

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

**Forest Service Handbook 5509.12 – Land Status Records System  
Chapter 20 – Land Ownership**

**Amendment:** 5509.12-2012-3

**Effective date:** May 17, 2012

**Duration:** This amendment is effective until superseded or removed.

**Superseded Directive:**

**Approved by:** Faye L. Krueger, Associate Deputy Chief, NFS

**Date approved:** April 16, 2012

**Responsible Staff:**

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

**20:** Establishes chapter, caption “Land Ownership,” and sets forth direction for land ownership and status for National Forest System lands.

**21:** Establishes code, caption, and sets forth direction for “National Forest System Units and Land Areas.”

**22:** Establishes code, caption “Title and Acquisition Methods,” and sets forth direction for reserved and acquired National Forest System lands and methods of acquiring additional land to the National Forest System.

**23:** Establishes code, caption, and sets forth direction for “Special Land Classifications,” including State Indemnity Base lands, Forest Lieu Selection lands, Land Utilization Projects, Grasslands, Administrative Sites, and Purchase Units.

**24:** Establishes code, caption, and sets forth direction for “Rights and Interests” in lands, including reserved rights, outstanding rights, water rights, and special land classifications.

**25:** Establishes code, caption, and sets forth direction for “Use Restrictions” including withdrawals and special uses.

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## 20.1 - Authority

1. Acceptance Gift Act of October 10, 1978 (92 Stat. 1065), amended. This act provides authority to the Secretary of Agriculture, on behalf of the United States, to accept, receive, hold, utilize, and administer bequests or devises of real and personal property made for the benefit of the U.S. Department of Agriculture or for the accomplishment of any of its functions.
2. Administrative Site Act of March 3, 1925 (43 Stat. 1132), as amended. This act authorizes the Secretary of Agriculture to purchase land for National Forest headquarters, ranger stations, dwellings, or other sites required for the effective performance of the authorized activities of the Forest Service.
3. Bankhead-Jones Farm Tenant Act of July, 22, 1937 (7 U.S.C. 1010-1012). This act authorized acquisition by the Federal government of damaged lands to rehabilitate and use them for various purposes. Both the Forest Service and the Bureau of Land Management manage some Bankhead-Jones lands. Some Forest Service Bankhead-Jones lands are National Grasslands. The act 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. The act 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.
4. Clarke-McNary Act of June 7, 1924 (43 Stat. 653, as amended, 16 U.S.C. 596). This act authorizes the Secretary of Agriculture to accept title to donations of land that is chiefly valuable for growing timber crops. Tracts wholly or largely composed of arable or rangelands, barren, permanent brush or shrub types, or lands characterized as urban or developed are not acceptable under the act.
5. Department of Agriculture Organic Act of August 3, 1956 (7 U.S.C. 428a), as amended. This act 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. Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1715, 1716). This act amends the Weeks Act by authorizing the Secretary of Agriculture to accept title to any non-Federal land or interest therein. The act provides the basic policies for Federal land management and governs actions such as acquisitions, sales, exchanges, withdrawals, and rights of way. The act also provides for the exchange of land or interests in land, and requires that the lands exchanged are located in the same State, that State and local needs are considered, that property values exchanged be equal in value or equalized by the payment of cash, that exchanges are in the public interest, and limits exchanges to United States citizens or corporations subject to the laws of a State or of the United States.

7. Federal Property and Administrative Services Act of June 30, 1949 (63 Stat. 377; 40 U.S.C. 471, 472c-e, 472g, 483-484). This act requires all Federal bureaus or agencies to report excess real property to the General Services Administration (GSA) for disposition. The act specifically excludes lands reserved or dedicated for National Forest purposes whether such lands are within or outside a National Forest boundary. For instance, acquired lands within an established purchase unit have National Forest status and would therefore be excluded. Also lands acquired under Title III of the Bankhead-Jones Act have not been subject to utilization surveys by the GSA. A recent Court decision confirms the position that these lands are effectively dedicated for National Forest purposes and is therefore exempt. See FSM 5570 and FSH 5509.11.

8. Forest and Rangeland Renewable Resources Planning Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1609). Section 10 of this act defines the National Forest System as consisting of units of federally owned lands, unified into a nationally significant integral system dedicated to long term public benefits, including national forest lands reserved or withdrawn from the public domain or acquired through purchase donation or other means, the national grasslands and land utilization projects and other lands, waters, or interests therein administered by the Forest Service. The act requires preparation of a strategic plan for all Forest Service activities every 5 years based on an assessment of renewable natural resources on all land ownerships every 10 years.

9. Forest Reserve Act of March 3, 1891 (Section 24 of the General Land Law Revision Act of 1891, also known as the Creative Act; 26 Stat. 1103; 16 U.S.C. §§ 471, repealed 1976 by P.L. 94-579, FLPMA). This act gave the President authority to establish forest reserves from public domain lands. The forest reserves, then comprising 63 million acres, formed the foundation of the National Forest System. In February 1905, Congress transferred the Forest Reserves from the U.S. Department of the Interior to the U.S. Department of Agriculture. In July 1905, the Bureau of Forestry was renamed the Forest Service.

10. Forest Service Omnibus Act of June 20, 1958 (72 Stat. 217; 16 U.S.C. 565b). Section 5 of this Act authorizes the Secretary of Agriculture to transfer to States and political subdivisions or agencies fire lookout towers and other structures or improvements as well as the land upon which they are located, if such land is outside National Forest boundaries.

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

12. 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 act authorizes 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.

13. Interchange With Department of Defense Act of July 26, 1956, as amended (70 Stat. 656; 16 U.S.C. 505a, 505b). This act authorizes the Secretary of Agriculture and the Secretary of a military department which has lands within or adjacent to the exterior boundaries of a unit of the National Forest System to interchange such lands, without reimbursement or transfer of funds. Lands, which are transferred to the Secretary of Agriculture, are subject to the laws applicable to lands acquired under the Weeks Act of March 1, 1911.
14. Land and Water Conservation Fund Act (L&WCF) of 1965 (Act of September 3, 1964) (78 Stat. 897), as amended. This act provides funding for the purchase of hundreds of thousands of acres of Wilderness in-holdings, wildlife habitat, and recreation areas throughout the National Forest System.
15. National Forest Management Act of October 22, 1976 (90 Stat. 2949; 16 U.S.C. 515, 1609). This act provides that no lands reserved or withdrawn from the public domain as National Forests shall be returned to the public domain except by act of Congress. Section 17(a) (3) states that all functions of the National Forest Reservation Commission are transferred to the Secretary of Agriculture.
16. National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), as amended. The National Industrial Recovery Act of 1933 and the Emergency Relief Appropriations Act of 1935 allowed the Federal government to purchase and restore damaged lands and to resettle destitute families. The National Grasslands were born.
17. Organic Act of June 4, 1897 (30 Stat. 34; 16 U.S.C. 473). This act gives the President authority to modify any executive order or proclamation establishing any National Forest and by such action to change the boundary lines of such National Forest. The National Forest Management Act of 1976 (item 4 this section) limits the President's authority under this act. Thus, boundaries may be changed but land cannot be removed from National Forest status.
18. Small Tracts Act (STA) of January 22, 1983 (16 U.S.C. 521c-i), as amended. This act provides the Secretary of Agriculture with discretionary authority to sell, exchange, or interchange by quitclaim deed all of the United States' right, title, and interest, including the mineral estate, in and to certain limited categories of National Forest System lands. The act 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. (36 CFR 254, Subpart C.)
19. Transfer Act of February 1, 1905 (P.L. 58-33, Ch. 288, 33 Stat. 628; 16 §§ U.S.C. 472, 554). This act renamed the forest reserves to the national forests and transferred administration of the forest reserves from the U.S. Department of the Interior to the U.S. Department of Agriculture.

20. Weeks Act of March 11, 1911 (16 U.S.C. 515), as amended. This act authorizes the Secretary of Agriculture to examine, locate, and purchase forested, cutover, or denuded lands within the watersheds of navigable streams necessary to regulate the flow of navigable streams or for timber production. It also authorizes the exchange of national forest land or timber having acquired land status for non-Federal lands. The act does not restrict reservations in conveyances from the United States. The United States may make such reservations as are in the public interest of navigable streams or for the production of timber. Before the Secretary of Agriculture can purchase lands under the Weeks Law, the legislature of the State in which they are located must consent to the acquisition of these lands by the United States for the purposes of the Weeks Law. All lands purchased under this authority must be within established National Forests or purchase units.

21. Wild and Scenic Rivers System Act of October 2, 1968 (82 Stat. 906-918, as amended). This act established the Wild and Scenic River System, designated 8 rivers as components of the system, and required the study of 27 other rivers. The act designated the initial components of this system and prescribed how future additions to the system would be evaluated. The act authorizes the Secretary of the Interior and the Secretary of Agriculture to acquire lands and interests in land within the authorized boundaries of any component of the National Wild and Scenic Rivers System.

22. Wilderness Act of September 3, 1964 (78 Stat. 896, as amended). This act authorizes the Secretary of Agriculture to acquire privately owned land within the perimeter of any area designated as wilderness under provisions of the act, if: (1) the owner concurs in such acquisition, or (2) Congress specifically authorizes the acquisition (sec. 5(c)). Gifts or bequests of land (sec. 6(a)) as well as private contributions and gifts may be accepted for use in furthering the purposes of the act. This act established the National Wilderness Preservation System and designated the initial components of that system. These lands are to be administered for the use and enjoyment of the American people and for the preservation of their wilderness character. Since 1964, amendments to the act have added several wilderness areas to the system. Other legislation, such as the

Eagles Nest Wilderness Act of July 12, 1976 (90 Stat. 870) and the Absaroka-Beartooth Act of March 27, 1978 (92 Stat. 162), has added new areas by reference to the Wilderness Act. In these cases, the acquisition authority remains the 1964 Act.

## **20.5 - Definitions**

Acquired lands. Lands that are obtained by purchase, donation, or other mechanism, and which have previously been patented and which have been re-acquired by the United States.

Administrative site. An area of land acquired, withdrawn, or leased, and dedicated specifically for forest headquarters, ranger stations, dwellings, warehouses, scaling stations, fire-retardant mixing stations, guard stations, and similar administrative installations for conducting Forest Service activities.

Condemnation. The act of the Government exercising the right of eminent domain in taking property for public use and benefit, subject to the owner's right to just compensation.

Donation. A land ownership transaction whereby land or an interest in land is conveyed to the United States without consideration or partial consideration.

Interchange. A land ownership transaction primarily used to transfer lands under the Interchange with Department of Defense Act of July 26, 1956 (16 U.S.C. 505a, 505b), as amended, in which the Secretary of Agriculture interchanges lands with a Department of Defense (DOD) agency.

Land exchange. A land ownership transaction whereby the United States trades Federal land and/or interests in land and/or timber for not less than an equal value of non-Federal land and/or interests in land needed for national forest purposes.

Land status. The foundation of defining management possibilities and obligations on every acre of NFS land.

National Forest System (NFS) acreage. Lands that are part of the earth's surface in Federal ownership administered by the Forest Service and are identified by land survey or protraction diagram, not by Geographical Information System (GIS) or other method.

Outstanding rights. Rights of record that were established and held by someone other than the person or entity from whom the Government acquired the land. This may be a previous owner or other third party.

Public domain. Lands that have never left Federal ownership and are disposed of only under the authority of Congress.

Purchase. A land ownership transaction whereby land or interests in land are obtained by the United States in exchange for money or its equivalent for administration by the Forest Service.

Purchase units. Approved national forest acquisition areas authorized under the Weeks Act.

Reservations. Rights retained by the party (grantor, either private or Government) conveying real estate in a conveyance document or deed.

Reserved lands. Public domain lands which were reserved for national forest purposes by Presidential Proclamation or by statute and have never been patented (conveyed out of Federal ownership).

Reserved public domain. Lands which have never left Federal ownership that have been reserved from the public domain for special purposes.

Transfer. A land ownership transaction whereby the administrative jurisdiction of land or interests in land is conveyed from one Federal agency to another.

Use restrictions. A term typically used to identify withdrawals, classifications, designations, long-term special use permits, and certain types of mining claims on National Forest System (NFS) lands.

Withdrawals. A management tool for setting aside an area of National Forest System (NFS) land from entry or for limiting activities.

## **21 - Land Ownership; Rights, Interests, Privileges, and Responsibilities**

Land ownership rights and responsibilities include those conferred or conveyed when the land or interest in land was acquired or divested, as well as those that may have increased or decreased over time through other actions. Decisions on activities ranging from granting a special use permit to approving a land management plan are to be made with complete knowledge of these rights and responsibilities. Refer to FSM 5590 for additional information on Landownership Status.

There are two general categories of National Forest System (NFS) lands: reserved and acquired. The authority cited in the legislation or conveyance document generally identifies the status of the lands, and the ownership rights and responsibilities.

By law, specific areas and/or certain categories of National Forest System (NFS) lands must be managed for specific purposes or may have certain management restrictions.

There are distinct and separate rights, interests, or privileges of ownership, which collectively constitutes one's total rights in a tract of land, and individually are rights in land severable from the whole. To own all of the rights is the highest level of ownership and is referred to as "fee simple estate," "fee title" or simply the "fee." Fee title implies complete ownership of land and everything under it, over it, and attached to it. Land ownership can be less than fee title. Ownership can be subject to outstanding rights in the land belonging to third parties.

The Land Status Records System (LSRS) (chapter 10) is used to group land interests into distinct categories. These categories enable effective display of the land rights, as well as the title and interests for national forest management. The definitions of these categories are not universal, nor are they the standard definitions found in legal dictionaries or real estate and property law texts. The categories do provide a means to group land status information into convenient, standardized terms to effectively meet Forest Service needs.

## **22 - National Forest System Units and Land Areas**

Units of the National Forest System (NFS) can be broadly categorized under the following descriptive groupings for public and official reference purposes: national forest; designated or dedicated areas such as national grasslands, land utilization projects, experimental areas, and administrative sites. The boundaries of such units are established by Act, Congress, Presidential Proclamation, Executive orders, or administratively established such as purchase units.



Normally, the lands for a national forest unit are within the official boundaries of that unit. However, a national forest unit may include lands that lie outside the boundaries.

## **22.1 - National Forests**

Information about national forests must be included in the Land Status Records System (LSRS) and, as a minimum, include the following data:

1. The current official name and location of each national forest from a compilation of information of all Acts of Congress or Executive orders establishing or modifying national forest boundaries.
2. A graphic record evidencing such boundaries, and a file of the applicable acts or orders. A valuable reference for the establishment of NFS lands and modification of boundaries is: U. S. Department of Agriculture, Forest Service, Lands staff, November 1997, FS-612, Establishment and Modification of National Forest Boundaries and National Grasslands, A Chronological Record: 1891-1996.
3. The Forest Service may not change the name and boundaries of a national forest administratively. The actual name must be used in all orders affecting each national forest.

## **22.2 - Special Dedicated Areas**

Included in this category are national grasslands and the remaining land utilization units administered pursuant to the rules and regulations applicable to national forests as established in Title 36, Code of Federal Regulations, part 213 (36 CFR 213). Dedicated areas may include other areas set aside by an administrative action for special management or areas set aside by an act of Congress or the President.

## **22.3 - Land Areas**

NFS land areas consist of surveyed or protracted lands that are quantified by acreage. Significant NFS land areas, not specified or quantified in legal descriptions or surveys, exist adjacent to, and sometimes beneath water bodies. These areas must be in the Land Status Records System (LSRS) to effectively quantify and manage all the resources within the National Forest System.

Title to land bound by water bodies carries with it certain rights and interests. The terms riparian and littoral are used to describe the rights and interests associated with land adjoining flowing and standing water bodies, respectively. A valuable reference for determination of riparian and littoral boundaries is: Simpson, James A., *River & Lake Boundaries, Surveying Water Boundaries - A Manual*, Plat Key Publishing, Kingman, AZ, 1994.

Where there is a surveyed meander line, the title of a riparian owner does not necessarily terminate at the surveyed meander line. Typically, the title of a riparian owner extends to the actual mean high water mark of the body of water, not the surveyed line. However, there are unusual cases where the property boundary will be defined as the surveyed meander line, where

it is determined that there is a gross or substantial error between the surveyed meander line and the actual mean high water mark.

Riparian and littoral boundaries are unusual in that these boundaries can move with the changing shoreline of the body of water, gaining or losing upland area due to the gradual, near imperceptible, accretion, reliction, or erosion of land by natural changes in an adjacent water body. The boundary does not move with sudden avulsive changes in the location of a body of water. If the land area between what was originally described, as may be evidenced by surveyed meander lines, and the actual water body increases significantly, a new survey, description, and possible approval of the survey by the courts may be required.

The title of a riparian or littoral owner may include the bed of the water body. Ownership of the bed of water bodies can vary considerably from State to State and individual case. The Supreme Court and Congress have provided that the United States transferred its interest to the beds of navigable water bodies to the States upon their admission to statehood. In some States, that title to the bed of navigable waters was then conveyed by the State to the upland owner(s). Title to the bed of non-navigable water bodies is generally attached to the adjoining upland landowner.

The term navigable, in this context, has a specific legal definition. The test for navigability, as it relates to title of the bed of a body of water, is whether the body of water, in its natural condition at the date of statehood, was susceptible of navigation as a highway in commerce, conducted in the customary modes of trade and travel on water at the time. This is the Federal definition, which determines if Federal title to the bed of the body of water has transferred to the State or not. In some States, the State claims title to the beds of both navigable and many non-navigable water bodies. In addition, there is considerable room to interpret whether a specific body of water fits the Federal definition or not. Some States interpret the definition in a very liberal manner, and claim ownership of the beds of many bodies of water within their borders.

Unless a Federal court has adjudicated title to the bed of a body of water within the boundaries of the NFS and determined the bed to be in non-Federal ownership, title to beds of water bodies should be depicted as NFS submerged riparian land.

Unresolved NFS riparian title to beds of water bodies, not included or quantified in the upland legal descriptions should be depicted as NFS submerged riparian land. Federal policy is that all streams on public land are deemed as non-navigable unless and until navigability is adjudicated in Federal Court with the United States as a party. Because the streams are presumed non-navigable, the title to the beds and banks is presumed in the United States.

## **22.4 - Area Computation**

For determining official landownership acreage, use the documents which reflect areas of land based on surveys or, in the case of unsurveyed lands, based on protraction diagrams and/or amended protraction diagrams. In developing status records, it is necessary to portray the graphic subdivision or the metes and bounds of lands as those boundaries exist on the ground. Use an official survey of record or amended protraction diagram to form the basis for the boundaries as well as the areas involved in landownership transactions.

## 23 - Title and Acquisition Methods

The two status categories of National Forest System lands are reserved and acquired, and land status records must reflect the appropriate status category.

It is possible for lands acquired in some land exchanges to retain reserved public domain status when they are acquired in exchange for lands having public domain status (refer to 16 U.S.C. 521a). It is necessary to make a distinction between designations of reserved public domain status and acquired status because it affects whether lands are open to the operation of the mining laws. Legislated land adjustments may take on either acquired or reserved public domain status based on the language contained within an act.

Acquired lands are those lands currently administered by the Forest Service which:

1. Have never been part of the original public domain, or
2. Had at some time in the past, left Federal ownership and have now been conveyed back to the United States.

As noted in the case of some land exchanges, not all lands added to the NFS that have left Federal ownership sometime in the past and have returned to Federal ownership have acquired status. The authority cited in the legislation or conveyance document generally determines the status of the lands and the management rights and responsibilities.

Land Status records must reflect the correct status as public domain or acquired. The following are status categories of land ownership pertaining to NFS lands and guidance on some of the numerous laws, rules, and regulations affecting title to and use of NFS lands.

### 23.1 - Public Domain

The lands comprising the initial forest reserves were those reserved from the public domain. The term public domain is applied to any or all of those areas of land ceded to the Federal Government by the Thirteen Original Colonies and to such other lands as were later acquired by treaty, purchase, or cession. Public domain lands are lands administered by the Bureau of Land Management (BLM). The BLM Glossary of Public Land Terms (October 1999) defines public domain as:

**Vacant, unappropriated, and unreserved public lands, or public lands withdrawn by Executive Order 6910 issued November 26, 1934, as amended, or Executive Order 6964 issued February 5, 1935, as amended, and not otherwise withdrawn or reserved, or public lands within grazing districts established under Section 1 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315-316), as amended, and not otherwise withdrawn or reserved.**

These areas are identified in the Public Land Survey System (PLSS) laws of the United States. The Public Land Survey System is not applicable within the land area of the Thirteen Original Colonies, Texas, Puerto Rico, Hawaii, and the Virgin Islands.

## **23.2 - Reserved Public Domain**

These lands have never left Federal ownership and have been reserved from the public domain for special purposes such as national forests pursuant to the Forest Reserve Act of March 3, 1891 (16 U.S.C. 471), as amended.

These lands may have been reserved from the public domain for the establishment of national forests or reserved by another Federal agency and later transferred to the Forest Service. The majority of NFS land was reserved from the public domain by proclamation, Executive order, or an act of Congress. These public domain lands were exempted from various land disposal authorities and designated as forest reserves (sec. 20.1).

Reserved national forest lands are subject to the reservation-of-water principle. Water rights in excess of the needs of the Federal Government are subject to appropriation under State law. In addition, these lands are generally subject to the general mining laws and the Mineral Leasing Act of 1920 (30 U.S.C. 181, et seq), as amended.

## **23.3 - Methods for Adding Lands to the National Forest System**

### **23.31 - Purchase**

Purchases are authorized by a variety of both specific and general authorizations. The land purchase authorizations are a tremendous benefit to the National Forest System (sec. 20.1). Refer to FSM 5420 and FSH 5409.13, chapter 30 for additional information.

### **23.32 - Exchange**

Lands (including surface and/or subsurface estates) that are excess to national forest needs may be traded for lands that have value for national forest use, management, and enjoyment.

The exchange statute appropriate to the particular status of the NFS lands in question governs exchanges involving NFS lands, and the purpose for which an exchange is to be made. Land exchanges were first authorized in 1908. Since then, over 100 exchange laws affecting the national forests have been passed. The two primary authorities are the Weeks Act of 1911 (16 U.S.C. 516), as amended, for acquired lands, and the General Exchange Act of 1922 (16 U.S.C. 485-486), as amended, for public domain lands. There is specific authority to resolve certain management problems and title claim cases by exchange through the Small Tracts Act (STA) of 1983 (16 U.S.C. 521c-i), as amended (sec. 20.1).

The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1715, 1716), as amended, supplements the Weeks Act and General Exchange Acts (sec 20.1).

Exchanges permit great flexibility to trade anything that is an interest in real property. The Forest Service can trade land, timber, oil, gas, minerals, road rights-of-way, scenic easements or development rights, buildings, power line rights-of-way, and/or other real property rights, including leasehold interests.

Some basic types of exchange are land-for-land, land-for-timber (bipartite and tripartite), timber-for-timber, interest-for-interest, and administrative site exchanges. In an exchange where the Federal land involves both acquired land and public domain land, it is necessary to show separately, the land received in exchange for public domain land, and the land received in exchange for acquired land. Refer to FSM 5430 and FSH 5409.13, chapter 30 for additional information.

### **23.32a - Acquired Lands**

The use of land exchange for the conveyance of acquired lands is a very important management tool for the eastern (Weeks Act) forests. It is used less frequently on the western forests because acquired lands in the west are a small fraction of the total national forest area. This conveyance method involves the issuance of a quitclaim deed by the Secretary of Agriculture for the lands being conveyed out of Federal ownership. Deeds are used to convey the offered private lands to the United States. The principal authorities for this conveyance method are the Weeks Act and the Bankhead-Jones Farm Tenant Act.

Lands received by the United States in an exchange take on acquired status and are referred to as exchange acquired, when the Federal land conveyed has Weeks Law (acquired) status. Refer to 16 U.S.C. 521a for additional Weeks Law information.

Refer to FSM 5430 and FSH 5409.13, chapter 30 for additional information on land exchange authorities and procedures.

### **23.32b - Reserved Public Domain**

The General Exchange Act conveyance method involves issuance of a patent by the BLM for the Federal lands. A deed conveys the offered private lands to the United States.

Lands acquired through the General Exchange Act take on reserved public domain status. When Federal land conveyed is reserved public domain, it is referred to as exchange reserved. When implemented, the primary use of the General Exchange Act was for the consolidation of National Forest System lands. Refer to FSM 5430 and FSH 5409.13, chapter 30 for additional information on land exchanges.

### **23.33 - Donation**

Reservations or outstanding rights must be evaluated prior to acceptance of the donation to ensure that they are administratively acceptable. The Acceptance of Gifts Act of 1978 (7 U.S.C. 2269), as amended, is the most recent authority. In previous years, other authorities, such as the Clarke-McNary Act of June 7, 1924, was used to receive donations. All donations have acquired status as determined by the Weeks Act Status for Certain Lands Act of September 2, 1958 (16 U.S.C. 521a), as amended. Refer to FSM 5420 and FSH 5409.13 chapter 20 for additional information on authorities and procedures.

### **23.34 - Transfer**

In the past, transfers were primarily a result of legislation, Executive orders, Public Land orders and Secretary's orders from both the Secretary of Agriculture and Interior. Transfers have been used to create military bases and reservations, to add areas to Indian reservations, to create new Indian reservations, and to add areas to national parks and monuments. There are also cases where lands that are surplus to the needs of other Federal agencies are transferred to the Forest Service to become a part of the National Forest System.

Land transferred to the Forest Service from the public domain retains its public domain status. Acquired land transferred to the Forest Service for administration receives Weeks Law (acquired) status if it is not located within the official limits of a town or city. Land acquired from the General Services Administration (GSA) that is outside of national forest boundaries or that is within the official limits of cities or towns does not have National Forest System status. Refer to sections 22 and 24 for additional information.

Oregon and California railroad grant lands transferred from the Secretary of the Interior to the Forest Service under the Converted Lands Act of June 24, 1954 (43 U.S.C. 1181f), as amended, are considered to be reserved public domain. Refer to the Weeks Act Status for Certain Lands Act of September 2, 1958, for additional information.

Some authorities used to accomplish transfers are the Clarke-McNary Act of June 7, 1924 (43 Stat. 653), as amended, the Federal Property Administrative Services Act of June 30, 1949 (40 U.S.C. 483), as amended, the Surplus Property Acts of August 24, 1934 and October 3, 1944, and the Forest Service Omnibus Law of June 20, 1958 (16 U.S.C. 565b), as amended.

There are statutes that authorize a one-time transfer to or from the National Forest System. Most of these authorities are listed in: U.S. Department of Agriculture, Forest Service, Lands staff, November 1997, FS-612, Establishment and Modification of National Forest Boundaries and National Grasslands, A Chronological Record: 1891-1996. Refer to FSM 5452 for additional information on authorities, policy, and direction on this subject.

### **23.35 - Interchange**

#### **23.35a - Department of Defense**

The Interchange with Department of Defense Act of July, 1955, facilitates two-way transfers between the Forest Service and various branches of the Department of Defense, including the Army Corps of Engineers. Interchanges with the Department of Defense do not affect ownership of property by the Federal government; they are merely transfers of jurisdiction. Equal value or equal acreage of interchanged lands is not a requirement. Lands transferred to the Department of Agriculture by this Act are subject to the laws applicable to lands acquired under the Weeks Act (acquired status). Lands interchanged under this act are deemed to include interests in lands. Refer to FSM 5450 for additional information.

### **23.35b - Small Tracts Act**

The Small Tracts Act (STA) interchange is an expedited exchange procedure in which the Secretary of Agriculture and another entity exchange lands or interests in lands of approximately equal value without a formal appraisal. Because of a survey error on the Lincoln National Forest, the STA was introduced as a quick and easy way to deal with innocent trespass, mineral survey fractions, and erroneous surveys. This law authorized expedited sale, exchange, or interchange, throughout the National Forest System. Land acquired under the STA always has acquired status as determined in the Weeks Act Status for Certain Lands Act of September 2, 1958 (16 U.S.C. 521a), as amended. Refer to FSM 5570 and FSH 5509.11 for additional information.

### **23.36 - Condemnation**

The objective of condemnation is to acquire real property or interests in property to perfect title or when all other methods of acquisition fail, and the property or interest is required for the protection, administration, or utilization of National Forest System lands. Under condemnation, the Government exercises the right of eminent domain by taking property for public use and benefit, subject to the owner's right to just compensation (value for real property determined by the court as fair and equitable compensation at the time of taking by the Government).

The Right of Eminent Domain Act of April 24, 1888 (40 U.S.C. 257), as amended, authorizes condemnation of property for public use and establishes appropriate legal procedures for determining just compensation. However, the Government may acquire property by condemnation only where an enabling statute, such as the Weeks Act, specifically authorizes acquisition of the land.

The Declaration of Taking Act of February 26, 1931 (40 U.S.C. 258a), as amended, provides for the filing of a declaration of taking signed by the Government official empowered by law to acquire the interest in lands described therein and in the complaint. The purpose of the declaration of taking is to vest title immediately in the Government before trial. The declaration of taking is a supplement for use only in conjunction with filing of the condemnation proceedings. It may be filed with the condemnation proceeding or thereafter at any time prior to an order or judgment vesting title in the United States. Lands acquired under condemnation take on acquired status. Refer to FSM 5430 for additional information.

## **24 - Special Land Classification**

### **24.1 - State Indemnity Base Lands**

The Land Ordinance of May 20, 1785 (also called the General Ordinance of 1785) provided for the grant of section 16 to each State township (other than the Thirteen Original Colonies) to create, by the proceeds of their sale, a fund for the establishment and maintenance of public schools. Thereafter, section 36 was granted in addition, and later Arizona, New Mexico, and Utah were granted sections 2 and 32 for schools. These lands were granted to the States by the authority of their enabling legislation. Depending upon the date of a State's enabling legislation;

there are States with different combinations of Federal grant land, and States without grants of Federal land.

Grants of public lands were also made to States for schools and other public purposes. The most common State grants are school, swamp, tideland, highways, and lands for internal improvements. Generally, title to State grant lands could pass only after survey of the lands. Originally, mineral lands were excluded. Also excluded were lands taken by settlers, withdrawn for public purposes, or otherwise disposed of by the Government. In cases where such lands had already been conveyed to individuals or reserved by the Federal Government, (for example, Forest Reserves, State lieu selections (referred to as indemnity lands)), these lands were also excluded from the public domain. In States where designated forest reserves antedated State selections, the States' rights continue where acreage is still due to the State. State indemnity base lands have reserved public domain status.

#### **24.2 - Forest Lieu Selection Lands**

Forest Lieu Selection (FLS) lands have reserved public domain status. These are lands that have been patented into private ownership and are then re-conveyed to the United States in lieu of vacant public domain land outside the National Forest System based on a relinquishment of the patented land prior to March 3, 1905.

The Resolution of Western Land Dispute Act of July 2, 1993 (107 Stat. 234), as amended, was enacted to resolve the question of title in the remaining FLS base lands.

#### **24.3 - Land Utilization Projects**

The National Industrial Recovery Act June 16, 1933 (48 Stat. 202), as amended, began the Federal acquisition and rehabilitation of depression/dust bowl era tax delinquent lands. A series of laws, passed between 1935 and 1953, established permanent Federal management of the rehabilitation lands.

The Emergency Relief Act of April 18, 1935 (49 Stat. 118), as amended, provided for establishing purchase boundaries for land utilization projects (LUPs). In 1937, the Bankhead-Jones Farm Tenant Act consolidated the lands under its management provisions; and in 1953, much of the land was turned over to the States or converted to national forest status. About 3.8 million acres were selected for permanent Federal ownership and turned over to the Forest Service ultimately to be managed as national grasslands.

Administration of Title III lands was transferred from the Soil Conservation Service, now the Natural Resources Conservation Service (NRCS), on December 24, 1953, effective January 2, 1954, (19 FR 75, Jan. 2, 1954). Most Title III lands are now included in the national grasslands, which are a part of the National Forest System (36 CFR 213). Some Title III lands are now included in national forests, others are still administered by the Forest Service as land utilization projects; others have been conveyed to States and other public authorities; and some of these lands are administered by the NRCS or by the Agricultural Research Service.



Title III lands may be conveyed or leased, with or without a consideration, but only to public authorities and only on condition that the property is used for public purposes (7 U.S.C. 1011c). Placing a reversionary provision on the deed from the United States enforces this condition. Title III lands may be exchanged to public authorities, as stated above, or they may be exchanged to public authorities or private parties under the provision in 7 U.S.C. 1011c without a reversion if land of approximately equal value is received in exchange by the United States.

#### **24.4 - Grasslands**

The land utilization projects (LUPs) retained for administration by the Forest Service were designated by the Secretary of Agriculture as National Grasslands on June 24, 1960 (36 CFR 213), to be permanently held and administered under Title III of the Bankhead-Jones Farm Tenant Act as part of the National Forest System. Congress recognized the national grasslands and the land utilization projects as being part of the National Forest System under the Forest and Rangeland Renewable Resources Planning Act of August 17, 1974 (16 U.S.C. 1600-1614), as amended, and the National Forest Management Act of October 22, 1976 (16 U.S.C. 1609), as amended. Lands within the grasslands and LUPs that were acquired subject to Title III of the Bankhead-Jones Farm Tenant Act have acquired status. Lands transferred to the Forest Service that were public domain lands retain their public domain status.

The Bankhead-Jones Farm Tenant Act provides much more liberal and innovative management opportunity than laws pertaining to national forests. A few provisions are more restrictive. Not all the laws and regulations applying to the national forest automatically apply to the national grasslands.

#### **24.5 - Administrative Sites**

Sites may consist of one or more parcels and vary in size. Administrative sites are usually restricted to the area occupied by support buildings and grounds, and may be located within, adjacent to, or a considerable distance from a National Forest System unit.

Any purchase, acceptance of any donation, or exchange of any real property for administrative sites requires approval by the Assistant Secretary for Administration as determined in FSM 5400. Approvals are applicable only to acquisitions that are not specifically identified in appropriation authorities.

#### **24.6 - Purchase Units**

Due to a lack of public domain lands, the establishment of national forests in the east required that the Federal Government buy private land. The first task was to identify suitable lands, which could be acquired for a viable national forest. The National Forest Reservation Commission determined where new forests could be established and drew the boundaries of forest purchase units. When enough land had been acquired within a purchase unit to permit efficient management, a new national forest was officially established. The National Forest Management Act of October 22, 1976 (90 Stat. 2949), as amended, abolished the National Forest Reservation Commission and transferred all functions of the Commission to the Secretary of

Agriculture. Since October 23, 1976, only the Secretary of Agriculture establishes purchase units.

Unless otherwise specified, acreage reported for purchase units is only that acreage in the purchase unit located outside of the exterior boundaries of a national forest, land utilization project, national grassland, or research and experimental area. Refer to FSH 5409.13, sec. 12, for additional information on purchase units.

## **24.7 - Oregon and California Revested Lands**

Under the original granting acts, the Railroad Land Grant Act of July 27, 1866 (43 U.S.C. 1181g), as amended, and the Oregon-California Land Grant Act of May 4, 1870 (16 Stat. 94), as amended, the Oregon and California (O&C) Railroad received the odd-numbered, non-mineral sections of public land within a strip extending 20 miles on each side of the route. In the event any of these alternate sections had been previously sold, occupied by homesteaders, or otherwise disposed of, the law provided that the railroad company might select odd-numbered sections within a secondary zone extending for 20 additional miles on both sides of the primary zone. This secondary zone was known as the indemnity zone.

Because the railroad company failed to sell the land according to the terms of the grant, title to all lands (approximately 2.4 million acres) yet unsold was revested in the United States by the Oregon and California Revestment Act of June 9, 1916. These O&C re-vested lands were placed under the Department of Interior administration.

Lands (approximately 490,000 acres) which were located within the secondary or indemnity zone, within a national forest boundary and were never selected or patented by the railroad company, were also claimed by the Department of Interior to be O&C revested lands to be administered under the O&C Act. These lands were called controverted lands.

The controverted lands were administered as National Forest System (NFS) lands until a new O&C Administration was established in the Department of the Interior in 1938. Then, in 1939, the O&C Administrator claimed administration over the controverted lands. The Forest Service and Department of Interior ultimately agreed that the Forest Service should continue to administer the lands provided the O&C Administration had the opportunity to object to a timber sale, and receipts would be placed in a special fund until the status of the lands was finally determined.

Because of the questions concerning the administration of the O&C controverted lands, Public Law 83-426 dated June 24, 1954, was passed. The law declared the controverted lands to be re-vested O&C lands, administered by the Forest Service as NFS lands, disposition of revenues should be in accordance with the Oregon and California Act of August 28, 1937, and exchange was prohibited. Legislative history shows that the prohibition against exchange of lands covered by Section 1 of the Converted Lands Act of June 24, 1954, was to prevent the reduction of timber values, or a shifting of the area to which the O&C revenue distribution applied.

The Act of Converted Lands Act of June 24, 1954, also authorized the Secretary of the Interior and Secretary of Agriculture to exchange administrative jurisdiction of revested (non-

controverted) O&C lands lying within a forest boundary or within 2 miles of such boundary. Those O&C lands transferred under the Act of 1954 are to be considered as lands reserved from the public domain, subject to the General Exchange Act of March 20, 1922, the general mining laws, and the Mineral Leasing Act of February 25, 1920.

## **25 - Rights and Interests**

Real estate may involve individual separate rights in the total of all rights. The term encumbrance is typically used in land status to identify private interests on National Forest System lands. The term partial interest is typically used to identify Federal interests on private lands. A more common real estate term for encumbrances and partial interests is simply separated rights. Examples of separated rights include mineral rights, utility easements, reserved interests, scenic easements, life estates, easements for road and trails, and so forth. These separated rights may also be described under the broader term use restrictions which include other management obligations such as withdrawals or wilderness areas.

### **25.1 - Reserved and Outstanding Rights**

National forest lands may be subject to rights in third parties, either as reserved or outstanding rights. For the Forest Service to regulate these rights, depends on whether they are reserved or outstanding.

#### **25.11 - Reservations**

A reservation creates a right retained by the grantor. Common reservations are rights-of-way, timber, and minerals. The Forest Service attempts to acquire land without reservations, but when reservations are necessary, in Weeks Act transactions, they must be made subject to the Secretary of Agriculture's rules and regulations found in Title 36, Code of Federal Regulations, section 251.14 through 251.19.

The Forest Service is responsible for administering regulations pertaining to reserved rights. The land status records must show the reserved rights and reference the title file so that the deed and file concerning them is readily available. This information is needed not only to permit administration of the Secretary's regulations, but also to prevent trespass by the Forest Service on these reserved rights. As an example, lands may be acquired with the gravel reserved by the grantor. Unless reliable land status is available, the district ranger may mistakenly use this gravel for national forest purposes as though it belonged to the Government. Such use is trespass, the same as if the Forest Service had gone on private ground to obtain such gravel. A similar circumstance exists in relation to other forms of reserved rights.

#### **25.12 - Outstanding Rights**

As with reservations, outstanding rights do not affect the legal description, boundaries, or size of the property conveyed, but they do affect the rights in the property. Also like reservations, they can be any kind of right.

Because such third party rights are not subject to the Secretary's regulations, rights outstanding in a third party may be more complex than rights reserved by the grantors of the land. The Forest Service officer in charge of the land shall, however, ensure that outstanding rights are used in accordance with the terms and limitations contained in the deed which severed those rights from the land. Detailed information on such rights may be found in the originating title documents. To prevent unauthorized use or exploitation by a third party and also to prevent Forest Service trespass on outstanding rights, it is essential that the land status records show the existence of such rights and that those rights are summarized in the Land Status Records System (LSRS).

### **25.13 - Water Rights**

The eastern States surface water rights normally attach to the land parcel where the water is used for beneficial purposes. In western States these rights are allowed to be severed from the land parcel and moved elsewhere. Consult with the regional office water rights program manager as to the policy in the State of interest. The grantor in land transactions can also retain water rights.

Ground-water rights are usually treated differently by the State than surface water rights; therefore, it is always necessary to consult with the Office of General Counsel (OGC) about this type of water right in relation to land status records.

The Forest Service has developed the Water Rights and Uses (WRU) sub-module within The Water and Air Module of the Natural Resources Information System (NRIS) corporate database specifically to store relevant data and information about all Forest Service and non-Forest Service held water rights and water uses located within proclaimed National Forest System boundaries. This sub-module is the proper place to store this data.

### **26 - Use Restrictions**

Use restrictions exist on lands administered by the Forest Service, other agency lands, and often includes private lands that are inside NFS boundaries that have been designated by Congress or the Chief of the Forest Service. A use restriction within a NFS boundary limits the use and management of the land in accordance with legislative or administrative action.

#### **26.1 - Classifications and Designations**

Restrictions range from a prohibition on mineral entry to providing direction on the primary use of an area, such as the classification of a Research Natural Area. Other actions, such as the designation of an area under the Wilderness Act of September 3, 1964 (16 U.S.C. 1131-1136), as amended, and subsequent wilderness laws and the Wild and Scenic Rivers Act of October 2, 1968 (16 U.S.C. 1271-1287), as amended, withdraw Federal lands from mineral entry, or modify application of mining laws while restricting use. Use restrictions may be imposed on NFS land at the request of the Forest Service, other Federal agencies, or by Congressional action.

#### **26.2 - Withdrawals**

Withdrawals limit activities such as settlement, sale, exchange, or mineral location. Public domain lands from which the national forests in the western United States were established are

subject to entry primarily for mineral purposes under the mining laws. Some activities that may be precluded and/or protected by withdrawals include capital improvements and scientific, scenic, cultural, historical, ecological, air, and water resources. Withdrawals may also facilitate some kinds of development. For example, many areas are withdrawn for Federal hydropower purposes. Withdrawal procedures may also be used to transfer administration of Federal lands for a specific purpose from one agency to another. Administrative sites, Federal Energy Regulatory Commission (FERC) projects, reclamation projects, and certain military areas are examples.

Most existing formal withdrawals were made under the following authorities that predate the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1714), as amended. Withdrawals may no longer be made under the subsequent authorities: Executive Order 10355 issued May 26, 1952; Secretarial orders; and Pickett Act of June 25, 1910.

Since FLPMA, areas are withdrawn by specific acts, subsequent amendments, and Public Land orders (PLOs). These areas are subject to withdrawal review as prescribed by Section 204(l) (1) of FLPMA; except those withdrawn by the subsequent acts: Wilderness Act of 1964; National Recreation Areas; and Wild and Scenic Rivers Act of 1968.

Since FLPMA, most withdrawals segregate land only from the operation of the General Mining Law of May 10, 1872 (30 U.S.C. 22, 28, 28b), as amended, commonly called the 1872 Mining Law. This eliminates the restriction that prevents exchange of the land without first revoking the withdrawal, while it segregates the land from the only non-discretionary law affecting reserved land, the 1872 Mining Law. Withdrawals on National Forest System lands created through the Secretary of the Interior under present or previous authority remain in full effect until the Bureau of Land Management (BLM) publishes a Public Land order opening the land for entry. Withdrawals created by an act of Congress remain in effect until modified or revoked by Congress. Refer to FSM 2760 for additional information.

## **26.21 - Forest Service Request**

These withdrawals, affected by Secretarial orders and Public Land orders (PLOs), often segregated the lands from operation of the public land laws as well as from mineral entry. Because of the discretionary nature of mineral leasing regulations, segregation of an area from mineral leasing is rare.

Secretarial orders executed in the late 1800s and early 1900s indicated that the lands are "...withdrawn from all forms of entry..." Solicitors for the Department of the Interior have interpreted this as meaning the segregation involved mineral entry and operation of the then existing public land laws. Because the Mineral Lands Leasing Act of February 25, 1920 (16 U.S.C. 520), as amended, removed coal, oil, gas, and certain other minerals from coverage under the General Mining Law of May 10, 1872 (30 U.S.C. 520 et seq.), as amended, Secretarial orders with the all forms statement do not prohibit leasing minerals unless specifically stated. Lands withdrawn from operation of the public land laws may not be disposed of until the withdrawal is terminated or modified to facilitate disposal.

Formal revocation of withdrawals over lands involved in a conveyance under the Small Tracts Act of 1983 (16 U.S.C. 521c-521i), as amended, is usually unnecessary because the Small Tracts

Act is not considered a public land law (Source: USDA Forest Service and George Mason University, 1996, PRLS 647 - Land Status, Boundaries, Claims and Withdrawals).

## **26.22 - Other Agencies Request**

Generally, when National Forest System (NFS) lands are withdrawn for other Government agencies, the withdrawn lands maintain NFS status, subject to the withdrawal terms and operation.

Other Government agencies, such as the Department of Defense (DOD), the Department of Energy (DOE), and the Bureau of Reclamation (BOR), may request withdrawal of NFS lands for specific purposes through the Secretary of the Interior under regulations in Title 43, Code of Federal Regulations, part 2310 (43 CFR 2310). These regulations require written consent from the regional forester before granting withdrawals except during times of war or national emergency. National Forest System lands withdrawn for national defense purposes (for example, military installations) are under the administrative jurisdiction of the DOD.

The BOR withdrawals withhold public domain and reserve NFS lands from all forms of entry pending development for water storage. In many cases, detailed development plans did not exist at withdrawal time; consequently, some withdrawals were larger than necessary to protect a maximum amount of land from entry. The Forest Service shares dual jurisdiction with the BOR to administer NFS lands subject to BOR withdrawals. Refer to FSM 1531.53a for additional information on policies shared by the Forest Service and the Bureau of Reclamation pertaining to administration of lands withdrawn for reclamation purposes.

Periodically, the BOR initiates restoration actions required by the Reclamation Act of June 17, 1902 (43 U.S.C. 390h), as amended, when the lands are no longer required for reclamation purposes. When this occurs, the BOR furnishes a copy of the restoration actions documents to the Forest Service regional office for concurrence. After receiving these documents and Forest Service concurrence, the BLM issues a PLO revoking the withdrawal and opening the NFS lands. Revocation of all or part of a withdrawal is a relatively simple process involving submission of a request to the BLM, who has the authority for revocation.

Restoration of lands classified as power sites or lands withdrawn by filing an application for a Federal Energy Regulatory Commission (FERC) license, or preliminary permit, require action by the BLM and the FERC. The restoration is complete when a PLO is published by the BLM in the Federal Register.

Congressional withdrawals of NFS lands are made under special legislation. Each Congressional withdrawal is unique and its provisions and segregative effects must be analyzed. Congress has made many types of withdrawals on NFS lands. These include municipal watersheds, experimental forests and ranges, wilderness and primitive areas, wild areas, wild and scenic rivers, scenic areas, and other areas acted on by Congress as special legislation. Revocation of Congressional withdrawals is determined by the legislation itself. Withdrawals created by an act of Congress are effective until modified or revoked by Congress unless the act specifies otherwise. National Forest System lands under withdrawal resulting from a Congressional action are managed according to the act under which the withdrawal was made.

### **26.23 - Special Uses**

Special use authorizations provide for the use of National Forest System lands by individuals, companies, organized groups, other Federal agencies, and State or local levels of government. These authorizations may be of short-term or long-term duration. Some of the uses for which authorizations are provided are pipelines, roads, power lines, electronic sites, telephone lines, and recreation residences.

Issuance of a special use authorization may restrict Forest Service management of resources or use of the land. Special use authorizations that are 10 years or longer in duration are required to be entered into the Land Status Records System. The official special uses information is housed in the Special Use Database System (SUDS). Coordination with Special Uses permit data stewards must occur to eliminate duplicity of recordation. Refer to FSM 2700 and FSH 2709.11 for additional information.