

# Federal Land Ownership: Acquisition and Disposal Authorities

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## Federal Land Ownership: Acquisition and Disposal Authorities

The federal government owns roughly 640 million acres, more than a quarter of the land in the United States. Four agencies—the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior, and the U.S. Forest Service (FS) in the Department of Agriculture—administer about 95% of those lands. The lands these agencies administer are heavily concentrated in 12 western states (including Alaska).

The extent to which each of these four federal agencies has authority to acquire and dispose of land varies considerably. The BLM has relatively broad authority for both acquisitions and disposals under the Federal Land Policy and Management Act of 1976 (FLPMA). The agency also has other authorities for disposing of land, including two laws that allow retention of the proceeds for subsequent land acquisition, among other purposes, and a law that allows transfers to governmental units and other entities for public purposes. By contrast, the NPS has no general authority to acquire land to create new park units or to dispose of park lands. The FS authority to acquire lands is mostly limited to lands within or contiguous to the boundaries of a national forest. The agency has various authorities to dispose of land, but they are relatively constrained. The FWS has various authorities to acquire lands but no general authority to dispose of lands it administers. The agency has frequently used acquisition authority under the Migratory Bird Conservation Act of 1929 because of the availability of mandatory funding through the Migratory Bird Conservation Fund.

The nature of the acquisition and disposal authorities of the four federal agencies also differs. In general, the acquisition authorities are designed to allow the four agencies to bring into federal ownership lands that could benefit from federal management. Disposal authorities generally are designed to allow agencies to convey land that is no longer needed for a federal purpose or that might be chiefly valuable for another purpose. Some of the authorities specify particular circumstances where they can be used, such as the conveyance of FS land for educational purposes and the disposal of BLM land for recreation and public purposes.

Currently, the principal financing mechanism for land acquisition of the four federal agencies is mandatory appropriations under the Land and Water Conservation Fund (LWCF). Provisions of the LWCF Act of 1965 provide for \$900 million in specified revenues to be deposited in the fund annually. In practice, most of the revenue is derived from oil and gas leases on the outer continental shelf. The fund can be used for multiple purposes, including land acquisition. Prior to FY2021, appropriations from the LWCF were discretionary and fluctuated considerably from year to year. Additional sources of mandatory funding are available for acquisitions of some agencies. For instance, the BLM can keep the proceeds of land sales and can use these proceeds for subsequent acquisitions and other purposes under the Federal Land Transaction Facilitation Act. As another example, the FWS has mandatory spending authority for land acquisition through the Migratory Bird Conservation Fund.

Congress often faces questions regarding the adequacy of existing acquisition and disposal authorities; the nature, extent, and location of their use; and the extent of federal land ownership overall. The current acquisition and disposal authorities form the backdrop for consideration of measures to establish, modify, or eliminate authorities, or to provide for the acquisition or disposal of particular lands. In some cases, Congress enacts bills to provide authority to acquire or dispose of particular parcels where no standing authority exists and, in other cases, to direct or facilitate land transactions. Congress also addresses acquisition and disposal policy in the context of debates on the role and goals of the federal government in owning and managing land generally, and it has considered broader measures to dispose of lands or to promote acquisition. Other issues for Congress pertain to the levels and types of funds for land acquisitions. Some questions relate to the LWCF, including the total amount that should be used for land acquisition and the types of acquisitions that should be prioritized; whether LWCF funding should remain mandatory; the breadth of programs that the fund should support; and the appropriateness and sufficiency of sources of funding.

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## Overview

The federal government owns roughly 640 million acres, more than a quarter of the land in the United States.<sup>1</sup> Four federal agencies—the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior (DOI), and the U.S. Forest Service (FS) in the Department of Agriculture—administer about 95% of all federal lands.<sup>2</sup> Lands of these four agencies are heavily concentrated in 12 western states (including Alaska),<sup>3</sup> where the federal government owns roughly half of the overall land area.

No single law provides authority for these four agencies to acquire and/or dispose of lands. Rather, Congress provided various acquisition and disposal authorities through laws enacted over more than a century. This report describes the primary authorities of the four agencies.

The extent to which each of the agencies has authority to acquire and dispose of land, and the nature of the authorities, vary considerably. Some of the agencies have relatively broad authority to acquire and/or dispose of land. Most notably, the BLM has relatively broad authority for both acquisitions and disposals. By contrast, the NPS has no general authority to acquire land to create new park units or to dispose of park lands. The acquisition and disposal authorities for the FS and the FWS are not as broad as the BLM's but not as restrictive as the NPS's. For example, the FS authority to acquire lands is mostly limited to lands within or contiguous to the boundaries of a national forest. The FS has various authorities to dispose of land, though they are relatively constrained. The FWS has various authorities to acquire lands but no general authority to dispose of lands it administers.<sup>4</sup>

The acquisition authorities differ as to the circumstances in which they apply, and the disposal authorities likewise differ as to their purposes. Thus, where a specific acquisition or disposal by an agency is contemplated, the particular authority at issue should be consulted. In general, the acquisition authorities are designed to allow federal agencies to acquire lands that could be viewed as benefitting from federal management. Among other circumstances, acquisition might be authorized to bring *inholdings* or lands adjacent to federal lands into federal ownership to improve or simplify management of federal lands.<sup>5</sup> Acquisitions also might be authorized to conserve species, protect natural and cultural resources, and increase opportunities for recreation. The disposal authorities generally are designed to allow federal agencies to dispose of land that is no longer required for a federal purpose, might be inefficient to manage, or might be chiefly

<sup>1</sup> The total federal land in the United States is not definitively known, and this figure is a rough estimate based on several government sources.

<sup>2</sup> For information on the extent of federal land ownership by these four federal agencies, as well as by the Department of Defense, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson. For an overview of federal land management agencies, see CRS In Focus IF10585, *The Federal Land Management Agencies*, coordinated by Katie Hoover, and CRS Video WVB00399, *Introduction to Federal Lands*, by Mark K. DeSantis and Katie Hoover.

<sup>3</sup> These states are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

<sup>4</sup> In addition to the authorities discussed in this report, the General Services Administration has authority to dispose of surplus federal property under the Federal Property and Administrative Services Act of 1949. However, that act generally excludes the public domain, mineral lands, national forest land, national park land, and other lands previously withdrawn or reserved from the public domain (40 U.S.C. §102). For a discussion of the federal real property disposal process, see CRS Report R44999, *The Federal Assets Sale and Transfer Act of 2016: Background and Key Provisions*, by Garrett Hatch. In addition, some agencies, such as the Department of Defense, have independent disposal authority under statute.

<sup>5</sup> An *inholding* can be characterized as private, state, or other nonfederal lands that are surrounded by federal lands, typically within a unit of a federal land management agency.

valuable for another purpose. For instance, disposal might be authorized to allow lands to be used for agriculture, community development, mineral extraction, or educational purposes.

Agencies also acquire and dispose of federal land in exchanges. Exchanges are not discussed separately in this report, as often the authorities to acquire and dispose of lands also apply to land exchange. However, there are provisions of law particularly applicable to exchanges. The Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. §§1701-1781) provides broader exchange authority and is the main authority governing exchanges by the BLM and the FS. The exchange authorities for the NPS and the FWS are relatively narrow.

## Issues for Congress

Congress often faces questions regarding the adequacy of existing acquisition and disposal authorities; the nature, extent, and location of their use; the extent of federal land ownership overall; and the sources and levels of land acquisition funds, among other issues. The suitability of the acquisition and disposal authorities, and the extent and circumstances of their use by the agencies, forms the backdrop for congressional consideration of measures to establish, eliminate, or modify the use of authorities. With regard to the establishment of new authorities, for instance, some 117<sup>th</sup> Congress proposals would provide new conveyance authorities. These proposals include bills to authorize states to apply to relinquish land grant parcels in exchange for federal lands managed by BLM and to authorize states to acquire certain FS lands and manage them primarily for timber production, up to a specified maximum per state. Among the provisions to eliminate the use of authorities are those enacted in annual Interior appropriations laws since FY1995 to prevent the disposal of federal land under the General Mining Law of 1872. Among the modifications of authorities are 115<sup>th</sup> Congress laws pertaining to FS disposal of land under the Small Tracts Act (16 U.S.C. §521e) and the reauthorization and amendment of BLM authority to sell or exchange land under the Federal Land Transaction Facilitation Act (FLTFA; 43 U.S.C. §§2301 et seq.).<sup>6</sup>

In addition, Congress frequently considers legislation authorizing and governing the acquisition or disposal of specific parcels. For example, P.L. 116-9 contained various provisions to authorize the acquisition and/or disposal of land.<sup>7</sup> Congress might consider such legislation to provide an agency with acquisition or disposal authority in a particular instance because it is lacking. For example, legislation might establish a new park unit, or modify the boundary of an existing park unit, and authorize the NPS to acquire land within the new or expanded park boundary. In other cases, Congress directs a particular acquisition or disposal to facilitate the action though the agency has authority to acquire or dispose of lands. For instance, the legislation may seek to direct an acquisition or a disposal based on Congress's assessment of public needs and priorities. The legislation also might authorize or direct actions not ordinarily permitted under an agency's authority to acquire or dispose of land. For instance, it might expedite the process for acquiring a parcel of land, such as by limiting the assessments and evaluations, or authorize the conveyance of land at reduced or no cost rather than at fair market value.

Congress also addresses acquisition and disposal policy in the context of deliberations on the role and goals of the federal government in owning and managing land generally. The extent to which the federal government should own land remains controversial. For example, some residents of

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<sup>6</sup> The Small Tracts Act was amended by the Agriculture Improvement Act of 2018 (P.L. 115-334, §8621). The Federal Land Transaction Facilitation Act (FLTFA) was reauthorized and amended through provisions of the Consolidated Appropriations Act, 2018 (P.L. 115-141, Division O, Title III).

<sup>7</sup> P.L. 116-9 was enacted as the John D. Dingell Jr. Conservation, Management, and Recreation Act. See, for example, Title I, Subtitle A, Land Exchanges and Conveyances.

the western United States contend that there is excessive federal influence over their lives and economies and that the federal government should divest itself of many lands. Other stakeholders support the policy of retaining lands in federal ownership on behalf of the public and sometimes advocate adding more lands to enhance protection. Recent Congresses considered diverse bills pertaining to the extent of federal land ownership. Among others, 117<sup>th</sup> Congress measures would ban federal acquisitions over a specified acreage unless authorized by the pertinent state and Congress and would prohibit presidential monument proclamations in areas with a certain amount of federal lands. Other bills would seek to prevent a net increase in federal lands (or a net loss in nonfederal lands) by directing federal agencies that acquire lands to offer an equal amount of land for sale or by barring federal funds for certain acquisitions unless equal amounts of federal land are disposed of.

## Acquisition Funding

The principal financing mechanism for federal land acquisition is mandatory appropriations under the Land and Water Conservation Fund (LWCF).<sup>8</sup> Provisions of the Land and Water Conservation Fund Act of 1965 (LWCF Act; 54 U.S.C. §§200301 et seq.) provide for \$900 million in specified revenues to be deposited in the LWCF annually. In practice, most of the revenue is derived from oil and gas leases on the outer continental shelf. The fund can be used for multiple purposes, including land acquisition by the four main federal land management agencies. The President and/or Congress can allocate each year's funds.<sup>9</sup>

Prior to FY2021, appropriations from the LWCF were discretionary. Each year, appropriations laws determined the total appropriation provided for LWCF programs and the amount for acquisitions by each of the four agencies. Total appropriations from the fund, and the amount provided for acquisitions of each agency, have fluctuated substantially since the program's origin in 1965. Under the Great American Outdoors Act (P.L. 116-152), beginning in FY2021, the annual revenue deposits to the fund became available as mandatory spending.<sup>10</sup> The change was promoted as providing a stronger federal role in acquiring and managing resources through more stable, predictable funding. It was opposed as limiting Congress's flexibility to determine annual funding through discretionary appropriations and as potentially increasing federal ownership of lands. Measures in recent Congresses have sought to allow LWCF to be used for a broader array of purposes, including nonacquisition purposes, due to concerns about the extent of federal land ownership and the availability of funding for other federal activities.

Additional sources of acquisition funding are available for some agencies or under certain authorities. For instance, the BLM has mandatory spending authority (under FLTFA) that allows retention of the proceeds of land sales and use of these proceeds for subsequent acquisitions and other purposes.<sup>11</sup> As another example, the FWS has mandatory spending authority for land

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<sup>8</sup> The Land and Water Conservation Fund (LWCF) was established by the LWCF Act, codified at 54 U.S.C. §§200301 et seq.

<sup>9</sup> In addition to the \$900 million under the LWCF Act, the outdoor recreation state grant program authorized in the LWCF Act receives additional mandatory appropriations under the Gulf of Mexico Energy Security Act of 2006 (P.L. 109-432, Division C, §105).

<sup>10</sup> For an overview of the change to mandatory spending for the LWCF, see CRS In Focus IF11636, *The Great American Outdoors Act (P.L. 116-152)*, by Carol Hardy Vincent, Laura B. Comay, and Bill Heniff Jr. For an overview of the operation of the fund historically, prior to the change to mandatory spending, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

<sup>11</sup> 43 U.S.C. §§2301 et seq. The authority allows the Secretary of the Interior and the Secretary of Agriculture to use proceeds of BLM land sales to acquire nonfederal lands. (See the discussion below of BLM's disposal authorities.)

acquisition through the Migratory Bird Conservation Fund.<sup>12</sup> These authorities are discussed below in other sections of this report.

Issues for Congress pertain to the levels and types of funds for land acquisition. Some questions relate to the LWCF, including the total amount that should be used for acquisitions, the portion for each agency, and the portions for particular line item acquisitions versus other types of acquisitions (e.g., for emergencies and hardships that might arise throughout the year). Other questions relate to the appropriate type of funding for the LWCF, focusing on whether the funding should remain mandatory or revert to discretionary to allow Congress to determine funding levels through the annual appropriations process. Other subjects of congressional debate have centered on whether the LWCF should be used for a broader array of purposes and the appropriateness and sufficiency of revenues for the fund.

## Federal Land Acquisition Authorities

As noted above, laws authorizing and governing specific land acquisitions have been enacted. Other laws pertaining to types of land designations authorize the Secretary of the Interior and/or the Secretary of Agriculture to acquire lands under specified terms and conditions. Examples include the Wild and Scenic Rivers Act (16 U.S.C. §§1271 et seq.), the National Trails System Act (16 U.S.C. §§1241-1251), and the Wilderness Act (16 U.S.C. 1131 et seq.).<sup>13</sup>

In addition, the four federal land management agencies have different standing authorities for acquiring lands. In general, all four agencies are authorized to accept land as gifts and bequests.<sup>14</sup> Each agency also is generally authorized to use *eminent domain*—taking private property, through condemnation, for public use—while compensating the landowner. However, this practice is controversial, and it is rarely used by the land management agencies.

Another donation authority is contained in the Antiquities Act of 1906 (54 U.S.C. §§320301 et seq.). This law authorizes the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. In addition, where the objects to be protected are on privately owned lands, the property “may be relinquished to the Federal Government” and the Secretary of the Interior may accept the relinquishment on behalf of the federal government.<sup>15</sup> Private and other nonfederal landowners have donated land under this provision, and Presidents have subsequently designated national monuments that included the donated lands. Most are managed by the NPS, but some are managed by the other agencies.<sup>16</sup>

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<sup>12</sup> 16 U.S.C. §718d.

<sup>13</sup> For information on the Wild and Scenic Rivers System, see CRS Report R45890, *Wild and Scenic Rivers: Designation, Management, and Funding*, by Anne A. Riddle. For information on the National Trails System, see CRS Report R43868, *The National Trails System: A Brief Overview*, by Mark K. DeSantis and Sandra L. Johnson. For information on the Wilderness Act, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

<sup>14</sup> Some authorities limit an agency’s acceptance of donations to areas within boundaries of units.

<sup>15</sup> 54 U.S.C. §320301(c).

<sup>16</sup> For more information on the President’s authority to establish national monuments under the Antiquities Act of 1906, and on related issues for Congress, see CRS Report R41330, *National Monuments and the Antiquities Act*, by Carol Hardy Vincent, and CRS Report R45718, *The Antiquities Act: History, Current Litigation, and Considerations for the 116th Congress*, coordinated by Erin H. Ward.



The primary land acquisition authorities particular to each of the four land management agencies are described below. The agencies appear in the general order of the breadth of their authorities, with the NPS (the narrowest authorities) first and the BLM (the broadest authorities) last.

## **National Park Service**

The NPS does not have broad general authority to acquire lands for the National Park System. Rather, Congress has created most units, and the law creating a park unit typically includes specific authority for the NPS to acquire nonfederal inholdings within the identified boundaries of that park.<sup>17</sup>

A limited additional authority applies to “minor” adjustments to park unit boundaries, which the Secretary of the Interior may make for “proper preservation, protection, interpretation, or management” (54 U.S.C. §100506(c)). When making such a boundary adjustment, the Secretary may acquire nonfederal lands within the adjusted boundary, under specified provisions and conditions. Some of these conditions have been interpreted to apply particularly to boundary adjustments requiring land purchases, as opposed to those in which added lands are acquired by donation, transfer, or exchange.<sup>18</sup>

Under law, the Secretary of the Interior and the NPS have responsibilities related to the potential acquisition of lands for the National Park System. Among other requirements, the Secretary is directed “to investigate, study, and continually monitor the welfare of” areas that could potentially be added to the system and to report to Congress on possible additions (54 U.S.C. §100507).<sup>19</sup> Furthermore, under law, the general management plan for each unit must include potential changes to the boundaries of the unit and the reasons for such changes (54 U.S.C. §100502). The Secretary also must conduct a “systematic and comprehensive review of certain aspects of the National Park System” and must submit a related report to Congress at least every three years (54 U.S.C. §100505(a)) that includes a list of all authorized but unacquired lands within the boundaries of park units and a priority listing of these unacquired parcels (54 U.S.C. §100505(c)).

## **U.S. Forest Service**

The Secretary of Agriculture has various authorities to acquire lands as part of the National Forest System (NFS), subject to certain constraints. The primary authority is the Weeks Act of 1911 (16 U.S.C. §515), which limits acquisitions to lands within (or adjacent to) the proclaimed exterior

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<sup>17</sup> For more information on legislation to establish new park system units, see CRS Report RS20158, *National Park System: Establishing New Units*, by Laura B. Comay.

<sup>18</sup> The Department of the Interior interprets limitations at 54 U.S.C. §100506(c)(5) to apply only to boundary additions accomplished through land purchases. These statutory limitations include, among others, that the sum total of the area added to and removed from the unit must be less than 200 acres, that it may not exceed 5% of the total federal acreage authorized for inclusion in the unit, and that its appraised value may not exceed \$750,000. Other conditions, such as requirements for public consultation and notice to Congress, apply to all boundary adjustments. See NPS Memorandum L1425 (2444), “Boundary Revision Authority,” July 26, 1999.

<sup>19</sup> 54 U.S.C. §100507(b) requires the Secretary to report annually to Congress on potential additions, but recent Administrations have not always submitted the reports annually.



boundaries of an NFS unit.<sup>20</sup> The Weeks Act also authorizes the Secretary to modify the NFS unit boundary as needed to encompass new acquisitions.<sup>21</sup>

Other laws authorize the Secretary of Agriculture (or the FS) to acquire lands for the NFS for specific purposes. For example, Section 205 of FLPMA authorizes the acquisition of access corridors across nonfederal lands to national forests (43 U.S.C. §1715(a)). In addition, the Endangered Species Act (16 U.S.C. §1534) authorizes the Secretary to acquire lands, waters, or interests to facilitate the conservation of fish, wildlife, and plants.<sup>22</sup> Another example is the Act of August 3, 1956 (7 U.S.C. §2268(a)), which authorizes the FS to acquire lands without any geographical limitations but requires authority for an acquisition in an appropriations or other law.

Several other acquisition authorities apply only to specific NFS units or have other geographic constraints. For example, there are laws authorizing acquisitions within certain national forests or within certain national recreational areas within the NFS.<sup>23</sup> The Secretary of Agriculture also is authorized to acquire privately owned lands within or adjacent to designated wilderness areas (16 U.S.C. §1134(c)), Wild and Scenic River corridors (16 U.S.C. §1277), and certain segments of designated National Trails (16 U.S.C. §1244), as specified by the law creating the trail.

Many of the acquisition authorities also allow the FS to accept donations of land as specified. In addition, the Clarke-McNary Act (16 U.S.C. §569) authorizes the FS to accept donations of land that is chiefly valuable for growing timber crops, subject to some constraints, and another law authorizes the FS to accept donations of land for any national forest or experimental purpose.<sup>24</sup> The Weeks Act, and other laws, also authorize the acquisition of NFS lands through exchange, discussed in the Federal Land Disposal Authorities section of this report.

### **National Forest System (NFS) Land Status and Committee Jurisdiction**

Lands were added to the NFS in different ways. The national forests in the western United States were primarily established through a presidential proclamation or order reserving lands from the public domain, whereas the national forests in the eastern United States were acquired under the Weeks Act authority. The national grasslands were acquired and transferred into the NFS pursuant to the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §§1010 et seq.). Other NFS units were added in other ways, including through acts of Congress. The different origination status of NFS lands has implications regarding congressional jurisdiction. The House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources have jurisdiction over the NFS units established from the public domain, whereas the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry have jurisdiction over the NFS other than those areas created from the public domain.

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<sup>20</sup> The proclaimed exterior boundaries of the National Forest System (NFS) are the formally identified geographic boundaries around lands that have been set aside and reserved for national forest purposes. These proclaimed exterior boundaries of an NFS unit may encompass areas larger than the actual boundary of an established national forest.

<sup>21</sup> Forest Service (FS), *FSM 5420 Land Purchases and Donations*, June 18, 2003, p. 4. Hereinafter referred to as FSM 5420.

<sup>22</sup> An interest in land is something less than full ownership. Depending on the agency undertaking the acquisition, an interest might include conservation easements, access easements, mineral rights, water rights, or other agreements.

<sup>23</sup> For a complete list of site-specific acquisition authorities, see FSM 5420.

<sup>24</sup> The Act of March 3, 1925 (43 Stat. 1133, as amended), authorizes the FS to accept donations of land for any national forest or experimental purpose.

## U.S. Fish and Wildlife Service

Nearly all of the land administered by the FWS is part of the National Wildlife Refuge System (NWRS). Lands may be added to the NWRS in a number of ways, including through congressional and administrative actions and donations. A principal FWS land acquisition authority is the Migratory Bird Conservation Act of 1929 (MBCA; 16 U.S.C. §§715 et seq.). This act authorizes the Secretary of the Interior to recommend areas “necessary for the conservation of migratory birds” to the Migratory Bird Conservation Commission, after consulting with the relevant governor (or state agency) and appropriate local government officials (16 U.S.C. §715a and §715c).<sup>25</sup> In addition, the Secretary may not acquire the land unless the state has enacted a law providing its consent (16 U.S.C. §715f and §715k-5). The Secretary may then purchase or rent areas or land, or interests therein, that have been approved by the commission and, if applicable, the state. The Secretary also may acquire by donation any area or interest therein for use as a migratory bird sanctuary (16 U.S.C. §715d).<sup>26</sup>

The FWS has frequently used the MBCA authority to acquire land or interests in land because mandatory funding is available through the Migratory Bird Conservation Fund (MBCF; 16 U.S.C. §718d).<sup>27</sup> The MBCF is supported by three major sources of funding, among others, including the sale of hunting and conservation stamps (commonly known as duck stamps); import duties on arms and ammunition; and a portion of certain refuge entrance fees.<sup>28</sup> MBCF funds are permanently appropriated to the extent of receipts and, after paying certain administrative costs, may be used for the “location, ascertainment, and acquisition of suitable areas for migratory bird refuges” (16 U.S.C. §718d(b)). In the past, the predictability of mandatory funding has made the MBCF, and thus the MBCA, particularly important for FWS land acquisition and unique among the four federal land management agencies. However, beginning in FY2021, all four of the agencies have a mandatory source of funding for federal land acquisitions—the LWCF—as discussed in the “Acquisition Funding” section above.

Other laws provide more general authority that may be used to expand the NWRS and conserve fish and wildlife, including the Fish and Wildlife Coordination Act of 1934 (16 U.S.C. §§661-667a), the Fish and Wildlife Act of 1956 (16 U.S.C. §§742a et seq.), and the Endangered Species Act of 1973 (16 U.S.C. §§1531-1544).<sup>29</sup> The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. §§668dd-668ee) authorizes the Secretary of the Interior to acquire land or interests therein for inclusion in the NWRS by purchase with donated funds or by exchange (16 U.S.C. §668dd(b)). In addition to acquiring lands within the boundaries of an existing refuge, the FWS can use its land acquisition authorities to create a new refuge or to expand an existing one under the general FWS authorities cited above, as well as under certain other laws.

Although the FWS may use its acquisition authorities to create national wildlife refuge (NWR) units, that is not the only way a NWR unit may be created. Some NWR units have been created by specific acts of Congress, such as Protection Island NWR (WA) and Bayou Sauvage Urban

<sup>25</sup> The Migratory Bird Conservation Commission consists of the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and two members each of the Senate and House of Representatives. 16 U.S.C. §715a.

<sup>26</sup> Donations may be in the form of a gift or devise (i.e., a bequest in the form of real property). 16 U.S.C. §715d.

<sup>27</sup> The Migratory Bird Conservation Fund was created through legislation enacted in 1934, which was later renamed the Migratory Bird Hunting and Conservation Stamp Act (also commonly referred to as the Duck Stamp Act). See 16 U.S.C. §§718 et seq.

<sup>28</sup> 16 U.S.C. §718d; 16 U.S.C. §3912.

<sup>29</sup> 16 U.S.C. §§662, 663, 666d, 666e; 16 U.S.C. §742f; 16 U.S.C. §1534.

NWR (LA) (16 U.S.C. §668dd note). Units also can be created by executive order; for example, the Midway Atoll NWR was created by President Clinton in Executive Order 13022.<sup>30</sup>

## **Bureau of Land Management**

The BLM has broad, general authority to acquire lands, principally under Section 205 of FLPMA. Specifically, the Secretary of the Interior is authorized to acquire, by purchase, exchange, donation, or use of eminent domain, lands or interests therein (43 U.S.C. §1715(a)). The BLM acquires land or interests in land, including inholdings, for a variety of reasons. These reasons include to protect natural and cultural resources, to increase opportunities for public access and recreation, and to improve management of lands.<sup>31</sup>

## **Federal Land Disposal Authorities**

Various laws have directed the disposal of particular lands. Other laws pertaining to types of land designations authorize the Secretary of the Interior and/or the Secretary of Agriculture to dispose of lands under specified terms and conditions. Examples include the Wild and Scenic Rivers Act (16 U.S.C. §§1271 et seq.), the National Trails System Act (16 U.S.C. §§1241-1251), and the Wilderness Act (16 U.S.C. 1131 et seq.).<sup>32</sup>

In addition, the four federal land management agencies have different standing authorities for disposing of lands. The primary land disposal authorities particular to each of the four land management agencies are described below. The agencies are presented in the order of their apparent breadth, with the NPS (the narrowest authorities) first and the BLM (the broadest authorities) last.<sup>33</sup>

### **National Park Service**

The NPS does not have general authority to dispose of National Park System lands. Units and lands of the park system that were established by acts of Congress can be disposed of only by acts of Congress.<sup>34</sup> Preservation of park units is a management goal and provisions of law limit the power of the Secretary of the Interior to dispose of land in changing park boundaries. Although the Secretary can, under specified conditions, make boundary changes that concurrently add and

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<sup>30</sup> 61 *Federal Register* 56875, October 31, 1996.

<sup>31</sup> In addition, geographic-specific authorities provide for acquisition of lands from proceeds of land sales. For instance, the Southern Nevada Public Land Management Act (P.L. 105-263) provides for the disposal, by sale or exchange, of certain lands in Nevada. The proceeds are to be used to acquire environmentally sensitive lands in Nevada, among other purposes. Another authority, FLTFA, 43 U.S.C. §§2301 et seq., allows the Secretary of the Interior and the Secretary of Agriculture to use proceeds of BLM land sales to acquire nonfederal lands. (See the discussion below of BLM's disposal authorities.)

<sup>32</sup> Depending on the authority, the terms may include disposal only as part of an exchange. For information on the Wild and Scenic Rivers System, see CRS Report R45890, *Wild and Scenic Rivers: Designation, Management, and Funding*, by Anne A. Riddle. For information on the National Trails System, see CRS Report R43868, *The National Trails System: A Brief Overview*, by Mark K. DeSantis and Sandra L. Johnson. For information on the Wilderness Act, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

<sup>33</sup> The FWS and the FS are in reverse order from the acquisition authorities because the FWS has broader acquisition authorities, whereas the FS has broader disposal authorities.

<sup>34</sup> Certain units of the National Park System were not established by acts of Congress. In particular, some national monuments were added to the system by presidential proclamation under the Antiquities Act. Presidents have occasionally modified the boundaries of national monuments established by previous presidential proclamations, in some cases reducing the size of the monument. However, no president has terminated a monument established by proclamation.

remove land within the boundary, minor boundary revisions solely to remove NPS acreage can be made only by Congress. Also, the Secretary can acquire by exchange lands that are adjacent to a boundary revision, but the Secretary cannot dispose of NPS land to do so (54 U.S.C. §100506(c)).

## **U.S. Fish and Wildlife Service**

The FWS's authority to dispose of lands it administers is limited. For refuge lands reserved from the public domain, FLPMA prohibits the Secretary of the Interior from modifying or revoking any withdrawal that added lands to the NWRS (43 U.S.C. §1714(j)). For acquired lands, the National Wildlife Refuge System Administration Act provides certain limited authorities to dispose of lands within the NWRS. FWS may dispose of such lands only if (1) the disposal is part of an authorized land exchange (16 U.S.C. §§668dd(a)(6) and (b)(3)); (2) the disposal is pursuant to a cooperative agreement with a state or local government (16 U.S.C. §668dd(a)(6)); or (3) the Secretary determines the lands are no longer needed for the NWRS's purposes and the Migratory Bird Conservation Commission approves the disposal (16 U.S.C. §668dd(a)(5)). In the case where the Secretary determines the lands are no longer needed, the disposal must recover the acquisition cost or be for the fair market value (whichever is higher), and the receipts must be deposited in the MBCF.<sup>35</sup> Aside from these limited authorities, NWRS areas administered by the FWS can be removed from the NWRS only by an act of Congress (16 U.S.C. §§668dd(a)(5) and (6)).

## **U.S. Forest Service**

The Secretary of Agriculture has numerous authorities to convey lands within proclaimed NFS boundaries out of federal ownership, through sale, grant, or exchange. The FS's exchange authorities are broader in scope relative to the FS's other disposal authorities, which generally apply only to a specific geographical area, type of property or facility, or specific purposes (e.g., resolving title conflicts).<sup>36</sup> Many of the authorities are used in conjunction with FLPMA and other federal law that may place requirements on the sale or exchange of land. Such actions include obtaining at least fair market value for the sale of federal lands; requiring that nonfederal land exchanged for federal land be in the same state; and requiring exchanged lands to be of equal value, although value may be partially equalized with a cash payment (43 U.S.C. §1716).

Two laws authorize the FS to exchange NFS land or timber for nonfederal land (or timber): the General Exchange Act of 1922 (16 U.S.C. §485) and the Weeks Act of 1911 (16 U.S.C. §516).<sup>37</sup> Both laws require the nonfederal land (or timber) to be of equal value, within the same state, generally within the exterior boundary of a national forest, and chiefly valuable for national forest purposes, among other provisions. The Bankhead-Jones Farm Tenant Act (7 U.S.C. §§1010, 1011(c)) authorized exchanges involving the national grasslands, with similar requirements regarding equal value and location within the same state. In addition, the Secretary of Agriculture and the secretary of a military department that has lands within or adjacent to proclaimed NFS land may exchange lands, without reimbursement or transfer of funds.<sup>38</sup>

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<sup>35</sup> 16 U.S.C. §668dd(a)(5).

<sup>36</sup> For example, the FS is authorized to sell, exchange, or lease administrative sites and related facilities through FY2023 (16 U.S.C. §580d(note)). Various authorities also allow for the sale of specific properties within a specific state or national forest.

<sup>37</sup> The General Exchange Act of 1922 applies to exchanges involving NFS units reserved from the public domain. The Weeks Act of 1911 applies to exchanges involving NFS units acquired under the act. The FS's regulations regarding land exchanges are promulgated at 36 C.F.R. Part 254 Subpart A.

<sup>38</sup> Interchange With Department of Defense Act of July 26, 1956, 16 U.S.C. §505a-§505b.

The 1983 Small Tracts Act authorizes the Secretary to dispose of NFS land by sale or exchange, generally up to certain specified acreage limits. The disposal may be

- To improve management efficiencies where NFS lands are interspersed with nonfederal mineral rights owners, or if the Secretary determines the parcels to be inaccessible, physically isolated from other federal land, or to have lost national forest character (40 acres maximum);
- To relieve encroachments including due to erroneous surveys, or encroachments by a permanent habitable improvement if there is no evidence that the encroachment was intentional or due to negligence (10 acres maximum);
- To dispose of unneeded federal rights-of-way substantially surrounded by nonfederal lands (no specified acreage limitation); and
- If the parcel is used as a cemetery, landfill, or sewage plant pursuant to a special use authorization for the use and occupancy of NFS land (no specified acreage limitation) (16 U.S.C. §521e).<sup>39</sup>

A Small Tracts Act conveyance must be determined to be in the public interest and the tracts may not be valued at more than \$500,000. The land can be disposed of for cash, lands, interests in land (such as an easement), or any combination thereof for at least the value of the land being sold or exchanged (16 U.S.C. §521d) plus “all reasonable costs of administration, survey, and appraisal incidental to such conveyance” (16 U.S.C. §521f). In some cases, the proceeds may be used for specified land acquisition purposes.<sup>40</sup>

There are other specific authorities that allow for the disposal of NFS lands, including those listed below.

- The 1958 Townsites Act authorizes the Secretary to transfer up to 640 acres of NFS land adjacent to communities in Alaska or the 11 western states for townsites,<sup>41</sup> if the “indigenous community objectives ... outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership” (16 U.S.C. §478a). Public notice of the application for such transfer is required, and upon a “satisfactory showing of need,” the Secretary may offer the land to a local governmental entity at “not less than the fair market value” (16 U.S.C. §478a).
- The Education Land Grant Act,<sup>42</sup> also known as the Sisk Act (16 U.S.C. §479a), authorizes the Secretary to transfer up to 80 acres of NFS land for a nominal cost upon written application of a public school district. It provides for reversion of the title to the federal government if the lands are not used for the educational purposes for which they were acquired.

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<sup>39</sup> The Small Tracts Act was amended by the Agriculture Improvement Act of 2018 (P.L. 115-334, §8621).

<sup>40</sup> P.L. 115-334, §8621 authorized the Secretary to use the proceeds from specific Small Tracts Act disposals for the acquisition of lands or interests in lands for administrative sites or to enhance recreational opportunities within the state in which the disposal occurred. The authorization applies to parcels conveyed due to: encroachment by a permanent habitable improvement; use as cemetery, landfill, or sewage treatment plant pursuant to a special use authorization; or isolation, inaccessibility, or loss of national forest character.

<sup>41</sup> The 11 western states are Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

<sup>42</sup> The Education Land Grant Act was enacted in 2000 as Title II of P.L. 106-577.



- The 1911 Weeks Act authorizes the disposal of NFS lands that are “chiefly valuable for agriculture” but were acquired inadvertently or otherwise, if agricultural use will not injure the forests or streamflows and the lands are not needed for public purposes. The lands can be sold as homesteads in parcels of up to 80 acres (16 U.S.C. §519).

The Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §§1010-1012) also authorizes the disposal of lands acquired under its authority,<sup>43</sup> although the FS has adopted regulations stating that the Bankhead-Jones lands comprising the national grasslands will be held permanently (36 C.F.R. §213.1(b)).

## Bureau of Land Management

The BLM can dispose of land under several authorities. They include (1) exchanges and sales under FLPMA, (2) sales or exchanges under FLTFA, (3) transfers to other governmental units or nonprofit entities for public purposes, (4) patents under the General Mining Law of 1872, and (5) geographically limited sale authorities.<sup>44</sup>

With regard to *exchanges* under FLPMA, the exchanges must serve the public interest, and the federal and nonfederal lands in the exchange must be located in the same state and be of equal value (with cash equalization payments possible), among other requirements (43 U.S.C. §1716).<sup>45</sup> With regard to *sales* under FLPMA, the BLM is authorized to sell certain tracts of public land that are identified through the land-use planning process.<sup>46</sup> Such a tract must meet specific criteria (43 U.S.C. §1713(a)):

- (1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or
- (2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or
- (3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

The size of the tracts for sale is determined by “the land use capabilities and development requirements.”<sup>47</sup> Proposals to sell tracts of more than 2,500 acres first must be submitted to Congress and can be disapproved by Congress.<sup>48</sup> Lands may not be sold at less than their fair

<sup>43</sup> Lands acquired under the Bankhead-Jones Act authority are authorized for disposal to public agencies and authorities, and in certain situations, private landowners, “under such terms and conditions as [the Secretary of Agriculture] deems will best accomplish the purposes of this title” (7 U.S.C. §1011(c)).

<sup>44</sup> Many other authorities for disposing of the public lands were repealed in 1976 by the Federal Land Policy and Management Act (FLPMA), for instance, the Homestead Act (with a 10-year extension in Alaska.).

<sup>45</sup> For information on BLM land exchanges, see CRS Report R41509, *Land Exchanges: Bureau of Land Management (BLM) Process and Issues*, by Carol Hardy Vincent.

<sup>46</sup> Lands identified in land use plans as “potentially available for disposal” are accessible via links on the BLM website at <https://www.blm.gov/programs/lands-and-realty/land-tenure/sales-and-exchanges/lands-potentially-for-disposal>.

<sup>47</sup> 43 U.S.C. §1713(e).

<sup>48</sup> 43 U.S.C. §1713(c). By allowing Congress to block action of the Secretary of the Interior by concurrent resolution, rather than a law, this provision of FLPMA may be unconstitutional under Immigration and Naturalization Service

market value. They generally must be sold through competitive bidding, although modified competition and noncompetitive sales are allowed.<sup>49</sup>

FLTFA provides for the sale or exchange of BLM lands identified for disposal under BLM land-use plans. The law creates a separate Treasury account for most of the proceeds (96%) from the sale or exchange, and it provides for the use of those funds by the Secretary of the Interior and the Secretary of Agriculture.<sup>50</sup> The Secretaries may acquire nonfederal lands, specifically inholdings, lands adjacent to federal lands that contain exceptional resources, and areas adjacent to inaccessible lands that are open to recreation. Up to 20% of the funds in the account may be used for administrative costs, and at least 80% of the funds for acquisition are to be in the state in which the funds are generated.<sup>51</sup>

The Recreation and Public Purposes Act (43 U.S.C. §869) authorizes the Secretary, upon application by a qualified applicant, to

dispose of any public lands to a State, Territory, county, municipality, or other State, Territorial, or Federal instrumentality or political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose consistent with its articles of incorporation or other creating authority.

The lands can be sold or leased, and the act specifies conditions, qualifications, and acreage limitations for transfer. The price of the land depends on the type of entity that will receive it, for instance, whether a state government or a nonprofit organization. The price also depends on the intended use of the land, with some sales and leases made at no cost.

Although the BLM can dispose of lands through patents under the General Mining Law of 1872, since FY1995 a series of annual moratoria on issuing mineral patents has been enacted into law. These moratoria, contained in the annual Interior appropriations laws, have effectively prevented this means of federal land disposal.<sup>52</sup> Specifically, the Mining Law allows access to and development of *hardrock* minerals on federal lands that have not been withdrawn from entry. With evidence of valuable minerals and sufficient developmental effort, the Mining Law allows mining claims to be patented, with full title (of surface and mineral rights) transferred to the claimant upon payment of the appropriate fee. Nonmineral lands used for associated milling or other processing operations can also be patented (30 U.S.C. §42). Patented lands may be used for purposes other than mineral development.

The BLM also has geographically limited land sale authorities. The program with the largest revenue stream has been the Southern Nevada Public Land Management Act of 1998, which

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(INS) v. Chadha, 462 U.S. 919 (1983).

<sup>49</sup> Desert lands also can be disposed under other laws. The Carey Act (43 U.S.C. §641) authorizes transfers to a state, upon application and meeting certain requirements, while the Desert Entry Land Act (43 U.S.C. §321) allows citizens to reclaim and patent 320 acres of desert public land. These provisions are seldom used, however, because the lands must be classified as available and sufficient water rights for settling on the land must be obtained.

<sup>50</sup> The FLTFA Interagency Implementation Agreement, dated January 2022, provides for an approximate allocation of acquisition funds based on projects submitted by each of four main federal land management agencies as follows: 60% for BLM, 20% for FS, 10% for FWS, and 10% for NPS.

<sup>51</sup> FLTFA originally was enacted on July 25, 2000, as P.L. 106-248, Title II. The law initially provided authority to BLM to sell or exchange land under FLTFA for 10 years, expiring on July 25, 2010. Subsequently, on July 29, 2010, the authority was extended for one year; it expired on July 25, 2011. As noted, the authority was revised and made permanent on March 23, 2018, by provisions of the Consolidated Appropriations Act, 2018 (P.L. 115-141, Division O, Title III).

<sup>52</sup> However, patent applications meeting certain requirements filed on or before September 30, 1994, were allowed to proceed.



allows the Secretary of the Interior to sell or exchange certain lands around Las Vegas. The BLM and the local government unit jointly decide on the lands to be offered for sale or exchange. In general, 85% of the proceeds are deposited into a special account, and are available to the Secretary of the Interior for land acquisition in Nevada,<sup>53</sup> and other purposes in the state such as certain capital improvements and development of parks, trails, and natural areas. The other 15% of the proceeds are for state or local purposes, specifically the State of Nevada General Education Fund (5%) and the Southern Nevada Water Authority (10%). Other provisions of law similarly provide for BLM land sales in particular areas (mostly in Nevada), with specific allocations of the proceeds. Further, the BLM continues to dispose of land in Alaska as required by law, such as through transfers to the state of Alaska, Alaska Native corporations, and individual Alaska Natives.<sup>54</sup> A total of about 150 million acres in Alaska will be transferred from federal to state and private ownership.

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<sup>53</sup> The Secretary has approved of acquisitions for each of the four primary federal land managing agencies.

<sup>54</sup> Multiple provisions of law provide authority for conveyance of lands in Alaska. They include the 1906 Native Allotment Act, Alaska Statehood Act of 1959, Alaska Native Claims Settlement Act of 1971, Alaska Native Veterans Allotment Act of 1998, and the Alaska Native Vietnam Era Veterans Land Allotment Program in P.L. 116-9, §1119. For information on the Alaska Native Claims Settlement Act, see CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Tana Fitzpatrick.