

While thousands have managed land under the law's authority, far fewer have actually worked with the law—interpreting its language or defending its provisions—in a legal setting. The work in court rooms and law offices is no less important than that carried out on the land itself.

IMPLEMENTING THE WEEKS ACT

A LAWYER'S PERSPECTIVE

The centennial of the Weeks Act of 1911 reminds us of one of the greatest conservation achievements of the twentieth century. By any measure, the law's impacts were remarkable—politically, socially, and legally—and it left the nation a lasting legacy of almost 25 million acres of national forest lands

acquired primarily in the eastern United States.

It is hard to comprehend 25 million acres, an area slightly larger than Indiana, but everything about the Weeks Act was big. From 1911 through 1976, the Forest Service purchased 19,740,957 acres of land at an average price of \$9.54 per acre.¹ Over a 65-year period, \$188,355,688 was spent on land purchases (not adjusted for inflation). During the same period, the Forest Service acquired 1,222,413 acres by land exchanges. Since any land acquired within a national forest boundary is given Weeks Act status,² the actual acreage attributed to the Weeks Act authority varies depending on how you count acquisitions. Additionally, some land acquisitions under New Deal conservation programs were incorporated into national forests and given Weeks Act status. What is not readily apparent from these statistics is the number of individual completed transactions. The number of individual land acquisitions must have numbered in the thousands.³ While the Forest Service continues to buy land under the Weeks Act authority, the major

purchase programs were largely over by 1976.

Anyone who has ever purchased a house has some inkling of how complicated it can be to acquire property. The land has to be surveyed and described, its title approved and encumbrances removed, financing arranged, conveyance documents written and approved. Finally, the landowner has to be paid and the deed recorded in local land records. With the eastern national forests, one can multiply the complexity of that process thousands of times, with every possible variation of problems. In a time when government and government employees are often maligned, implementation of the Weeks Act stands as a triumph accomplished by hundreds of anonymous men and women working for the Forest Service.

PRECONDITIONS TO ACQUISITION

The political and legal underpinnings of the Weeks Act are themselves a fascinating story. The Commerce Clause of the U.S.

BY JAMES B. SNOW

Constitution provided the constitutional basis for buying land to conserve the “navigability of navigable rivers.” While this legalistic premise was necessary, the practical reality is that virtually all inland areas are within the watersheds of navigable rivers. Nonetheless, there were two important preconditions for Forest Service land acquisition under the Weeks Act.

First, before buying any land, a purchase unit had to be approved by the National Forest Reservation Commission (NFRC), comprising the secretaries of agriculture, the interior, and war, along with two members each from the House of Representatives and the Senate.⁴ The Forest Service would “examine, locate, and recommend for purchase...lands as...may be necessary to the regulation of the flow of navigable streams.”⁵ The NFRC reviewed the recommendations and, if approved, would establish a purchase unit within which the Forest Service could buy land. When enough land was purchased to be manageable for national forest purposes, the secretary of Agriculture or the president would formally designate the land as a national forest. Apparently the process of recommendation and approval was very carefully vetted between the Forest Service and the NFRC. While land purchase recommendations were sometimes modified at the request of the NFRC, they were rarely disapproved.

Second, there was a precondition for state consent before any lands could be purchased within that state. Ultimately, 39 states and Puerto Rico enacted enabling legislation consenting to Forest Service acquisition of lands. Eleven states have never given consent,⁶ and several states actually approved the establishment of forest reserves long before passage of the Weeks Act.⁷ Most others passed enabling legislation in the 1920s and 1930s. Often, state-enabling statutes put geographical and other conditions on federal acquisitions. For example, many limited their consent to certain counties, and some required the concurrence of county governments. Some states prohibited or limited the use of condemnation, and some put a limitation on how many acres could be acquired overall.

Most state-enabling statutes gave the Forest Service sufficient latitude to do its work in purchase units approved by the NFRC. However, in later decades, after much of the conservation work had been accomplished, some states attempted to renege on earlier authorizations. Such attempts were variously attributed to resurgent assertions of states’ rights, to anti-federalism sentiment, and to private property proponents. In 1984, Indiana attempted to revoke its earlier 1935 consent, and in 2000 Ohio attempted a similar action. In both cases, the U.S. Department of Agriculture’s Office of the General Counsel opined that, based on a Supreme Court ruling interpreting other federal land acquisition programs, such deauthorization was ineffective.⁸

The political landscape obviously has changed since 1911. Due in part to the impact of environmental regulations, owners of forest lands can no longer practice “cut and run” logging, thereby alleviating rampant deforestation, one of the major impetuses for federal acquisition. The highest and best use of forest land is now often for recreation or residential subdivision, which, in private ownership, contributes to the local tax base. Thus, state and local governments no longer see federal land acquisitions as needed or desirable, a condition that can lead to insidious results. For example, in the 1980s a state-enabling law in Vermont required that sales to the Forest Service be approved by local towns. What resulted was a local policy known as the Woodford Plan, a pay-to-play scheme requiring private landowners to make cash pay-

ments to local town governments as a precondition for gaining the town’s consent to federal acquisition.⁹ As with the state revocation cases, the USDA Office of the General Counsel found such schemes to be unlawful, and the Forest Service thereafter refused to cooperate in such payments.

TITLE AND SURVEY PROBLEMS

For a general perspective on the land acquisition process undertaken by the Forest Service, let us again consider what goes into buying a house. When one buys a house today, one has to assure the seller has good title; that is, the seller actually owns the property free and clear of ownership defects and third-party rights. To determine whether the title is good, a title insurance company usually creates a report that lists the prior owners of the property along with any outstanding interests such as mortgages, liens, and easements. If the title to the land is acceptable to the purchaser (and, more importantly, the purchaser’s lender), then the property can be purchased, usually with the requirement that the seller give the buyer a general warranty deed by which the seller contracts to defend the title if defects are discovered in the future. Often, the whole transaction is insured by a title insurance policy that indemnifies the insured against any unforeseen title problems.

Like the house buyer’s scenario, the federal government had to assure that it was acquiring good title to the land being purchased under the Weeks Act. In the early 1900s, that task could be daunting in rural counties where land was often unsurveyed, titles often premised on unrecorded deeds or inheritance based on estates for which there was never a will or probate, or occupancy undocumented for many years. Frequently, title to the land was held by a timber company that had acquired the land under questionable circumstances.

Identifying the land it wanted to buy was typically the first challenge for the Forest Service. Land descriptions in deeds might simply describe property by referring to a neighbor’s land, something like “and bounded on the north by Joe Smith, on the west by William Black, and the south by John White.” Other descriptions might refer to landmarks, such as an oak tree that may be among many oaks or might even have died. Given the difficulty of measuring landlines in mountainous terrain, it is not surprising that the acreage figures provided in deeds was notoriously inaccurate. Consequently, expensive land surveys were often required to accurately describe properties.

Determining ownership could be as difficult as describing the land. Deeds were not always prepared by lawyers and were not always recorded in the county land records. Even if recorded, locating the records themselves could be difficult—inevitably some records were destroyed in courthouse fires and other mishaps. The Forest Service and its attorneys sought title information from local land records, often hiring local attorneys to prepare title abstracts that listed all known owners and conveyances for a given property. These abstracts were reviewed by title attorneys in the Department of Justice, who gave instructions for rectifying any title problems.¹⁰

Anecdotal accounts of title problems are legendary, such as the man who died without a will in the 1860s and left thirteen children, each of whom later died without wills and left similar numbers of children. In such cases, a given parcel of land might have hundreds of potential undivided owners. In an example from the 1980s, the Forest Service acquired a parcel of land for the Appalachian Trail through a court action. The known owners were compensated,

but the case was reopened later when another unknown branch of the deceased landowner's family came forward claiming to be the illegitimate heirs of the landowners. That case was resolved with a payment by the Department of Justice to the illegitimate heirs.

Because of these complicated title issues, much land was acquired under the Weeks Act through eminent domain, commonly called condemnation.¹¹ Condemnation assures the government will acquire good title, requiring the government to ascertain the known owners of the land and give notice to other claimants. It further requires that the land be identified by description, and that just compensation be paid to those having an ownership interest in the land. The court adjudicates title disputes, sets the price, and determines

who is entitled to payment. It is impossible to easily determine how many Weeks Act–authorized land acquisitions the Forest Service has made through condemnation. Today, the government's use of condemnation is widely maligned, and Congress has effectively taken it away as a tool for land management agencies.¹² However, it was widely used decades ago as the only effective way of cutting through the Gordian knots of unclear land titles and assuring that landowners were justly compensated.¹³ Most Weeks Act condemnation cases moved forward with the consent of those claiming ownership in the land and thus were not adversarial in nature.

PRIVATE RIGHTS ON WEEKS ACT LANDS

Forestland ownership can be divided among several parties. A person might own the tract's surface, while the mineral and timber rights belong to other parties. A property might also be subject to easements for roads and utilities, or some other form of interest in third parties. The original Weeks Act of 1911 recognized this fact and required the attorney general's approval for all land titles.¹⁴ In 1913, Congress amended the law by allowing Weeks Act land acquisitions to be subject to rights-of-way, easements, and reservations of water, timber, and mineral rights, so long as the exercise of such rights would not interfere with the purposes for which the land was acquired.¹⁵ The secretary of Agriculture issued regulations prescribing how these rights could be exercised, and these regulations were actually appended to and made a part of any deed which reserved rights in timber, minerals, rights-of-way, and other issues.¹⁶

Mineral development is not uncommon on the national forests and is actually encouraged in some areas. However, the development of privately owned minerals can be the most problematic issue on land acquired for national forest purposes. A century ago, some minerals were considered virtually worthless because the



A strip mine within the Wayne National Forest in Ohio. The vegetation is removed and the coal face exposed. Because strip mining is so destructive, the Forest Service vigorously contests those claiming a right to engage in such activities.

technology for profitable mining and drilling was not yet developed. Indeed, the Forest Service sometimes passed up opportunities to buy mineral rights when mining was not deemed feasible or a possibility. The author recalls seeing a memorandum in a case file from the 1930s declining to pay an extra 50 cents an acre for the mineral rights in West Virginia. At the time, coal mining was deemed unfeasible, but decades later the viability of mining coal and drilling for oil and gas had improved with new markets and technologies that made mineral developments profitable.

The most protracted issue concerns strip mining. Mining regulations issued by the Forest Service in 1911, 1937, and 1947 implied a prohibition of strip mining, but ambiguities in the regulations often resulted in litigation. When confronted with strip mining proposals, the Forest Service argued that strip mining could not have been contemplated for lands acquired for watershed protection. In some cases, courts considered whether strip mining was practiced in the area when the mineral rights were separated from the surface. If the answer was no, then strip mining was prohibited.¹⁷ However, in other cases, courts have deemed minerals as a dominant estate over surface ownership. This bias for the mineral owner has resulted in unfortunate consequences, at times allowing strip mining on some national forest lands.¹⁸ Occasionally, more recent state and federal regulations requiring land reclamation have somewhat ameliorated the effects of strip mining, but the threat remains to the surface resources.

Most recently, conflicts between the rights of mineral owners and the federal government have centered on the Alleghany National Forest in Pennsylvania, in the portion of the state where Edwin Drake first discovered oil in 1858. The high price of oil and gas, coupled with new techniques for economically extracting minerals, has led to expanded development within the Alleghany National Forest. This means more than 400,000 acres of that forest—some 90 percent of the national forest—are subject to private

FOREST HISTORY SOCIETY PHOTOGRAPH COLLECTION, R9_482284; U.S. FOREST SERVICE PHOTO 482284

mineral rights. This private mineral rights situation has led to inevitable conflict with the Forest Service. Some mineral owners assert an uninhibited right to build roads and place drilling pads wherever they please, notwithstanding conflicts with wildlife habitats, waterways, and other sensitive forest resources. The Forest Service had asserted regulatory authority over mineral activity on the federally owned surface estate in order to protect forest resources.

In September 2011, a decision in *Minard Run Oil Company v. U.S. Forest Service* by the United States Third Circuit Court of Appeals severely constrained the Forest Service's ability to protect surface forest resources on Weeks Act lands.¹⁹ The court held that the owners of private minerals underlying the Allegheny National Forest are not required to obtain the approval of the Forest Service before drilling for oil and gas. The court distinguished this case from other legal precedents that allow the regulation of private uses in order to protect natural resources. In the court's opinion, the U.S. Congress did not grant the same regulatory powers under the Weeks Act as it did with public domain forests.

The full implications of the *Minard Run* decision are currently unclear, aside from making the eastern national forests more vulnerable to the negative impacts of private mineral development and the exercise of private reserved and outstanding rights. The federal government primarily relies on state law to determine the extent of its property rights, but laws vary from state to state regarding the respective rights of surface and mineral owners. Some states, such as Pennsylvania, highly favor the mineral owners. These conflicts may have different outcomes in different states; the effects on national forests could be profound and greatly complicate management.

There are few options for the Forest Service in addressing private mineral rights. One is acquisition by purchase or exchange. While mineral rights are not prioritized for the use of scarce land acquisition funds, exchanges are sometimes possible. In 2000 an innovative exchange of mineral rights was done on the Daniel Boone National Forest through legislation allowing the Forest Service to acquire approximately 45,000 acres of land containing coal from the Tennessee Valley Authority (TVA).²⁰ In return, the TVA received monetary credits to acquire rights to federal mineral leases in the contiguous 48 states. Consequently, strip mining is not allowed on a large area of the Daniel Boone National Forest.

Another innovative approach to resolving the conflict between severed ownership of mineral and surface estates has been for the Forest Service to acquire nonfederal mineral rights through dormant mineral statutes. To encourage the development of min-



PHOTO COURTESY OF U.S. FOREST SERVICE

Property lines can be vigorously disputed. In this picture from the Chattahoochee National Forest in Georgia, a landowner defaced a Forest Service property sign by painting out the Forest Service logo and changing the wording to claim the land as his own. The maintenance of land lines is an ongoing and expensive task of the Forest Service.

eral rights, some states have enacted laws allowing a surface owner to secure title to the underlying mineral estate if the mineral owner fails to develop or otherwise assert ownership to such minerals for a period prescribed by the state law. These unused rights are referred to as dormant minerals, and the U.S. Supreme Court has upheld such dormancy statutes, determining the tactic to be a legitimate exercise of state power.²¹

Using a dormant-mineral statute in Georgia in the 1990s, the Forest Service acquired title to more than 130,000 acres of minerals underlying the Chattahoochee National Forest. Under Georgia law, the surface owner can acquire the underlying minerals if they remain dormant for a period of seven years. To get title to the minerals, Georgia's Department of Justice filed quiet title lawsuits for each of 16 separate counties.²² Part of the affected area has a long history of mining, going back as early as the Georgia gold rush of the 1820s. The Forest Service was motivated to undertake this action because of concern that uncontrolled exploration and development of private minerals could have profound adverse environmental impacts. Twenty-five years later, with gold now exceeding \$1,700 per ounce, those concerns were obviously well founded. Yet the Forest Service's efforts to acquire mineral rights had met with some criticism from environmental advocates who accused the agency of trying to promote mining in the forest.

Dormant mineral statutes have also been relied on to address private minerals underlying national forests in other states, such as Tennessee and Michigan. Both states have laws that automatically vest the surface owner with the subsurface estate if the minerals are dormant for the statutory period. While the effect of those laws avoids the need to litigate title, it has the disadvantage of not having a recordable document to show the vesting of title. Nationally, about one-third of the states have some form of dor-



This house was built partially on national forest land and partially on private land. The correct land line is superimposed on the photograph. Such encroachments may be the result of faulty private surveys, negligence, or simply a disregard for public land.

mant mineral statute. Unfortunately, West Virginia, Kentucky, and Pennsylvania do not, and these are the three states where the Forest Service has the most problems with private minerals.

ACCESS AND RIGHTS-OF-WAY

The issue of access to lands arises frequently in the eastern national forests. Because the eastern forests were purchased tract by tract from individual landowners over many years, the landownership pattern is a patchwork of intermingled public and private lands. This sometimes leaves a private landowner with access to the property only through the national forest. Often that access is clearly delineated on existing roads. When access is in dispute, however, many principles of law can come into play. Many states with roads that have existed since colonial times still recognize their existence despite nonuse and lack of maintenance. In other cases, individual landowners may claim continuous use of a roadway for many years, based on the concept of prescription, sometimes referred to as adverse possession.²³ Prescriptive rights are not favored in the law and as a general rule cannot be established against a state or the federal government.

Individuals owning property surrounded by national forestland have a statutory right of access to reach their land.²⁴ However, the Forest Service does not have to grant access over the most convenient and cheapest route. Occasionally, landowners claim historic access over a particular route. Such a claim necessarily requires that the landowner show that a prescriptive right was established before the date the Forest Service acquired the land. This can be a particularly difficult burden of proof for a landowner, given the passage of time. For example, if the Forest Service bought a parcel of land in 1935, someone claiming a prescriptive right would have to prove its establishment with evidence going back more than 75 years.

The authority of the Forest Service to regulate road use over national forest land is another source of controversy. Most courts

have held that federal land management agencies can reasonably regulate the occupancy and use of roads on federally owned lands, even if those roads are owned by another party.²⁵ In a few instances, courts have limited the Forest Service's regulatory authority over the use of private roads, based on prior existing rights.²⁶ Generally, the Forest Service has ample authority to protect forest resources and public safety within national forest boundaries.²⁷

The problem of providing ingress and egress to cemeteries is one of the more interesting recurring access issues on acquired lands. The Appalachian Mountains are full of old cemeteries, some dating to the American Revolution era. The Forest Service

acquired cemeteries in Weeks Act acquisitions, often unknowingly. Although the agency declines to maintain cemeteries, it allows others to do so, generally granting access permits for such purposes. In recent years, a cemetery caused a distinct dilemma for the agency. Congress had designated a tract of national forest land in Florida as a wilderness, where no roads or motorized vehicles are permitted. However, this particular wilderness included a cemetery, and an infirm elderly woman wanted to visit the graves of relatives. By law, the Forest Service could not allow motorized access, yet it wanted to reasonably accommodate this family's need. Examination of Florida law provided a solution: state law implied a right of access to cemeteries, and it was determined that the Forest Service's acquisition of the land was subject to that law. Therefore, the Forest Service was able to permit motorized access to the cemetery.

ENCROACHMENTS

An encroachment is a polite term for a trespass, or sometimes outright theft. Encroachments can be unintentional and minor, or they can be deliberate attempts to steal public resources. The most common problem on Weeks Act land arises from the lack of land surveys or from conflicting surveys, resulting at times in trespass onto federal land. The Forest Service devotes significant resources to surveying and maintaining land lines and property corners, but encroachments are common. For example, in the eastern national forests neighboring landowners will commonly consider a fence line to be a boundary, only to discover upon survey that part of the fence was built on federal land. Generally, relocating a fence or granting a permit for occupancy of federal land will resolve such situations. On other occasions, disputes over property lines can result in tampering with federal boundary markers; such cases sometimes spur legal action.

Residential subdivision can be more problematic, particularly where valuable lots are laid out and construction is based on erro-

neous private surveys. Some of these cases end up in court, with property owners fighting the Forest Service over the accuracy of surveys, particularly when valuable improvements have already been constructed. When the trespass is identified, it is not uncommon for the trespasser to ask the assistance of politicians to call off the Forest Service. On the Chippewa National Forest in Minnesota, a homeowner ignored a federal survey line and built part of his garage on the national forest. In that case, a member of Congress actually threatened to sponsor legislation to validate the trespass. However, the case was ultimately settled, with the requirement that the garage be removed from federal land.

The Minnesota case illustrates how political factors can sometimes intervene in cases where a perceived conflict exists between public and private property rights. To its credit, the Forest Service has resisted political entreaties to validate trespasses, except in cases with equitable considerations and where the encroachment was unintentional. In one such case in Arkansas, the Forest Service supported legislation to clear up the land titles of a multitude of landowners who had erroneously relied on a flawed private survey when they purchased their land.²⁸ The survey problem was discovered after many years of innocent reliance on what was thought to be the correct property lines. Under the federal legislation, the Forest Service quitclaimed the encroached-on land area to each landowner.

In a North Carolina case, an owner of private land within the national forest was alleged to have removed federal survey monuments and to have replaced them with erroneous survey markers in order to substantially improve the location of his property. He then illegally built a road on national forest land to access the property. In federal court, the government was able to establish the correct boundaries and corners of the property and to quiet title to the federal land. This case took hundreds of hours of work to prosecute; although the costs of litigation were substantial, it was deemed important that the Forest Service show resolve in pursuing the case in order to deter others from similar activities.²⁹

THE FUTURE

Given the millions of acres acquired under the Weeks Act in a multitude of states over several decades, what is surprising is how few legal problems arise. This is a tribute to the quality of the acquisition work done by hundreds of anonymous federal employees as well as the never-ending management of the real estate. For many issues, time is on the side of conservation, such as with prescriptive claims, which become more difficult to prove over



A trespass road constructed on the Pisgah National Forest in North Carolina. Resolution of the associated land title claim required action in federal court.

PHOTO COURTESY OF THE U.S. DEPARTMENT OF JUSTICE

time. On the other hand, mineral rights previously thought uneconomic might become valuable as mining technologies improve and market demands make the mining profitable.

The eastern national forests are one of our country's proudest accomplishments. However, the opportunities for land acquisitions under the Weeks Act were never totally fulfilled. Weeks Act forests will always be a patchwork of intermingled public and private land. (The two maps on page 81 illustrate this patchwork ownership.) In the Forest Service's Southern Region,³⁰ there are 35 national forests with a total of 24,046,163 acres within the defined forest boundaries. Within that area, the federal government owns 12,926,501 acres, or about 54 percent.³¹ Similarly, for the Eastern Region,³² there are 17 national forests, encompassing a total of 21,106,462 acres, of which the federal government owns 11,961,158 acres or about 57 percent.³³

When the federal government only owns a bit more than half the land within authorized forest boundaries, inevitably, conflicts will result. In addition to encroachments, the patterns of land use are ever-changing. Perhaps the most profound effect is with development of the forest-urban interface, where people intentionally purchase land within or adjacent to the national forests for privacy, aesthetic, or other reasons. The existence of private homes within the forest boundaries exacerbates issues such as fire fighting, insect and disease control, and timber management. A "not in my backyard" mentality often prevails among private landowners when the Forest Service proposes management activities such as logging that are unpopular with nearby residents.

An obvious answer to the intermingled land ownership patterns is for the Forest Service to buy more forest inholdings. However, the factors that motivated federal land acquisition in the first half of the twentieth century largely do not exist today. Floods resulting from deforestation have largely abated. Fortunately, vast tracts

of denuded and deforested lands no longer exist. Perhaps more importantly, there is little public support for large-scale federal acquisition, which eliminates land from the local tax rolls. Finally, the federal fiscal situation in recent years is not conducive to large appropriations for land acquisition.

Limited opportunities will arise for acquiring national forest inholdings of special importance, but such deals will be most successful if they involve a coalition of interests that includes government agencies—whether federal-, state-level, or both—and nonprofit organizations. One such project is the Rocky Fork tract in the Cherokee National Forest in Tennessee, comprising 9,624 acres in the southern Appalachian Mountains. Efforts to conserve this property are under way through a partnership between the Conservation Fund, a nonprofit; the state of Tennessee; and the Forest Service.

A century ago, it is doubtful John Weeks or anyone else fully anticipated the profound impact of the law they passed authorizing the purchase of land within the watersheds of navigable rivers. Today, most people take for granted the millions of acres of national forest in the eastern United States, probably assuming these forest lands always existed as they appear now. There are many lessons to be learned from the legacy of the Weeks Act, particularly at a time when we cope with the challenges of climate change and environmental pollution. Of special relevance today is the understanding that, while our natural resources are both fragile and finite, with enlightened public policy we can effect change for the benefit of future generations.

Thank you, John Weeks. □

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NOTES

1. U.S. Department of Agriculture, "Final Report of the National Forest Reservation Commission for the Fiscal Year ending September 30, 1976, and Subsequent Actions to October 22, 1976," (Washington, DC, November 1977), 12.
2. Act of September 2, 1958; 16 U.S.C. 521a.
3. In 1976, when the program was winding down, the Forest Service reported purchases on 335 tracts totaling 40,204 acres, or an average transactional average of about 120 acres. See "Final Report of the National Forest Reservation Commission," 2.
4. The NFRC was abolished in 1976 by section 17 of the National Forest Management Act, and the NFRC functions were transferred to the secretary of Agriculture. Since then, the secretary has occasionally designated purchase units to expand existing national forest boundaries.
5. USDA Forest Service, "Weeks Law," in *The Principal Laws Relating to Forest Service Activities* (Washington, DC: Government Printing Office, 1993), 20–22.
6. Arizona, Alaska, Connecticut, Delaware, Hawaii, Kansas, Maryland, Massachusetts, New Jersey, New York, and Wyoming have not passed laws.
7. States that passed enabling laws prior to 1911 are Alabama (1907), Georgia (1901), Maine (1903), New Hampshire (1903), North Carolina (1901), South Carolina (1901), Tennessee (1901), Virginia (1901), and West Virginia (1909).
8. In *North Dakota v. United States*, 460 U.S. 300 (1983), the Supreme Court ruled on a case involving North Dakota's attempt to impede land acquisitions under the federal Migratory Bird Hunting Stamp Act. The court held that once state consent is given to a federal acquisition program, it cannot be revoked at will.
9. In one Vermont town, landowners were purportedly required to pay 20 percent of the gross selling price of the property as a condition to the town consenting to acquisition of the land for national forest purposes.
10. Until the 1970s, all title reviews for federal government land acquisitions were performed by the Land Acquisition Section of the Department of Justice. At that time, the task of land title review and approval was delegated to the chief legal officer of each federal department or agency authorized to buy land. At the Department of Agriculture, this delegation was made to the General Counsel who sub-delegated that authority to each Office of the General Counsel's field office. They now conduct all title reviews and approvals for Forest Service land acquisitions.
11. In order to avoid strengthening the opposition to enactment of the Weeks Act, the sponsors of the legislation did not expressly authorize condemnation. Instead, reliance was made on a general statute enacted in 1888 authorizing condemnation for the procurement of real estate (See 25 Stat. 357).
12. Since 2003, a provision in the appropriations for the Interior Department and the Forest Service precludes the use of condemnation without the prior approval of the Appropriations Committees. For example, see "Appropriations for Fiscal Year 2010" at §414, Public Law 111-88 (123 Stat. 2959).
13. Sometimes the condemnation net was cast too widely and some land was inadvertently acquired. In 1943, Congress authorized the Forest Service to quitclaim back to land claimants any land "acquired through mistake, misunderstanding, error or inadvertence." See Act of July 8, 1943; 7 U.S.C. § 2253.
14. See 36 Stat. 962.
15. Act of March 4, 1913 (37 Stat. 855).
16. In amended forms, these regulations are still on the books. See Title 36, Code of Federal Regulations, sections 251.14 (timber), 251.15 (minerals), 251.17 (continued occupancy), 251.18 (rights-of-way), 251.19 (waters).
17. *United States v. Polino*, 131 F. Supp. 772 (ND West Virginia, 1955).
18. See *United States v. Belville Mining Company*, 763 F. Supp. 1411 (S.D. Ohio 1991); *Affirmed*, 999 F. 2d 989 (6th Cir., 1993).
19. *Minard Run Oil Company, et al. v. U.S. Forest Service*, 2011 WL 4389220, C.A.3 (Pa.), September 20, 2011 (NO. 10-1265, 10-2332).
20. Public Law 106-429.
21. In *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), the Supreme Court upheld the constitutionality of an Indiana statute extinguishing unused mineral interests after 20 years of nonuse unless the owner of the severed interest filed a statement of claim. The court rejected the contention that the statute constituted a taking of private property without just compensation, holding that it was the mineral owner's failure to use the property, rather than any action by the state, which caused the lapse of property rights.
22. *United States of America v. B. P. Allison, et al.*, No. 2:94-CV-83-WCO, U.S. District Court for the Northern District of Georgia, Gainesville Division.
23. Depending on the state, a person can acquire title to land based on actual and open occupancy and use which is adverse to the actual owner of land for a statutory period of time.
24. 16 U.S.C. 3210(a): "The Secretary of Agriculture . . . shall provide such access to nonfederally owned land with the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided that such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System."
25. For example, see *United States v. Vogler*, 859 F. 2d 638 (9th Cir. 1988).
26. For example, see *Srynsky v. United States*, 271 F. 3d 595 (4th Cir. 2001).
27. For example, see *United States v. Lindsey*, 595 F. 2d. 5 (9th Cir. 1979).
28. Private Law 101-8; 104 Stat. 5143 (1990).
29. *United States v. Kubalak, et al.*, 365 F. Supp. 2d 677 (WDNC, 2005).
30. The states in the region are: Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Texas, Oklahoma, and Florida.
31. U.S. Department of Agriculture, *Land Areas of the National Forest System*, FS-383 (Washington, DC, 2011), 20.
32. The states in the region are: Minnesota, Wisconsin, Illinois, Missouri, Indiana, Ohio, Michigan, Pennsylvania, New York, Vermont, New Hampshire, Maine, and West Virginia.
33. *Land Areas of the National Forest System*, 23.