

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

March 5, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff – Brandon Miller  
Subcommittee on Federal Lands (x6-7736)

Mark-Up: **H.R. 5133 (Rep. Rob Bishop)**, To reauthorize the Federal Land Transaction Facilitation Act, and for other purposes.  
**March 7, 2018, at 10:15 a.m.; 1324 Longworth House Office Building**

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## ***H.R. 5133, Federal Land Transaction Facilitation Act Reauthorization of 2018***

### **Summary of the Bill**

H.R. 5133, introduced by Representative Rob Bishop (R-UT-01), permanently reauthorizes the Federal Land Transaction Facilitation Act (FLTFA, Public Law 106-248), which was first enacted in 2000 and expired under current law in 2011. Through FLTFA, the revenue generated by Bureau of Land Management (BLM) sales of disposable land is permitted to be retained in order to provide funding for high-priority land conservation. BLM is also authorized to receive equalization payments from land that has been exchanged. The disposal revenue is distributed in the following manner: the State in which the land is sold (4%), and the Federal Land Disposal Account (96%).

The funds held in the Federal Land Disposal Account are apportioned such that 80% are required to be used for land acquisitions within the State in which funds were received, and 20% to be used for land acquisitions in any of the other ten contiguous Western States or Alaska. H.R. 5133 places emphasis on wildlife-dependent recreation in support of sportsmen and women. The bill also requires BLM to create and maintain a publicly-available database of all lands available for disposal. Further this legislation creates additional flexibility to more effectively and efficiently fund conservation in the Western States.

### **Background**

FLTFA is a program that has successfully facilitated strategic federal land sales by BLM to provide funding for high-priority land acquisition. FLTFA provides funding for BLM, U.S. Forest Service (USFS), National Park Service (NPS), and U.S. Fish and Wildlife Service (USFWS) land conservation projects that increase public access for outdoor recreation, hunting, fishing as well as conservation of wildlife habitat. Funds are also used to protect water quality and preserve historic and cultural resources. FLTFA has resulted in a net reduction of federal lands.

Before FLTFA expired in July 2011, BLM completed hundreds of land sales, generating over \$113 million, which funded 39 conservation projects in Western States. Many ranchers and farmers purchased BLM lands adjacent to their properties, often allowing them to expand their operations. BLM also sold lands with timber interests, to real estate companies, community colleges, landfills, and others. BLM sales helped support economic development, consolidate land ownership, and create jobs. FLTFA's implementation between 2000-2011 resulted in BLM selling 27,249 acres of low-priority lands and federal agencies acquiring 18,093 acres of high-priority lands, at a ratio of 3 federal acres sold for every 2 federal acres acquired. Completed FLTFA land conservation projects have included river frontage for fly-fishing access at North Platte River SRMA, big-game winter habitat at Elk Springs Area of Critical Environmental Concern in New Mexico, historic preservation at Canyons of the Ancients National Monument in Colorado, and other sites.

For use of the land acquisition funds, nominations shall be submitted to BLM, and an Interagency team (BLM, USFS, NPS and USFWS) will evaluate and rank proposals. A 2003 Interagency MOU recommended the distribution of land acquisition funds as the following: 60% for BLM, 20% for USFS; 10% for USFWS, and 10% for NPS. Approvals from the Secretaries of the Interior and Agriculture are required to authorize the funding.

### **Support for the Legislation**

#### [List of Supporters](#)

### **Major Provisions/Analysis of H.R. 5133**

#### Section 2:

Paragraph 1 - Expands the definition of "exceptional resource" (the term describing what land can be targeted for acquisition using FLTFA proceeds) to include land acquired for "recreational access and use."

Paragraph 2 - Ensures that any land marked for disposal by BLM qualifies for sale, and that proceeds can be used to buy State or private land within any federal area. Under the 2000 authorization, only land marked for disposal prior to 2000 was eligible for sale, and acquisition could only target land encumbered by federal areas established as of 2000.

Paragraph 3 - Requires BLM to create and maintain a publicly-available database of all lands available for disposal.

Paragraph 4 - Four years after a land sale is made, drops the requirement in current law that 80% of those proceeds be made available for land acquisition in the same State in which the sale occurred. The wide divergence of federal ownership patterns in Western States means some States have more federal land suitable for disposal than they have land-locked private or state land appropriate for federal acquisition. This provision provides flexibility to shift acquisition dollars to other States, but only after the States have had ample time to identify land suitable for conservation.

Paragraph 5 - In developing procedures to prioritize land for acquisition, the legislation requires agencies to consider "*the extent to which the acquisition of the land or interest therein will*

*increase the public availability of resources for, and facilitate public access to, hunting, fishing and other recreation activities.”*

Paragraph 6 - Makes this authorization permanent by striking the FLTFA termination language.

Paragraph 7 - Makes technical and conforming changes to account for legislation passed since 2000.

### **Cost**

A Congressional Budget Office cost estimate has not yet been completed for this bill.

### **Administration Position**

The Bureau of Land Management 2019 budget proposes to permanently reauthorize FLTFA.

### **Anticipated Amendments**

None

### **Effect on Current Law**

#### **Showing Current Law as Amended by H.R. 5133**

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

### **The Federal Land Transaction Facilitation Act (43 U.S.C. 2301 et seq.)**

#### **Section 203 (43 U.S.C. 2302)**

#### **§2302. Definitions**

In this chapter:

##### **(1) Exceptional resource**

The term "exceptional resource" means a resource of scientific, natural, historic, [cultural, or] cultural, recreational access and use, or other recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.

##### **(2) Federally designated area**

The term "federally designated area" means land in Alaska and the eleven contiguous Western States (as defined in section 1702(o) of this title) that [on July 25, 2000, was] is within the boundary of-

(A) a national monument, area of critical environmental concern, national conservation area, national riparian conservation area, national recreation area, national scenic area, research natural area, priority species and habitats designated in a land use plan in accordance with subpart E (entitled "Fish and Wildlife") of part I of Appendix C of Bureau of Land Management Land Use Planning Handbook H-1601-1 (Rel 1-1693), or a special

recreation management area, national outstanding natural [area, or] area, a national natural landmark managed by the Bureau of Land Management;

(B) a unit of the National Park System;

(C) a unit of the National Wildlife Refuge System;

[(D) an area of the National Forest System designated for special management by an Act of Congress; or]

(D) a National Forest or National Grassland in the National Forest System;

(E) an area within which the Secretary or the Secretary of Agriculture is otherwise authorized by law to acquire lands or interests therein that is designated as-

(i) wilderness under the Wilderness Act (16 U.S.C. 1131 et seq.);

(ii) a wilderness study area;

(iii) a component of the Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or

(iv) a component of the National Trails System under the National Trails System Act (16 U.S.C. 1241 et seq.).

Section 205 (43 U.S.C. 2304)

## **SEC. 205. DISPOSAL OF PUBLIC LAND.**

(a) In General.--The Secretary shall establish a program, using funds made available under [section 206, to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans (as in effect on the date of enactment of this Act) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).] section 206—

(1) to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712);

(2) not later than 180 days after the date of the enactment of the Federal Lands Transaction Facilitation Act Reauthorization of 2018, to establish and make available to the public, on the website of the Department of the Interior, a database containing a comprehensive list of all the land referred to in paragraph (1); and

(3) to maintain the database referred to in paragraph (2).

(b) Sale of Public Land.--

(1) In general.--The sale of public land so identified shall be conducted in accordance with sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1719).

(2) Exceptions to competitive bidding requirements.--The exceptions to competitive bidding requirements under section 203(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713(f)) shall apply to this section in cases in which the Secretary determines it to be necessary.

(c) Report in Public Land Statistics.--The Secretary shall provide

in the annual publication of Public Land Statistics, a report of activities under this section.

[**(d) Termination of Authority.--The authority provided under this section shall terminate 11 years after the date of enactment of this Act.**]

Section 206 (43 U.S.C. 2305)

## **§2305. Federal Land Disposal Account**

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### **(c) Use of the Federal Land Disposal Account**

#### **(1) In general**

Funds in the Federal Land Disposal Account shall be expended in accordance with this subsection.

#### **(2) Fund allocation**

##### **(A) Purchase of land**

Except as authorized under subparagraph (C), funds shall be used to purchase lands or interests therein that are otherwise authorized by law to be acquired, and that are-

- (i) inholdings; and
- (ii) adjacent to federally designated areas and contain exceptional resources.

##### **(B) Inholdings**

Not less than 80 percent of the funds allocated for the purchase of land within each State shall be used to acquire inholdings identified under [section 2303 of this title](#).

##### **(C) Administrative and other expenses**

An amount not to exceed 20 percent of the funds deposited in the Federal Land Disposal Account may be used by the Secretary for administrative and other expenses necessary to carry out the land disposal program under [section 2304<sup>1</sup> of this title](#).

##### **(D) Same State purchases**

Of the amounts not used under subparagraph (C), not less than 80 percent shall be expended within the State in which the funds were generated. Any remaining funds may be expended in any other State.

**(E) Any funds made available under subparagraph (D) that are not obligated or expended by the end of the fourth full fiscal year after the date of the sale or exchange of land that generated the funds may be expended in any State.**

#### **(3) Priority**

The Secretary and the Secretary of Agriculture shall develop a procedure for prioritizing the acquisition of inholdings and non-Federal lands with exceptional resources as provided in paragraph (2). Such procedure shall consider-

- (A) the date the inholding was established (as provided in [section 2303\(c\) of this title](#));

(B) the extent to which the acquisition of the land or interest therein will increase the public availability of resources for, and facilitate public access to, hunting, fishing, and other recreational activities;

[(B)] (C) the extent to which acquisition of the land or interest therein will facilitate management efficiency; and

[(C)] (D) such other criteria as the Secretary and the Secretary of Agriculture deem appropriate.

**(4) Basis of sale**

Any land acquired under this section shall be-

(A) from a willing seller;

(B) contingent on the conveyance of title acceptable to the Secretary, or the Secretary of Agriculture in the case of an acquisition of National Forest System land, using title standards of the Attorney General;

(C) at a price not to exceed fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions; and

(D) managed as part of the unit within which it is contained.

**(d) Contaminated sites and sites difficult and uneconomic to manage**

Funds in the Federal Land Disposal Account shall not be used to purchase land or an interest in land that, as determined by the Secretary or the Secretary of Agriculture-

(1) contains a hazardous substance or is otherwise contaminated; or

(2) because of the location or other characteristics of the land, would be difficult or uneconomic to manage as Federal land.

**(e) Chapter 2003 of title 54**

Funds made available under this section shall be supplemental to any funds appropriated under chapter 2003 of title 54.

**[(f) Termination**

On termination of activities under section 2304<sup>1</sup> of this title-

(1) the Federal Land Disposal Account shall be terminated; and

(2) any remaining balance in the account shall become available for appropriation under section 200303 of title 54.]

Section 207 (43 U.S.C. 2306)

**§2306. Special provisions**

**(a) In general**

Nothing in this chapter provides an exemption from any limitation on the acquisition of land or interest in land under any Federal law in effect on July 25, 2000.

**(b) Other law**

This chapter shall not apply to land eligible for sale under-

(1) Public Law [96-568] 96-586 (commonly known as the "Santini-Burton Act") (94 Stat. 3381); [or]

(2) the Southern Nevada Public Land Management Act of 1998 (Public Law 105-263; 112 Stat. 2343)[.];

(3) the White Pine County Conservation, Recreation, and Development Act of 2006 (Public Law 109-432; 120 Stat. 3028);

(4) the Lincoln County Conservation, Recreation, and Development Act of 2004 (Public Law 108-424; 118 Stat. 2403);

(5) subtitle F of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1132 note; Public Law 111-11);

(6) subtitle O of title I of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www note; Public Law 111-11);

(7) section 2601 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 1108); or

(8) section 2606 of the Omnibus Public Land Management Act of 2009 (Public law 111-11; 123 Stat. 1121).