

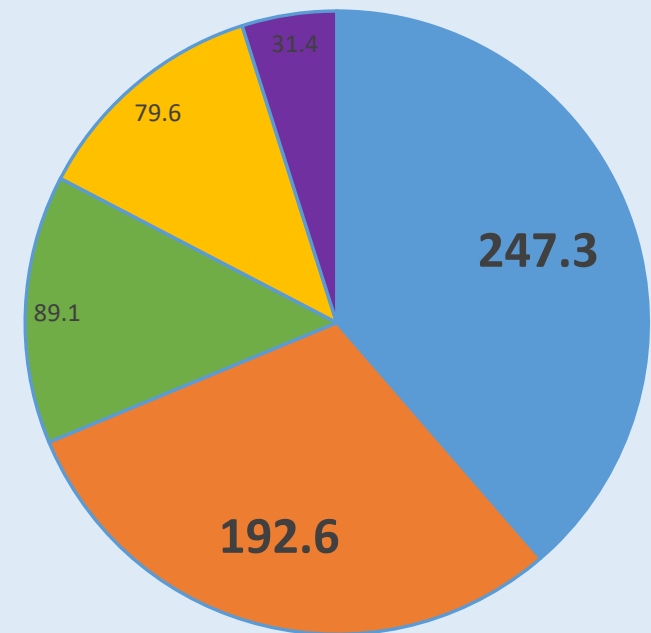


Compensatory Mitigation on Federal Lands

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Why Site Mitigation on Federal Lands?



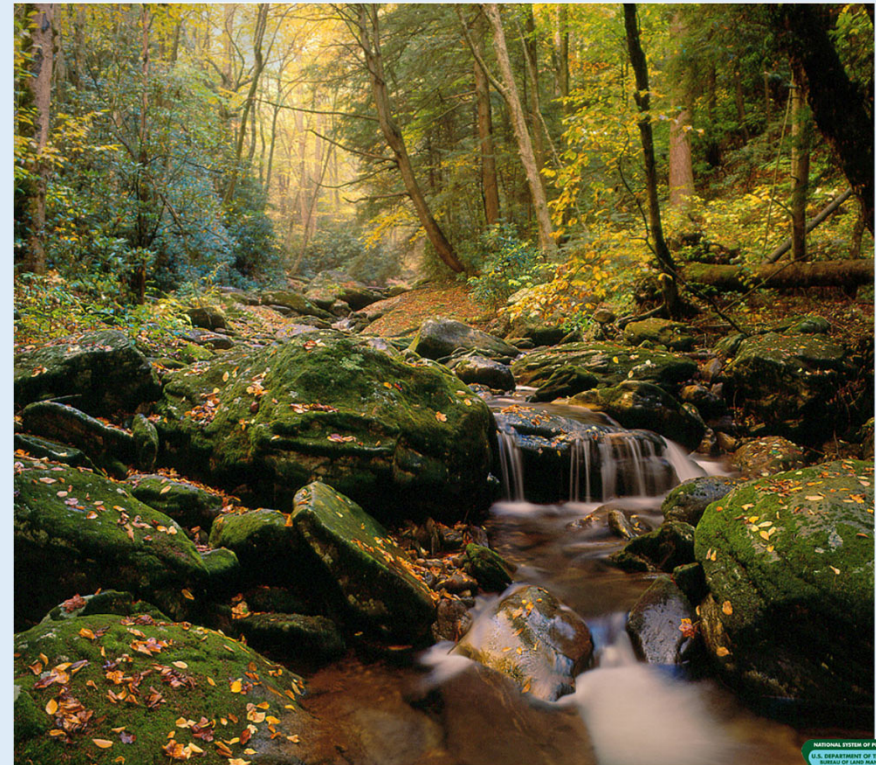
Credit: Leslie Tunis, ICF

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Federal Lands – What's different?

- Durability
- Compatible with Resource Management Plans/Land Use Plans
- Mechanism/Instrument/Agreement
- Federal Laws Governing Public Land Uses/Multiple Use Mandates
- Appropriated/Other Funds Already Available



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Federal Land Mitigation Mechanisms



- Planning Designations
 - Federal Facility Management Plans/Resource Management Plans/Land Use Plans
- Conservation Land Use Agreement/Cooperative Agreement/Memorandum of Agreement
- Leases/Permits/Right-of-Way Grants
- Other

Durability achieved through long-term rather than permanent mechanisms—no guarantees

Some Considerations...

- Multiple use mandates
- Land use will change over time
- Resource needs & demands
- Timing of development projects and mitigation projects – can mitigation be provided in advance to reduce risk?



Unknowns...

- Congress
- The Next Administration
- Court Decisions That Alter Outcomes

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Siting Advance Compensatory Mitigation on BLM-managed Public Lands

- Under the Federal Land Policy and Management Act of 1976 (FLPMA) the Bureau of Land Management (BLM) is responsible for managing the public lands under principles of multiple use and sustained yield (43 U.S.C. 1732(a)). In managing the public lands the BLM regulates, through easements, permits, leases, licenses . . . the use, occupancy, and development of public lands, in accordance with current land use plans.
- Leases granted by the BLM under Section 302 of FLPMA are to be used to authorize public land uses involving substantial construction, development, or land improvement and the investment of large amounts of capital which are to be amortized over time (43 CFR 2920.1-1(a)).

Case Study: New Mitigation Tool

- The BLM has collaborated with the Federal Highway Administration and the South Dakota Department of Transportation (DOT) to develop an **'Aquatic Habitat Restoration Lease'** under Section 302 of FLPMA.
- The Lessee (DOT) is authorized to restore, enhance, and manage aquatic resources as mitigation that may be used to offset adverse impacts to similar resources resulting from development projects that occur later in time.



Case Study: New Mitigation Tool

This is an ‘advance compensation’ model:

- where the BLM is the Lessor and the DOT is the Lessee and single user of the mitigation site,
- the compensation generated will be used to offset impacts to wetlands/streams,
- the BLM and the public will benefit from the restoration project through improved conditions on public lands that would not occur otherwise, and
- approval for use of the ‘credits’ generated by the restoration would be regulated by the Army Corps of Engineers and any other agencies that regulate these resources.



Aquatic Habitat Restoration Lease

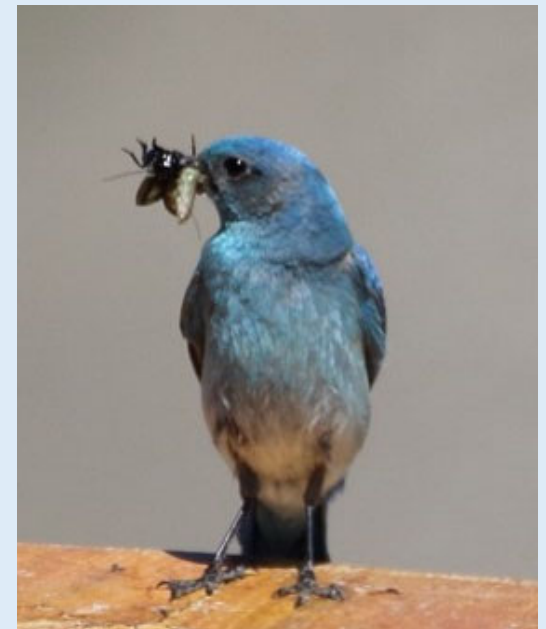
Considerations:

- BLM has not allocated resources to improve the mitigation site, nor are adequate funds likely to be available in the future
- Lessee will pay fair market value rent (rent goes to the Treasury)
- Lease is long-term with a right to renew
- The lease requires a site development plan, long-term management and monitoring plan, and financial assurances for performance and long-term management, monitoring and reporting – must be approved by the BLM and Army Corps of Engineers
- Oversight is conducted by the appropriate agencies and a Lease Monitor
- Army Corps of Engineers is designated as a third-party beneficiary with the right of access to the Mitigation Site and the right to enforce all the obligations of Lessor



Expanding the Section 302 FLPMA Lease Model

- The pilot project with the South Dakota DOT is for mitigating impacts to aquatic resources, primarily impacts to wetlands and waters of the U.S. under the jurisdiction of the U.S. Army Corps of Engineers.
- This type of lease could also be used for terrestrial resources such as listed species or other sensitive species to help prevent a future listing under the Endangered Species Act.



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Questions?

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