

**Forest Service Manual  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Manual 5500 – Landownership Title Management  
Chapter 5520 - Encumbrances**

**Amendment:** 5500-2003-1

**Effective date:** May 21, 2003

**Duration:** This amendment is effective until superseded or removed.

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

**Date approved:** March 31, 2003

**Responsible Staff:**

**Last Change:**

**Superseded Document(s):** 5500, Contents (Amendment 5500-91-1, 09/27/91); 5500 Zero Code Contents (Amendment 5500-95-1, 06/02/95); 5500 Zero Code (Amendment 5500-95-2, 06/02/95); 5510 (Amendment 5500-90-1, 06/01/90); 5520 Contents (Amendment 5500-92-1, 02/25/92); 5520 (Amendment 5500-92-2, 02/25/92); 5570 Contents (Amendment 5500-96-1, 03/26/96); 5570 (Amendment 5500-96-2, 03/26/96); 5580 (Amendment 5500-90-1, 06/01/90); 5590 Contents (Amendment 5500-91-2, 09/27/91); 5590 (Amendment 5500-91-3, 09/27/91)

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

**5500:** This is a technical amendment that converts the format and style of this Forest Service Manual (FSM) title (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 title.

Table of Contents

5520.1 - Authority [Reserved] .....	3
5520.2 - Objectives [Reserved] .....	3
5520.3 - Policy [Reserved] .....	3
5520.4 - Responsibilities [Reserved] .....	3
5521 - Reserved and Outstanding Rights [Reserved] .....	3
5521.1 - Reservation and Right Retained By Vendor [Reserved] .....	3
5521.11 - Outstanding Rights - Private Vendor [Reserved] .....	3
5522 - Outstanding Federal Grants and Easements .....	3
5522.01 - Authority .....	3
5522.02 - Objectives .....	3
5522.03 - Policy .....	3
5522.1 - Grants for Water Conveyance Facilities .....	4
5522.11 - 1866 Act Rights-of-Way .....	4
5522.12 - Department of the Interior Issued Rights-of-Way .....	5
5522.13 - Replacement of 1866 Act Grants and Department of Interior Easements .....	6
5522.2 - Railroads [Reserved] .....	6
5522.3 - Conditional Land Grants [Reserved] .....	6
5523 - Land Uses [Reserved] .....	6
5523.1 - Special Uses [Reserved] .....	6
5523.12 - Memorandums of Understanding [Reserved] .....	6
5524 - Mineral and Oil and Gas Rights [Reserved] .....	6
5524.1 - Mining Claims [Reserved] .....	6
5524.11 - Surface Rights [Reserved] .....	6
5524.12 - Mineral Leases [Reserved] .....	6

This chapter directs the administration of certain property interests held by others (encumbrances) on National Forest System lands that were granted and administered by prior owners, or other agencies under several repealed authorities, or other existing authorities that vested administration under another agency.

**5520.1 - Authority [Reserved]**

**5520.2 - Objectives [Reserved]**

**5520.3 - Policy [Reserved]**

**5520.4 - Responsibilities [Reserved]**

**5521 - Reserved and Outstanding Rights [Reserved]**

**5521.1 - Reservation and Right Retained By Vendor [Reserved]**

**5521.11 - Outstanding Rights - Private Vendor [Reserved]**

**5522 - Outstanding Federal Grants and Easements**

**5522.01 - Authority**

1. Transfer Act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472). Section 1 directs the Secretary of Agriculture to execute or cause to be executed all laws affecting National Forest System lands. This authority includes the administration of encumbrances granted under other authorities on or across National Forest System land transferred to the Department of Agriculture.

2. Federal Land Policy Management Act of October 21, 1976 (90 Stat. 2770; 43 U.S.C. 1761). Section 501(b)(3) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1761(b)(3), as supplemented by section 1(c) of the Act of October 27, 1986 authorizes the Secretary of Agriculture to administer rights-of-way granted on National Forest System land by the Secretary of the Interior under previous Acts, including those existing under authority of the Act of July 26, 1866.

**5522.02 - Objectives**

The objectives of administering outstanding grants and easements are to:

1. Protect National Forest System lands from damage.
2. Recognize and honor holders' rights.

**5522.03 - Policy**

Ensure consistent and equitable administration of outstanding grants and easements.

### **5522.1 - Grants for Water Conveyance Facilities**

The direction in this section applies to all water conveyance system grants now administered by the Secretary of Agriculture, which were previously authorized and administered by the Secretary of the Interior, including those granted by the Act of July 26, 1866. Additional guidance is found in sections 5522.11 - 5522.13 and in FSH 5509.11, Chapter 60.

1. Administer valid existing easements, which have been shown to exist prior to October 21, 1976, according to the public land law under which the grant was made. The grant is not diminished by defects in a survey or description made many years ago.

2. Administer easements according to the rights conferred under the grant, and Department of Interior regulations at 43 CFR Part 2800, unless otherwise ordered by a court of competent authority. Grants authorize occupancy for particular purposes, and provide for use of the area actually occupied and used, or described in the easement or statute.

3. Allow use of a road when part of an existing right-of-way if it is adjacent to the system and was constructed as part of the system.

4. Allow a holder to perform maintenance and minor improvements within the easement right-of-way. A new authorization is not needed for normal maintenance or minor changes made in the facilities on the right-of-way to maintain capacity of the ditch as it existed on October 21, 1976. Significant changes in location or alignment, significant increases in the area occupied, construction of new access roads, and enlargements and extensions that increase capacity of the system or include new land will require application for, and issuance of, an authorization under FLPMA, as amended.

5. Allow a holder access to the easement on existing roads.

6. Ensure that water conveyance systems on National Forest System lands are operated in a manner that will protect the adjacent Federal lands from damage. Inspect the facilities to identify instances where damage is occurring or is likely to occur and make every attempt to obtain correction by the easement holder. If the holder does not make corrections, consult with the local Office of General Counsel (OGC) about appropriate legal remedies.

7. Although prior authorization is not required for holders to use mineral and vegetative materials, including timber, from National Forest lands for emergency repair work, ensure the holder makes prompt application for the materials used and appropriate payment for such materials after the emergency has been resolved. Use of materials, on or off the right of way, for purposes other than emergency repair work requires application for, and issuance of, the appropriate permit, and payment in advance for the materials to be used.

#### **5522.11 - 1866 Act Rights-of-Way**

Policy in this section applies to rights-of-way for ditches and canals constructed under provisions of section 9 of the Act of July 26, 1866 (14 Stat. 253, 30 U.S.C. 51; 43 U.S.C. 661; sec. 2339, Revised Statutes). General policies in section 5522.1 also apply to these grants.

Rights-of-ways obtained under the 1866 Act were not formally documented and must be individually verified through water decrees, permits, water use records, deeds, ditch location statements, field survey notes filed with the Bureau of Land Management, water rights applications, testimony, court decrees, water administrative records, irrigation records, ditch rider notes, or other historical data. These rights-of-way, when verified, are a valid use of National Forest System land despite the absence of an authorizing document, and the Forest Service has recognized the existence of many such rights-of-ways since the National Forests were established.

1. Administer valid easements in accordance with the above 1866 Act and the various court decisions dealing with facilities constructed under that statute.
2. Treat questions relating to the rights of the United States or the water system owner as a title claim (see FSM 5510). Claims for damages to National Forest System land resulting from the use of the systems will be treated and processed the same as other claims. Work with the owner to ensure maintenance of improvements to prevent or stop damage. Consult the OGC before initiating action to recover damages.
3. Easements are an outstanding property right and are permanent until relinquished or abandoned.
4. Refer questions of abandonment to the Office of General Counsel (OGC) for advice.

#### **5522.12 - Department of the Interior Issued Rights-of-Way**

1. Authority. In addition to the general direction in section 5522.1, apply the direction in this section to grants and easements for reservoirs, ditches, canals, and tunnels issued by the Department of the Interior under the Act of March 3, 1891 (26 Stat.1095, 1101-1103), the Act of January 21, 1895 (28 Stat. 635), the Act of February 15, 1901 (31 Stat. 790), the Act of February 1, 1905 (33 Stat. 628, 16 U.S.C. 524), and other authorities, for which administration has been transferred to the Secretary of Agriculture. Grants under the 1891 Act are an outstanding property right and are permanent until relinquished or abandoned.

2. Transfer of Administration to Forest Service. On the anniversary date of a grant or easement, the Bureau of Land Management sends to the Forest Service the files for rights-of-way, which have a fee. The Forest Service must request files for those rights-of-way issued without annual fees. Regional Foresters should coordinate with Bureau of Land Management State Directors on an orderly transfer of administration of grants or easements now under Forest Service jurisdiction.

3. Administration.

- a. Administer grants issued by the Department of Interior under the terms of the authorizing statute, the terms and/or stipulations of the right-of-way grant or easement, and the regulations at 43 CFR Part 2800 (FSH 5509.11, ch. 60).

- b. Ensure that rights-of-way issued under the 1891 and 1905 Acts are being reasonably used for the authorized purposes (FSH 5509.11, sec. 60.12).
- c. Do not initiate terminations of rights-of-way issued under the 1895 and 1901 Acts without prior approval of the Chief.
- d. Treat questions relating to the rights of the United States or the water system owner as a title claim (FSM 5510). Treat and process claims for damages to National Forest System land resulting from the use of the system as any other case involving damage resulting from any other outstanding right. Work with the owner to ensure maintenance of improvements to prevent or stop damage. Consult the Office of General Counsel (OGC) before initiating action to recover damages.
- e. Refer questions of abandonment, relinquishment, or forfeiture to OGC for advice on how to proceed.

### **5522.13 - Replacement of 1866 Act Grants and Department of Interior Easements**

New easements issued by the Forest Service shall contain provisions for correcting any damage to National Forest System land that may be occurring from the system. Refer to FSM 2729.16 for instructions on the granting of replacement easements for agricultural uses, including eligibility, conditions, and form to be used. Refer to 36 CFR Part 251 and FSM 2720 for guidance on issuance and administration of authorizations for non-agricultural uses. Ensure that the original grant is surrendered upon issuance of the replacement easement.

### **5522.2 - Railroads [Reserved]**

### **5522.3 - Conditional Land Grants [Reserved]**

### **5523 - Land Uses [Reserved]**

#### **5523.1 - Special Uses [Reserved]**

#### **5523.12 - Memorandums of Understanding [Reserved]**

### **5524 - Mineral and Oil and Gas Rights [Reserved]**

#### **5524.1 - Mining Claims [Reserved]**

#### **5524.11 - Surface Rights [Reserved]**

#### **5524.12 - Mineral Leases [Reserved]**