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Statement on Federal Public Lands Transfer, Sale, and Exchange

The large-scale transfer or sale of public lands would directly undermine the future of hunting, fishing, and outdoor recreation in America and is not acceptable. Our public lands and outdoor traditions are not only entwined they are also core to driving the \$1.2 trillion annual outdoor recreation economy and supporting 5 million jobs. There may be instances, however, in which targeted exchanges or sale-purchase models may be in the public's interest by helping to enhance outdoor recreation opportunities and improve the management of public lands. For example, consolidating "public-private checkerboard" lands can improve public access to public lands, protect high priority conservation lands -- including migration routes and crucial habitats -- and benefit local communities and the recreation economy.

To aid the hunting, fishing, outdoor recreation business, and conservation community in the consideration and development of proposals that address the sale or transfer of public lands, the above named organizations endorse the positions below. This position statement is intended to proactively address and overcome challenges with public land transfer or sale, educate lawmakers, engage stakeholders, and put a stop to proposals that threaten our public lands hunting and fishing heritage.

Background

For the Bureau of Land Management (BLM), the Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the sale or exchange of BLM federal land. Under FLPMA, lands must be "identified for disposal" through a public process (BLM's Land Use Planning process, Section 202) and, at a minimum, meet one of the following criteria as outlined in Section 203:

- They are difficult and uneconomical to manage and are not suitable for management by another federal department or agency.
- Disposal would serve important public objectives, including, but not limited to, community expansion or economic development, that could not be achieved prudently or feasibly on land other than public lands and that outweigh other public objectives or values.
- The tract was acquired for a specific purpose and is no longer required for that purpose or any other federal purpose.

Building on these criteria, Department of the Interior Secretarial Order 3373, issued in 2019, directed the BLM to update its policy to "ensure that when identifying BLM-managed public lands available for disposal or exchange the increase or decrease of public access for outdoor recreation - including hunting

and fishing - will be one of the factors considered in determining the appropriateness of the disposal or exchange.”

The BLM also has state-specific, county-specific, and other location-specific sales and sale-purchase authorities, including the Southern Nevada Public Land Management Act in Nevada and the Owyhee Public Lands Management Act in Idaho.

For the U.S. Forest Service (USFS), Congress has given the agency a general exchange authority, the SISK Act exchange authority, and limited authorities to sell National Forest System lands. The limited authorities include the Small Tracts Act (parcels under \$500,000), the Townsite Act (for townsite purposes in the 11 western states and Alaska only, and 640 acres or under), the Forest Service Realignment and Enhancement Act (for administrative sites and facilities; currently requiring reauthorization), the Pilot Conveyance Act (very limited), the Education Land Grant Act, and many state-specific or national forest-specific “land adjustment” Acts. The USFS does not have a general land disposal authority or process like the BLM, under FLPMA.

USFS and BLM regulations also require that exchanges must be in the public’s interest, specifically the resource values and the public objectives of the lands to be acquired must equal or exceed the resource values and the public objectives of the federal lands that would be conveyed. Additionally, the intended use of the conveyed federal land must not substantially conflict with established management objectives on adjacent federal lands. In making these “public interest” determinations, regulations require that the following factors be considered:

When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of existing or planned land use authorizations; promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs. *36 cfr 254.3 (b)(1)* (similar regulations for BLM are found under 43 CFR 2200.0-6)

Additionally, the BLM and the USFS, through additional laws, can use the “modified land exchange” or “sale-purchase” model as an efficient alternative to traditional land exchanges. While this approach is like an exchange, it differs in that the sale and purchase parcels do not need to be arranged at the same time; instead, the land sales revenue is deposited into an account, and the federal agencies can draw money from that account for priority conservation and facilitating land sales. This provides more flexibility than the traditional exchange approach, and an incentive for the agency to strategically sell lands, since the money will return to conservation and the sales account, rather than to the Treasury. The public trust is enhanced, not diminished, since low-priority federal lands are sold to purchase high-priority federal lands.

One example of a “modified land exchange” is the Federal Land Transaction Facilitation Act (FLTFA), a proven approach in the eleven contiguous western states and Alaska. Permanently reauthorized in 2018, (P.L. 115–141) the FLTFA program operates under the authority of FLPMA (which already allows for land

sales) but establishes a modified land exchange process whereby land sales revenue is deposited into a federal account that federal agencies can use to acquire high-priority conservation lands. During its original authorization, which expired in 2011, the program sold \$113 million of land, and, in exchange, funded 39 conservation projects that increased public access to public land, protected critical wildlife habitat, and other benefits. BLM has sold few lands without the FLTFA program in place, due to a decrease in land sales capacity and lack of incentive. USFS similarly utilizes this “modified land exchange” model with national forest-specific land adjustment legislation.

These laws and regulations provide a good framework and baseline of criteria. However, America’s public lands hold particularly high value for the sporting, outdoor recreation, and conservation community and additional, specific criteria is necessary to thoroughly evaluate a proposal and determine if it is to the benefit or detriment of outdoor recreationists, conservation, and fish and wildlife habitat.

Policy Position Statement

The above-named organizations support the existing public lands disposal and exchange authorities granted to the BLM and USFS, as well as the modified land exchange or sale-purchase model (e.g., FLTFA). We encourage the agencies to more fully utilize these existing authorities to facilitate land exchanges and disposals when doing so is in the public interest and meets land management and community needs. We would also consider thoughtful legislative proposals to further improve agency land transactional authorities, and place-based legislation that would facilitate targeted public lands disposal or exchange actions. While each proposal for the sale or exchange of public land is unique and should be evaluated on its own merit (recognizing that many exchanges are designed primarily to benefit historic trails, rare plants, listed species, watershed protection, and paleo resources), the following criteria must be met in order for a proposal to sell or exchange public land—whether through an Act of Congress or administrative action—to be considered in the best interest of the hunting and fishing community.

1. Public access to quality hunting, fishing, and outdoor recreation opportunities must, on balance, increase or not be negatively affected by the overall proposal.
2. Habitat for fish and wildlife game species must, on balance, benefit or not be negatively affected by the overall proposal.
3. Access to nearby or adjacent public lands must be enhanced or not hindered by the proposed action.
4. The proposed action must be made available to the public for review and comment, and the input and guidance of hunters, anglers, and recreationists should be fully considered by the managing agency or other decision-maker(s).
5. Proceeds from the sale of public lands must be used to acquire public lands with strategic importance for public access or high-conservation value.

Finally, it is recognized that tension exists around the federal ownership and management of public lands, in part, because the federal agencies simply do not have the resources, capacity and training necessary to do their jobs as expected by the American people. We believe that the funding challenges and lack of staff capacity for federal land management agencies must be addressed, and steps need to be taken to address the gridlock that is hampering the effective management of our public lands.

However, our groups oppose the large-scale transfer or sale of public lands as a solution to such management challenges.