REPORT TO CONSTITUTIONAL DEFENSE COUNCIL

BY MARK WARD, UTAH ASSOCIATION OF COUNTIES

OCTOBER 16, 2014

REGARDING STATUS OF FEDERAL LEGISLATIVE JURISDICTION OVER FEDERAL LANDS IN UTAH

I.

Department of Interior and U.S. Forest Service Lands in Utah Are Federal Proprietary Jurisdiction Lands, Not Exclusive or Concurrent Jurisdiction Lands.

1. 1969 Department of Justice Report

In May of 1969 (revised September 1969) the Land and Natural Resources Division of the United States Department of Justice, Washington, D.C., prepared and submitted a report entitled "Federal Legislative Jurisdiction" for the U.S. Public Land Law Review Commission ("1969 Department of Justice Report"). Relevant portions of the 1969 Department of Justice Report are reprinted and attached as Exhibit A hereto. The 1969 Department of Justice Report states among other things:

> - "[T]he great bulk of federally owned areas which constitute the lands of the public domain, including the great majority of such areas which have been reserved or withdrawn for various Federal purposes, continue to be held by the United States merely in a proprietorial status, with legislative jurisdiction remaining in the respective host states." Exhibit A page 53.
>
> - The other major areas of the PLLR Commission's interest, lands of the national forests of the United States, also are in vast majority held by the United States merely in a proprietorial status, with legislative jurisdiction remaining in the respective host states." Id. at 54.
>
> - 2. Exclusive legislative jurisdiction. This term is applied when the Federal Government possesses, by whichever method acquired, all of the authority of the State, and in which the State concerned has not

reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area for activities which occurred outside the area. Id. at 57.

- 3. Concurrent legislative jurisdiction. This term is applied to those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. Id.

- 4. Partial legislative jurisdiction. This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the areas (e.g., the right to tax private property). Id. at 57-58.

- 5. Proprietorial interest only. This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State, but has not obtained any measure of the State's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietorial capacity. Id. at 58.

- d. Bureau of Land Management. This Bureau reports administering 327 section 10 properties aggregating 467,992,539.0 acres, and 48 non-section 10 properties aggregating 2,390,724.9 acres, a total of 375 properties aggregating 470,383,263.9 acres. With only three exceptions, all the properties of this largest Federal landholding agency are in a proprietorial jurisdiction status.

Proprietorial jurisdiction is indicated as the most advantageous for all the several purposes for which real property is administered by the Bureau of Land Management. It is reported that no problems have been encountered with this status

in the past, and none are anticipated. Id. at 88.

The 1969 Department of Justice Report at Appendix B Table 3 sets forth the jurisdictional status of Federal lands by state and agency. For the State of Utah, the figures are as follows:

> Forest Service Lands in Utah
>
> > Exclusive Jurisdiction: 0 acres
> > Concurrent Jurisdiction: 0 acres
> > Partial Jurisdiction: 0 acres
> > Proprietorial Jurisdiction: 7,916,042.5 acres
>
> Exhibit A at 163, 189.
>
> Department of Interior Lands in Utah (specifically Geological Survey, Bureau of Land Management, Bureau of Mines, National Park Service, Bureau of Reclamation and Bureau of Commercial Fisheries)
>
> > Exclusive Jurisdiction: 5.2 acres (BLM Administrative site in Cedar City (See id., at 88-89)
> > Concurrent Jurisdiction: 5.0 acres (Bureau of Mines)
> > Partial Jurisdiction: 0 acres
> > Proprietorial Jurisdiction: 27, 124,492.2 acres (including 24,864,084.4 acres BLM)
>
> Id.

2. US Attorneys Criminal Resource Manual

Commenting on the Assimilative Crimes Act, 18 U.S.C. § 13, Section 667 of the U.S. Attorneys Criminal Resource Manual states in part:

> The Assimilative Crimes Act, 18 U.S.C. § 13, makes state law applicable to conduct occurring on lands reserved or acquired by the Federal Government as provided in 18 U.S.C. § 7(3), when the act or omission is not made punishable by an enactment of Congress. Prosecutions instituted under this statute are not to enforce the laws of the state, but to enforce Federal law, the details of which, instead of being recited, are adopted by reference.

Exhibit B hereto (emphasis added).

Commenting on the 18 U.S.C. § 7(3) definition of land subject to the

Assimilative Crimes Act, Section 664 of the U.S. Attorneys Criminal Resource

Manual states in part:

> The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. [Citation omitted.] But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. *See Mason Co. v. Tax Commission,* 302 U.S. 97 (1937); *James v. Dravo Contracting Co.,* 302 U.S. at 141-42.
>
> State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. [Citations omitted.]

Exhibit C hereto.

Section 1630 of the US Attorneys Criminal Resource Manual states in part:

> For purposes of federal criminal jurisdiction, government property can be categorized in three ways. First, certain lands fall within the exclusive jurisdiction of the United States. As this term implies, on these lands federal criminal law applies to the exclusion of state law. Other properties acquired by the United States fall within the concurrent jurisdiction of the state and Federal governments. Finally, the United States may acquire property without accepting any special criminal jurisdiction over it. in this situation the United States simply retains proprietary jurisdiction over the property.
>
> The jurisdictional status of property acquired by the United States, is important because it triggers the application of a series of federal laws, known as federal enclave statutes. These statutes apply to lands within "the special maritime and territorial jurisdiction of the United States," a term which includes "(a)ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof . . . . *See* 18 U.S.C. § 7(3). Therefore, any property under the exclusive or concurrent jurisdiction of the United States is subject to these federal enclave laws.
>
> . . . .
>
> . . . Therefore United States Attorneys should be aware of the jurisdictional status of all federal property within their respective districts.

Exhibit D hereto (emphasis added).

3. Relevant Utah Provisions

Utah has not ceded or shared its jurisdiction with the United States with respect to Forest Service and Department of Interior Lands. Utah's Enabling Act, approved July 16, 1894, evidences the fact that Utah ceded only ownership or title, not jurisdiction, to the United States with respect to non-tribal federal lands. Section 3 of the Utah Enabling Act at paragraph second states in part:

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States[.]

Emphasis added.

The fact this provision of the Enabling Act went to the trouble to specify that Congress has jurisdiction over Indian lands, means the absence of any such express provision for non-Indian unappropriated public lands stands in stark contrast and reflects the obvious intent for the State to retain such jurisdiction, even though the people of the State gave up title ownership thereto.

Nowhere in the Utah Code has Utah ever ceded or shared with the United States any jurisdiction over Forest Service and Department of Interior lands. The 1969 Department of Justice Report conclusion that virtually all such lands in Utah are held in the category of proprietary jurisdiction, remains accurate at the present time.

INDEX OF EXHIBITS
TO MEMORANDUM BY UTAH ASSOCIATION OF COUNTIES AND UTAH SHERIFFS ASSOCIATION IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT A	Selected pages from Federal Legislative Jurisdiction, Report Prepared by U.S. Department of Justice, Washington, D.C., for U.S. Public Land Law Review Commission, May 1969 (Revised September 1969)
EXHIBIT B	U.S. Attorneys Criminal Resource Manual 667, Assimilative Crimes Act, 18 U.S.C. § 13
EXHIBIT C	U.S. Attorneys Criminal Resource Manual 664, Territorial Jurisdiction
EXHIBIT D	U.S. Attorneys Criminal Resource Manual 1630, Protection of Government Property - Real Property - 18 U.S.C. § 7
EXHIBIT E	Selected pages from PowerPoint presentation by BLM Office of Law Enforcement & Security, May 2012: "Law Enforcement Authority & Jurisdiction for BLM Rangers, Special Agents & Managers"

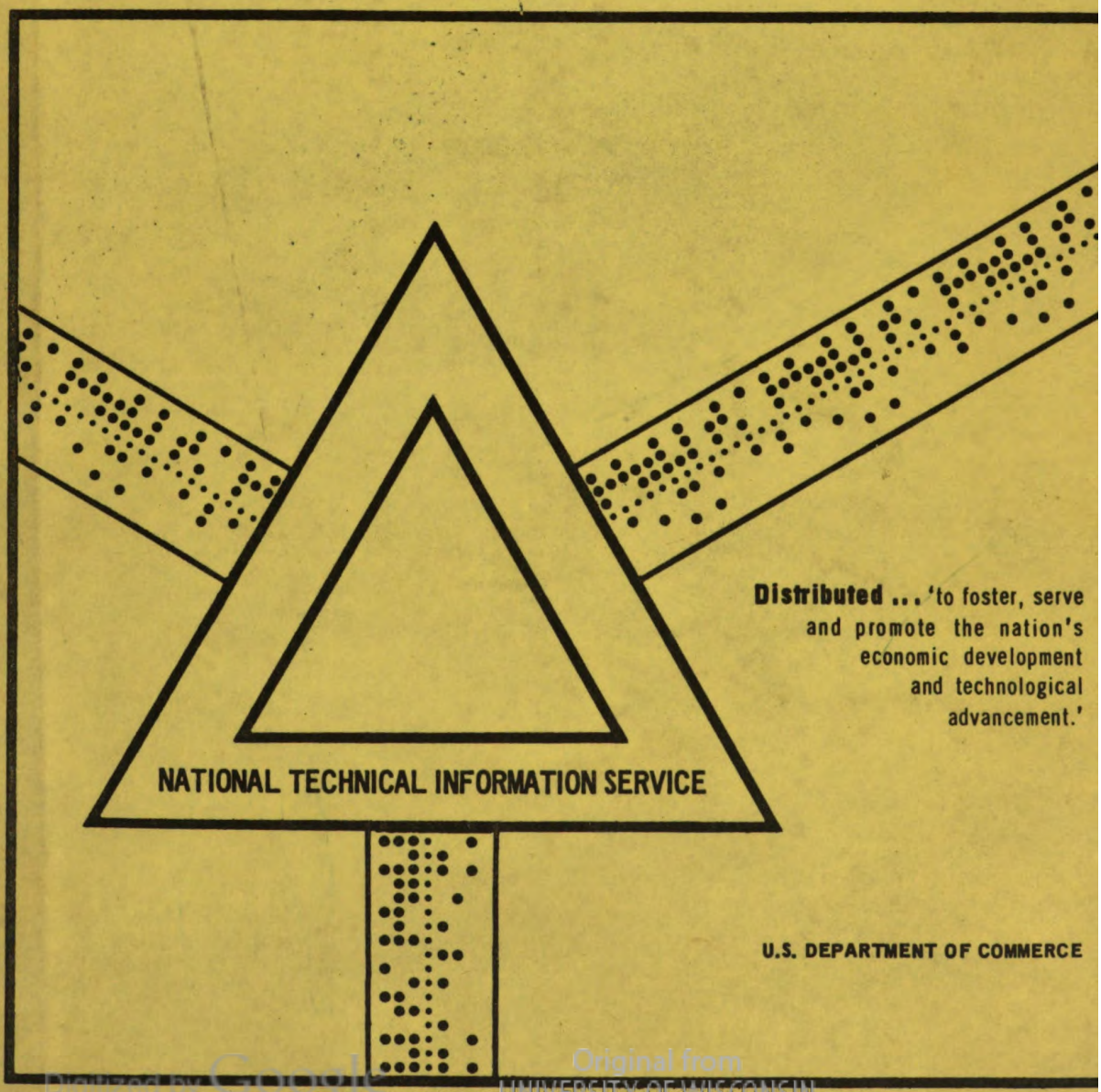
Exhibit A

PB 185 9

FEDERAL LEGISLATIVE JURISDICTION

United States Department of Justice
Washington, D. C.

May 1969
Revised September 1969



FEDERAL LEGISLATIVE JURISDICTION

Report

Prepared for

U.S Public Land Law Review Commission

May 1969

(Revised September 1969)

Land and Natural Resources Division

United States Department of Justice

Washington, D.C.

FOREWORD

This manuscript is one of a series prepared for the Public Land Law Review Commission to provide data for the Commission's use in forming a basis for recommending future public land policies to Congress and the President of the United States.

As pointed out elsewhere, these reports represent the views of their authors and are not necessarily those of the Commission. They are only one of a number of information sources used by the Commission.

In establishing the Public Land Law Review Commission in September 1964, Congress declared the following policy: That the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public. It also directed that a comprehensive review be made of the public land laws and the related administrative rules and regulations to determine whether and to what extent revisions are necessary to accomplish the stated policy objective.

Considerable evidence pointed to the need for such a review. Dating back in some cases to the birth of the nation, our public land laws have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other. Administration of the public lands and the related laws has been divided among several agencies of the Federal Government. Quite possibly, these laws and the manner in which they are administered may be inconsistent with one another and inadequate to meet the current and future needs of the American people.

The Commission was instructed to:

1. Study existing statutes and regulations governing the retention, management, and disposition of the public lands;

2. Review the policies and practices of the Federal agencies charged with administrative jurisdiction over such lands insofar as such policies and practices relate to the retention, management, and disposition of those lands;

3. Compile data necessary to understand and determine the various demands on the public lands which now exist within the foreseeable future; and

4. Recommend such modifications in existing laws, regulations, policies and practices as will, in the judgment of the Commission, best serve to carry out the policy objective.

To fulfill these requirements, the staff was charged with the responsibility of performing or having performed the appropriate research and to then present to the Commission all the information and data necessary as a foundation for the Commission's deliberations, conclusions, and recommendations. A study program encompassing various subject areas was undertaken and separate manuscripts have been or are being prepared covering each of 33 separate topics.

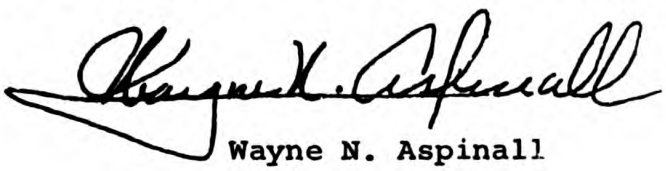
In fulfillment of a policy of maintaining the smallest technical and professional staff possible, most of the studies are being accomplished under contract with individuals, institutions such as universities, and research organizations; a few of the studies and analyses are being accomplished inhouse by the Commission staff, some with consultant assistance.

Thus, while it is still our purpose to review the whole body of public land laws at one time, each study has been designed to examine only a portion of the public lands complex and should be utilized with this understanding. There is, therefore, an interrelationship among the studies and the resultant manuscripts that will require review and examination of more than one report in order to obtain a

complete view of any one aspect of public land law and administration.

Each manuscript has been transmitted from the staff with a letter which discusses the content of the report and sets forth the policy matters to be considered with respect to the particular subject. A copy of the letter of transmittal for this report has been made a part of this volume in order to assist in the understanding of the approach.

These manuscripts have already served an extremely useful purpose in providing a common base for discussion in the Commission and between the Commission and its Advisory Council and the representatives of the 50 governors. We believe that they will also be valuable as reference works, not only on Federal public land matters but concerning all of our natural resources, for use by all levels of government -- Federal, state, and local -- and the academic community as well as all those who are interested in the tremendous natural resources that we, as a nation, possess.



Wayne N. Aspinall
Chairman

PUBLIC LAND LAW REVIEW COMMISSION

Background

The public lands of America date back to the time of the Union's formation. Then, and soon thereafter, seven of the original States ceded to the Central Government some 233.4 million acres of land lying westward to the Mississippi River. Thereafter, through purchase and treaty, the United States acquired an additional billion acres of public domain, the last acquisition being the purchase of Alaska from Russia in 1867. Altogether, nearly 2 billion acres of land in 32 States have been part of the public domain at one time or another.

At first, these lands were sold for their revenue. Eventually, however, as the pioneers swept westward, the revenue-raising policy was replaced by one stressing settlement and development of the land. The Homestead Act of 1862 was the first of a series of settlement and development laws enacted over a period of some 60 years - the desert land law, mining laws, and the various homestead laws - all designed to meet a particular need of the period. Meanwhile, many millions of acres were transferred to private ownership through military, railroad, and other land grants, including various grants to the States.

Through these means, nearly 1.2 billion acres have passed from Federal ownership, leaving approximately 715 million acres of the original public domain lands in Federal ownership. Of these 715 million acres 364 million are in the State of Alaska. Add to this the 52 million acres acquired for various purposes, and federally owned lands today amount to approximately 770 million acres - about one-third of the Nation's total land area. Some of these lands are in national forests and some are reserved for national parks, wildlife refuges, and other specific uses; but more than half constitute the "vacant and unappropriated" public domain lands which have never left Federal ownership and have not been dedicated to a specific use pursuant to legislative authorization.

The Act establishing the Public Land Law Review Commission contains in section 10 the following definition:

As used in this Act, the term 'public lands' includes (a) the public domain of the United States, (b) reservations, other than Indian reservations, created from the public domain, (c) lands permanently or temporarily withdrawn, reserved or withheld from private appropriation and disposal under the public land laws, including the mining laws, (d) outstanding interests of the United States in lands patented, conveyed in fee or otherwise, under the public land laws, (e) national forests, (f) wildlife refuges and ranges, and (g) the surface and subsurface resources of all such lands, including the disposition or restriction on disposition of the mineral resources in lands defined by appropriate statute, treaty, or judicial determination as being under the control of the United States in the Outer Continental Shelf.

Working with the Commission are a 33-member Advisory Council and the representatives of the 50 State Governors.

Federal Legislative Jurisdiction

Staff:

Glen E. Taylor, Deputy Assistant Attorney General, Land and Natural Resources Division: Liaison Officer, Department of Justice, and Member Advisory Council, PLLRC.

Edward S. Lazowska, Legislative Assistant, Land and Natural Resources Division: Staff Contact, PLLRC, Department of Justice, and Study Coordinator.

Mary Ellen Brown, Attorney, Land and Natural Resources Division, Department of Justice: Assistant Study Coordinator.

Elmer F. Bennett, General Counsel, PLLRC Project Officer.

The individuals responsible for this study have herein set out the product of their researches without the agency review which is a condition precedent to agency approval. Consequently, views herein stated are those of such individuals, and not those of the Department of Justice, of the Public Land Law Review Commission, or of any cooperating agency.

CONTENTS

E. Special Status of Section 10 Properties

1. Public domain lands. It should be noted that article I, section 8, clause 17 of the Constitution provides for exercise of Federal jurisdiction only as to places "purchased" with the consent of the legislature of the host State. While this use of the word "purchased" has been held by the courts to apply to all forms of acquisition by the United States, including acquisition by gift and through exercise of the power of eminent domain, the clause has never been held applicable to lands of the public domain, since these lands have not been "purchased by the consent of the Legislature of the State in which the Same shall be." However, the United States has acquired the same type of legislative jurisdiction as is contemplated by article I, section 8, clause 17 over some public domain lands reserved for one or another purpose, under provisions of Statehood Acts in the cases of Hawaii and Alaska, under provisions of State constitutions in the cases of Montana, North Dakota, South Dakota, and Washington, or by State statutes specially profering cession of jurisdiction over such land in a number of instances. Such Federal-State arrangements received the blessing of the Supreme Court in Ft. Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), where the Court, in upholding the validity of an act of Kansas ceding to the United States jurisdiction over the Fort Leavenworth military reservation, said (pp. 541-2):

> Though the jurisdicition and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and the general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said,

> exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States.

However, the great bulk of federally owned areas which constitute the lands of the public domain, including the great majority of such areas which have been reserved or withdrawn for various Federal purposes, continue to be held by the United States merely in a proprietorial status, with legislative jurisdiction remaining in the respective host States.

2. National forest lands. The other major area of the PLLR Commission's interest, lands of the national forests of the United States, also are in vast majority held by the United States merely in a proprietorial status, with legislative jurisdiction remaining in the respective host States. This is so because the earliest national forests were created by withdrawal of lands from the public domain, and the Weeks Forestry Act of 1911, which authorized acquisition of privately owned lands for national forest purposes, provided (16 U.S.C. 480):

> The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.

National forests, with the jurisdictional status of their acquired lands normally controlled by this provision and that of their public domain lands affected by the infrequency with which the United States has received jurisdiction over such lands, contain few areas subject to Federal legislative jurisdiction. Only in several instances where national forest lands were originally acquired by the Federal Government or reserved from the public domain for some other Federal purpose and later converted to national forest use, does there exist such legislative jurisdiction as may have been acquired by the Government during the previous use.

F. Categories of Legislative Jurisdiction

1. Development of categories. The early practice was State transfer to the United States of exclusive legislative jurisdiction, that is to say, of all the powers had by the State. Where such jurisdiction has been acquired by the Federal Government "the national and municipal powers of government, of every description, are united in the government of the Union." 132/ In 1819, Justice Storey expressed doubts as to "whether congress are by the terms of the constitution, at liberty to purchase lands for forts, dockyards &c., with the consent of a state legislature, where such consent is so qualified that it will not justify the 'exclusive jurisdiction', of congress there". 133/ From the beginning, however, it was accepted that reservation by States of the right to serve their court process within an area was not inconsistent with cession of exclusive legislative jurisdiction over the area, and examination of State statutes discloses that States have almost invariably made such a reservation.

In 1885, for the first time, the Supreme Court admitted of the right in a State to reserve to itself more than merely authority to serve process. In approving a statute of the State of Kansas reserving certain rights to tax corporate assets on a Federal reservation, the court described the statute as providing for a cession of jurisdiction, rather than for a transfer of jurisdiction by State consent and consequent operation of the Constitution. "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post." 134/ The distinction between

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132/ Pollard v. Hagan, 3 How. 212, 223 (1845).

133/ United States v. Cornell, 25 Fed. Cas. 646 (1819).

134/ Ft. Leavenworth R.R. v. Lowe, 114 U.S. 525,539 (1885).

legislative jurisdiction acquired by consent of a State legislature and such jurisdiction acquired by other means persisted for some time, but was completely eliminated by the Supreme Court in 1937. 135/ It has been accepted since then that, whatever the method of transfer of legislative jurisdiction from a State to the Federal Government, in such a transfer there may be retained by the State, either for exclusive exercise by itself, or for exercise concurrently with a vesting of like authority in the Federal Government, any of its normal State-type power or authority. States have most often reserved their taxing authority, but have also made an almost infinite variety of other reservations, so that there are now numerous shadings of legislative jurisdiction as to Federal properties. Various terms are used, often loosely, to describe various jurisdictional status. For the purposes of the present study there have been adopted the terms which were applied in the 1955-1957 Interdepartmental Committee Study: (1) exclusive legislative jurisdiction, (2) concurrent legislative jurisdiction, (3) partial legislative jurisdiction, and (4) proprietorial interest only.

2. Exclusive legislative jurisdiction. This term is applied when the Federal Government possesses, by whichever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area for activities which occurred outside the area.

3. Concurrent legislative jurisdiction. This term is applied to those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

4. Partial legislative jurisdiction. This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United

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135/ James v. Dravo Contracting Co., 302 U.S. 134 (1937).

States, other authority constituting more than merely the right to serve civil or criminal process in the area (e.g., the right to tax private property).

5. Proprietorial interest only. This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State, but has not obtained any measure of the State's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietorial capacity.

6. Multiplicity of categories. With the right of States to withhold legislative jurisdiction from the United States, either in whole or in part, firmly established, and with the Federal Government demonstrating a growing disinclination to accept jurisdiction, States tended to repeal their consent and cession statutes or to amend them by reserving additional powers for exercise by themselves. So, whereas early in the twentieth century all States had statutes profering exclusive jurisdiction to the United States, by the mid-nineteen fifties only twenty-five States had statutes granting such jurisdiction in any circumstances. Several now have no provision for cession of any jurisdiction to the United States.

A great variety of State provisions not only made for a similar variety of Federal-State jurisdictional situations on Federal lands in different States, but created a variety of situations in individual States, according to the particular State statute under which jurisdiction was transferred to the United States. Indeed, it will be seen that in numerous instances different portions of the same Federal installation, all within the same State, are in different jurisdictional status because they were acquired at different times, when different State statutes prevailed. 136/

136/ A striking example involves the site of the Post Office at Winchester, Virginia, which is a mixture of exclusive jurisdiction, partial jurisdiction and proprietorial interest only, the whole aggregating less than one-half acre of land.

c. Bonneville Power Administration. The Bonneville Power Administration has 467 properties, totalling 11,863.5 acres, primarily under its supervision and control, all of them being section 10 lands and all in a proprietorial jurisdiction status. All of these properties are used for power development and distribution.

The Administration finds proprietorial jurisdiction not merely adequate, but advantageous. In no instance have State or local laws required any adjustments in the use of the property or created any other problems. On the other hand, proprietorial jurisdiction has enabled State and local provision of police services, fire protection, local garbage and sewage disposal, vital statistics maintenance, and numerous other services which are not locally available from the Federal Government.

The 78 residents on the Administration's premises at Midway, Hot Springs, Lower Monumental and Fairview substations (Oregon) are in no way discriminated against in the matter of privileges and services at the hands of local and State governments. They are permitted to vote, the total of 27 resident children attend public schools, and in all other matters, also, these persons are fully accepted as State and local residents.

d. Bureau of Land Management. This Bureau reports administering 327 section 10 properties aggregating 467,992,539.0 acres, and 48 non-section 10 properties aggregating 2,390,724.9 acres, a total of 375 properties aggregating 470,383,263.9 acres. With only three exceptions, all the properties of this largest Federal landholding agency are in a proprietorial jurisdiction status.

Proprietorial jurisdiction is indicated as the most advantageous for all the several purposes for which real property is administered by the Bureau of Land Management. It is reported that no problems have been encountered with this status in the past, and none are anticipated.

The principal exception to the Bureau's jurisdictional homogeny is Naval Petroleum Reserve No. 4, a 23 million-acre area in Alaska, which is jointly managed by Interior (BLM)

and the Navy Department. Concurrent jurisdiction vested in the United States over this property by specific provision of section 11(b) of the Alaska Statehood Act (Act of July 7, 1958, 72 Stat. 339). BLM indicates that the jurisdictional status of this area is unimportant, because it is an uninhabited wilderness, but that proprietorial jurisdiction would be adequate for BLM purposes.

The two other BLM properties as to which the United States has more than proprietorial jurisdiction are: (1) the Tillamook Job Corps Civilian Conservation Center in Oregon (625.5 acres - exclusive jurisdiction) and (2) the Cedar City Administrative Site in Utah (5.2 acres - exclusive jurisdiction). Both of these were formerly military installations which have been retransferred to Interior after having served their military purposes. The small Cedar City site is used for storage, and no problems have been noted as arising out of its exclusive jurisdiction status, although a lesser jurisdictional status would be deemed appropriate by BLM. The exclusive jurisdiction status of the Tillamook JCCC Center has created problems, however. The most serious disadvantage occurs from lack of local law enforcement. The Center is being used to carry out a Job Corps program of the Office of Economic Opportunity and has 31 permanent residents and approximately 164 Job Corpsmen. It is stated that Corpsmen who violate the law on the Center must be transported to the U.S. Marshal in Portland, apparently some distance away. It is indicated that other problems exist, but they are not specified. A concurrent or proprietorial jurisdiction is suggested by BLM as that which would best satisfy the needs of this installation, but the agency has no present plans for procuring the necessary legislation. Undoubtedly an ameliorating factor at this installation is the apparent fact that all the permanent residents are permitted to vote in local elections, send their children (11) to local schools, and otherwise receive benefits at the hands of the State and local governments which they may or may not have legal right to expect.

APPENDIX B*

Jurisdictional Status of Federal Lands

Table 1 - By Agency and Bureau

Table 2 - By State

Table 3 - By State and Agency

* These tables are based upon information developed by the General Services Administration in an inventory of the jurisdictional status of Federal lands in the United States as of June 30, 1962, and were prepared by that agency.

Copies were reported available from GSA when this report was delivered to Clearinghouse for reprinting.

TABLE 1. JURISDICTIONAL STATUS OF FEDERAL LANDS IN THE UNITED STATES, BY AGENCY AND BUREAU

AGENCY AND BUREAU	NO. OF INSTALL	JURISDICTIONAL STATUS (IN ACRES) EXCLUSIVE	CONCURRENT	PARTIAL	PROPRIETORIAL	UNKNOWN	TOTAL
CIVIL							
AGRICULTURE							
AGRICULTURAL MARKETING SERVICE	1	.0	.0	.0	9.9	.0	9.9
AGRICULTURAL RESEARCH SERVICE	93	35,950.7	.0	39.7	364,869.6	.0	400,860.0
COMMODITY CREDIT CORPORATION	22	9.9	.0	.0	53.0	.0	62.9
FARMERS HOME ADMINISTRATION	1	.0	.0	.0	1,668.5	.0	1,668.5
FOREST SERVICE	227	58,113.0	.0	411,226.0	185,682,972.0	.0	186,152,311.0
SOIL CONSERVATION SERVICE	19	.0	.0	.0	20,607.0	.0	20,607.0
TOTAL	363	94,073.6	.0	411,265.7	186,070,180.0	.0	186,575,519.3
COMMERCE							
COAST AND GEODETIC SURVEY	13	214.5	.0	2.3	573.8	.0	790.6
MARITIME ADMINISTRATION	15	696.4	.0	.0	3,864.1	.0	4,560.5
NATIONAL BUREAU OF STANDARDS	8	.1	.0	.0	2,373.0	.0	2,373.1
PUBLIC ROADS, BUREAU OF	8	12.6	.0	.0	1,060.0	.0	1,072.6
OFFICE OF THE SECRETARY	1	.0	.0	.0	6.5	.0	6.5
WEATHER BUREAU	7	3.0	.0	.0	436.4	.0	439.4
TOTAL	52	926.6	.0	2.3	8,511.8	.0	9,442.7
HEALTH EDUCATION AND WELFARE							
PUBLIC HEALTH SERVICE	86	3,251.9	7.0	70.1	1,700.0	.0	5,029.0
INTERIOR							
BONNEVILLE POWER ADMIN	249	.0	.0	.0	8,598.2	.0	8,598.2
ALASKA RAIL ROAD	1	.0	.0	.0	36,845.2	.0	36,845.2
GEOLOGICAL SURVEY	3	.0	.0	.0	68.1	.0	68.1
INDIAN AFFAIRS, BUR OF	88	49,006.2	.0	.0	4,613,107.1	11,112.8	4,669,226.1
LAND MANAGEMENT, BUR OF	151	5.2	23,000,000.0	.0	466,424,621.2	.0	489,424,626.4
MINES BUREAU OF	24	365.8	17.9	.0	25,228.6	.0	25,612.3
NATIONAL PARK SERVICE	193	2,333,332.9	19,131.3	9,715,570.8	10,293,134.0	.0	22,361,169.0
RECLAMATION, BUREAU OF	166	413.0	.0	87,467.0	9,102,706.4	.0	9,190,586.4
SALINE WATER, OFFICE OF	6	.0	.0	.0	77.7	.0	77.7
SOUTHWESTERN POWER ADM	4	.0	.0	.0	136.0	.0	136.0
COMM FISHERIES, BUR OF	421	709,346.9	1,408.4	4,740.8	26,543,769.6	323.7	27,259,789.4
TOTAL	1,306	3,088,470.0	23,020,757.6	9,807,778.6	517,650,292.1	11,436.5	552,978,734.8
JUSTICE							
IMMIGRATION AND NAT SERVICE	29	24.1	.0	.0	81.4	.0	105.9
PRISONS, BUREAU OF	26	21,068.4	.0	521.0	4,405.9	.0	25,995.3
TOTAL	55	21,092.5	.0	521.0	4,487.3	.0	26,100.8
POST OFFICE	3,023	1,232.0	76.3	190.9	175.3	.0	1,674.5
STATE							
INTER WATER COMM US MEX	6	5,260.7	.0	.0	69,122.6	.0	74,383.3
TREASURY							
CUSTOMS, BUREAU OF	19	7.8	.0	.0	25.4	3.7	36.9
MINT, BUREAU OF	5	82.3	.0	.0	.4	.0	82.7
COAST GUARD	1,271	10,633.4	50,655.9	689.2	10,703.0	142.8	72,904.3
TOTAL	1,295	10,723.5	50,655.9	689.2	10,908.8	146.5	73,023.9
GENERAL SERVICES ADMINISTRA	712	4,731.9	132.8	293.6	7,480.8	46.5	12,685.6
HOUSING AND HOME FINANCE AG							
OFFICE OF THE ADMINISTR	5	.0	.0	.0	28.1	.0	28.1
PUBLIC HOUSING ADMINIS	8	.0	.0	.0	258.0	.0	258.0
TOTAL	13	.0	.0	.0	286.1	.0	286.1
VETERANS ADMINISTRATION	184	21,740.6	1,273.5	1,703.5	1,953.8	.0	26,671.4
OTHER CIVIL AGENCIES							
ATOMIC ENERGY COMMISSION	38	12,294.3	98.9	679.9	2,093,251.7	.0	2,106,324.8
CENTRAL INTELLIGENCE AGENCY	3	.0	138.2	.0	585.9	.0	724.1
FEDERAL AVIATION AGENCY	247	714.1	10,900.1	.0	100,688.3	.0	112,302.5
FEDERAL COMMUNICAT COMM	17	643.0	5.3	.0	2,011.2	.0	2,659.5
NATL AERO AND SPACE ADM	9	872.6	.0	.0	21,517.1	.0	22,389.7
NATIONAL SCIENCE FOUNDA	2	.0	2,654.3	.0	2.6	.0	2,656.9
SAINT LAWRENCE SEAWAY	1	.0	.0	.0	3,269.0	.0	3,269.0
TENN VALLEY AUTHORITY	114	2,993.5	.0	.0	695,029.1	.0	698,022.6
SMITHSONIAN INSTITUTION	1	21.0	.0	.0	.0	.0	21.0
U S INFORMATION AGENCY	6	.0	.0	.0	8,197.4	.0	8,197.4
TOTAL OTHER AGENCIES	438	17,538.5	13,796.8	679.9	2,924,552.3	.0	2,956,567.5
TOTAL CIVIL AGENCIES	7,533	3,269,043.8	23,086,699.9	10,223,154.8	706,149,550.9	11,629.5	742,740,078.9
DEFENSE							
MILITARY FUNCTIONS							
ARMY	1,147	1,767,371.4	872,770.6	1,401,954.9	5,816,665.9	.0	9,858,762.8
AIR FORCE	1,223	425,913.0	158,008.4	201,922.6	8,222,452.0	.0	9,007,896.0
NAVY	473	444,609.2	57,540.4	662,569.1	2,305,287.3	.0	3,470,006.0
TOTAL MILITARY	2,843	2,637,893.6	1,088,319.4	2,266,046.6	16,344,405.2	.0	22,336,664.8
CIVIL FUNCTIONS							
CORPS OF ENGINEERS	856	15,643.6	654.7	191.9	5,641,881.4	.0	5,658,371.6
TOTAL DEFENSE	3,699	2,653,537.2	1,088,974.1	2,266,238.5	21,986,286.6	.0	27,995,036.4
TOTAL ALL AGENCIES	11,232	5,922,581.0	24,175,674.0	12,489,393.3	728,135,837.5	11,629.5	770,735,115.3

TABLE 3. JURISDICTIONAL STATUS OF FEDERAL LANDS IN THE UNITED STATES, BY STATE AND AGENCY, (CONTINUED)

AGENCY AND BUREAU	NO. OF INSTALL	JURISDICTIONAL STATUS mIN ACRESo					
		EXCLUSIVE	CONCURRENT	PARTIAL	PROPRIETORIAL	UNKNOWN	TOTAL
COMM FISHERIES, BUR OF	11	.0	.0	.0	104,840.7	.0	104,840.7
TOTAL	21	308.4	.0	693,190.0	147,963.3	.0	841,461.7
JUSTICE							
IMMIGRATION AND NAT SERVICE	13	21.1	.0	.0	38.3	.0	59.4
PRISONS, BUREAU OF	3	2,151.3	.0	.0	.0	.0	2,151.3
TOTAL	16	2,172.4	.0	.0	38.3	.0	2,210.7
POST OFFICE	148	69.8	.0	.0	6.6	.0	76.4
STATE							
INTER WATER COMM US MEX	4	5,260.7	.0	.0	56,774.2	.0	62,034.9
TREASURY							
CUSTOMS, BUREAU OF	2	.0	.0	.0	.2	3.7	3.9
COAST GUARD	16	72.8	.0	.0	30.3	.0	103.1
TOTAL	18	72.8	.0	.0	30.5	3.7	107.0
GENERAL SERVICES ADMINISTRA	51	59.1	.0	.0	1,726.9	2.4	1,788.4
HOUSING AND HOME FINANCE AG							
OFFICE OF THE ADMINISTR	1	.0	.0	.0	.1	.0	.1
VETERANS ADMINISTRATION	10	1,142.6	.0	69.8	.0	.0	1,212.4
OTHER CIVIL AGENCIES							
ATOMIC ENERGY COMMISSION	1	4,005.2	.0	.0	15.6	.0	4,020.8
FEDERAL AVIATION AGENCY	3	.0	.0	.0	46.9	.0	46.9
FEDERAL COMMUNICAT COMM	2	.0	.0	.0	523.0	.0	523.0
TOTAL OTHER AGENCIES	6	4,005.2	.0	.0	585.5	.0	4,590.7
TOTAL CIVIL AGENCIES	294	14,177.6	.0	693,259.8	986,187.2	6.1	1,693,630.7
DEFENSE							
MILITARY FUNCTIONS							
ARMY	53	64,082.0	.0	220,113.6	109,827.8	.0	394,023.4
AIR FORCE	82	32,020.8	.0	12,827.7	45,517.5	.0	90,366.0
NAVY	19	6,693.3	.0	.0	5,994.7	.0	12,688.0
TOTAL MILITARY	154	102,796.1	.0	232,941.3	161,340.0	.0	497,077.4
CIVIL FUNCTIONS							
CORPS OF ENGINEERS	35	1,860.8	.0	.0	542,969.8	.0	544,830.6
TOTAL DEFENSE	189	104,656.9	.0	232,941.3	704,309.8	.0	1,041,908.0
TOTAL ALL AGENCIES	483	118,834.5	.0	926,201.1	1,690,497.0	6.1	2,735,538.7
UTAH							
CIVIL							
AGRICULTURE							
AGRICULTURAL RESEARCH SERVICE	2	.0	.0	.0	1.2	.0	1.2
FOREST SERVICE	11	.0	.0	.0	7,916,041.3	.0	7,916,041.3
TOTAL	13	.0	.0	.0	7,916,042.5	.0	7,916,042.5
INTERIOR							
GEOLOGICAL SURVEY	1	.0	.0	.0	50.0	.0	50.0
INDIAN AFFAIRS, BUR OF	5	.0	.0	.0	438.7	.0	438.7
LAND MANAGEMENT, BUR OF	18	5.2	.0	.0	24,864,084.4	.0	24,864,089.6
MINES BUREAU OF	2	.0	5.0	.0	12,342.2	.0	12,347.2
NATIONAL PARK SERVICE	11	.0	.0	.0	295,178.8	.0	295,178.8
RECLAMATION, BUREAU OF	16	.0	.0	.0	1,863,476.7	.0	1,863,476.7
COMM FISHERIES, BUR OF	7	504.3	.0	.0	88,921.4	.0	89,425.7
TOTAL	60	509.5	5.0	.0	27,124,492.2	.0	27,125,006.7
POST OFFICE	18	8.0	.0	.0	.8	.0	8.8
GENERAL SERVICES ADMINISTRA	8	3.9	.0	.0	12.7	.8	17.4
VETERANS ADMINISTRATION	2	157.9	.0	.0	.0	.0	157.9
OTHER CIVIL AGENCIES							
ATOMIC ENERGY COMMISSION	2	.0	.0	.0	3,625.4	.0	3,625.4
FEDERAL AVIATION AGENCY	15	.0	.0	.0	1,818.4	.0	1,818.4
TOTAL OTHER AGENCIES	17	.0	.0	.0	5,443.8	.0	5,443.8
TOTAL CIVIL AGENCIES	118	679.3	5.0	.0	35,045,992.0	.8	35,046,677.1
DEFENSE							
MILITARY FUNCTIONS							
ARMY	9	36,555.5	3,675.0	1,292.9	823,878.6	.0	865,402.0
AIR FORCE	11	15,066.0	.0	.0	4,751.0	.0	19,817.0
NAVY	3	833.0	.0	.0	91,464.0	.0	92,297.0
TOTAL DEFENSE	23	52,454.5	3,675.0	1,292.9	920,093.6	.0	977,516.0
TOTAL ALL AGENCIES	141	53,133.8	3,680.0	1,292.9	35,966,085.6	.8	36,026,193.1
VERMONT							
CIVIL							
AGRICULTURE							
FOREST SERVICE	1	.0	.0	.0	232,134.0	.0	232,134.0

Exhibit B

667 Assimilative Crimes Act, 18 U.S.C. § 13

The Assimilative Crimes Act, 18 U.S.C. § 13, makes state law applicable to conduct occurring on lands reserved or acquired by the Federal government as provided in 18 U.S.C. § 7(3), when the act or omission is not made punishable by an enactment of Congress.

Prosecutions instituted under this statute are not to enforce the laws of the state, but to enforce Federal law, the details of which, instead of being recited, are adopted by reference. In addition to minor violations, the statute has been invoked to cover a number of serious criminal offenses defined by state law such as burglary and embezzlement. However, the Assimilative Crimes Act cannot be used to override other Federal policies as expressed by acts of Congress or by valid administrative orders.

The prospective incorporation of state law was upheld in *United States v. Sharpnack*, 355 U.S. 286 (1957). State law is assimilated only when no "enactment of Congress" covers the conduct. The application of this rule is not always easy. In *Williams v. United States*, 327 U.S. 711, 717 (1946), prosecution of a sex offense under a state statute with a higher age of consent was held impermissible, but a conviction for a shooting with intent to kill as defined by state law was upheld, despite the similarity of provisions of 18 U.S.C. § 113. *Fields v. United States*, 438 F.2d 205 (2d Cir.), *cert. denied*, 403 U.S. 907 (1971); *but see Hockenberry v. United States*, 422 F.2d 171 (9th Cir. 1970). *See also United States v. Bowers*, 660 F.2d 527 (5th Cir. 1981) (child abuse); *United States v. Smith*, 574 F.2d 988 (9th Cir. 1978)(sodomy). There seems to be a definite trend to construe 18 U.S.C. § 13 liberally to provide complete coverage of criminal

conduct within an enclave, even where the offense is generally covered by Federal law. *See, e.g.*, *United States v. Johnson*, 967 F.2d 1431 (10th Cir. 1992)(aggravated assault); *United States v. Griffith*, 864 F.2d 421 (6th Cir. 1988)(reckless assault); *United States v. Kaufman*, 862 F.2d 236 (9th Cir. 1988)(assault); *Fesler v. United States*, 781 F.2d 384 (5th Cir.), *cert. denied*, 476 U.S. 1118 (1986)(child abuse).

The Uniform Code of Military Justice (U.C.M.J.), 10 U.S.C. § 801 *et seq*., because of its unlimited applicability, is not considered an "enactment of Congress" within the meaning of 18 U.S.C. § 13. *See United States v. Walker*, 552 F.2d 566 (4th Cir. 1977), *cert. denied*, 434 U.S. 848 (1977)(drunk driving). *See also Franklin v. United States*, 216 U.S. 559 (1910). Military personnel committing acts on an enclave subject to Federal jurisdiction which are not made an offense by Federal statutes other than the U.C.M.J. may therefore be prosecuted in district court for violations of state law assimilated by 18 U.S.C. § 13, even though they are also subject to court martial. However, dual prosecution, it should be noted, is constitutionally precluded by the Double Jeopardy Clause. *See Grafton v. United States*, 206 U.S. 333 (1907).

Section 13 of Title 18 does not assimilate penal provisions of state regulatory schemes. *See United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977). Nor does it incorporate state administrative penalties, such as suspension of drivers licenses. *See United States v. Rowe*, 599 F.2d 1319 (4th Cir. 1979); *United States v. Best*, 573 F.2d 1095 (9th Cir. 1978). Section 13(b) allows suspension of licenses within the enclave.

Federal agency regulations, violations of which are made criminal by statute, have been held to preclude assimilation of state law. *See United States v. Adams*, 502 F. Supp. 21 (S.D.Fla. 1980)(carrying concealed weapon in federal courthouse); *United States v. Woods*, 450 F. Supp. 1335 (D.Md. 1978)(drunken driving on parkway). In

Adams, 502 F. Supp. 21, the defendant was charged with carrying a concealed weapon in a United States Courthouse in violation of 18 U.S.C. § 13 and the pertinent Florida felony firearms statute. In dismissing the indictment, the Adams court concluded that a General Services Administration (GSA) petty offense weapons regulation (41 C.F.R. § 101-20.313), explicitly provided for by statute, 40 U.S.C. § 318a, amounted to an enactment of Congress within the meaning of 18 U.S.C. § 13 and, therefore, the defendant could not be prosecuted by the assimilation of state law which prohibited the same precise act.

It is important to note, however, that a critical provision of the GSA regulations apparently was not considered in *Adams*. *See* 41 C.F.R. § 101-20.315 which provides in part:

Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

This non-abrogation provision arguably would permit the assimilation of appropriate state firearms laws or other state statutes notwithstanding the existence of the GSA regulations. It appears that this language has never been considered in any reported case. Moreover, no discussion of the meaning of this language appears in the pertinent parts of the Federal Register, 43 Fed.Reg. 29001, July 5, 1978; 41 Fed.Reg. 13378, March 30, 1976. We believe it would be reasonable to interpret this non-abrogation provision as permitting the government, in its discretion, to proceed under 18 U.S.C. § 13 and appropriate state firearms laws, rather than under the GSA weapons regulation.
[cited in USAM 9-20.100; USAM 9-20.115]

Exhibit C

664 Territorial Jurisdiction

Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . .

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:

The Congress shall have power. . . *To exercise exclusive Legislation in all Cases whatsoever*, over such District (not exceeding ten Miles square) as may, be Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority *over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.* (Emphasis added.) The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." *See James v. Dravo Contracting Co*., 302 U.S. 134, 141 (1937), *citing*, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652

(1930).

Until the decision in *Dravo*, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to serve civil and criminal process, was inoperable. *See Surplus Trading Co. v. Cook*, 281 U.S. at 652-56. When *Dravo* held that a state might reserve legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. *See* H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

Dravo also settled that the phrase "other needful building" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." *See James v. Dravo Contracting Co*., 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction. The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United

States has otherwise acquired the property. *See Collins v. Yosemite Park Co.*, 304 U.S. 518, 529-30 (1938); *James v. Dravo Contracting Co*., 302 U.S. at 142; *Surplus Trading Co. v. Cook*, 281 U.S. at 650-52; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526-27, 538, 539 (1885).

The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. *See Kohl v. United States*, 91 U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. *See Mason Co. v. Tax Commission*, 302 U.S. 97 (1937); *James v. Dravo Contracting Co*., 302 U.S. at 141-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. *See Adams v. United States*, 319 U.S. 312 (1943); *Surplus Trading Co. v. Cook*, 281 U.S. at 651-52. Whether or not the United States has jurisdiction is a Federal question. *See Mason Co. v. Tax Commission*, 302 U.S. at 197.

Prior to February 1,1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. *See Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction

has been acquired." *See Adams v. United States*, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. *United States v. Johnson*, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. *See Markham v. United States*, 215 F.2d 56 (4th Cir.), *cert. denied*, 348 U.S. 939 (1954); *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

COMMENT: In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

A. Where it reserved such jurisdiction upon entry of the state into the union;
B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;
C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and
D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

[cited in USAM 9-20.100]

Exhibit D

1630 Protection of Government Property—Real Property -- 18 U.S.C. § 7

The Federal government is the single largest holder of real estate in the United States. Federal custody and control over this property brings with it a host of responsibilities, including in some cases federal criminal jurisdiction. Yet it is clear that federal criminal jurisdiction does not exist over real property simply because the United States owns it. *See Adams v. United States*, 319 U.S. 312 (1943).

For purposes of federal criminal jurisdiction, government property can be categorized in three ways. First, certain lands fall within the exclusive jurisdiction of the United States. As this term implies, on these lands federal criminal law applies to the exclusion of state law. Other properties acquired by the United States fall within the concurrent criminal jurisdiction of the state and Federal governments. Finally, the United States may acquire property without accepting any special criminal jurisdiction over it. In this situation the United States simply retains proprietary jurisdiction over the property.

The jurisdictional status of property acquired by the United States, is important because it triggers the application of a series of federal laws, known as federal enclave statutes. These statutes apply to lands within the "special maritime and territorial jurisdiction of the United States," a term which includes "(a)ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof . . . . *See* 18 U.S.C. § 7(3). Therefore any property under the exclusive or concurrent jurisdiction of the United States is subject to these federal enclave laws.

The federal enclave laws provide two forms of protection to property found on federal land. At the outset these laws specifically forbid certain property crimes. For example, arson, theft, receiving stolen goods, destruction of property and robbery are all prohibited within the special maritime and territorial jurisdiction of the United States. *See* 18 U.S.C. §§ 81 (arson), 661 (theft), 662 (receiving stolen goods), 1363 (destruction of property), 2111 (robbery). In addition, 18 U.S.C. § 13 incorporates state law into the law of the federal enclave. Thus, property offenses which violate state law but are not otherwise punishable under federal law become federal crimes when committed on a federal enclave within the state.

Through these two means the federal enclave statutes add significantly to the body of law protecting government property. While these laws are not expressly limited to crimes involving government property, much of the property crime occurring in a federal enclave will involve property belonging to the United States. Therefore, United States Attorneys should be aware of the jurisdictional status of all federal property within their respective districts.

There are three methods by which the United States obtains exclusive or concurrent jurisdiction over federal lands in a state: (1) a state statute consenting to the purchase of land by the United States for the purposes enumerated in Article 1, Section 8, Clause 1 7, of the Constitution of the United States; (2) a state cession statute; and (3) a reservation of federal jurisdiction upon the admission of a state into the Union. *See Collins v. Yosemite Park Co*., 304 U.S. 518 (1938). Since February 1, 1940, the United States acquires no jurisdiction over federal lands in a state until the head or other authorized officer of the department or agency which has custody of the lands formally accepts the jurisdiction offered by state law. *See* 40 U.S.C. § 255; *Adams v. United States*, 319

U.S. 312 (1943). Prior to February 1, 1940, acceptance of jurisdiction had been presumed in the absence of evidence of a contrary intent on the part of the acquiring agency or Congress. *See Silas Mason Co., Inc. v. Tax Commission*, 302 U.S. 186 (1937). See also USAM 9-20.000 et seq., for a discussion of federal enclave jurisdiction.
[cited in Criminal Resource Manual 1635; USAM 9-66.100]

Exhibit E

Law Enforcement Authority & Jurisdiction for BLM Rangers, Special Agents, & Managers

Office of Law Enforcement & Security

May 2012

Overview

- Welcome to the online training module for Law Enforcement Authority and Jurisdiction for BLM Law Enforcement Rangers, Special Agents, and Managers. This course is designed to provide you with the foundation of BLM's law enforcement authority and the scope of our law enforcement jurisdiction.
- By the end of this session you will be able to….
  - list the sources of law enforcement authority in the BLM.
  - identify the type and scope of the BLM's jurisdiction.
  - recognize situations that fall under BLM authority and jurisdiction.
- In addition to establishing an initial base of knowledge, this course and the associated reference materials are designed to serve as a long term knowledge resource on the topic of BLM's law enforcement authority and jurisdiction.

Before you begin

- In order for you to successfully complete this course, you will need to print off or have an electronic copy of the *LE Authority & Jurisdiction Study Guide* available to you while you complete the course. The *Study Guide* is available at LE Authority and Jurisdiction Study Guide.pdf
- The *LE Authority & Jurisdiction Study Guide* is a series of questions and practical exercises designed to help you explore and learn the subject matter, and to help you apply your knowledge of BLM's authority and jurisdiction to a variety of scenarios.
- The information needed to answer the questions presented in the *Study Guide* can be found within the course material including the references. Links to the reference materials are included throughout the course or in the Reference Section at the end of the course.
- In order to receive credit for completion of this course, please bring your completed *Study Guide* to the first day of Introduction to Resource Protection or Law Enforcement for Manager's Training course.

Enforcement of State and Local Laws by BLM Rangers and Special Agents

- We know from our earlier discussion that BLM managed public lands fall under proprietary jurisdiction. Under proprietary jurisdiction the State has retained all authority, therefore the laws, regulations, and ordinances of the State and it's municipalities apply on public lands.
- In some States, federal law enforcement officers may have some limited or complete state peace officer authority to enforce State laws.
- The application of any state peace officer authority by a BLM Ranger or Agent is limited by the Tenth Amendment to the U.S. Constitution. The 10th Amendment grants all powers to the States not delegated to the United States. It further prohibits a State from expanding the jurisdiction of the federal government beyond what Congress provided. Through FLPMA, Congress established the law enforcement jurisdiction of the BLM as the public lands and property located thereon.
- 43 USC 1733(d) of FLPMA provides that "*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.
- This cooperation includes accepting State Peace Officer authority however it must relate to the *"administration and regulation of the use and occupancy of the public lands*". In other words, enforcement of State and Local laws and regulations by BLM LEOs under any State Peace Officer authority must be within the scope of the law enforcement jurisdiction established by FLPMA.

State Peace Officer Authority – cont.

- BLM policy requires that a written Memorandum of Understanding signed by the appropriate State Director, BLM Special Agent-in-Charge, and the authorized State or Local law enforcement official be in place prior to any BLM Ranger or Agent exercising any State Peace Officer authority. Being sworn in as a Special Deputy by the Sheriff is not enough.
- Please see the following policy references for additional information:
  - General Order 03 Authority.pdf
  - General Order 23 LE Coordination.pdf
  - IM 2008-111 - MOUs for Law Enforcement Authority.pdf

- The authority of a State to grant State Peace Officer authority differs from State to State and in some cases does not exist. In some cases where State law provides authority to convey State Peace Officer authority to BLM LEOs, the State or local entity may choose not to for various reasons at their discretion.

- Please see Guide to Authority and Jurisdiction for BLM Rangers and Agents 2012.pdf for a list of laws in the western States that may convey State Peace Officer authority to BLM Rangers and Agents.

Enforcement of state law through the Assimilative Crimes Act (18 USC 13)

- The Assimilative Crimes Act sometimes adopts and applies state law to violations occurring on federal lands. However the following three criteria must be met before a federal law enforcement officer can assimilate a state law under the Assimilative Crimes Act
  - The U.S. has exclusive or concurrent jurisdiction.
  - There is no federal law covering the conduct, and
  - There is an applicable state law.

- As we learned in our earlier discussion on jurisdiction, the vast majority of public lands fall under propriety jurisdiction. Therefore the Assimilative Crimes Act cannot be used to enforce state law on BLM managed public lands.