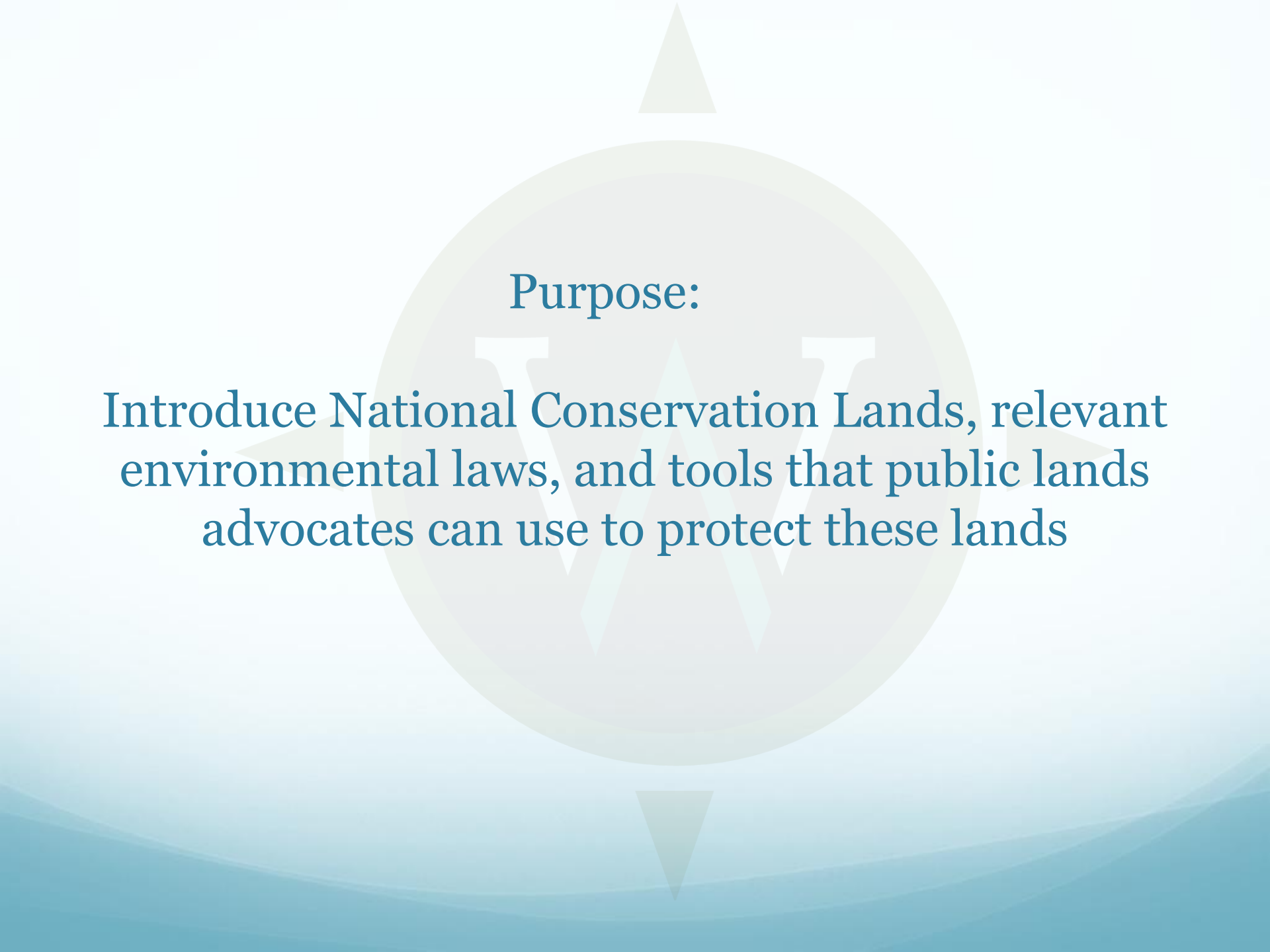




ADVOCATES for the **West**

PUBLIC LANDS ADVOCACY PRIMER & TOOLS

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Purpose:

Introduce National Conservation Lands, relevant environmental laws, and tools that public lands advocates can use to protect these lands

Part I: Advocacy Primer

- Introduction to the Bureau of Land Management (“BLM”) & the Federal Land Policy and Management Act (“FLPMA”)
- Overview of National Conservation Lands
- **Key environmental laws**
 - National Environmental Policy Act
 - Endangered Species Act
 - Administrative Procedure Act

Bureau of Land Management Basics

- **Largest federal land management agency** is housed within the Department of the Interior
- 245 million acres of surface area + 700 million acres of subsurface mineral estates, mostly across 12 western states
- BLM lands are the leftovers from **original public domain**
- **Mission** – sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations
- **Federal Land Policy and Management Act** (“FLPMA”) is the key law that governs BLM lands

Federal Land Policy Management Act (“FLPMA”)

- **Multiple use mandate** to manage lands for recreation, grazing, timber, mining, etc.
 - Does NOT mean all uses on all acres
- Provides some discretion, but requires BLM to **protect natural resources and values**
- Requires public lands to **stay in public hands** unless disposal is in the national interest
- Includes **criteria to regulate** or address land disposal, land exchanges, rights of way, livestock grazing, and WSAs

FLPMA – Key BLM Duties

- Prepare and revise **resource management plans** (“RMP”)
- Make management decisions that are **consistent** with RMPs
- Includes important duties for BLM to protect natural resources
 - Ensure no **permanent impairment** to the productivity of the land and the quality of the environment
 - Take action to prevent **unnecessary & undue degradation**
 - Designate and prioritize for protection **Areas of Critical Environmental Concern** – (“ACECs”)
- **Requires public participation** – *Advocates for the West* just won a preliminary injunction where PP was cut out of O&G leases

National Conservation Lands

- Established in 2000 by then Secretary of the Interior Bruce Babbitt, and now CLF Board Member!
- **Mission:** Conserve, protect, and restore NCL lands for the benefit of current and future generations
- ~ **36 million acres** of BLM lands
- 27 National Monuments, 22 National Conservation Areas, wilderness or WSAs, National Trails, Wild & Scenic Rivers, National Scenic and Historic trails

National Conservation Lands(con't)

- Made permanent by **2009 Omnibus Lands Act**
- BLM **must protect values** described in each land's proclamation or enabling legislation
- Department of the Interior and BLM policies that describe how NCLs must be managed and protected
 - 2010 **Secretarial Order 3308** requires BLM to prohibit uses that conflict with protected values, *where appropriate*
 - 2011 **15-year strategic plan** set specific goals for managing lands
 - Two **BLM Policy Manuals** – 6100 and 6220 -- establish guidance for BLM's management decisions

National Environmental Policy Act (“NEPA”)

- **Twin purposes:** consider & disclose impacts
- **Major** proposed federal actions significantly impacting the environment
- **Process only:** Environmental Impact Statement or Assessment does not have to choose protective option
- **“Hard look”** at direct, indirect, & cumulative impacts and a reasonable range of alternatives
- **Public disclosure:** notice and comment requirements

Endangered Species Act

- No public participation but strong standards
- Agencies must **consult** with Services re: action that **may affect** protected species or critical habitat
- Prohibits “**take**” w/o incidental take statement/permit
 - Antelope allotment – agencies prohibited from authorizing grazing that tramples threatened frogs until Biological Opinion issued
- Can force **sweeping changes** to public lands management
 - Selkirk Woodland Caribou – lawsuit enjoined agency from authorizing snowmobiles to protect critical habitat

Administrative Procedure Act

- Judicial review of **final action or failure to act** for statutes that lack cause of action
- Prevents agencies from making 180° turns for politics
- **Review** limited to administrative record
- **Deferential** to opinion of agency – court cannot substitute its own opinion about best course of conduct
- **Remedies** – court must overturn decisions that are arbitrary and capricious or unlawful & remand to agency

Other important legal sources

- Executive orders/proclamations
- Wilderness Act
- National Historic Preservation Act
- Mining Law of 1872
- Mineral Leasing Act of 1920
- Wild and Scenic Rivers Act
- Freedom of Information Act
- And more!

Part II: Advocacy tools

- **Step 1: Figure out how BLM manages its lands**
 - Personal discussions and relationship
 - Websites that disclose information
 - Freedom of Information Act requests
- **Step 2: Provide input on proposed management**
 - Ground truth and research projects
 - Submit public comments
- **Step 3: Stop BLM from enacting bad decisions**
 - File protests or appeals with agency
 - Bring federal court litigation
 - Important considerations

Advocacy tools

Step 1: Figure out what the agency is up to

- Develop **relationships** with agency staffers
- **Sign up** for agency lists as an interested party
- Review BLM e-planning website
- Check the **Federal Register** regularly – email sign-up for notifications on specific issues
- Look for and attend **public meetings**

Advocacy tools

Step 1: Figure out what the agency is up to (con't)

- Freedom of Information Act (“FOIA”) requests
 - **Right to access** records held by agencies –
 - monitoring and science
 - proposed or upcoming management/permitting decisions
 - communications with industry
 - Agencies must produce docs on short timeline *if FOIA request properly describes records sought*
 - **Fees often waived** for NGOs if certain criteria met
 - Ability to challenge **wrongfully withholdings**

Advocacy tools

Step 2: Gather and provide input on proposed actions

- **Ground truth projects**

- Document on the-ground conditions with photos, trip reports, and report problems like trespass issues
- Use CLF's TerraTruth app!
- Visiting lands at issue is crucial to provide standing that is necessary to challenge decisions later on

- **Public comments/hearings**

- Participation *at all levels* required to challenge decisions
- Include relevant factual and legal arguments
- Submit your ground truthing evidence, plus any other photos, data, science, expert info if possible

Advocacy tools

Step 3: Challenge bad decisions

- **Protests & appeals**

- Raise concerns with agency through court-like dispute
- No attorney generally needed
- Short deadlines, detailed procedural requirements

- **Federal litigation**

- Comment/protest/appeal participation generally required before heading to court
- Often 1-4 year timeline with some expenses
- Procedural and substantive relief available

Advocacy Tools

Step 3: Challenging bad decisions (con't)

- **Defensive litigation**
 - Challenge individual decisions or package of decisions
 - Primary outcome: stop, delay, or improve project
- **Offensive litigation**
 - Change legal interpretations, influence government or public, fill regulatory gaps
 - Spur broader change beyond individual projects
 - Example: winter travel management rule (court order)
- **Positive Conservation Game (still important)**
 - Threat of riders, Congressional exemptions
 - Keep politics in mind when litigating

Advocacy Tools

Step 3: Challenging bad decisions (con't)

- **Canyon of the Ancients National Monument**
 - BLM proposed to re-open grazing allotments based on outdated Environmental Assessment
 - Protest was enough to stop decision *for now*
- **Bighorn sheep**
 - NEPA and substantive arguments
 - Federal court shut down domestic sheep grazing allotments to protect bighorn sheep population from extirpation in Idaho
- **Sage Grouse Oil and Gas**
 - Federal litigation quickly stopped key part of Trump's oil and gas policy across sage grouse habitat

Conclusion

- BLM must consider and **protect National Conservation Lands**
- **Federal laws limit discretion** of BLM, Zinke, and Trump to harm wildlife, natural resources, recreation, etc.
- Advocacy tools can uncover, stop, or improve agency decisions and management plans
- Consult with CLF or *Advocates for the West* early and often with questions

Questions?

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