

Conflict and History at Malheur National Wildlife Refuge

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On January 2, 2016, a peaceful rally was held in Burns, Oregon, to protest legal actions against two local ranchers. Afterward, a few participants traveled to [Malheur National Wildlife Refuge](#) (MNWR), which is managed by the U.S. Fish and Wildlife Service (FWS). They took over the isolated MNWR Visitor Center (MVC). The MVC was closed, and no employees were present at the time of the takeover. The refuge, as well as federal Bureau of Land Management (BLM) and Forest Service offices in Burns, remains closed.

On January 26, 2016, federal law enforcement arrested eight participants at a roadblock north of MNWR. Another participant was killed. The following day, three occupiers surrendered to law enforcement. An arrested leader in the group has [asked for the remaining occupiers to leave](#); according to reports, [four individuals remain at the MVC](#). Their plans are not yet clear.

Although the cited cause for the occupation was the ranchers' resentencing, the issue reflects the larger conflict over management goals and [ownership of federal lands](#). However, [FWS does not have general authority to dispose of its lands](#). With few exceptions, wildlife refuge lands administered by FWS can be disposed of only by an act of Congress (16 U.S.C. §§668dd(a)(5) and (6)).

In 2012, ranchers Dwight and Steven Hammond were accused of setting several fires during 2001 and 2006; some of the fires burned lands owned by BLM. The 2006 fire also burned land within the MNWR. According to press reports, the two ranchers argued that BLM took excessive time in setting controlled range fires to mitigate future fires and slow the spread of invasive species. BLM responded that the resulting fires endangered people, property, wildlife, and the environment and cost more than \$600,000 for containment. The ranchers were convicted and sentenced to three months (Dwight Hammond) and one year (Steven Hammond) in prison. In 2014, an appeals court held that the arson sentences did not meet the required federal minimum of five years. In 2015, the ranchers were sentenced to the remaining terms. The Hammonds voluntarily reported to federal prison.

According to press reports, among the claims made by the occupiers is that MNWR land was taken illegally or

unconstitutionally. Whether the claims refer to the whole refuge or only to certain portions is unclear, as is the claims' precise justification. However, similar claims have not been upheld in [past court decisions](#). The federal government acquired western lands in the 1800s primarily from foreign governments; when western states joined the United States, their statehood acts gave up rights to claim lands retained by the federal government within their boundaries as a condition of joining the United States. However, the boundaries of the federal government's lands, particularly those adjacent to waters, were not always certain and often changed due to acquisition or disposal. The history of land retention or acquisition at MNWR is particularly complex.

Land Acquisitions at MNWR

Lake Malheur and Lake Harney are two natural lakes in the rangelands of southeast Oregon. Their waters host abundant migratory, breeding, and overwintering birds. By the early 20th century, their bird populations had been devastated by feather collectors for the millinery trade.

In the late 19th century, land ownership immediately around the two lakes was in dispute due to shifting shorelines and inadequate land surveys. The [Comprehensive Conservation Plan](#) (CCP) prepared by FWS for MNWR reviewed some of the complex legal history of the refuge and its lands. A few major landmarks are summarized below.

Table 1. Lands Forming the Malheur National Wildlife Refuge

Origin of Acquisition	Acres
Reserved from Public Domain	57,898
Acquired by Another Federal Agency (U.S. Department of Agriculture)	55,930
Purchased by FWS	73,068
Donated	240
Donated Easement	31
Total	187,167

Source: Fish and Wildlife Service (FWS), [Statistical Data Tables for Lands Under Control of the Fish & Wildlife Service \(as of 9/30/2015\)](#), Table 3.

Notes: The Comprehensive Conservation Plan reports a different figure for lands reserved from the public domain. The origin of the error is unclear, but the Statistical Data Tables are authoritative, according to the FWS Realty Office.

In 1908, President Theodore Roosevelt signed Executive Order (E.O.) 929 setting aside Lake Malheur and Lake Harney and "the smallest legal subdivisions which touch the shore line" and interconnecting waters. The "Lake Malheur Reservation" was placed under the Secretary of Agriculture's jurisdiction.

President Herbert Hoover issued temporary withdrawals of public lands around the lakes (E. O. 5891), and President Franklin Roosevelt withdrew additional lands (E.O. 6152). Both withdrawals were for studies on the lands' suitability as migratory bird refuges. Roosevelt also approved funds for purchase of land in the area (E.O. 6724). The CCP reported that a total of 5,070 acres was purchased from 10 landowners through condemnation at what was judged at the time (in 1935) to be fair market value. In the same year, the CCP noted that an additional 64,717 acres were purchased from a land company and 14,518 acres were purchased from a ranch unable to support livestock during an ongoing drought. Title to lands around the two lakes was litigated on [several occasions](#); in 1942, the U.S. Court of Appeals for

the Ninth Circuit [held](#) that certain additional lands were, in fact, legally privately owned.

According to the CCP, in 1944 the Migratory Bird Conservation Commission approved acquisition of all the privately owned lands; price agreements were reached on 13,004 acres. After the refuge was transferred to the Department of the Interior, the Interior Secretary requested condemnation proceedings for the remaining 10,943 acres. Condemnation requires compensation at fair market value, but condemnation proceedings on these holdings were dropped when the courts accepted a much higher value for the acreage than the federal government would accept. However, through willing sellers, over several years the remaining lands were purchased or exchanged, becoming part of the refuge.

The early acquisitions may or may not be a significant source of the current controversy. The controversy instead may reflect the broader question of [ownership](#) and management of all federal lands. For this refuge, the passage of more than 70 years since the early acquisitions may complicate the occupiers' hopes for the return of purchased land or for disposition of lands reserved from the public domain.