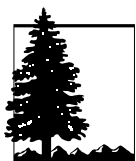


PERC POLICY SERIES

FEDERAL LAND EXCHANGES: LET'S END THE BARTER

BY TIM FITZGERALD

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JANE S. SHAW
SERIES EDITOR

P E R C
502 SOUTH 19TH AVENUE, SUITE 211
BOZEMAN MT 59718-6827
PHONE: (406) 587-9591 • FAX: (406) 586-7555
perc@perc.org • www.perc.org

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TO THE READER

Land exchanges are used by government agencies to reconfigure fragmented and scattered land holdings. Such fragmentation, a legacy of past government land policies, makes management difficult and access sometimes impossible. While land exchanges have a valuable purpose, they are cumbersome and time-consuming and frequently criticized for not being fair trades. Because of their complexity, many useful trades are never completed.

“Federal Land Exchanges: Let’s End the Barter,” by Tim Fitzgerald, recommends replacing such costly and time-wasting transfers with buying and selling federal land. The paper explains the complex land exchange program, includes specific examples, and shows how markets can correct many of the problems. The author is a former research assistant with PERC who currently makes his living as a guide and outfitter in Colorado.

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“**T**he reason
they invented money
was that the barter system
was slow and cumbersome.”

—*Harlan Hobbs*

Realty Officer, National Park Service (retired)
(Nelson et al. 1998, 12)

INTRODUCTION

Although barter has long since ceased to be a major means of trade, it persists in the federal government. Over the past seven years the federal government has traded nearly two and a half million acres of land with private individuals or corporations (BLM 1993–99). While these land exchanges have an important purpose, they are often prolonged and cumbersome and involve negotiations that have been widely criticized on financial and environmental grounds.

The purpose of this *PERC Policy Series* paper is to explain why exchanges should be replaced by selling and buying land. Indeed, Congress has begun to recognize the awkwardness and inefficiency of these trades. A bill sponsored by Peter Domenici (R-New Mexico) and Jeffrey Bingaman (D-New Mexico), which has the backing of the Clinton administration, would take an initial step to free up the ability of land management agencies to buy and sell land.

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This essay will discuss the history that led to land exchanges and describe the land exchange process, indicating the differences between the Forest Service and the Bureau of Land Management and giving examples of actual exchanges. The paper will look at ways that states, which also conduct such transfers, have smoothed the land exchange process and will show how markets can correct many of the deficiencies of the present system.

A SYSTEM OVERWHELMED

In 1996, Plum Creek Timber, a logging company, proposed exchanging 62,000 acres of pristine old-growth forest along the icy backbone of Washington's Cascade Mountains in return for 16,500 acres of timberland elsewhere in the state. As Plum Creek entered the highly-regimented federal land exchange process, it stipulated that it could not wait forever; a deal needed to be completed within two years—by the end of 1998. Everyone, it seemed, favored the trade, including the Sierra Club and local environmental groups. Yet the process proved arduous and slow and almost fell through. Only a bill in Congress, introduced by Washington's congressional delegation with the support of the governor and the state legislature, rescued the deal.¹ The agreement was concluded about a year after the deadline and involved only about two-thirds of the originally proposed acreage.

The participants in this exchange were fortunate to achieve as much as they did. Land exchanges between the federal government and private owners are a nightmare, even when the benefits to both the government and the private company are obvious.

Land exchanges are performed nationally, but they are used most in the West, where the federal government is the single largest landholder and where public and private land is intermingled in a patchwork mosaic. Federal land agencies have trouble managing small parcels scattered over the landscape. The federal land exchange program allows swaps between land management agencies and private parties.

The process, however, is so complex that an entire industry

has sprung into existence to facilitate exchanges for private parties. Exchange proponents must hire private firms to guide them through the labyrinth of federal regulations on the topic (Nelson et al. 1998). As property is rearranged via land exchange, local citizens worry whether or not the government is in fact acting in the public interest, and many want a voice in the process.

In spite of these problems and obstacles, some land exchanges do occur, and in fact they have been increasing in number. From 1993 to 1999 the Bureau of Land Management (BLM) and Forest Service performed land exchanges involving 2.4 million acres, leading to a net gain in federal land of just under 20,000 acres (BLM 1993–99).

WHY EXCHANGES?

Land exchanges occur because current holdings reflect inefficient legacies of the nineteenth century. The current fragmented land ownership pattern creates management problems:

- Access to public lands is limited. Because federal holdings are often separated and interspersed with private holdings, it is difficult for either the general public or land managers to obtain access to them.
- Conflicts over uses occur between public and private owners. Logging on private land next to a popular public recreation area can affect the quality of the recreation experience, perhaps by reducing the amount of wildlife or simply because logged-over land may be unsightly. Consolidating ownership under one owner would eliminate conflict.
- Small separated tracts limit managers' flexibility. This is especially a problem for the BLM.² Whether the land is producing commodities or providing recreation, fragmentation makes management difficult.

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- Fragmentation is so severe in some areas that the federal government becomes merely a custodian of land. For example, in La Plata County, Colorado the Bureau of Land Management manages 18,338 acres split into 75 parcels ranging from 0.2 to almost 1,550 acres in size. The median size of these parcels is only 80 acres.³ Pueblo County, Colorado, faces a similar predicament. Eighty-four parcels of BLM land, which amount to 15,820 acres, have a median size of only 40 acres.⁴

HOW WE GOT HERE

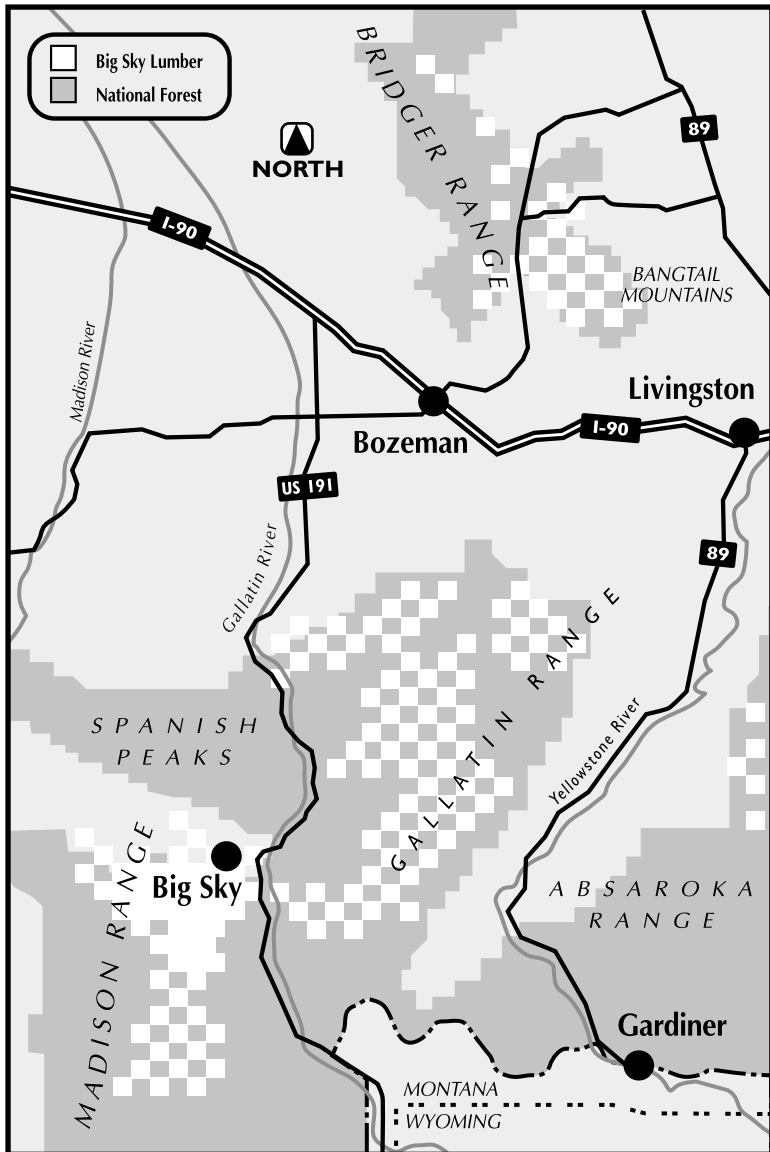
U ntil the end of the nineteenth century, no one expected the federal government to keep much land over the long term. Government policies promoted agriculture and commerce through private ownership and education through grants of land to the states. In fact, however, because the federal government ended up holding a great deal of land (one third of the entire nation), each program contributed to today's fragmented pattern of federal land ownership.⁵

- The Homestead Act of 1862 permitted any man or woman to claim 160 acres provided he or she took measures to improve the land and used it with due diligence. Formalizing "squatter's rights," the act allowed pioneers to choose the best arable land. The process tended to leave less desirable land in the public estate. For example, in the arid West settlers often claimed narrow strips of land in river bottoms instead of larger blocks including rocky uplands. Unclaimed land, which could only be reached through the bottomland, was then used as a grazing common.
- Government policy toward railroads left an indelible mark. To encourage railroad expansion in the West during the late nineteenth century, the federal government granted 131.4 million acres to road corporations and states (BLM 1997,

5). Companies received alternating square mile (640-acre) sections along the railroad right-of-way. Often these grants encompassed an area fifteen or twenty miles on either side of the right of way. Frequently, these private grant lands were sold to other individuals, but the adjacent land sometimes remained under federal control. The resulting checkerboard pattern of private and public holdings can still be seen in many parts of the West, as in Figure 1, which shows a map of the Gallatin National Forest in southern Montana.⁶

- Efforts to promote public education also contributed to today's fragmentation. Starting with the induction of Ohio in 1803, the government began to grant new state governments at least a section (640 acres) in each township (Souder and Fairfax 1996, 20–21).⁷ These lands were to be used for the establishment and improvement of the educational system. Sale and lease of these lands have helped fund the land-grant universities and public primary and secondary schools in western states. In total, almost eighty million acres (about the size of New England plus New York and New Jersey) were allocated for public schools (BLM 1997, 5). While many trades and sales have consolidated state land, single school sections or smaller fragments of state land can still be found.
- In the 1870s, cut-and-run logging of large areas, especially in the Midwest, aroused fears of a timber famine and fear of floods. A preservation movement began to demand that the government set aside land to preserve timber and protect watersheds. The Forest Reserve Act of 1891 allowed the president to withdraw from settlement 17.5 million acres of forestland, almost all of it in large, contiguous blocks (Loomis 1993, 26). In some cases, however, homesteads and private mining claims already existed on these lands, forming inholdings surrounded by reserves. In the vicinity of old railroad grants, the Forest Reserves included sections of federal land checkerboarded with private land.

Figure 1
Gallatin National Forest
(before the Gallatin land exchanges)



Jason King

Federal Land Exchanges: Let's End the Barter

The Forest Service became the official steward of the Forest Reserves in 1905.

Today the Forest Service manages 191 million acres in the 48 contiguous states (GAO 1995). The original compromise of commercial and preservation interests within the Forest Service spawned today's multiple-use management strategy, which struggles to include commodity production (such as grazing and logging), recreation, and protection of environmental amenities including wildlife, biodiversity, and wilderness.

The Bureau of Land Management (1999) faces greater problems with fragmentation on its 177 million acres. The BLM manages all of the public land that was never claimed by anyone else.⁸ The agency frequently inherited parcels of less than one section sprinkled among private holdings, checkerboarded remnants, and areas speckled with inholdings. In many areas, no comprehensive management program was feasible. But other regions that were not penetrated by homesteaders left the BLM areas of a million or more contiguous acres.

LAND EXCHANGES: A WAY TO CORRECT PROBLEMS

Given this fragmentation, land exchanges emerged as a means for federal agencies to improve management. Over the past few years the Forest Service has been involved in several high-profile land exchanges: the Crown Pacific trade in central Oregon, Montana's Gallatin land exchanges, two trades with timber companies in the Washington Cascades (including the Plum Creek trade mentioned above), and numerous smaller deals around the country. Likewise, the BLM has pursued trades, notably around Las Vegas to accommodate rapid urban growth. (Other Interior Department agencies, such as the Park Service or the Bureau of Reclamation, also conduct exchanges. Their regulations are virtually identical with those of the BLM and they will not be considered separately in this paper.)

Figure 2 shows how exchange activity fell dramatically dur-

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ing the late 1960s and early 1970s as a wave of environmental legislation made the process more complicated and laborious. Demand for land led to an increase in exchanges in the early 1980s. Rapid growth in recent years has accelerated the trend.

The details of exchanges vary slightly between agencies, but both the Forest Service and the BLM operate under the auspices of the National Environmental Policy Act (NEPA). Because all land exchanges must involve lands of equal appraised value, appraisals are a central issue in any exchange.

The Problem with Barter

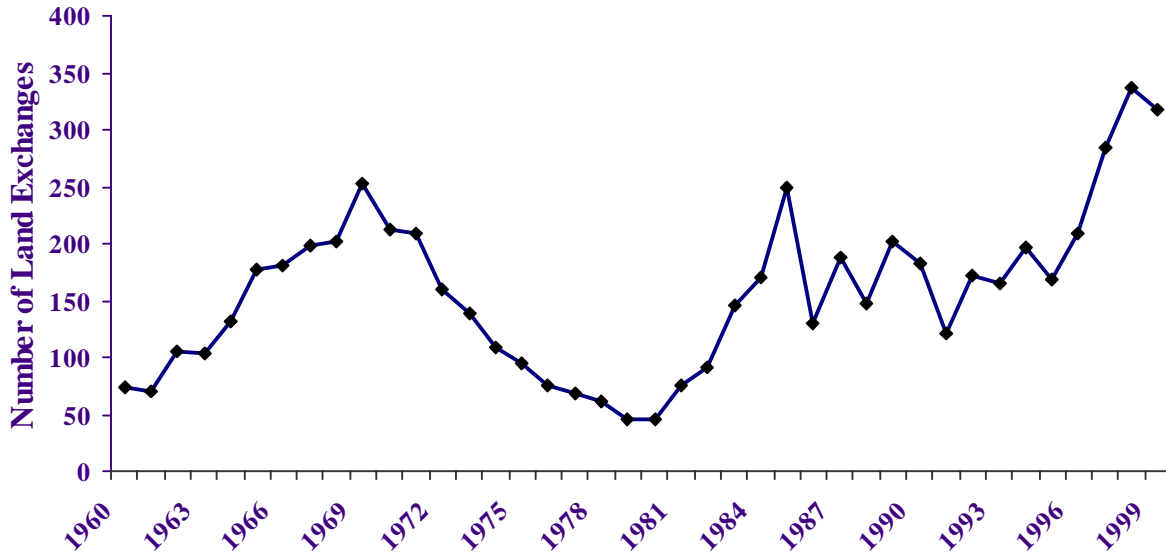
Land exchanges are essentially barter—trade without a medium of exchange such as money. Those who engage in land exchanges therefore face the problem of finding some way to measure the value of different goods. Without the benefit of prices or some other standard, people with different products have a difficult time determining whether a trade makes sense for each person engaged in it—that is, whether it is fair. And even if they can agree on the value of the land they want to trade, finding the right-sized parcels that add up to equal value can be daunting.

To conduct a land exchange, the value of the land must be determined by some means. This is done by appraisal. Appraisals are at the core of any negotiated exchange, since, by law, all exchanges must involve parcels of equal appraised market value.⁹ They are also the stumbling block for many exchanges.

After an initial agreement, an appraisal is conducted to determine if lands of equal value are in fact delivered to each party. One appraiser judges public land while another evaluates private land. Therefore two different individuals (or groups) each look at half of the exchange. This system is intended to provide accurate independent assessments of the property. As a result, however, no single qualified appraiser can determine if the exchange is equal.

To allow the exchange to proceed, there is pressure to make the appraisals come out equal. If that pressure is resisted, then there is the delay and difficulty of adding and subtracting parcels after

Figure 2
Federal Land Exchanges
1960–1999



Source: BLM (various years).

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the appraisals are completed in order to equalize the total value of the exchange. Once appraisals are received, the exact parcels that will be traded can be determined. The Forest Service typically has a preference order for the inclusion of various parcels as the value is adjusted. Even so, this process adds another step in negotiations.

The appraisal system has been heavily criticized, in part because of suspect valuations. One of the most notorious was in 1992 near Paonia, Colorado, when a developer who had an inholding in a wilderness area started flying in supplies and began building a mansion. In an effort to stop construction, the Forest Service offered him a parcel near the ski resort of Telluride that happened to be appraised at the same value as the inholding: \$640,000. Within a year and a half after he received the land from the Forest Service the developer sold his newly acquired property for \$4.2 million (Hearn 1998). The main objection to this exchange was the claim that the Telluride parcel was ridiculously undervalued by the Forest Service to expedite the exchange so that the Forest Service could prevent development inside a wilderness area (Nelson et al. 1998).

Although such episodes are sure to draw reproach, the biggest complaint about appraisals is that they are kept secret until after the exchange has been consummated (Nelson et al. 1998).¹⁰ The stated goal is to protect the confidentiality of the proceedings. However, this has frustrated environmental groups trying to determine if the public is getting a fair deal.

In reality, any appraisal is subject to question because it is an estimation of value rather than a price determined by a market—that is, by finding out what bids and offers are made. Mack Hogans (1998), senior vice president at Weyerhaeuser Company, wrote in the *Seattle Times*, “Like the purchase of a house, property or car by an individual, there’s always someone who thinks the sales price is too high or too low.” With properties such as houses or cars, however, an appraisal is usually a precursor to a market transaction; in land exchanges, the appraisal is regarded as the one true value of the land. This substitution of an appraisal for a price is a fundamental weakness of the system.

A Complicated Process

Land exchanges must follow a complex and lengthy formal procedure. One Forest Service document outlines 56 steps in the exchange process; a similar BLM plan shows 53. The length reflects primarily the NEPA process, which requires compliance with numerous regulations and comment periods.

Most land exchanges take at least two years to complete and longer if the case is large or complicated. The process can drag on for as long as ten years from the time the first negotiations are started until the title is transferred. Some exchanges never even begin once the private interests discover what is involved. The Gunnison National Forest in Colorado has a backlog of exchanges that cannot be processed because of the high costs of completing a trade.¹¹ When Plum Creek Timber initiated its massive trade in Washington, the company set a deadline because it could not keep its assets tied up in negotiations indefinitely.¹² Although the deadline was broken, it did expedite the process.

The land exchange process is time- and labor-intensive. Preliminary discussions outline the basic conditions of the trade. Once the basic terms of the swap are reached, a feasibility report is prepared and the general public is notified, often in the fine print of the legal notices in the local newspaper. At the same time an environmental assessment (or environmental impact statement, depending on the size of the exchange) is initiated, outlining the impacts of the proposed trade on the environment and the community. Significant cultural, community, and archaeological impacts must be investigated in addition to strictly environmental ones. For a major land exchange the environmental impact statement (EIS) can be hundreds of pages long and take months to prepare.

While land exchanges are essentially business deals that are worked out between the government and a private company or individual, they must be open for public comment after a draft of the environmental analysis is completed, in compliance with NEPA. Lawsuits filed by environmental groups are common, particularly in large exchanges, prolonging the process.

Barring lawsuits, after the comment period closes the ex-

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change can run through the formalities of title closing and then be done. Closure usually takes place a minimum of two years after the feasibility report. Of the process Hogans (1998) wrote, “Companies such as Weyerhaeuser, which voluntarily work with the government for mutually beneficial exchanges, would like to see a process that doesn’t take so many years to complete.”

Impartial Incentives?

While private parties typically initiate the exchange process, both the Forest Service and the BLM periodically examine their holdings, on a local level, and identify parcels appropriate to divest. When a proponent of a land exchange approaches an agency, the agency will consult its list of designated properties to determine if an exchange is feasible. These preliminary negotiations can take several years as each side makes various offers.

Because private parties usually start the exchange, some critics claim that most land exchanges are not in the public interest. Janine Blaeloch, director of the Western Land Exchange Project, a Seattle-based anti-land exchange group, has been particularly outspoken. “Under the current federal land exchange policy, the public interest has been subordinated to the interests of private traders” (Western Land Exchange Project 1998, 3). In Blaeloch’s view the “sheer number and momentum” of exchanges is “of great concern” (Durbin 1998).

However, the initiative of private groups does not necessarily mean that an exchange is disadvantageous for the public. Exchanges only occur between an agency and a willing private interest. Managers are likely to pursue trades that they perceive to be advantageous. Trades in which agency personnel do not see public value will not be pursued.

Differences between the Forest Service and BLM

The Bureau of Land Management has more latitude than the Forest Service when it comes to land exchanges. The Forest Service cannot acquire land outside the existing national forest bound-

aries. The BLM can exchange land anywhere within any state. The BLM can also sell land outright, an option that is denied the Forest Service. In fact, the BLM does this every year—3,204 acres were sold nationwide in 1999 for some \$2.2 million (BLM 1999). The BLM cannot retain the revenues to acquire other land, however. These revenues revert to the general treasury.

One notable exception to this rule shows how closely land sales are related to exchanges. A recent act of Congress allows the BLM to sell land in Clark County, Nevada (surrounding Las Vegas), and retain 85 percent of the revenue for conservation purchases.¹³ The remainder is distributed to local and state governments to help fund infrastructure improvements. This legislation was drafted because the land exchange program was overwhelmed by demand for land as Las Vegas expanded (Nalder 1998).

Thus, congressional intervention is sometimes used to facilitate land exchanges—as in the case of Plum Creek's exchange in the central Cascades—or to bypass it altogether, as in Las Vegas. Such congressional action is highly controversial, however. Although it may achieve results (relatively) rapidly, it does so with limited public input and often without extensive environmental research. Additionally, legal recourse is restricted.¹⁴ Despite these shortcomings, legislated exchanges have been used in several cases, including a 500,000-acre consolidation of inholdings in Utah and the Gallatin exchanges in Montana.

RECENT EXCHANGES

Recent examples illustrate the potential and some of the pitfalls of land exchanges. The cases below are examples of large assembled land exchanges that have caused public controversy because of the appraisal process and the exclusion of interested parties in the community. At the same time, they show how land exchanges can be beneficial and illustrate how unique agreements have allowed deals to be completed.

Huckleberry Mountain Exchange

In December 1997 the Mount Baker-Snoqualmie National Forest in Washington concluded a trade with Weyerhaeuser. A year and a half later, an appeals court suspended the trade, ruling that environmental analysis had been insufficient. To amend a sealed deal injects uncertainty into any and every future exchange—if an agreed-upon exchange can be reversed at a later date, how can anyone be confident about entering into such an agreement? This is another indication that the land exchange process is broken.

The controversy stemmed from the appraisals. Under the original terms, the Forest Service received over 32,000 acres of private land, including a 2,000-acre donation that was added to the popular Alpine Lakes Wilderness Area. In exchange, Weyerhaeuser received about 4,300 acres on Huckleberry Mountain east of Enumclaw.

The exchanged lands were extensively checkerboarded. Public land in the area is managed for recreation and wildlife, so creating a larger block of contiguous land assisted the Forest Service's goals (USDA 1996, 15). Weyerhaeuser acquired a valuable piece of timberland in return for acreage that—because of the checkerboard pattern—had been plagued with conflicts with public land users.

Before it was completed, three small, local environmental groups challenged the exchange in court. This litigation was dismissed, and the deeds were exchanged. After the deal was completed, however, several local critics questioned the environmental benefits from the swap.

The Forest Service has goals of preserving roadless areas, reclaiming existing roads, and protecting sensitive old-growth habitat. Yet in this exchange, the Forest Service traded away pristine timber and wildlife habitat in return for acres of clearcuts crossed with roads. From this perspective, the trade seemed to violate all three of its directives. On the other hand, consolidation of checkerboard lands has been a priority of the Forest Service for many years. Checkerboards cause a multitude of management problems, and the trade would create a solid corridor of public land on the western slope of the Cascades. In addition, the land it received had

Federal Land Exchanges: Let's End the Barter

6,000 roadless acres, half a dozen lakes, and 10 river miles of riparian habitat (another priority).¹⁵

Critics also questioned the appraised values. Some of the land that Weyerhaeuser conveyed had been extensively logged. In addition, it was low-productivity ground on which regrowth would be slow. A network of logging roads across steep hillsides would need maintenance. In short, the land was not a good long-term investment as timberland. This explained why Weyerhaeuser, a timber management firm, wanted to get rid of it, especially in return for a parcel with high timber value. The Forest Service conveyed a much smaller parcel, 4,300 acres of mature timber; however, it was one of the few remaining stands of low-elevation mature timber in public hands (Nelson et al. 1998). Did the appraisals properly equate these parcels?

One appraiser looked at the private land and another examined the public land. The criteria are the same as would be used to evaluate a lot in downtown Tacoma or Seattle. These are based on the productive value of the land—included are timber value, access via roads, and productivity, but not necessarily environmental aspects of the land.

The land the public acquired had little marketable timber and low productivity, both of which tended to decrease its value per acre. On the other hand, it had roads, which increased its value per acre. In exchange, the land that Weyerhaeuser received, the Huckleberry Mountain parcel, had stands of mature timber and was located on ground that would quickly regenerate a second crop of trees, but it did not have roads. It had a higher appraised value per acre than the company lands, so—to equalize the value of the parcels—the Forest Service withdrew 2,000 additional acres from the offer after the appraisals came in. Environmental critics have suggested that the private appraisal was still too high and the public appraisal too low.¹⁶

The future of the lands in this trade is uncertain (Draffan and Baeloch 2000, 42). The U.S. Court of Appeals in Portland rendered a decision in May 1999 ordering a new, more comprehensive, environmental analysis by September 2000. The outcome hinges on this review. Weyerhaeuser had already begun logging on

its new acreage when the claim was filed in the appeals court. Even after the interminable exchange process had apparently ground to completion, a fresh lawsuit inaugurated a new stalemate that obviated the earlier work. In sum, the *ex post* amendment of a completed trade indicates that something is seriously wrong with the way federal land exchanges work.

Crested Butte Mountain Resort

In December 1998 an exchange was completed in the Gunnison National Forest in Colorado that involved five parties: the Forest Service, the Colorado State Land Board, Crested Butte Mountain Resort, and two private ranchers. The Forest Service received more than 5,700 acres in exchange for 558. The Forest Service consolidated inholdings formerly held by the state of Colorado. In return, the Forest Service conveyed a parcel adjacent to Crested Butte that would expand the existing ski area plus a cash payment to compensate for the difference in the appraised value of the lands (*Aspen Daily News* 1998). The state received a private ranch while its owner received cash.

There was also a side exchange. Another rancher swapped roughly 150 acres with the Forest Service to resolve a fence line dispute (Environmental Assessment). The exchange of this acreage had been discussed earlier. Once the Crested Butte exchange was underway, adding another 150 acres to the analysis was relatively cheap.¹⁷

The State Land Board owned a number of single-section inholdings throughout the area. The Forest Service constantly tries to acquire such inholdings,¹⁸ and these were particularly attractive to the Forest Service because the State Land Board could have allowed them to be developed, even though they were surrounded by natural forest.¹⁹ The decision to seek a trade was made in 1986; work started on negotiations in 1988. This is a rare case of the federal government taking the initiative in a land exchange.

These negotiations did not proceed well initially. So Crested Butte interceded, recognizing that future expansion of its skiing operation depended on access to national forest land. As is typical

of most land exchanges, this one required a private interest as a catalyst. After years of preliminaries, the three parties formally initiated the exchange process in January 1996. Throughout the remainder of the negotiations, the Forest Service dealt exclusively with Crested Butte. The corporation introduced two local ranchers to the process to round out the deal and also paid for the environmental analysis.

Although some interest groups claim that corporate-sponsored environmental analysis is a conflict of interest, in actuality it facilitates deals that federal agencies do not have the staff to pursue on their own.²⁰ Crested Butte Mountain Resort made this exchange happen. As a result of its involvement the state and federal agencies benefited, and two local ranchers and the ski area were able to improve their operations.

The High Country Citizens' Alliance became involved in the Crested Butte exchange. The group was opposed to expansion of the ski area and claimed that the environmental analysis was flawed because it did not study long-term effects on the surrounding community. (The analysis complied fully with federal regulations, but those regulations do not require study of such impacts.²¹)

As a matter of Forest Service policy, alliance was denied access to the appraisal of the public parcel being conveyed to Crested Butte,²² but the alliance wanted to evaluate the deal independently. Stubborn persistence enabled its members to see this valuation before the deal was closed. Even so, the group filed one of three appeals to stop the exchange. Only after Crested Butte made last-minute concessions concerning community open space did the group withdraw its appeal.

HOW TWO STATES ACCOMPLISH TRADES

In contrast to the federal government, some states have successfully experimented with different land exchange systems and developed easy and effective tools to adjust their holdings. In many areas these lands have been consolidated into blocks for easier management, though elsewhere fragmentation persists.

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Typically, state lands have legislative mandates to provide income for public schools and other public institutions. Thus, they seek to produce an adequate income stream, and lands are sometimes sold or traded to increase income. Because state lands have a greater incentive to adjust their land ownership, we would expect their land sale and exchange laws to be more versatile than the federal laws, and they are. Two creative examples may be applicable to the federal problem.

Colorado: A Role for the State Land Board

Between 1995 and 1998, the Colorado State Land Board conducted fifteen to twenty land exchanges a year, with an average processing time of less than one year.²³ Like the federal program, the process includes public comment periods, appraisals, and environmental analysis. Unlike the federal program, after a proposal is prepared, state employees submit it to the State Land Board, a citizens' board composed of community representatives, which has the power to approve or deny the exchange. Because the board's responsibility is to provide funds for the state's schools, it tends to favor trades that improve returns from the state lands. Its executive power expedites the process.

The state also allows direct sale of land if a comparable asset is purchased with the proceeds within a 24-month period. Unlike a land exchange, this allows managers to buy and sell land when it is available.²⁴ This streamlining allows the state to consolidate and improve the state's holdings more quickly and to take advantage of timely opportunities.

Utah: A Settlement Account

After struggling through years of impasse, Utah reached an agreement with the federal government in 1995 to facilitate land exchanges between the state and the Bureau of Land Management. As in Colorado, the state found it cumbersome, if not impossible, to constantly negotiate exchanges that had to be comprised of equally valued land.²⁵ The solution was the creation of

a settlement account between the state and the BLM.

Like accounts that permit transactions between large banks, the account allowed the two entities to exchange parcels of land that were not necessarily perfectly equal and to carry over any balance in an account. Any discrepancy between values is merely noted in the account, which is settled every three years.²⁶ Since the creation of this account, the state and the BLM have been able to exchange parcels without concerning themselves over complete parity of values. This has opened the door to many exchanges.

HOW MARKETS CAN SIMPLIFY EXCHANGES

Land exchanges have revealed their weaknesses. Using the reforms in Colorado and Utah as models, the federal government should change its regulations to allow agencies to buy and sell land. Today the BLM can sell fragments but cannot directly buy inholdings without applying for funds from the Land and Water Conservation Fund²⁷ or going to Congress. The Forest Service is barred from selling any land. This should be changed.

Actual implementation should take the form of a trust account for land acquisition and disposal. The Forest Service and the Bureau of Land Management would each have its own account, and actual authority for using the account would be local—organized by regions in the case of the Forest Service and by states in the case of the BLM. Land within each state or region could be bought or sold using this account. This would allow a sufficient land base and enough flexibility to permit an active market while maintaining local control

The proceeds from sales would be kept in the fund. Money would then be readily available when a private tract is identified for acquisition, and lands could be divested without having to find a willing private party for exchange. While the BLM is legally able to do this (but without being able to keep and reuse the proceeds), such a program would be new for the Forest Service. Both agencies would have a new ability to use proceeds from land sales

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to purchase land at their discretion, rather than depending on congressional appropriations.

This greater freedom would create a strong incentive for managers to consolidate federal lands. It would not open the door to widespread land acquisitions, however, since funds would become available only through sales. Acquired land would be used to reduce fragmentation and improve management by purchasing inholdings or consolidating checkerboarded areas.

For sales of large tracts or multiple parcels, it may be preferable to hold an auction. The primary benefit of an auction is that it reduces the costs associated with selling land while procuring the highest possible price. Many states sell land by auction.²⁸ An auction or reliance on bids is preferable to noncompetitive private-party sales in which other bids are not solicited.

A second major advantage of using markets is the lesser role for appraisals. Appraisals have proved problematic in many exchanges. They have been criticized for low valuations for public land and high valuations for private land. In a market, appraisals would only be used as a proxy—for reserve prices in auctions, for example. When land is offered in an open market, the government will, by definition, receive the market price. This price will represent the value of the highest and best marketable use of the land at that time. Prices generated by markets represent real values placed on properties by real people instead of abstract estimates, and they take into account amenities such as wildlife habitat that might be overlooked in appraisals.

Keeping land management decisions out of the political sphere is another benefit of using markets. When the exchange system fails, managers must resort to politics. Congressional legislation has addressed several land exchanges in the past two years—including three exchanges that might not have been completed otherwise.²⁹ Legislation changed the land sale rules for the Nevada BLM to allow sale of land and retention of proceeds for other purchases. While lobbying yields some results, forcing land managers to go to Washington every time they need a land exchange unnecessarily politicizes the process. All that is needed for this proposal is one bill that permits the local authority (state BLM offices and

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regional Forest Service offices) to purchase and sell public land with full retention of revenues.³⁰

Most importantly, this proposal creates a strong bureaucratic incentive for managers to make rational decisions. In its current form, the land exchange process is time-consuming and expensive for a federal manager. Yet selling land outright, which might accomplish the agency's goals more quickly, is not in the interest of the typical bureaucrat because it reduces the area of his or her control. If agency officials had a guarantee that a comparable asset could be purchased as a replacement, suddenly bureaucrats would find themselves in a situation in which selling land would not necessarily lead to a smaller land base over the long run. This would create an incentive for managers to improve their holdings.

Any reform that applies to government land is sure to elicit public reaction. In particular, net reduction of public acreage is immensely unpopular, while trades like the Weyerhaeuser or Plum Creek exchanges that give the government far more acreage than it gives up tend to be popular. Weyerhaeuser spokesman Frank Mendizabal emphasized this point: "Seven to one. That's what this exchange is all about: seven to one" (Nelson et al. 1998, 2). How a trade in which the government gave up substantially more acreage would be received is another matter. The proposal made here leaves those decisions up to the local BLM or Forest Service manager.

The plan would not relax environmental regulations. The NEPA process would continue to be an important part of federal land management. Before designating land for sale, an agency would have to perform an environmental assessment with the attendant public comment period. Concerns such as preservation of roadless areas, critical wildlife habitat, and old-growth forests would still weigh heavily in federal planning. More efficient ownership would enhance managers' abilities to protect the environmental conditions of the property under their control.

The government is not blind to the deficiencies of the current system. In February 2000, Senator Domenici (R-NM) introduced a bill in the Senate that would end this barter.³¹ The bill, which has the backing of the Clinton administration, creates a "Federal Land Disposal Account" controlled by the Secretaries

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of the Interior and Agriculture that would operate independent of the federal treasury. The account would allow case-by-case sale or purchase of land by the federal government as an alternative to trading lands, with the revenues to be deposited in this account for future purchases.

Although this proposal takes steps towards eliminating the muddle of federal land exchanges, it would perpetuate some of the inadequacies of the current system. As the bill is currently written, sale of public land would still require appraisals to determine prices rather than allowing auctions or competitive bids. Furthermore, it creates only one account to be shared by the BLM and the Forest Service, thereby perpetuating the long-standing feud between the two agencies and precluding local control. And it would only be temporary—the bill mandates the closure of the account just ten years after its creation. Thus more extensive reform, as outlined in this paper, is necessary.

CONCLUSION

Currently, the federal land exchange program is a slow and awkward way to rearrange federal holdings. The land exchange system needs reform as the demand for land around public holdings increases and before conflicts and tension over land use prevent any reallocation. Allowing the direct sale and purchase of land with revenues retained in a trust fund will give managers the flexibility they need to make better management decisions. Changes of the kind outlined here will help federal agencies do a better job.

NOTES

1. The provision was part of the 1999 Omnibus Spending Bill in the 106th Congress.

2. Sandra Brooks, Field Manager, Billings Field Office, Montana BLM, telephone conversation, February 19, 1999.

3. Clyde Johnson, Realty Specialist, San Juan Field Office, Colorado BLM, telephone conversation, February 11, 1999.

4. These data were provided to the author by Andy Senti, longtime cartographer for the Colorado BLM. Many areas face such severe fragmentation problems that officials are unable to report even general land statistics.

5. For an authoritative account of these policies see Gates (1968); a briefer synopsis can be found in Nelson (1995, 5–35).

6. The Gallatin exchange was a massive two-part legislated exchange that resolved some of the checkerboard fragmentation in the Gallatin National Forest in 1993 and 1998. Michael Scott, Program Director, Greater Yellowstone Coalition, Bozeman, Montana, telephone conversation, January 7, 1999.

7. Maine, Texas, and West Virginia had no public land and did not receive grants (Souder and Fairfax 1996, 20–21).

8. In 1934 livestock owners lobbied Congress to manage the remaining public domain to reduce overgrazing. The Taylor Grazing Act effectively ended homesteading in the lower 48 states. The passage of the Federal Land Policy and Management Act in 1976 prescribed perpetual management of public lands by the BLM.

9. CFR 36 Sec. 254.3 (3)c; CFR 43 Sec. 2201.6

10. This policy is under discussion. The Western Land Exchange Project has sued the Forest Service in U.S. District Court in Seattle to divulge appraisal information under the Freedom of Information Act. Officials in both the BLM and the Forest Service have acknowledged that the policy may need to be changed (Draffan and Blaeloch 2000, 33).

11. Craig McGwire, Recreation Forester, Gunnison Ranger District, Gunnison, Colorado, personal interview, December 16, 1998.

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12. Michael Yeager, Land Use Planning Manager, Plum Creek Timber, Seattle, telephone conversation, January 27, 1999.

13. The Southern Nevada Public Land Management Act, passed in October 1998, made this possible.

14. Fear that lawsuits by environmental groups would delay the process indefinitely was one of the primary reasons for taking the Plum Creek exchange to Congress.

15. Charlie Raines, Director, Sierra Club Cascade Checkerboard Project, Seattle, WA, telephone conversation, January 15, 1999.

16. Raines, telephone conversation, January 15, 1999.

17. Jim Carson, Staff Officer for Recreation, and Jim Dunn, Lands Forester, Grand Mesa-Uncompahgre-Gunnison National Forest, Delta, Colorado, personal interview, December 17, 1998.

18. Appendix C of the Environmental Assessment of the Proposed Upper Gunnison Basin Land Exchange (USDA 1998) includes a copy of the 1987 Memorandum of Understanding between the State Land Board and the Rocky Mountain Regional Forester stipulating that all state-owned inholdings would be priorities for federal acquisition.

19. Since that time, by Amendment 16 of the Colorado State Constitution, passed in November 1996, the emphasis for management of state lands has been altered from revenue maximization to long-term conservation.

20. Similar concerns have been raised over the controversial Crown Pacific exchange in south-central Oregon (Nelson et al. 1998).

21. Sandy Shea, Public Lands Coordinator, High Country Citizens' Alliance, Crested Butte, Colorado, telephone conversation, January 12, 1999.

22. This policy has since been changed.

23. John Brejcha, Deputy, Colorado State Land Board, Denver, by fax, January 12, 1999.

24. Brejcha, telephone conversation, January 12, 1999.

25. Kevin Carter, Assistant Director for Surface Lands, Utah School and Institutional Trust Lands Administration, Salt Lake City, telephone conversation, January 21, 1999.

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26. Memorandum of Understanding between the State of Utah, School and Institutional Trust Lands Administration; and the United States of America, Bureau of Land Management, July 26, 1995.

27. The Land and Water Conservation Fund (LWCF) is an outlay that can be used by government agencies to acquire lands. Instead of offering federal lands in trade, agencies can buy desired tracts outright.

28. Most typically these are oral outcry (English) auctions. The adoption of a second price with reserve (known as a Dutch auction) might be a more appropriate mechanism, since the value of government land, rarely sold, is unknown. See Vickrey (1961) for further explanation. After a public notification, bidders would submit sealed bids expressing their bid price. The highest bidder is only required to pay the amount of the second-highest bid upon winning. It is important that the reserve price is properly calibrated to ensure that a minimum price is obtained.

29. Plum Creek's exchange in 1999; Montana's Gallatin II exchange and the Utah School and Institutional Trust Lands Administration exchange in 1998.

30. This system could also be extended to national parks and Bureau of Reclamation districts.

31. The pertinent bill is S. 1892 in the 106th Congress. It would also authorize government purchase of the Baca Ranch in New Mexico.

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