

**Forest Service Manual  
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**Forest Service Manual 5400 – Landownership**

**Chapter 5470 – Reservations and Outstanding Rights**

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**Superseded Directive:** 5470, Amendment 5400-90-1, 06/01/1990; 5460, Amendment 5400-2003-8

**Approved by:** Susan M. Super, Acting Service-wide Directive Manager

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**Responsible Staff:**

**Posting Instructions:** Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 5400-2003-8 to 5460.

**Explanation of changes:** Following is an explanation of the changes throughout the directive by section.

**Digest:**

**5470:** This is a technical amendment that converts the format and style of this chapter (previously in “Applixware”) to the new FSM template using the agency’s current corporate word processing software. Where chapters were previously organized into more than one document, they are now merged into one chapter whenever possible.

Although some minor typographical and technical errors have been corrected, this amendment contains no changes to the substantive direction in this chapter.

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## **5470.1 - Authority**

### **5470.11 - Statutory Authority**

Numerous acts of Congress provide authority to acquire and dispose of National Forest System land or interests in land. Some acts include specific guidelines for reservations and outstanding rights. These are listed below. Other acquisition authorities do not mention reservations and outstanding rights but provide authority for the acquisition of land, or land and interests in land, or land and water interests therein. Carefully review against the statutory authority any landownership adjustment proposal subject to outstanding or reserved rights to ensure that the proposal is consistent with the guidelines in the act. When the act contains no restrictions, acquisition subject to reservations and outstanding rights are authorized, consistent with the policies and guidelines of this chapter. Acquisition authorities are in FSM 1010, FSM 5420.1, and FSM 5430.1.

#### **5470.11a - Reservations by Non-Federal Owners**

1. Weeks Act of March 1, 1911. (36 Stat. 961, as amended, 16 U.S.C. 480, 500, 513-517, 517a, 518, 519, 551, 563, as amended). This law permits the purchase or exchange of lands encumbered by located or defined rights-of-way, easements, and reservations that would not interfere with use of the lands for purposes of the act. The act provides that rights-of-way, easements, and reservations retained by the grantor be subject to rules and regulations of the Secretary of Agriculture (FSM 1013.4, 36 CFR 251.14 - 251.19). The Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1715, 1716) amends the Weeks Act by authorizing the Secretary to accept title to any non-Federal land or interest therein.

2. General Exchange Act of March 20, 1922. (42 Stat. 465, as amended; 74 Stat. 205; 16 U.S.C. 485, 486, 7 U.S.C. 2201). This law permits acquisition of lands by exchange, encumbered by reservations of timber, or minerals or easements that would not interfere with use of the lands for National Forest purposes. The act is amended by the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1715, 1716), which authorizes the Secretary to accept title to any non-Federal land or interest therein.

3. Clarke-McNary Act of June 7, 1924. (43 Stat. 653, as amended, 16 U.S.C. 596). This law permits acceptance of donated lands subject to reservation of merchantable timber or mineral or other rights for a period not exceeding 20 years.

4. Department of Agriculture Organic Act of August 3, 1956. (70 Stat. 1034; 7 U.S.C. 428a(a)). This law provides for the acquisition of land or interests in land by purchase, exchange, or otherwise as may be necessary to carry out the authorized work of the Department.

5. Act of March 3, 1925. (43 Stat. 1133, as amended, 16 U.S.C. 555). This law permits acquisition of sites for Forest Headquarters, Ranger stations, and dwellings by purchase or donation subject to reservations or outstanding rights as the Secretary of Agriculture determines would not interfere with the purpose of the act. The purpose of this act is to provide sites needed for the effective conduct of authorized activities of the Forest Service.

6. Whiskeytown-Shasta-Trinity National Recreation Area Act of November 8, 1965. (79 Stat. 1295; 16 U.S.C. 460q). This law authorizes grantors to reserve all or any part of the minerals or any other interest or right of use in such lands or waters on such terms and conditions, as the Secretary may deem appropriate.

7. Wild and Scenic Rivers Act of October 2, 1968. (82 Stat. 906 as amended; 16 U.S.C. 1271-1287). This law authorizes the acquisition of land or interests in land and permits the owners of improved property (as defined in the act), on the date of its acquisition, to retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed 25 years or for the lifetime of the owner or spouse.

8. Oregon Dunes National Recreation Area Act of March 23, 1972. (86 Stat. 99; 16 U.S.C. 460z). This law provides persons or their assigns owning improved property with a right to reserve use and to occupy the residence and no more than 3 acres of land on which such residence is situated for the life-time of the owners or for a period not to exceed 25 years. The Secretary may exclude from such reserved property any lands or waters deemed necessary for public use, access, or development.

9. Eastern Wilderness Act of January 3, 1975. (88 Stat. 2096; 16 U.S.C. 1131, 1132). This law authorizes property owners to retain for themselves, their successors, or assigns a right to use and occupy the property for noncommercial residential purposes or for agricultural activities for 25 years or until the death of the owner or spouse, whichever occurs later.

10. Federal Land Policy and Management Act of October 21, 1976. (90 Stat. 2743; 43 U.S.C. 1715, 1716). This law amends all exchange authorities and authorizes the Secretary to accept title to any non-Federal land or interest therein determined to be in the public interest.

#### **5470.11b - Reservations by the United States**

The laws authorizing disposal of National Forest System land provide a variety of guidelines for reservations by the United States. References to reservations contained in the principal land exchange and sale authorities are outlined below. The numerous special sale and exchange acts (FSM 5430 and FSM 5450) generally represent special purpose legislation and are not discussed in this section.

1. Federal Land Policy and Management Act of October 21, 1976. (90 Stat. 2743; 43 U.S.C. 1715, 1716). This law amends all exchange authorities by authorizing the Secretary to dispose of a tract of land or interests therein where the Secretary determines that such disposal would serve the public interest.

2. General Exchange Act of March 20, 1922. (42 Stat. 465, as amended, 16 U.S.C. 485, 486). This law provides that either party to an exchange may reserve timber, minerals, or easements.

3. Weeks Law Exchange Act of March 3, 1925. (43 Stat. 1215; 16 U.S.C. 516). This law does not restrict reservations in conveyances from the United States. The United States may make such reservations as are in the public interest.

4. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937. (50 Stat. 525, as amended; 7 U.S.C. 1010-1012). This law provides that title III lands may be exchanged subject to such reservations or conditions as are deemed necessary and in the public interest and subject to existing outstanding rights.

This law also requires that the conveyance of lands to public agencies by sale or grant be subject to the condition that such land is to be used for public purposes.

5. Department of Agriculture Organic Act of August 3, 1956. (70 Stat. 1034; 7 U.S.C. 428a(a)). This law provides for the acquisition of land or interests in land by purchase, exchange, or otherwise as may be necessary to carry out the authorized work of the Department. There are no restrictions on conveyances from the United States.

6. Forest Service Omnibus Act of October 23, 1962. (76 Stat. 1157; 16 U.S.C. 555a). This law contains no restrictions prohibiting either party from making reservations. The United States may make such reservations as are in the public interest.

7. Townsite Act of July 31, 1958. (72 Stat. 438, as amended; 16 U.S.C. 478a). The purpose of this law is to convey lands determined to be essential for community needs in the 11 contiguous western states. It does not restrict reservations in conveyances from the United States. The United States may make such reservations as are in the public interest.

8. Small Tracts Act of January 22, 1983. (96 Stat. 2535; 16 U.S.C. 521c-521i). This law allows the conveyance of lands to resolve land disputes and management problems involving encroachments, mineral survey fractions, and certain road rights-of-way. It does not restrict reservations in conveyances from the United States. The United States may make such reservations as are in the public interest.

### **5470.11c - Regulations**

The Secretary of Agriculture's rules and regulations governing the exercise of rights reserved by grantors are in 36 CFR 251.14-251.19 (FSM 1013.4). Check for preprinted regulation forms and, where available, use them in negotiations and as attachments to options and land exchange agreements.

See FSM 2830 for information about the various rules and regulations governing the exercise of reserved mineral rights.

### **5470.2 - Objectives**

To accomplish real property adjustments free of encumbrances that would detract from present or future uses of National Forest System land or that would needlessly restrict private land use and impose an unwarranted management obligation on the Forest Service.

### **5470.3 - Policy**

Acquire and dispose of land with as few reservations and outstanding rights as possible. Make exceptions to this policy when it is possible to satisfy management needs by acquiring only a partial interest or when it is necessary to impose reservations or conditions to ensure proper land management--such as when the best access to other lands is across the tract being conveyed. However, keep encumbrances to a minimum and ensure that they are compatible with National Forest System purposes. Because separate ownership of the surface and mineral estates can have an adverse affect upon land management objectives, place particular emphasis on keeping these two estates together.

Carefully administer the exercise of reserved rights to ensure compliance with the terms of the reservation and protection of the public interest.

All rights reserved by the vendor, either for that vendor or for the use of another, must be subject to the applicable rules and regulations of the Secretary of Agriculture and to any other conditions necessary to protect the public interest.

Make reservations as specific as possible; specify an expiration date and confine the reserved right to the minimum area needed.

### **5470.4 - Responsibility**

The Forest Supervisor assesses the impact of proposed reservations or outstanding rights on use of land for National Forest System purposes and makes recommendations for acquisition or disposal.

### **5471 - Reservations in Conveyances to the United States**

A number of different kinds of reservations are possible in real estate transactions. The most common reservations are minerals, timber, occupancy, water, grazing, improvements or use of improvements, easement, and right-of-way reservations. See FSH 5409.13 for a thorough discussion of the use of reservations.

### **5472 - Outstanding Rights**

Outstanding rights are the same types as those discussed under reservations (FSM 5471). However, rather than being reserved by the grantor in a conveyance to the United States, these rights are owned by a third party by virtue of a previous reservation or deed of conveyance. Identify outstanding rights by reference to the document creating the right.

Encourage the present owner to acquire outstanding rights that are potentially incompatible with planned projects or use before conveying property to the Government. If this is not possible and the outstanding rights are potentially incompatible with planned projects or use, the Forest Supervisor shall attempt to acquire these rights or to obtain agreement from the owner of the rights to subject the exercise and use of the rights to the Secretary's rules and regulations. The remaining alternative is to weigh the possible adverse impacts of the outstanding rights on planned use of the land. The decision whether or not to acquire property subject to the

outstanding rights must take place at the level having case approval authority. For all outstanding rights, document with Form FS-5400-29, Certificate of Use and Consent for Purchase, Donation, and Land Exchange. If it is necessary to acquire the land and if the outstanding rights are incompatible with planned projects or use, consider condemnation of the outstanding right.

#### **5473 - Reservations by the United States**

In all disposals of National Forest System land or interests in land, it is essential to reserve those interests and rights-of-way necessary to comply with laws and regulations, to permit removal of reserved resources, to protect interests reserved in such documents as conservation easements, and to provide access to National Forest System lands (FSM 5470.11b).

Include in all conveyances of National Forest System land appropriate reservations or conditions that are necessary to effectively manage and administer National Forest System lands and resources. Reservations may occasionally be used as a means of ensuring that all parties affected by a land exchange receive equitable treatment.

Reserve a right-of-way for ditches or canals constructed by the authority of the United States in all patents for land after August 30, 1890, under any of the land laws of the United States, or on entries or claims validated by the Act of August 30, 1890, west of the 100th meridian.

Do not exchange lands of the United States under the authority of the General Exchange Act of March 20, 1922, as amended, and certain other exchange acts without reserving minerals, unless the Secretary of the Interior advises that the lands are nonmineral in character or approves the value and disposal of the minerals in the lands to be patented.

#### **5474 - Deed Restrictions and Conditions**

In conveyances of National Forest System lands, in addition to reservations, it may be necessary to apply specific limiting conditions to manage effectively or to protect National Forest System lands and resources. Likewise, lands may occasionally be acquired with limiting conditions such as restrictive covenants. For additional information, see the definitions in FSH 5409.13.

#### **5475 - Valuation of Reservations and Outstanding Rights**

In most instances, reservations and outstanding rights have an effect on the value of the property being conveyed. Know the effect on value plus the administrative impacts prior to negotiation. Include the effect on value in the appraisal to determine fair market value.

See FSM 5410 for the guidelines for appraising properties subject to reserved or outstanding rights.

#### **5476 - Condemnation of Outstanding Rights**

There are three circumstances that may require condemnation of outstanding rights.

1. Protection of the Public Interest. When the exercise of the right would cause unacceptable damage to the environment, would materially interfere with National Forest System programs, or would result in public hazards.

2. Subordination. To subordinate rights when some control is needed but it is not necessary to acquire title to the right. Use subordination only in exceptional cases because courts generally award damages as though the total property were acquired.

3. Quiet Title Actions. When it is not possible to determine the owner of all or a portion of the real property ownership rights.