

Lands and Special Uses

Reference Conditions

Federal land in the United States is owned in common by its citizens and is intended to be managed for their common benefit. Our country grew rapidly after the revolution and the opening of federal lands to settlement east of the Mississippi River. Most acquisition of lands by the United States occurred between the late 1700s and the late 1800s, adding to the public domain that is subject to the control of and disposition by Congress.

Over the past 200 or more years, Congress has given away, sold, or otherwise disposed of about two-thirds of the nearly 1.8 billion acres of public land once owned in common by the citizens. This was done to pay national debts and operating expenses and to foster settlement, basically to achieve national economic and social goals.

By the late 1800s, disposal of the federal estate had brought about wide perception and concern of public land scarcity and a desire to reserve special natural areas of the country for public use. While the western United States still consisted of substantial areas of public domain, the East had been mostly conveyed to private interests. Various Acts of Congress have been passed over the last century or so to reserve lands in the public domain and to purchase additional lands to protect watersheds or other values and to manage natural resources for the public benefit. Approximately 635 million acres of various federal lands existed in the United States in 2002.

Numerous agencies have been given the responsibility to manage our present federal public land base, to serve as stewards dedicated to providing long-term benefits from these lands for present and future generations. The United States Department of Agriculture, Forest Service, administers the National Forests including the Monongahela National Forest in West Virginia. Approximately 193,000,000 acres were being administered by the Forest Service nationally in 2006, mostly in the West.

The Monongahela National Forest is comprised of just over 919,000 public acres. Prior to the establishment of the Forest in 1920, there was no need for federal rights-of-way, landlines, or land acquisition within the Upper Greenbrier Watershed. Since then, as the amount and distribution of National Forest System (NFS) land has changed, the Forest has had to continually adapt to changing private needs, laws and agency policies in order to effectively manage the federal estate. Many, scattered, private lands within the boundaries of national forests have led to the need for realty specialists to work with diverse neighbors and forest users in matters relating to boundary management, rights-of-way, occupancy and use of public land, claims, encroachments, reserved and outstanding rights, purchases, exchanges, and sale of public lands.

PROPERTY BOUNDARY MANAGEMENT – LANDLINES

Background

Probably the most critical activity of the lands program affecting other resource management programs is property boundary management. This involves establishing, marking, and

maintaining the property lines between NFS lands and private lands. When land was plentiful and cheap, exact surveys and boundaries were not perceived as so important, but as it increases in value, a few feet can make a great difference. Probably no other land issue can flare into emotional confrontation as quickly as disputes over landownership.

It is essential that lands managed by the Forest Service be identified on the ground, not only to prevent unauthorized use of national forest resources but also, to ensure that Forest Service personnel do not unknowingly authorize use of resources owned by others. Well-established, well-marked property lines allow for maximum management and use of all resources, including the identification of lands for public use. In the past, many managers backed off private boundaries that had not been marked on the ground rather than survey the line, or just marked them in the approximate location. These practices resulted in millions of acres of land across the country not being used or managed by the Forest Service. A USDA audit of the Forest Service in 1977 estimated that more than 25 million dollars a year of annual revenue was being lost because of backing off, or using substandard surveys. The enforcement of Forest Service regulations also requires on-the-ground identification of areas where regulations apply.

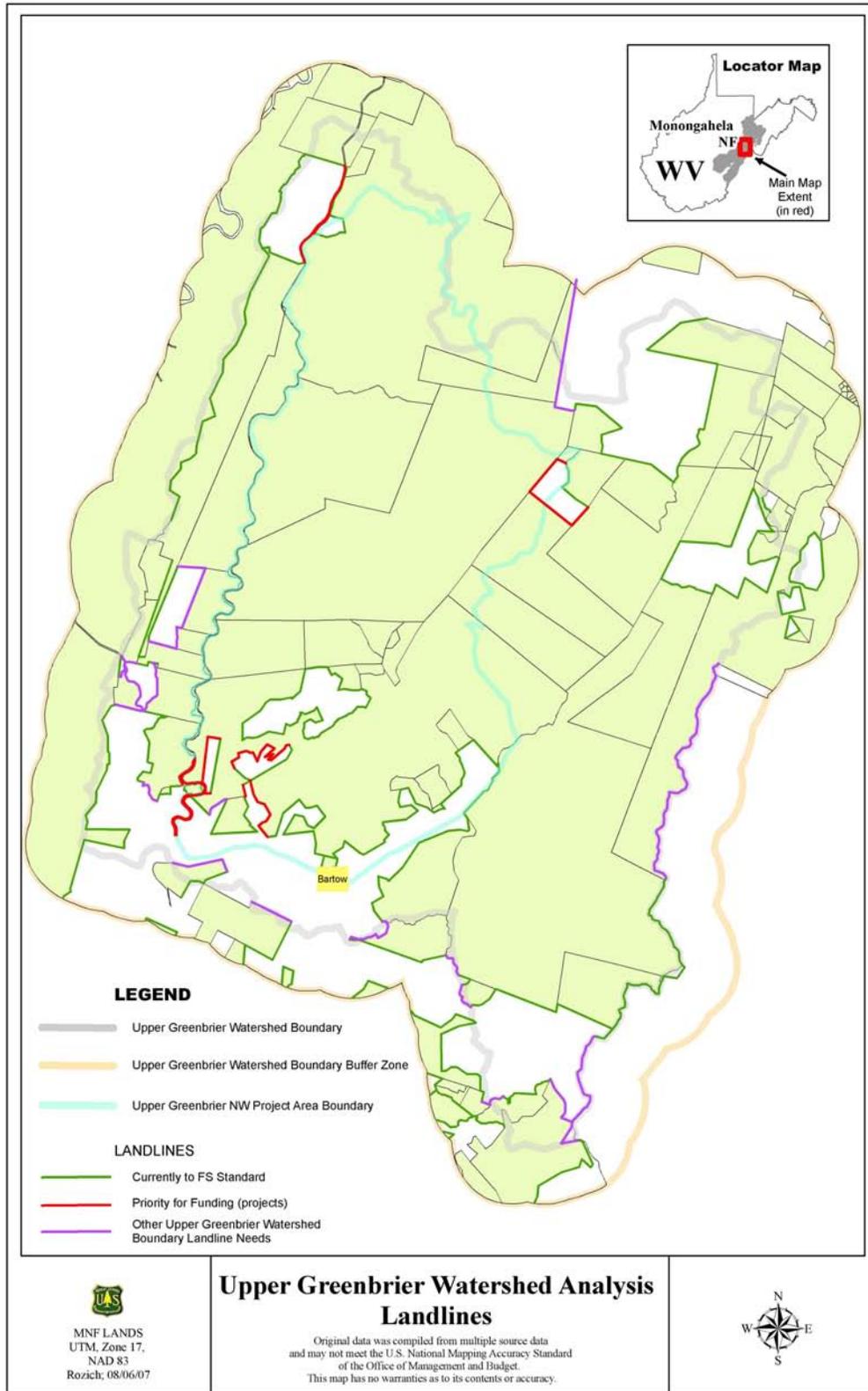
The Forest Service implements some key policies related to landline location. One is that all National Forest System property boundary lines adjoining private, state, and public trust lands shall be located, monumented (corners), marked, and posted to prescribed Forest Service standards prior to undertaking land management activities that occur near or adjacent to the property line. In addition, all land management practices shall use, occupy, and/or protect the land and resources of the United States up to the property line to prevent the creation of a false or misleading use line. Although most acquired NFS lands were surveyed prior to acquisition, many have not been surveyed to modern standards and some of the old corner monumentation and marking of lines has been lost due to time and lack of maintenance. Boundary lines must be maintained every few years to keep them visible and functional.

Responsibility for property line surveys between National Forest and private lands is shared equally between the landowner and the government. Locating and posting lines should be a cooperative undertaking. Landowners are likewise responsible for ensuring that their activities do not infringe on public lands. Landline location is very expensive and involves sophisticated equipment and highly trained personnel. Budgets are most often insufficient to allow surveying of many miles of lines to standard on an annual basis. Prioritization of surveys is necessary to make the best use of available dollars as follows: 1) where known litigation is pending or a title claim asserted; 2) where significant resource values exist and utilization is planned (including necessary easements); 3) where encroachment is suspected or probability can be reduced; 4) all remaining property lines.

Current Conditions

Currently, an estimated 81 percent (69,300 acres) of the Upper Greenbrier Watershed is NFS land, with the remaining 19 percent (15,800 acres) in private ownership. Current uses on private lands include residential, agriculture, pastureland, forestry, and some commercial/industry in the Durbin-Bartow corridor.

Map LS-1. Priority Landlines in the Upper Greenbrier Watershed



A review of the landlines between National Forest System land and private land was completed for this analysis. Map LS-1 graphically displays the status of property boundaries. In summary, there are approximately 120 miles of common Forest Service/private boundaries in the watershed area. Nearly 68 percent (80 miles) of those lines have been surveyed and marked to standard. Approximately 12 percent (15 miles) have been identified as having a higher priority for survey due to the potential for management activities in the foreseeable future. Another 20 percent (25 miles) are a lower priority and should be considered for survey as dollars become available or circumstances dictate a higher need. Specific needs related to landlines or other property management issues should be identified as early as possible in the project planning process in order to complete these often protracted activities in a timely fashion.

Desired Conditions

National Forest property boundaries and corners are located on the ground, monumented, marked, and posted to properly identify lands managed by the Forest. Pro-active efforts to mark and maintain property boundaries and educate and inform users and adjacent landowners result in reduced levels of unauthorized uses, encroachments, and user conflicts. Boundaries and corners are maintained to Forest Service standards to prevent their loss over time to damage and neglect. Well-established property lines support enforcement of Forest Service regulations (Forest Plan, p. II-50).

LANDOWNERSHIP ADJUSTMENT

Background

Landownership adjustment involves a group of activities whose primary function is to change the landownership pattern within the National Forest System. The purposes of these changes are to facilitate management or reduce administrative costs by obtaining an optimum pattern of landownership and resources to meet the public's present and future needs. They include purchase (acquiring partial or all interests in a property by cash payment), donation (private gifts of real property rights), exchange (land-for-land, land-for-timber, or partial interest), transfer (jurisdictional change between federal agencies--usually one way), interchange (jurisdictional change between federal agencies-- two way or a Small Tracts Act expedited exchange) or, condemnation (rights taken through the Eminent Domain Act of 1888). Disposal of property by grants are very limited and can relate to rights-of-way. Special laws are occasionally passed for sale or other disposal of certain federal lands.

Acquisition can reduce management costs by reducing the need for very expensive landline surveys and subsequent upkeep. It can also reduce the need for acquiring needed rights-of-way to access NFS lands often isolated by natural features and private properties. More efficient fire protection is a benefit of a consolidated land ownership pattern. Protection and/or enhancement of threatened, endangered and sensitive floral and faunal species can often be realized by acquisition of key properties. The demands for special use authorizations are reduced, especially for access and utilities to serve private lands, from those required in an otherwise fragmented ownership pattern. Public recreational opportunities can be greatly enhanced through the purchase of properties exhibiting certain characteristics such as waters supporting fishing and

boating, cliffs for climbing, highly productive forests for hunting, camping, etc. Heritage resources can be protected, interpreted, and enjoyed by present and future generations. Rights-of-way afford public and administrative access to federal lands.

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Opportunities should be considered as they avail themselves on a willing seller basis for acquisition of private lands to consolidate federal ownership. Opportunities or needs related to land acquisition should be identified as early as possible in the planning process to allow time to complete these often protracted transactions.

Desired Conditions

Consolidation of landownership is aimed at reducing management costs, reducing miles of landlines necessary to survey and maintain, reducing numbers of rights-of-way needed to access public lands, consolidating transportations systems, and providing more efficient fire protection.

Land adjustments reflect Forest Priorities for acquisition and conveyance. Landownership adjustments reduce limitations posed by private lands, rights, or authorizations. They provide public access to NFS lands that are isolated. Managers allow adequate time to accommodate needed adjustments prior to proposed management activities.

SPECIAL USES

Background

Various laws provide direction to managers to govern the occupancy and use of National Forests. Special use authorizations provide for the use of National Forest System Lands by individuals, companies, organized groups, other federal agencies, or state and local units of government. They may be of short- or long-term duration and include such things as pipelines, roads, power lines, electronic or communication sites, telephone lines, cable TV lines, agriculture, organizational camps, recreational outfitting and guiding, ski areas, sanctioned recreational competitions, community uses, industrial uses, and water uses. Uses can be authorized by a permit that does not transfer an interest in real property or by granting of specific rights such as a road easement that does, in fact, convey an interest in real property. The type of authorization is dependent on the use requested and on the applicant requesting the use.

Proposals for use by persons or entities are screened for: consistency with laws, regulations, orders and policies; consistency with the forest land and resource management plan; potential risks to public health and safety; elimination of potential for exclusive or perpetual rights to use

and occupy national forest, not unreasonably interfering with agency administrative use or other authorized existing uses of national forest or use of adjacent private lands among other criteria. Proponents can be assessed administrative fees to process their applications as well as land use fees associated with their activities. Authorized Forest Service officials evaluate the effects of accepted applications, including effects on the environment, and decide whether to approve the proposed uses, approve the uses with modifications, or deny the uses.

Current Conditions

Numerous authorizations have been approved, permitting occupancy and use of NFS land in the Upper Greenbrier Watershed. The wide variety of current special use authorizations in the Upper Greenbrier Watershed are summarized in the following list:

- Six utility corridors for power lines (Monongahela Power)
- Three utility corridors for telephone lines (Citizens, Mountain State, Spruce Knob/Seneca Rocks)
- Three rights-of-way to West Virginia Department of Transportation
- Two private road access permits (Plyler and Newman)
- One well and spring
- One waterline for domestic use
- One communication site/TV antenna
- One organizational camp (Pocahontas 4H)
- One manager residence area for West Virginia Division of Natural Resources
- One weather station
- One gas pipeline (Cabot Oil and Gas Company)

Special uses have been mapped and are on file at the Forest Supervisors Office, but are not displayed here for national security reasons.

It is hard to anticipate what specific uses of national forest may be requested or exactly where they might be proposed. Program managers attempt to be responsive to proposals that may come at any time. Discovery of unauthorized uses sometimes accompanied by enforcement actions may lead to subsequent follow-up proposals submitted by those users in an attempt to continue to use national forest in compliance with governing laws. Once uses are authorized, they are monitored for compliance with permit conditions. Problems with special uses are typically addressed as non-compliance issues as part of permit administration. There is a general need to continue monitoring special uses and their effects so that issues can be identified and addressed in a timely and effective fashion. Opportunities or needs related to rights-of-way or easement special uses should be identified as early as possible in the project planning process to allow time to complete these often protracted transactions.

Desired Conditions

Proposed private uses of NFS lands are generally met on private lands. Conflicts between authorized special uses and other uses and resources are mitigated or eliminated (Forest Plan, p. II-49).