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# Federal Land Ownership: Acquisition and Disposal Authorities

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## Summary

The federal government owns roughly 640 million acres, heavily concentrated in 12 western states. Four agencies—the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) 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 extent to which these four federal agencies have 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 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 and infrequently used. The FWS has various authorities to acquire lands but no general authority to dispose of its lands. The agency frequently uses acquisition authority under the Migratory Bird Treaty Act of 1929 because of the availability of funding through the Migratory Bird Conservation Fund.

Congress also enacts legislation authorizing and governing the acquisition or disposal of particular lands. In some cases this is to provide authority where no standing authority exists, and in other cases it is to direct or facilitate land transactions.

The nature of the acquisition and disposal authorities of the four federal agencies also varies. In general, the acquisition authorities are designed to allow the four agencies to bring into federal ownership lands that many contend 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.

Congress often faces questions on 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. 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 sources and adequacy of funds for land acquisition. The Land and Water Conservation Fund (LWCF) is the primary source of funding for land acquisition. The FWS also has the Migratory Bird Conservation Fund, an account with mandatory spending authorities supported by revenue from three sources. The BLM has authority allowing the proceeds from certain land sales to be used for acquisition and other purposes, although a more general authority of this nature has expired. Congress has considered legislation to increase LWCF funding and make it permanent, to direct LWCF funding to particular purposes, and to use LWCF monies for non-acquisition purposes.

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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> These lands are heavily concentrated in 12 western states (including Alaska but not Hawaii), where the federal government owns roughly half of the overall land area. Four federal agencies—the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM), all in the Department of the Interior (DOI), and the U.S. Forest Service (FS) in the Department of Agriculture—administer about 95% of those lands.<sup>2</sup>

This report describes the primary authorities of these agencies for acquiring and disposing of land. The various acquisition and disposal authorities were provided by Congress through laws enacted over more than a century. The extent to which the agencies have authority to acquire and dispose of land, and the nature of the authorities, varies 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 extent of the acquisition and disposal authorities for the FS and the FWS are not nearly as broad as the BLM's but not nearly as restrictive as the NPS's. 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 and infrequently used. The FWS has various authorities to acquire lands but no general authority to dispose of its lands.

The acquisition authorities differ as to the circumstances in which they apply, and the disposal authorities likewise differ as to their purposes. Thus, the particular authority at issue should be consulted where a specific acquisition or disposal is contemplated. 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. 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 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 exchange authorities for the NPS and the FWS are relatively narrow. 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.

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<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, Laura A. Hanson, and Jerome P. Bjelopera.

## Issues for Congress

Congress often faces questions on 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 adequacy of land acquisition funds, among other issues. The adequacy 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, modify, or eliminate the use of authorities. With regard to the establishment of new authorities, for instance, a 114<sup>th</sup> Congress proposal would generally direct the Secretary of the Interior and the Secretary of Agriculture to offer to sell 80% of BLM and FS land, respectively. Proposals to modify authorities include measures in the 114<sup>th</sup> Congress to reauthorize and amend expired BLM authority to sell or exchange land under the Federal Land Transaction Facilitation Act and to amend the Small Tracts Act regarding the type and value of FS lands that can be disposed of and the use of related proceeds. Among the provisions to eliminate the use of authorities are those to prevent the disposal of federal land under the General Mining Law of 1872, which have been contained in annual Interior appropriations laws since FY1995.

In addition, Congress frequently considers legislation authorizing and governing the acquisition or disposal of specific parcels. For example, Title XXX of P.L. 113-291 contained various provisions to authorize the acquisition and/or disposal of land.<sup>3</sup> Congress may consider such legislation to provide an agency with acquisition or disposal authority in a particular instance because it is lacking. In other cases, Congress directs a particular acquisition or disposal to facilitate the action. For instance, the legislation may seek to direct an acquisition based on Congress's assessment of public needs and priorities. It may expedite the process for acquiring a parcel of land, such as by limiting the assessments and evaluations that ordinarily would be required under law. The legislation also might authorize actions not ordinarily permitted, such as 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. Many westerners contend that there is excessive federal influence over their lives and economies and that the federal government should divest itself of many lands. Many others support the policy of retaining lands in federal ownership on behalf of the public and sometimes advocate adding more lands to enhance protection.<sup>4</sup> Recent Congresses considered diverse bills pertaining to the extent of federal land ownership. Among others, a 114<sup>th</sup> Congress measure would require disposal of BLM lands identified for disposal in land use plans, while another proposal provides that where a land management agency acquires land, an equal number of acres is to be offered for sale.

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<sup>3</sup> P.L. 113-291 was enacted as the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015. In Title XXX, see Subtitle A, Land Conveyances and Related Matters.

<sup>4</sup> For information on the history of federal land disposal and retention, including state, administrative, and congressional actions and policies, see CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*, by Kristina Alexander.

## Acquisition Funding

Another set of issues pertains to the sources and adequacy of funds for land acquisition. The principal financing mechanism for federal land acquisition is annual appropriations under the Land and Water Conservation Fund (LWCF).<sup>5</sup> LWCF is credited with \$900 million annually from designated sources, and Congress determines the level of appropriations each year.<sup>6</sup> Total appropriations for land acquisition and the amount provided to each of the federal land management agencies have varied substantially since the origin of the program in 1965. In the 114<sup>th</sup> Congress, some measures propose to reauthorize LWCF permanently and/or provide permanent appropriations at the authorized level. Advocates of such bills typically seek stable and predictable funding to promote a strong federal role in acquiring and managing sensitive resources. Other pending measures would direct a portion of funding to particular purposes, such as acquisitions in areas with restricted access for fishing, hunting, and other types of recreation. Still other proposals would allow LWCF to be used for a broader array of purposes, including non-acquisition purposes, due to concerns about the extent of federal land ownership and the availability of funding for other federal activities.

Additional sources of funding are available for some agencies or under certain authorities. The FWS has an additional source of funds for land acquisition through the Migratory Bird Conservation Fund, as discussed below. The BLM has authority to keep the proceeds of certain land sales (primarily in Nevada) and use them for subsequent acquisitions and other purposes; a similar, more general authority—under the Federal Land Transaction Facilitation Act—has expired. The application of these authorities, including the uses of the proceeds, has been the subject of congressional debate.

## Federal Land Acquisition Authorities

As noted above, Congress sometimes enacts legislation authorizing and governing specific land acquisitions. 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. In addition, each generally is 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.

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

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<sup>5</sup> For information on the structure, operation, and funding of the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

<sup>6</sup> However, monies provided to the state grant program under §105, Division C, of P.L. 109-432 are appropriated permanently.

## National Park Service

The NPS does not have standing authority to acquire lands for new or existing units of the National Park System, except in limited circumstances. Rather, most units have been created by Congress, 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>7</sup> The President also may establish one type of unit—national monuments.

The Secretary of the Interior is authorized to make minor boundary adjustments of park units for “proper preservation, protection, interpretation, or management” and to acquire the nonfederal lands within the adjusted boundary, under specified provisions and conditions.<sup>8</sup> The Secretary also is authorized to acquire lands adjacent to the boundaries of park units under certain conditions (54 U.S.C. §100506(c)).<sup>9</sup>

The President has authority to create national monuments on federal lands under the Antiquities Act of 1906 (54 U.S.C. §§320301, et seq.). In total, 142 monuments have been created by presidential proclamation. Most are managed by the NPS, but some are managed by the BLM and other agencies.<sup>10</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>11</sup> Furthermore, the general management plan for each unit is to include potential changes to the boundaries of the unit and the reasons for such changes (54 U.S.C. §100502). The Secretary also is to conduct a “systematic and comprehensive review of certain aspects of the National Park System” and to 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)).

## Forest Service

The Secretary of Agriculture has various authorities to acquire lands for the National Forest System (NFS). The NFS consists of 282 units of federally owned land, covering 232.1 million acres,<sup>12</sup> including national forests, national grasslands, purchase units, land utilization projects,

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<sup>7</sup> See CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent. Congress often first enacts a law requiring the NPS to evaluate an area for possible addition to the system.

<sup>8</sup> Among other conditions (54 U.S.C. §100506(c)), the sum total of the area added to and removed from the unit must be less than 200 acres, and it may not exceed 5% of the total federal acreage authorized for inclusion in the unit. Also, the NPS must receive written consent from affected property owners.

<sup>9</sup> These conditions include, among others, that the Secretary may not dispose of National Park System properties in order to acquire lands by exchange and that property may not be acquired without the consent of the owner.

<sup>10</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 Kristina Alexander.

<sup>11</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.

<sup>12</sup> U.S. Forest Service, *Land Areas of the National Forest System as of September 30, 2014*, FS-383, November 2014, p. 1, at <http://www.fs.fed.us/land/staff/lar-index.shtml>.

and other areas.<sup>13</sup> Today, only an act of Congress can create new NFS units, but the Secretary may acquire lands within or contiguous to the proclaimed exterior boundaries of an NFS unit.<sup>14</sup> The NFS contains substantial acreage of nonfederal lands within the proclaimed boundaries of the system, particularly in the east, where national forests were established after extensive settlement. NFS units in the Eastern and Southern Regions average about 46% nonfederal land within their boundaries, while Western Region NFS units average about 9%.<sup>15</sup> The FS has very limited regulatory authority over the uses of the 39.0 million acres of nonfederal lands within the NFS.

The first national forests were reserved from the public domain through presidential proclamation.<sup>16</sup> The President's authority to reserve new forests from the public domain and modify previous proclamations was first restricted in 1907<sup>17</sup> and terminated when the Federal Land Policy and Management Act (FLPMA; P.L. 94-579)<sup>18</sup> was enacted in 1976. However, the Administration was authorized to acquire lands for inclusion into the NFS through the Weeks Law of 1911 (16 U.S.C. §515):

The Secretary of Agriculture is hereby authorized and directed to examine, locate, and purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber.<sup>19</sup>

This authority was used to acquire many of lands that became the eastern national forests,<sup>20</sup> and it continues to be the agency's primary authority to acquire lands within (or adjacent to) established NFS unit boundaries.<sup>21</sup> Under this authority, the Secretary also is authorized to modify the NFS unit boundary as needed to encompass the new acquisition.

Other laws authorize the FS to acquire lands for the national forests, typically in specific areas or for specific purposes. For example, Section 205 of FLPMA authorizes the acquisition of access corridors—including easements—to national forests across nonfederal lands (43 U.S.C.

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<sup>13</sup> 16 U.S.C. §1609 describes the types of lands within the NFS.

<sup>14</sup> The proclaimed exterior boundaries of the NFS are the formally identified geographic boundaries around lands that have been set aside and reserved for national forest purposes (see FSM 5450.5). These proclaimed exterior boundaries of an NFS unit may encompass areas larger than the actual boundary of an established national forest.

<sup>15</sup> U.S. Forest Service, *Land Areas of the National Forest System as of September 30, 2014*, FS-383, November 2014, p. 1, at <http://www.fs.fed.us/land/staff/lar-index.shtml>.

<sup>16</sup> Act of March 3, 1891, ch. 561, 26 Stat. 1103, 16 U.S.C. §471.

<sup>17</sup> The Act of March 4, 1907, ch. 2907, 34 Stat. 1271, provided that only Congress could establish new national forests in several western states.

<sup>18</sup> FLPMA repealed 16 U.S.C. §471.

<sup>19</sup> In 1924, the Clarke-McNary Act (P.L. 68-270) added timber production as a purpose for acquiring land using the Weeks Law authority. Weeks Law acquisitions originally were to be approved by a National Forest Reservation Commission as well as the state legislature. Prior to its termination in 1976 (Section 17 of the National Forest Management Act of 1976 repealed 16 U.S.C. §513), the Commission designated geographic areas as purchase units, from which the Secretary is authorized to acquire lands for inclusion in the NFS. When sufficient land within a purchase unit was acquired, a new national forest would be proclaimed. Currently, there are 56 purchase units in the NFS, covering 1.9 million acres of primarily (80%) nonfederal land (See *Land Areas of the National Forest System as of September 30, 2014*).

<sup>20</sup> Additionally, some of the lands within the eastern national forests, including the 20 national grasslands and 7 land utilization projects in the NFS, were purchased through authorities provided by the 1937 Bankhead-Jones Farm Tenant Act (7 U.S.C. §§1010-1012). However, those acquisition authorities were repealed in 1962.

<sup>21</sup> Forest Service, *FSM 5420 Land Purchases and Donations*, June 18, 2003, p. 4.

§1715(a)). Another example is the Act of August 3, 1956 (7 U.S.C. §428(a)), which authorizes the FS to acquire lands without any geographical limitations but does require a provision be made in a specific appropriation or other law. This authority has been used to acquire administrative sites and Land and Water Conservation Fund acquisitions where other authorities do not apply. Several other acquisition authorities apply to specific national forests, such as the Act of June 11, 1940, which authorizes the purchase of lands within the Angeles National Forest in California. In addition, the Secretary of Agriculture and the secretary of a military department that has lands within or adjacent to proclaimed NFS land may interchange lands, without reimbursement or transfer of funds.<sup>22</sup> Many of the acquisition authorities also allow the FS to accept donations of land as specified.

The Secretary of Agriculture is authorized to acquire privately owned lands within or adjacent to the perimeter of a designated wilderness area in the NFS (16 U.S.C. §1134(c)). The Secretary of Agriculture (along with the Secretary of the Interior) also is authorized to acquire tracts within designated 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.

## **Fish and Wildlife Service**

Lands may be added to the National Wildlife Refuge System (NWRS) in a number of ways. A principal FWS land acquisition authority is the Migratory Bird Treaty Act of 1929 (MBTA; 16 U.S.C. §§703, 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 (Commission), after consulting with the relevant governor (or state agency) and appropriate local government officials (16 U.S.C. §715c). In addition, the state in which the purchase is located must have consented to the acquisition by law (16 U.S.C. §§715f and 715k-5). The Secretary may then purchase or rent areas approved by the Commission (16 U.S.C. §715d(1)), and acquire any area or interest therein (16 U.S.C. §715d(2)).<sup>23</sup>

The MBTA authority is used frequently because of the availability of funding through the Migratory Bird Conservation Fund (MBCF). The MBCF is supported from three sources: 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. 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)). The predictability of funding and permanent authority for use makes the MBCF, and thus the MBTA, particularly important for FWS land acquisition and unique among the four agencies.

Other laws provide general authority to expand the NWRS, 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). Further, FLPMA authorizes the Secretary of the Interior to withdraw lands from the public domain for creating or adding to refuges (which would be an interagency transfer), although withdrawals

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<sup>22</sup> Interchange With Department of Defense Act of July 26, 1956, 16 U.S.C. §505a-§505b.

<sup>23</sup> An interest in land is something less than full ownership.

exceeding 5,000 acres are subject to congressional approval (43 U.S.C. §1714(c)).<sup>24</sup> In contrast to NPS and FS land acquisition, where the lands generally must be within the boundaries of established units, the FWS can acquire new lands 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.

Some units have been created by specific acts of Congress, such as Protection Island NWR (WA) and Bayou Sauvage NWR (LA). Units also can be created by executive order; for example, the Midway Atoll NWR was created by President Clinton in Executive Order 13022.<sup>25</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 eminent domain, lands or interests therein (43 U.S.C. §1715(a)). An interest in land is something less than full ownership, and could include conservation easements, access easements, mineral rights, and water rights. The BLM acquires land or interests in land, including inholdings (nonfederal lands surrounded by the agency's lands), for a variety of reasons. These include to protect natural and cultural resources, to increase opportunities for public access and recreation, and to improve management of lands.<sup>26</sup>

## Federal Land Disposal Authorities

As noted above, Congress sometimes enacts laws directing the disposal of particular lands. In addition, the four federal land management agencies have different standing authorities for disposing lands. There is no broad authority covering all four agencies. The specific disposal authorities are discussed below for each of the four agencies in the order of their apparent breadth, with the NPS (the narrowest authorities) first and the BLM (the broadest authorities) last. Note that the FWS and the FS are in reverse order from the acquisition authorities, since the FWS has broader acquisition authorities, while the FS has broader disposal authorities.

## 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 only be disposed of by acts of Congress. 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 add and remove land within the boundary, minor boundary revisions solely to remove NPS acreage can only be made

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<sup>24</sup> These procedures result in termination of executive actions other than by legislation, which may be unconstitutional in light of *Immigration and Naturalization Service (INS) v. Chadha*, 462 U.S. 919 (1983).

<sup>25</sup> 61 *Federal Register* 56875, October 31, 1996.

<sup>26</sup> In addition, several 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. See the discussion below of BLM's disposal authorities.

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)).

Presidents have 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.<sup>27</sup>

## Fish and Wildlife Service

The FWS does not have general authority to dispose of its lands. With certain exceptions, wildlife refuge lands administered by the FWS can be disposed only by an act of Congress (16 U.S.C. §§668dd(a)(5) and (6)). For refuge lands reserved from the public domain, FLPMA prohibits the Secretary of the Interior from modifying or revoking any withdrawal which added lands to the National Wildlife Refuge System (43 U.S.C. §1714(j)). For acquired lands, disposal is allowed only if: (1) the disposal is part of an authorized land exchange (16 U.S.C. §§668dd(a)(6) and (b)(3)); or (2) the Secretary determines the lands are no longer needed and the Migratory Bird Conservation Commission approves the disposal (16 U.S.C. §668dd(a)(5)). In the latter case, the disposal must recover the acquisition cost or be at the fair market value (whichever is higher), and the receipts are deposited in the Migratory Bird Conservation Fund.

## Forest Service

The Secretary of Agriculture has numerous authorities to convey lands within proclaimed NFS boundaries out of federal ownership—through sale or exchange—although previous, broader authorities have been modified or revoked. For example, the oldest authority (from 1897) had allowed the President to modify the boundary or revoke proclamations or executive orders that reserved public domain lands for the establishment of a national forest (16 U.S.C. §473). However, the National Forest Management Act of 1976 restricted this authority by requiring an act of Congress to return NFS lands to the public domain (16 U.S.C. §1609(a)), although the Secretary retains the authority to modify NFS unit boundaries.<sup>28</sup>

Many of the authorities put constraints on land disposal, such as applying only to a specific geographical area or to the disposal of particular administrative properties or facilities.<sup>29</sup> Many of the authorities are used in conjunction with FLPMA and as such may place requirements on the sale or exchange of land. This includes obtaining at least fair market value for the sale of federal lands (43 U.S.C. §1713(d)); 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).

The General Exchange Act of 1922 (16 U.S.C. §485) authorizes the exchange of NFS land or timber that was reserved from the public domain if the Secretary determines it will be in the

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<sup>27</sup> For information on the authority of the President to reduce or eliminate national monuments, see CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*, by Pamela Baldwin.

<sup>28</sup> Senate Committee on Agriculture and Forestry, S.Rept. 94-893 on S. 3091, May 14, 1976.

<sup>29</sup> For example, the Forest Service Facility Realignment and Enhancement Act of 2005, as amended (16 U.S.C. §580(d)), authorizes the disposal of administrative sites and related facilities. Various authorities also allow for the sale of specific properties within a specific state or national forest.

public interest. The nonfederal land must be within the same state and within the exterior boundary of a national forest, and it must be chiefly valuable for national forest purposes, among other provisions. The Weeks Act of 1911 allows for similar exchanges for acquired NFS lands (16 U.S.C. §516).

The 1983 Small Tracts Act authorizes the Secretary to dispose of up to 40 acres of NFS land, by sale or exchange. The tracts must be valued at no more than \$150,000 and meet certain specified conditions, such as to relieve encroachments due to erroneous surveys or dispose of unneeded federal rights-of-way surrounded by nonfederal lands (16 U.S.C. §521e). The land can be disposed of for cash, lands, interests in land (such as an easement), or any combination thereof for the value of the land being disposed (16 U.S.C. §521d) plus “all reasonable costs of administration, survey, and appraisal incidental to such conveyance” (16 U.S.C. §521f).

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, 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.”

The Education Land Grant Act (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.

There are a few other specific authorities that allow for the disposal of NFS lands. For example, 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 “under such terms and conditions as [the Secretary of Agriculture] deems will best accomplish the purposes of this title,” but “only to public authorities and agencies and only on condition that the property is used for public purposes” (7 U.S.C. §1011(c)). However, the FS has adopted regulations stating that the Bankhead-Jones lands comprising the national grasslands will be held permanently (36 C.F.R. §213).

## **Bureau of Land Management**

The BLM can dispose of land under several authorities. They include (1) exchanges and sales under FLPMA; (2) transfers to other governmental units or nonprofit entities for public purposes; (3) patents under the General Mining Law of 1872; and (4) geographically limited sale authorities.<sup>30</sup>

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<sup>30</sup> The Homestead Act and many other authorities for disposing of the public lands were repealed by FLPMA in 1976, with a 10-year extension in Alaska. The General Services Administration has the 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, and lands previously withdrawn or reserved from the public domain (40 U.S.C. §472(d)(1)).

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>31</sup> With regard to sales under FLPMA, the BLM is authorized to sell certain tracts of public land that meet specific criteria (43 U.S.C. §1713(a)):

(a) A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 1712 of this title, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristic 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.” Proposals to sell tracts of more than 2,500 acres first must be submitted to Congress and can be disapproved by Congress through a concurrent resolution.<sup>32</sup> Lands may not be sold at less than their fair market value. They generally must be sold through competitive bidding, although modified competition and non-competitive sales are allowed.<sup>33</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.

<sup>31</sup> For information on BLM land exchanges, see CRS Report R41509, *Land Exchanges: Bureau of Land Management Process and Issues*, by Carol Hardy Vincent.

<sup>32</sup> 43 U.S.C. §1713(c). In allowing Congress to block action of the Secretary of the Interior by means other than enactment of a law, this provision of FLPMA may be unconstitutional under *INS v. Chadha*, 462 U.S. 919 (1983).

<sup>33</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.

While lands can be disposed of through patents under the General Mining Law of 1872, since FY1995 Congress has enacted a series of annual moratoria on issuing mineral patents. These moratoria, contained in the annual Interior appropriations laws, have effectively prevented this means of federal land disposal.<sup>34</sup> Specifically, the Mining Law allows access to *hardrock* minerals on federal lands that have not been withdrawn from entry. Minerals within a valid mining claim can be developed without obtaining full title to the land (surface and mineral rights). However, 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—\$5.00 per acre for vein or lode claims (30 U.S.C. §29) or \$2.50 for placer claims (30 U.S.C. §37), plus various filing fees. Non-mineral 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 several geographically limited land sale authorities. The program with the largest revenue stream has been the Southern Nevada Public Land Management Act, which 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 and other purposes in the state, such as certain capital improvements; Lake Tahoe restoration; and development of parks, trails, and natural areas. The Secretary has approved of acquisitions for each of the federal land managing agencies. The other 15% of the proceeds are for certain 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 and to Alaska native corporations. A total of about 150 million acres in Alaska will be transferred from federal to state and private ownership.<sup>35</sup>

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<sup>34</sup> However, patent applications meeting certain requirements that were filed on or before September 30, 1994, were allowed to proceed, and third-party contractors were authorized to process the mineral examinations on those applications.

<sup>35</sup> Another disposal authority, under the Federal Land Transaction Facilitation Act, as amended (P.L. 106-248; 43 U.S.C. §§2301, et seq.), expired on July 25, 2011. The law had provided for the sale or exchange of BLM lands identified for disposal under the BLM land use plans in effect at the date of enactment (July 25, 2000). The act created a separate Treasury account for most of the proceeds (96%) from the sale or exchange, and provided for the use of those funds by the Secretary of the Interior and the Secretary of Agriculture. The Secretaries could acquire nonfederal lands, specifically inholdings and lands adjacent to federal lands that contain exceptional resources. Up to 20% of the funds in the account could be used for administrative costs, and at least 80% of the funds for acquisition were to be in the state in which the funds were generated.

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