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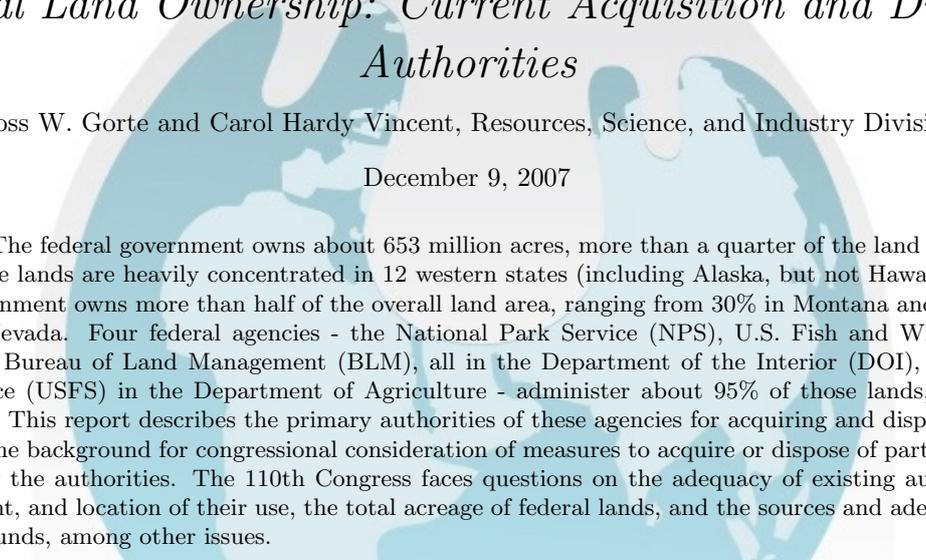
Report RL34273

*Federal Land Ownership: Current Acquisition and Disposal
Authorities*

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December 9, 2007

Abstract. The federal government owns about 653 million acres, more than a quarter of the land in the United States. These lands are heavily concentrated in 12 western states (including Alaska, but not Hawaii), where the federal government owns more than half of the overall land area, ranging from 30% in Montana and Washington to 84% in Nevada. Four federal agencies - the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM), all in the Department of the Interior (DOI), and the U.S. Forest Service (USFS) in the Department of Agriculture - administer about 95% of those lands, as shown in Appendix A. This report describes the primary authorities of these agencies for acquiring and disposing of land. It provides the background for congressional consideration of measures to acquire or dispose of particular parcels or to modify the authorities. The 110th Congress faces questions on the adequacy of existing authorities, the nature, extent, and location of their use, the total acreage of federal lands, and the sources and adequacy of land acquisition funds, among other issues.



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Federal Land Ownership: Current Acquisition and Disposal Authorities

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Summary

The federal government owns about 653 million acres, heavily concentrated in 12 western states. Four agencies—the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management, all in the Department of the Interior, and the U.S. Forest Service in the Department of Agriculture—administer about 95% of those lands. This report describes the primary federal land acquisition and disposal *authorities* of these agencies, as background for congressional consideration of measures to acquire or dispose of particular land and to establish new authorities or amend or terminate existing ones. Congress faces questions on the adequacy of existing authorities, the extent and location of their use, the amount of land in federal ownership overall, and the sources and adequacy of funds for land acquisition, among other issues.

The nature of the acquisition and disposal authorities of the federal land management agencies varies. In general, the acquisition authorities are designed to allow the four agencies to bring into federal ownership lands that many believe would benefit from federal management. Disposal authorities generally are designed to allow agencies to convey land that is no longer needed for a federal purpose or that might be chiefly valuable for another purpose. Many of the authorities specify particular circumstances where they can be used, such as the conveyance of Forest Service land for educational purposes.

The extent to which the agencies have authority to acquire and dispose of land differs considerably. The Bureau of Land Management has broad authority for both acquisitions and disposals under the Federal Land Policy and Management Act of 1976. The agency has other authorities for disposing of land, including two laws that allow the agency to retain the proceeds for subsequent land acquisition, among other purposes. By contrast, the National Park Service has no general authority to acquire or dispose of land. The authorities for the Forest Service and the Fish and Wildlife Service are somewhere in between. The Forest Service has authority to acquire lands only within the boundaries of a national forest. The agency has various authorities to dispose of land, but they are relatively constrained (very specific authorities, such as for townsites) and infrequently used. The Fish and Wildlife Service has various authorities to acquire lands, but no general authority to dispose of its lands. The agency frequently uses acquisition authority under the Migratory Bird Treaty Act of 1929, because of the availability of funding through the Migratory Bird Conservation Fund. Congress also enacts legislation to acquire or dispose of lands and in some cases the President has such authority with regard to the four agencies covered here.

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The federal government owns about 653 million acres, more than a quarter of the land in the United States. These lands are heavily concentrated in 12 western states (including Alaska, but not Hawaii), where the federal government owns more than half of the overall land area, ranging from 30% in Montana and Washington to 84% in Nevada.¹ Four federal agencies—the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM), all in the Department of the Interior (DOI), and the U.S. Forest Service (USFS) in the Department of Agriculture—administer about 95% of those lands, as shown in **Table 1** at the end of this report.

This report describes the primary *authorities* of these agencies for acquiring and disposing of land. It provides the background for congressional consideration of measures to acquire or dispose of particular parcels or to modify the authorities. The 110th Congress faces questions on the adequacy of existing authorities, the nature, extent, and location of their use, the total acreage of federal lands, and the sources and adequacy of land acquisition funds, among other issues.

The various acquisition and disposal authorities were provided by Congress through various laws enacted over time. The extent to which the agencies have authority to acquire and dispose of land, and the nature of the authorities, vary considerably. Some of the agencies have relatively broad authority to acquire and/or dispose of land. Most notably, the BLM has broad authority for both acquisitions and disposals. Other agencies have no general authority to acquire or dispose of land, as is the case for the NPS. The authorities for the FS and FWS are somewhere in between. The FS has authority to acquire lands only within the boundaries of a national forest. The agency has various authorities to dispose of land, but they are relatively constrained and infrequently used. The FWS has various authorities to acquire lands, but no general authority to dispose of its lands.

The acquisition authorities differ as to the circumstances where they apply, and the disposal authorities likewise differ as to their purposes. Thus, the particular authority at issue should be consulted where a specific acquisition or disposal is contemplated. Most generally, the acquisition authorities are designed to allow federal agencies to acquire lands that could be viewed as benefitting from federal management. Among other circumstances, acquisition might be authorized to bring inholdings or lands adjacent to federal lands into federal ownership, to improve or simplify management of federal lands. Acquisitions also might be authorized to conserve species, protect natural and cultural resources, and increase opportunities for recreation. The disposal authorities generally are designed to allow federal agencies to dispose of land that is no longer required for a federal purpose, or that might be chiefly valuable for another purpose. For instance, disposal might be authorized for lands that are inefficient to manage. Other reasons for disposals might include to allow lands to be used for agriculture, community development, mineral extraction, and educational purposes.

Agencies also acquire and dispose of federal land in exchanges. Exchanges are not discussed separately in this report, as often the authorities to acquire and dispose of lands also apply to land exchanges. However, there are provisions of law particularly applicable to exchanges. The exchange authorities for the NPS and FWS are relatively narrow. The Federal Land Policy and Management Act of 1976 (FLPMA, as amended; 43 U.S.C. §§ 1701-1781, et al.) provides

¹ U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile, As of September 30, 2004*, at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf, Table 16, pp. 18-19.

broader exchange authority, and is the main authority governing exchanges by the BLM and USFS.²

The nature of the acquisition and disposal authorities covered in this report, and the extent and circumstances of their use by the agencies, form the backdrop for congressional consideration of legislation pertaining to land acquisition and disposal. Recent Congresses have considered measures to provide agencies with additional acquisition or disposal authorities or to revise such authorities. With regard to additional authorities, for instance, the 106th Congress enacted legislation to allow the Secretary of Agriculture to dispose of National Forest System lands for educational purposes (Title II of P.L. 106-577). With respect to amendment of existing authorities, for example, the 108th Congress expanded the purposes for which the proceeds of land sales under the Southern Nevada Public Land Management Act (SNPLMA, P.L. 105-263) could be used.³ Congress also addresses acquisition and disposal policy in the context of deliberations on the role and goals of the federal government in owning and managing land generally. For instance, in the 109th Congress hearings were held on legislation requiring disposal of federal land before federal acquisition in states where 25% or more of the land is already in federal ownership.

In addition, Congress frequently considers legislation authorizing and governing the acquisition or disposal of specific land. The 109th Congress, for instance, directed the conveyance of BLM land to the city of Eugene (OR) to establish a wildlife viewing area and build an environmental education center (P.L. 109-457). Congress may consider such legislation to provide an agency with acquisition or disposal authority because it is lacking. In other cases, Congress directs a particular acquisition or disposal to facilitate the action. For instance, the legislation may seek to direct an acquisition based on Congress's assessment of public needs and priorities. It may expedite the process for acquiring a parcel of land, such as by limiting the assessments and evaluations that would ordinarily be required under law. The legislation also might authorize actions not ordinarily permitted, such as the conveyance of land at no cost rather than at fair market value.

The 110th Congress is faced with varied issues related to federal land acquisition and disposal. They include the adequacy of existing authorities for managing the federal estate, and whether new authorities or changes to existing ones might be desirable. The public and Members of Congress are interested in agencies disposal and acquisition efforts, and especially in the location of the transactions. Congress continues to consider bills to direct numerous, specific acquisitions and disposals. Further, the amount of land in federal ownership overall remains controversial. Many western citizens and Members of Congress are concerned about what they feel is excessive federal influence over their lives and economies, and contend that the federal government should divest itself of many lands. (See **Table 1** at the end of this report.) Others support the policy of retaining lands in federal ownership, and sometimes advocate adding more lands that they believe warrant protection.⁴

Another set of issues pertains to the sources and adequacy of funds for land acquisition. The principal financing mechanism for federal land acquisition is annual appropriations under the

² See CRS Report RS21967, *Land Exchanges: Bureau of Land Management Process and Issues*, by Carol Hardy Vincent.

³ Section 342 of P.L. 108-108 directed SNPLMA funds to Lake Tahoe for environmental restoration projects.

⁴ For background, see CRS Report RL34267, *Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention*, by Kristina Alexander and Ross W. Gorte.

Land and Water Conservation Fund (LWCF).⁵ LWCF is credited with \$900 million annually from designated sources. Congress determines the level of appropriations each year. Total appropriations for land acquisition and the amount provided to each of the federal land management agencies have varied substantially since the origin of the program more than 40 years ago. Appropriations for federal land acquisition more than tripled during the five fiscal years ending in FY2001 (rising to \$453.4 million), but have declined steadily since then (to \$113.0 million in FY2007).

Additional sources of funding are available for some agencies or under certain authorities. The FWS has a large additional source of funds for land acquisition, through the Migratory Bird Conservation Fund, as discussed below. The BLM has authorities allowing the agency to keep the proceeds of land sales and use them for subsequent acquisitions and other purposes, as detailed below. The application of these authorities, including the uses of the proceeds, has been of interest to Congress. Whether similar authorities might be desirable for other agencies or under other circumstances also might be of interest.

Current Federal Land Acquisition Authorities

The four federal land management agencies have different authorities for acquiring lands. In general, all four agencies are authorized to accept land as gifts and bequests. In addition, each is generally authorized to use *eminent domain*—taking private property, through condemnation, for public use—while compensating the landowner. However, this practice is controversial, and it is rarely used by the land management agencies.

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

National Park Service

The NPS does not have general authority to acquire lands to establish units of the National Park System.⁶ Rather, most units have been created by Congress, although the President also may establish one type of unit—national monuments. Congress often first enacts a law requiring the NPS to evaluate an area for possible addition to the System. An act of Congress creating a park unit typically identifies the boundaries and authorizes the NPS to acquire the nonfederal lands within those boundaries. The Secretary of the Interior is authorized to make boundary adjustments for “proper preservation, protection, interpretation, or management” and to acquire the nonfederal lands within the adjusted boundary, under the provisions and conditions of 16 U.S.C. § 460l-9(c).

The President has authority to create national monuments on federal lands under the Antiquities Act of 1906 (16 U.S.C. §§ 431, et seq). More than 100 monuments have been created by presidential proclamation. Most are managed by the NPS, but some are managed by the BLM and

⁵ See CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Current Issues*, by Carol Hardy Vincent.

⁶ See CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent.

other agencies. Recent proclamations creating national monuments with nonfederal land within the boundaries typically have specified that these lands will become part of the monument upon acquisition by the United States.

Under law, the Secretary of the Interior and the NPS have responsibilities related to the potential acquisition of lands for the National Park System. For instance, the Secretary is directed “to investigate, study, and continually monitor the welfare of” areas that could potentially be added to the System, and to report to Congress on possible additions (16 U.S.C. § 1a-5). The general management plan for each unit is to include “indications of potential modifications to the external boundaries of the unit, and the reasons therefor” (§ 1a-7). The Secretary is to prepare a “systematic and comprehensive review of certain aspects of the National Park System” in a report to Congress at least every three years (§ 1a-9). This report is to include a “comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit” (§ 1a-11(a)) and a “priority listing of all such unacquired parcels” (§ 1a-11(b)).

U.S. Forest Service

The Secretary of Agriculture has various authorities to acquire lands for the National Forest System (NFS), although the lands must be within the proclaimed boundaries of a national forest. Many national forests contain substantial acreages of nonfederal lands within their proclaimed boundaries, particularly in the East, where forests were established after extensive settlement. Western national forests average about 10% nonfederal land within their boundaries, while the national forests in the Eastern and Southern Regions average about 45% nonfederal land within their boundaries. The USFS has no regulatory authority over the uses of nonfederal lands within the boundaries of the national forests.

Each national forest was originally created by presidential proclamation, but the President’s authority to proclaim new forests and modify previous proclamations was terminated in 1976. Today, new national forests can be created only by an act of Congress, and national forest boundaries can be modified only by an act of Congress.

The first and broadest USFS land acquisition authority was provided in the Weeks Law of 1911 (16 U.S.C. § 515):

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

Originally, the acquisitions were to be approved by a National Forest Reservation Commission, but the Commission was terminated in § 17 of the National Forest Management Act of 1976 (NFMA; 16 U.S.C. §§ 513-518).

Other laws authorize land acquisition for the national forests, typically in specific areas or for specific purposes.⁷ For example, § 205 of FLPMA authorizes the acquisition of access corridors to national forests across nonfederal lands (43 U.S.C. § 1715(a)).

⁷ The 1937 Bankhead-Jones Farm Tenant Act (7 U.S.C. §§ 1010-1012) authorized the Secretary of Agriculture to establish “a program of land conservation and land utilization” for acquiring marginal lands not suited for agriculture. (continued...)

U.S. Fish and Wildlife Service

Lands may be added to the National Wildlife Refuge System (NWRS) in a number of ways. A principal FWS land acquisition authority is the Migratory Bird Treaty Act of 1929 (MBTA; 16 U.S.C. §§ 703, et seq.). This act authorizes the Secretary of the Interior to recommend areas “necessary for the conservation of migratory birds” to the Migratory Bird Conservation Commission, after consulting with the relevant governor (or state agency) and appropriate local government officials (§ 715c). The Secretary may then purchase or rent areas approved by the Commission (§ 715d(1)), and acquire any area or interest therein (§ 715d(2)).

The MBTA is a frequently-used authority, because of the availability of funding through the Migratory Bird Conservation Fund (MBCF). The MBCF is supported from three sources: the sale of hunting and conservation stamps (commonly known as duck stamps); import duties on arms and ammunition; and a portion of certain refuge entrance fees. MBCF funds are permanently appropriated to the extent of receipts, and after paying certain administrative costs may be used for the “location, ascertainment, and acquisition of suitable areas for migratory bird refuges ...” (§ 718d(b)). However, the acquisition must be “approved by the Governor of the State or appropriate State agency” (§ 715k-5). The predictability of funding and permanent authority for use make the MBCF, and thus the MBTA, particularly important for FWS land acquisition.

Other laws provide general authority to expand the NWRS, including the Fish and Wildlife Coordination Act of 1934 (16 U.S.C. §§ 661-667a), the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742a, et seq.), and the Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1544). Further, FLPMA authorizes the Secretary of the Interior to withdraw lands from the public domain for creating or adding to refuges (which would be an interagency transfer); withdrawals exceeding 5,000 acres are subject to congressional approval (43 U.S.C. § 1714(c)).⁸ In contrast to NPS and FS land acquisition, where the lands generally must be within the boundaries of established units, the FWS can acquire new lands to create a new refuge under the general FWS authorities cited above, as well as under certain other laws.

Some units have been created by specific Acts of Congress, such as Protection Island NWR (WA) and Bayou Sauvage NWR (LA). Units also can be created by executive order; for example, the Midway Atoll NWR was created by President Clinton in Executive Order 13022.⁹

Bureau of Land Management

The BLM has broad, general authority to acquire lands, principally under § 205 of FLPMA. Specifically, the Secretary of the Interior is authorized (43 U.S.C. § 1715(a)):

... to acquire pursuant to this Act [FLPMA] by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the

(...continued)

Under this program, the USFS acquired and established 20 national grasslands and 8 land utilization projects that account for 2% of the NFS; in addition, millions of acres acquired under this authority have been transferred to the BLM. However, the authority to acquire lands was repealed in 1962.

⁸ These procedures result in termination of executive actions other than by legislation, which may well be unconstitutional in light of *Immigration and Naturalization Service (INS) v. Chadha*, 462 U.S. 919 (1983).

⁹ 61 *Fed. Reg.* 56875 (Oct. 31, 1996).

Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose.

The BLM may acquire land or interests in land, especially *inholdings* (non-federal lands surrounded by the agency's lands), for a variety of reasons. These include to protect threatened natural and cultural resources, increase opportunities for public recreation, restore the health of the land, and improve management of these areas. The BLM does not have designated units for management; rather, it manages federal lands that were not reserved for parks, refuges, and forests or disposed to states and the private sector. Thus, the BLM is not restricted to acquiring lands within unit boundaries.

Current Federal Land Disposal Authorities

The four federal land management agencies also have different authorities for disposing lands. In contrast to the acquisition authorities that apply to the four agencies (accepting gifts/donations and eminent domain), there are no general disposal authorities. The disposal authorities are discussed below for each of the four agencies in the order of their apparent breadth, with the NPS (the narrowest authorities) first and the BLM (the broadest authorities) last. Note that the FWS and USFS are in reverse order from the acquisition authorities, since the FWS has broader acquisition authorities, while the USFS has broader disposal authorities.

National Park Service

The NPS does not have general authority to dispose of National Park System lands. Units and lands of the Park System that were established by Acts of Congress can only be disposed of by Acts of Congress. Preservation of park units is a management goal and several laws limit the power of the Secretary of the Interior to change park boundaries. Non-NPS lands encompassed by minor boundary adjustments can be acquired through land exchanges, but “the Secretary may not alienate [dispose of] property administered as part of the national park system in order to acquire lands by exchange” (16 U.S.C. § 460l-9(c)).

Presidents have modified the boundaries of national monuments established by previous presidential proclamations, in some cases reducing the size of the monument. However, no president has terminated a monument established by proclamation. Further, national monuments proclaimed by a president cannot be returned to the public domain for disposal under the BLM land disposal authorities. Specifically, “The Secretary shall not ... modify or revoke any withdrawal creating national monuments under” the Antiquities Act (43 U.S.C. § 1714(j)).

U.S. Fish and Wildlife Service

The FWS does not have general authority to dispose of its lands. With certain exceptions, wildlife refuge lands administered by the FWS can be disposed only by an act of Congress (16 U.S.C. §§ 668dd(a)(5) and (6)). For refuge lands reserved from the public domain, FLPMA prohibits the Secretary of the Interior from modifying or revoking any withdrawal which added lands to the NWRS (43 U.S.C. § 1714(j)). For acquired lands, disposal is allowed only if: (1) the disposal is part of an authorized land exchange (16 U.S.C. §§ 668dd(a)(6) and (b)(3)); or (2) the Secretary determines the lands are no longer needed and the Migratory Bird Conservation Commission

approves the disposal (§ 668dd(a)(5)). In the latter case, the disposal must recover the acquisition cost or be at the fair market value (whichever is higher).

U.S. Forest Service

The Secretary of Agriculture has numerous authorities to dispose of NFS lands, all constrained in various ways and seldom used.¹⁰ In the oldest (1897), the President was authorized (16 U.S.C. § 473):

... to revoke, modify, or suspend any and all Executive orders and proclamations or any part thereof issued under section 471 of this title [which had authorized the President to create forest reserves], from time to time as he shall deem best for the public interests. By such modification he may reduce the area or change the boundary lines or may vacate altogether any order creating a national forest.

The 1897 Act also provided for the return to the public domain of lands better suited for agriculture or mining. These provisions on modifying earlier reservations have not been repealed, but in 1976, § 9 of NFMA prohibited returning to the public domain any land reserved or withdrawn from the public domain, except by an act of Congress (16 U.S.C. § 1609).

The 1911 Weeks Law authorizes the Secretary to dispose of NFS land “chiefly valuable for agriculture” which was included in lands acquired (inadvertently or otherwise), if agricultural use will not injure the forests or streamflows and the lands are not needed for public purposes (16 U.S.C. § 519).

The Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §§ 1010-1012) authorizes the disposal of lands acquired under its authority “under such terms and conditions as he [the Secretary of Agriculture] deems will best accomplish the purposes of this” title, but “only to public authorities and agencies and only on condition that the property is used for public purposes” (7 U.S.C. § 1011(c)). However, the USFS has adopted regulations stating that the Bankhead-Jones lands comprising the national grasslands will be held permanently (36 C.F.R. § 213).

The 1958 Townsites Act authorizes the Secretary to transfer up to 640 acres of NFS land adjacent to communities in Alaska or the 11 western states for townsites, if the “indigenous community objectives ... outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership” (16 U.S.C. § 478a). There is to be a public notice of the application for such transfer, and upon a “satisfactory showing of need,” the Secretary may offer the land to a local governmental entity at “not less than the fair market value.”

The 1983 Small Tracts Act authorizes the Secretary to dispose of NFS land, by sale or exchange, if valued at no more than \$150,000 and meets one of three conditions (16 U.S.C. § 521e):

- parcels of 40 acres or less interspersed with or adjacent to lands transferred out of federal ownership under the mining laws *and* which are inefficient to administer because of their size or location;

¹⁰ This discussion excludes the authority to dispose of administrative sites and related facilities under the Forest Service Facility Realignment and Enhancement Act of 2005, Title V of P.L. 109-54, the FY2006 Interior appropriations act.

- parcels of 10 acres or less encroached upon by improvements based in good faith upon an erroneous survey or other land description; or
- road rights-of-way substantially surrounded by nonfederal land and not needed by the federal government, subject to the right of first refusal for adjoining landowners.

The land can be disposed of for cash, lands, interests in land, or any combination thereof for the value of the land being disposed (§ 521d) plus “all reasonable costs of administration, survey, and appraisal incidental to such conveyance” (§ 521f).

Finally, the Education Land Grant Act, Title II of P.L. 106-577, authorizes the Secretary to transfer up to 80 acres of NFS land for a nominal cost upon written application of a public school district. Section 202(e) provides for reversion of the title to the federal government if the lands are not used for the educational purposes for which they were acquired.

Bureau of Land Management

The BLM can dispose of its public lands under several authorities. A primary means of disposal is through exchanges under FLPMA, as amended. The exchange must serve the public interest, and the federal and nonfederal lands in the exchange must be located in the same state and be of roughly equal value (with cash adjustments possible), among other requirements.

Other general disposal authorities include (1) sales under FLPMA; (2) sales or exchanges under the Federal Land Transaction Facilitation Act (FLTFA; Title II of P.L. 106-248); (3) patents under the 1872 General Mining Law; and (4) transfers to other governmental units for public purposes.¹¹

Section 203 of FLPMA authorizes the BLM to sell certain tracts of public land that meet specific criteria (43 U.S.C. § 1713(a)):

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

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved

¹¹ The Homestead Act and many other authorities for disposing of the public lands were repealed by FLPMA in 1976, with a 10-year extension in Alaska. The General Services Administration has the authority to dispose of surplus federal property under the Federal Property and Administrative Services Act of 1949; however, that act generally excludes the public domain, mineral lands, and lands previously withdrawn or reserved from the public domain (40 U.S.C. § 472(d)(1)).

prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

The size of the tracts for sale is to be determined by “the land use capabilities and development requirements.” Proposals to sell tracts of more than 2,500 acres must first be submitted to Congress, and such can be disapproved by Congress.¹² Tracts are to be sold at not less than their fair market value, generally through competitive bidding, although modified competition and non-competitive sales are allowed.¹³

FLTFA provides for the sale or exchange of BLM lands identified for disposal under the BLM land use plans in effect at the date of enactment. This act created a separate Treasury account for proceeds from the sale or exchange, and provides for the use of those funds by the Secretary of the Interior or the Secretary of Agriculture. The Secretaries may acquire nonfederal lands, especially inholdings and lands adjacent to federal lands that contain exceptional resources. Up to 20% of the funds may be used for administrative costs, and at least 80% of the funds for acquisition are to be used in the state in which the funds were generated.

The General Mining Law of 1872 allows access to *hardrock* minerals on federal lands that have not been withdrawn from entry. Minerals within a valid mining claim can be developed without obtaining full title to the land. However, with evidence of valuable minerals and sufficient developmental effort, mining claims can be patented, with full title transferred to the claimant upon payment of the appropriate fee—\$5.00 per acre for vein or lode claims (30 U.S.C. § 29) or \$2.50 for placer claims (30 U.S.C. § 37), plus various filing fees. Non-mineral lands used for associated milling or other processing operations can also be patented (30 U.S.C. § 42). Patented lands may be used for purposes other than mineral development. Beginning in FY1995, Congress has enacted a series of annual moratoria on issuing mineral patents in the annual Interior appropriations acts, effectively preventing this means of federal land disposal. Congress continues to debate mining law reform.¹⁴

The Recreation and Public Purposes Act (43 U.S.C. § 869) authorizes the Secretary, upon application by a qualified applicant, to:

... dispose of any public lands to a State, Territory, county, municipality, or other State, Territorial, or Federal instrumentality or political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose consistent with its articles of incorporation or other creating authority.

The act specifies conditions, qualifications, and acreage limitations for transfer, and provides for restoring the lands to the public domain if conditions are not met.

The BLM also has several geographically-limited land sale authorities. The largest is the Southern Nevada Public Land Management Act (P.L. 105-263) which allows the Secretary of the

¹² This and certain other provisions of FLPMA may be unconstitutional under *INS v. Chadha*, 462 U.S. 919 (1983).

¹³ Desert lands also can be disposed under other laws. The Carey Act (43 U.S.C. § 641) authorizes transfers to a state, upon application and meeting certain requirements, while the Desert Entry Land Act (43 U.S.C. § 321) allows citizens to reclaim and patent 320 acres of desert public land. These provisions are seldom used, however, because the lands must be classified as available and sufficient water rights for settling on the land must be obtained.

¹⁴ See CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals*, by Marc Humphries.

Interior to sell or exchange certain lands around Las Vegas. The BLM and the local government unit jointly decide on the lands to be offered for sale or exchange. In general, 85% of the proceeds are deposited into a special account, and are available to the Secretary of the Interior for land acquisition in Nevada. The Secretary has approved of acquisitions for each of the federal land managing agencies. The other 15% of the proceeds are provided to the State of Nevada and certain local entities for state and local purposes, such as the Nevada general education fund. Other statutes similarly provide for BLM land sales in particular areas (mostly in Nevada), with specific allocations of the proceeds.

Table 1. Federal Lands, by State or Region and by Agency

(in millions of acres)

	Alaska	11 Western States ^a	Other ^b	Total
National Park Service	51.09	20.13	6.90	78.13
Fish and Wildlife Service	76.61	6.32	7.55	90.47
Bureau of Land Management	83.54	174.35	0.39	258.28
USDA Forest Service	21.97	141.80	29.02	192.79
Other Federal ^c	19.29	10.73	3.61	33.63
Federal Total	252.50	353.33	47.47	653.30
Nonfederal Total	112.99	399.62	1,105.44	1,618.04
Percent Federal	69.1%	46.9%	3.1%	28.8%

Sources:

U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of Sept. 30, 2007*, at http://www.fs.fed.us/land/staff/lar/2007/TABLE_4.htm.

U.S. Dept. of the Interior, National Park Service, *National Park Service Listing of Acreage as of 9/30/07*, at <http://www2.nature.nps.gov/stats/acrebypark07fy.pdf>. Includes only NPS lands with fee simple NPS ownership.

U.S. Dept. of the Interior, Fish and Wildlife Service, *Annual Report of Lands Under control of the U.S. Fish & Wildlife Service, as of September 30, 2006*, at http://www.fws.gov/realty/pdf_files/2006LandsReport.pdf, pp. 10-11. Includes only federal lands with FWS primary jurisdiction.

U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2006*, at http://www.blm.gov/style/medialib/blm/wo/Business_and_Fiscal_Resources/2006_pls.Par.93605.File.dat/Part_IC.pdf, Table 1-4.

U.S. General Services Administration, *Federal Real Property Profile, as of September 30, 2004*, at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf, Table 16, pp. 18-19.

Notes:

- a. Includes Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
- b. Includes the other 38 states, the District of Columbia, Puerto Rico, Virgin Islands, Guam, and other insular areas.
- c. "Other Federal" was calculated by CRS as the difference between total federal land, as reported by the U.S. General Services Administration (GSA), and the federal land administered by the four major federal land management agencies (NPS + FWS + BLM + FS).

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