



# Federal Acquisition of Public Lands

Updates to Eisenhower Analysis | May 13, 2024

## Eisenhower Report

- [Federal report](#) published in 1956-1957 with analysis regarding how the federal govt can acquire legislative jurisdiction over public lands within a state.
- Report outlined three methods for federal govt to acquire jurisdiction over public lands:
  - (1) State consents to federal jurisdiction under Federal Enclave Clause<sup>1</sup>.
  - (2) State cedes jurisdiction to federal govt.
  - (3) Federal govt reserves jurisdiction at time of statehood.

## Updates to Eisenhower Analysis

No significant changes to Eisenhower analysis since report was published - the three methods for federal acquisition of public lands (described above) are established in caselaw.

However, the following Supreme Court cases provide additional nuance to Eisenhower analysis:

### **Paul v. United States, 371 U.S. 245 (1963)**

#### **Background:**

- Federal govt challenged ability for state to enforce price controls on milk sold within military base (“federal enclave”).
- Supreme Court held that state law applies within federal enclave if law was in effect at time when transfer of sovereignty occurred.

#### **Key Takeaways:**

- When the federal govt acquires land by consent, state may reserve right to retain jurisdiction within federal enclave if consistent with federal use.
- State must reserve right to retain jurisdiction within federal enclave at the time consent was given, and only state law existing at time of acquisition remains enforceable.

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➤ <sup>1</sup> Article I, Section 8, Clause 17 of the U.S. Constitution, known as the Federal Enclave Clause, grants the federal government exclusive jurisdiction over land ceded by a state to the federal government “*for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*”



### **Kleppe v. New Mexico, 426 U.S. 529 (1976)**

#### **Background:**

- State challenged constitutionality of federal law enacted to protect free-roaming horses on public lands on grounds that law violated state sovereignty.
- Supreme Court held that although the federal law does not establish exclusive federal jurisdiction over public lands, the federal law overrides state law insofar as that state law attempts to regulate federally protected animals in violation of the Supremacy Clause.

#### **Key Takeaways:**

- When federal govt acquires land by consent or cession, jurisdiction can range from exclusive to concurrent (allowing state to exercise some jurisdiction).
  - Example of concurrent jurisdiction is National Forest Lands - states retain civil and criminal jurisdiction within national forests.
- Absent consent or cession, state retains jurisdiction over federal lands unless state's actions, in exercising jurisdiction, violate Supremacy Clause.

### **North Dakota v. United States, 460 U.S. 300 (1983)**

#### **Background:**

- Federal govt challenged state law restricting federal govt's ability to acquire wetland easements after giving consent for acquisitions.
- Supreme Court held that the state cannot restrict federal govt's ability to acquire easements pursuant to consent previously given. Supreme Court also held that while state laws restricting future easements may apply, "specific aberrant or hostile state rules do not provide appropriate standards for federal law."

#### **Key Takeaway:**

- State cannot withdraw consent over federal acquisition unless withdrawal of consent is expressly authorized.