PUBLIC LAND ACCESS
Conflicts, Challenges, Opportunities

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Across the West, 9.52 million acres of public lands—from forests and prairies to riverbanks and foothills—sit inaccessible. Although these lands, which offer some of our nation’s best hunting and fishing opportunities, are owned by the American people and managed by public agencies, they can be accessed only with the permission of adjacent private landowners.

Back when private-land permissions were readily acquired, this was not a serious obstacle to sporting access. But as land ownership patterns have shifted, sportsmen and women more and more frequently encounter no-trespassing signs and gated roads, and inaccessible public lands now present a major barrier to hunting and fishing.

--Off Limits, But Within Reach, Theodore Roosevelt Conservation Partnership, On X, 2018
**LEGALLY LANDLOCKED PUBLIC LANDS—WYOMING**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Acres</th>
<th>Total Acres</th>
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<tbody>
<tr>
<td>Bureau of Land Management (BLM)</td>
<td>2,938,000</td>
<td>3.05 million</td>
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<tr>
<td>US Forest Service (USFS)</td>
<td>88,000</td>
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<tr>
<td>Bureau of Reclamation</td>
<td>21,000</td>
<td></td>
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</tbody>
</table>
THE CHECKERBOARD LANDS—A UNIQUE CHALLENGE IN WYOMING
Total land grant: 5,749,051 acres

Leo Sheep Co. v. United States, 440 U.S. 668 (1979)

“More importantly, the easement is not actually a matter of necessity in this case, because the Government has the power of eminent domain. Jurisdictions have generally seen eminent domain and easements by necessity as alternative ways to effect the same result.”

“The applicability of the doctrine of easement by necessity in this case is, therefore, somewhat strained, and ultimately of little significance.”

“Nonetheless, the present times are litigious ones, and the 37th Congress did not anticipate our plight. Generations of land patents have issued without any express reservation of the right now claimed by the Government. Nor has a similar right been asserted before. When the Secretary of the Interior has discussed access rights, his discussion has been colored by the assumption that those rights had to be purchased. This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some ill-defined power to construct public thoroughfares without compensation.”
What are the access acquisition management policies of federal agencies?

BLM

The Bureau of Land Management’s policy is to acquire legal public access to larger blocks of public land that have high value for public recreation and use. In areas where there are intermingled public and private lands, it is not always practical or feasible for the government to secure public access to all public land. BLM may acquire public access either by buying easements from willing private landowners or by exchanging lands to obtain public access. The BLM has authority to condemn rights-of-way for public access; however, the need for such action must be well justified, and the landowner must be paid just compensation.
Sec. I **Purpose**

This Order ensures that recreational public access is an important value now and into the future as the Bureau of Land Management (BLM) makes decisions involving the disposal or exchange of lands. Public access for purposes of this Order should be construed broadly as publicly available access to Federal or State lands.
The Forest Service policy is to acquire, on a priority basis, rights-of-way needed to provide reasonable access to the National Forests and National Grasslands. Many roads that provide access to these lands may have been open to the public, courtesy of the landowner, for years. The Forest Service does have authority to condemn rights-of-way for public access. The need for such action must, however, be well justified, and the landowner must be paid just compensation.
TOOLS TO ENHANCE ACCESS TO PUBLIC LANDS

- Voluntary Permission
- Acquisition of Easements
- Land Exchanges
- Land Purchases
- Condemnation (?)
The Land and Water Conservation Fund (LWCF) Federal program supports the protection of federal public lands and waters— including national parks, forests, wildlife refuges, and recreation areas— and voluntary conservation on private land. LWCF investments secure public access, improve recreational opportunities, and preserve ecosystem benefits for local communities. (DOI Website)
‘‘(b) ALLOCATION OF FUNDS.—Of the total amount made available to the Fund through appropriations or deposited in the Fund under section 105(a)(2)(B) of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note; Public Law 109–432)—

(1) not less than 40 percent shall be used for Federal purposes; and

(2) not less than 40 percent shall be used to provide financial assistance to States.’’.
THE WYOMING PUBLIC ROAD STATUTE

24-9-101. Answer and complaint; initial hearing; appointment of viewers and appraisers.

(a) Any person whose land has no outlet to, nor connection with a public road, may commence an action in district court in any county in which any part of the land is located for a private road leading from his land to some convenient public road.
6-3-303. Criminal trespass; penalties. (1982)
(a) A person is guilty of criminal trespass if he enters or remains on or in the land or premises of another person, knowing he is not authorized to do so, or after being notified to depart or to not trespass.
Now, anyone with an up-to-date handheld GPS or cellphone application has the ability to pinpoint his or her location in relation to property boundaries with unprecedented precision. With these tools, sportsmen and women can even utilize public land parcels that are unmarked by any sort of government-issued signage—without the risk of private-land trespass.

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STATE TRUST LANDS

- 36-1-110. Authority of director to effect and complete exchanges.
  “...The board of land commissioners may authorize the purchase of lands only in an amount necessary to effect and complete the exchange of state-owned lands for other lands and only for those lands identified in the authorization of purchase. The board shall not use the power of eminent domain pursuant to W.S. 1-26-801 et seq. to purchase any lands under this section.”

- 36-1-111. Orders, rules and regulations relative to exchange of lands.
  “State lands may be exchanged upon the board's finding the exchange is necessary to:
  (i) Make state lands more manageable where the lands are not otherwise manageable;
  (ii) Meet a specific need of a school or community for land;
  (iii) Better meet the multiple use objectives for the benefit of the trust; or
  (iv) Realize a clear long term benefit to the trust which substantially exceeds the present and probable future benefit from continued ownership.
Section 3. Acquisition Procedure.

(g) After acquiring the option to purchase, the Office shall:

(iii) Make available to the public:

(C) The existence and importance of any wildlife habitat and wildlife-oriented recreational opportunities located on the parcel, as determined by the Wyoming Game & Fish Department; and

(D) The existence and importance of any public recreation opportunities or cultural resources located on the parcel, as determined by the Wyoming Department of State Parks & Cultural Resources

Section 4. Disposal Procedure.

(d) For each parcel on the Category II Disposal List, the Office shall:

(ii) Prepare a detailed analysis of the parcel, including:

(D) The existence and importance of any wildlife habitat and wildlife-oriented recreational opportunities located on the parcel, as determined by the Wyoming Game & Fish Department; and

(E) The existence and importance of any public recreational opportunities or cultural resources located on the parcel, as determined by the Wyoming Department of State Parks and Cultural Resources;