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Land Exchanges: Bureau of Land Management (BLM) Process and Issues

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Summary

The Bureau of Land Management (BLM) conducts land exchanges with other land owners to acquire and dispose of land. The agency is authorized to conduct land exchanges under the Federal Land Policy and Management Act (FLPMA) of 1976. Additionally, Congress sometimes enacts legislation authorizing and governing specific land exchanges.

FLPMA governs how administrative exchanges are to occur. For instance, land exchanges must be in the public interest, and the federal and nonfederal lands in the exchange are to be in the same state. Further, the values of the lands exchanged are to be equal, although payments to equalize value may be made under specified terms. Typically, BLM and the other parties share equally in the administrative costs. While some exchanges involve single parcels, assembled land exchanges consist of a consolidation of multiple parcels for one or more exchanges over time. Lands acquired by BLM by exchange become public lands managed under existing authorities.

The land exchange process generally has five phases: development of an exchange proposal, feasibility evaluation, processing and documentation, decision analysis and approval, and title transfer. Each phase typically involves multiple actions. For example, processing and documentation includes title review; public notice and comment; identification and resolution of environmental issues; assessments of mineral, cultural, and other resources; Native American consultations; threatened and endangered species consultations; and preparation of land appraisals. The appraisal and environmental analysis often are the most challenging and time-consuming parts of the process. Legislated exchanges generally follow this process as well, unless otherwise directed by Congress.

In the past, some BLM land exchanges were controversial. Concerns during the 2000-2009 decade centered on benefits to the public, determinations of market value, contradictions in policies and procedures, delays in appraisals, and various aspects of the exchange process. These topics were the subject of various governmental and nongovernmental reports, for instance by the Government Accountability Office (2000, 2006, and 2009), the Appraisal Foundation (2002), Interior appropriators (2009), and the Office of Inspector General of the Department of the Interior (DOI, 2009). In response, BLM and DOI implemented changes to the appraisal and exchange processes. For instance, BLM formed and adopted the recommendations of the Appraisal and Exchange Workgroup. Later, BLM also issued instruction memoranda on land exchanges containing additional policies and guidance. As another example, the Secretary of the Interior changed the organization and operation of the appraisal services function.

A key issue for Congress is the extent to which the reforms to the exchange process and appraisal function addressed perceived problems and improved land transactions. Other issues for Congress are whether to amend BLM's exchange authority or to discontinue BLM's administrative exchanges. Opponents of exchanges view them as inherently difficult and thus favor other authorities to sell or exchange land. Supporters continue to view administrative exchanges as useful to change the "checkerboard" pattern of land ownership in the West and to increase the efficiency of land management while decreasing management costs.

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Introduction

A land exchange, popularly viewed as a swap or a trade, is a real estate transaction where the disposal (sale) and acquisition (purchase) of land are combined. The Bureau of Land Management (BLM), in the Department of the Interior (DOI), is authorized to exchange land or interests in land under the Federal Land Policy and Management Act of 1976 (FLPMA),[1] as amended by the Federal Land Exchange Facilitation Act of 1988 (FLEFA), as well as under other authorities.[2] Administrative exchanges under FLPMA often are referred to as discretionary exchanges, because FLPMA does not require the agency and nonfederal parties to exchange lands. BLM implementing regulations are contained in 43 C.F.R. §2200. Additional information is contained in BLM's *Land Exchange Handbook* and various agency instruction memoranda.[3] Selected provisions of these sources are summarized below in the section entitled "Basic Rules for Exchanges."

Additionally, Congress sometimes enacts legislation authorizing and governing specific land exchanges. Legislated land exchanges generally follow the process and procedures outlined in this report, unless the statute provides otherwise. Legislated exchanges are discussed below under "Legislated Land Exchanges."

Land Exchange Data

The total number of land exchanges completed by BLM, their acreage, and their value, vary from year to year. (See **Table 1** and **Table 2**.) From FY2006 to FY2015,[4] BLM issued 218 patents or deeds for exchanged lands,[5] totaling 159,130 acres with an appraised value of $86.7 million. In FY2015, the number of patents or deeds issued was the lowest during the 10-year period (tied with FY2011) and the associated acreage was the lowest during the decade. The dollar value was lower than all years except FY2014. Specifically, two deeds or patents were issued for exchanged lands in FY2015, encompassing 95 acres with a value of $17,200.

Also from FY2006 to FY2015, BLM received 91 deeds for exchanged land, totaling 193,663 acres with a value of $107.7 million. In FY2015, BLM did not receive any deeds for exchanged lands. Rather, the agency received a cash equalization payment of $17,200 for 95 acres patented or deeded out, as shown in **Table 1**. FY2015 was the only year during the decade in which BLM did not acquire lands by exchange.[6]

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[1] An interest in land is something less than full ownership, such as easements or mineral, timber, or water rights. Hereinafter, *exchange* is used to encompass both exchanges of land and interests in land.

[2] 43 U.S.C. §§1715-1716. Provisions of these statutes apply to the Forest Service in the Department of Agriculture as well, but this report relates only to the Bureau of Land Management (BLM). For information on acquisition and disposal authorities of BLM and other land management agencies, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by (name redacted) et al.

[3] The *Land Exchange Handbook* is available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.72089.File.dat/h2200-1.pdf. Hereinafter cited as BLM Land Exchange Handbook.

[4] FY2015 is the most recent fiscal year for which land exchange data are available.

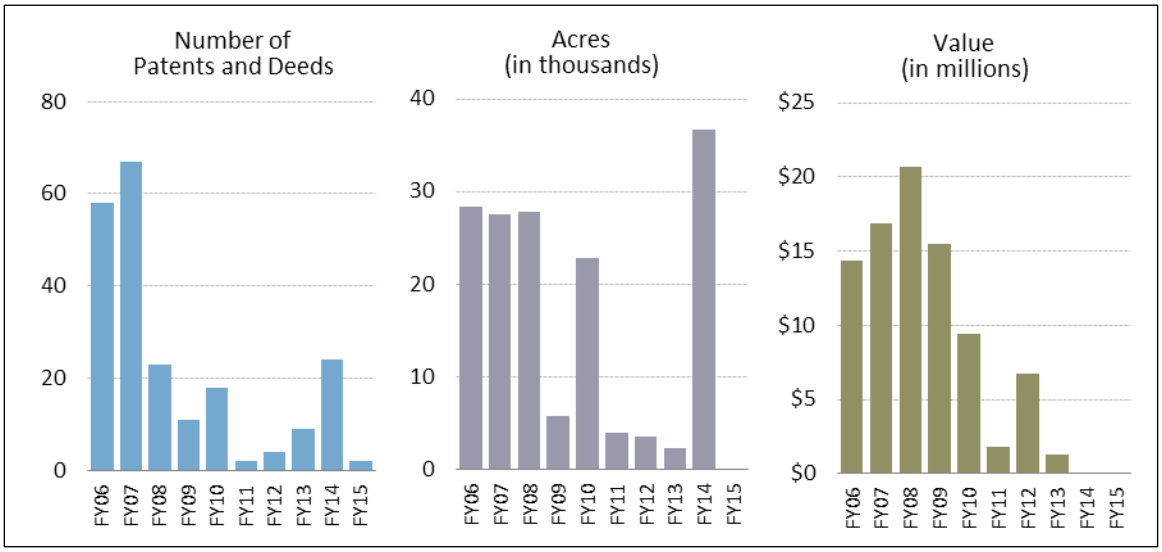
[5] BLM records the number of land transactions, in terms of patents/deeds issued and deeds received, rather than the number of land exchanges. Each land exchange involves BLM issuing at least one patent or deed and receiving at least one deed. The number of such transactions in one exchange can be higher, if the exchange involves multiple parties or multiple parcels of land. Further, the numbers of patents or deeds issued and received in an exchange need not be—and often are not—equal, as the data in this report show.

[6] Information on the number, acreage, and value of exchanges is taken from BLM's *Public Land Statistics*, annual (continued...)

In general, the number of BLM exchanges has declined over at least the past 25 years. For instance, the Government Accountability Office (GAO) reported that BLM completed about 2,600 exchange transactions during the 11-year period from FY1989 to FY1999, consisting of about 1,700 transactions to convey BLM land and 900 transactions to acquire nonfederal land. On average, 238 exchange transactions occurred annually during this period.[7] By contrast, BLM completed 309 exchange transactions during the 10-year period from FY2006 to FY2015, consisting of 218 transactions to convey BLM land and 91 transactions to acquire nonfederal land, as noted. An average of about 31 exchange transactions occurred annually during this period. The decline has been attributed to a variety of reasons, such as reductions in experienced realty staff and in funding for exchanges, changing priorities, and preferences for land sales under other authorities.[8]

Table 1. BLM Land Patented or Deeded Out by Exchange

(FY2006-FY2015)



Patents and Deeds Issued	Number	Acres	Value
FY2006	58	28,397	$14,377,969
FY2007	67	27,587	$16,896,200
FY2008	23	27,777	$20,720,300
FY2009	11	5,845	$15,504,898

(...continued)

volumes for FY2006-FY2015, Table 5-8a and Table 5-8b, at http://www.blm.gov/public_land_statistics/index.htm.

[7] See Government Accountability Office (GAO), *BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest*, p. 14, GAO/RCED-00-73, June 2000, at http://www.gao.gov/products/RCED-00-73. Hereinafter referred to as 2000 GAO Report.

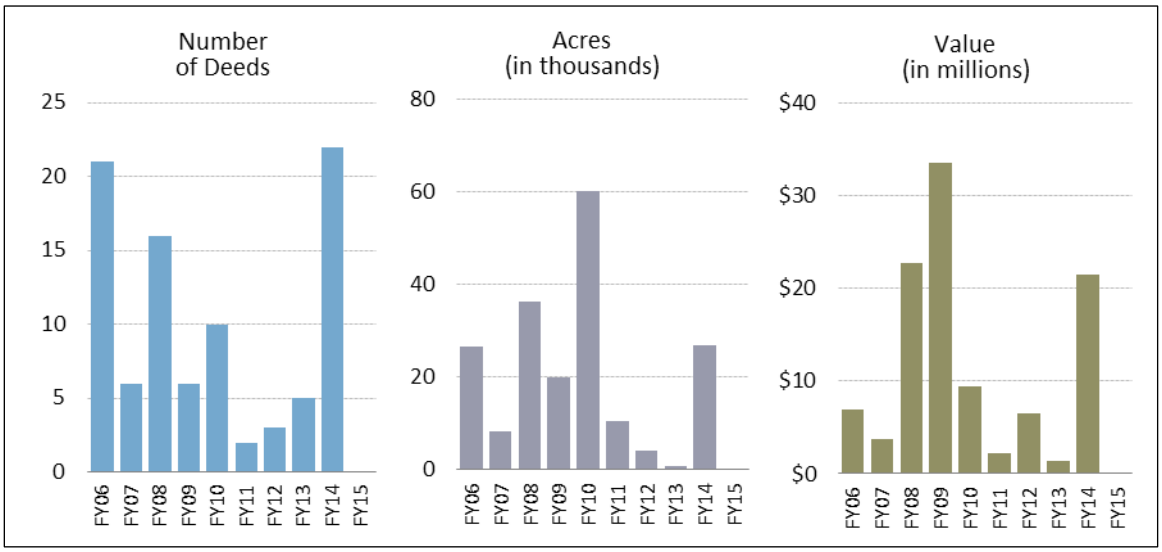
[8] A second GAO report addressed BLM exchanges from October 2004 through June 2008. This report noted a decline in exchange transactions since the period covered by the first report (FY1989-FY1999) and identified factors in this paragraph as among the reasons. See GAO, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, pp. 16-19, GAO-09-611, June 2009, at http://www.gao.gov/products/GAO-09-611. Hereinafter referred to as 2009 GAO Report.

FY2010	18	22,848	$9,422,603
FY2011	2	3,940	$1,767,000
FY2012	4	3,534	$6,713,000
FY2013	9	2,365	$1,327,750
FY2014	24	36,742	$1,867
FY2015	2	95	$17,200
FY2006-FY2015	218	159,130	$86,748,787

Source: U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), *Public Land Statistics*, annual volumes for FY2006-FY2015, Table 5-8a, at http://www.blm.gov/public_land_statistics/index.htm.

Table 2. Nonfederal Land Acquired by BLM by Exchange

(FY2006-FY2015)



Deeds Received	Number	Acres	Value
FY2006	21	26,666	$6,892,712
FY2007	6	8,341	$3,669,550
FY2008	16	36,249	$22,719,122
FY2009	6	19,789	$33,553,808
FY2010	10	60,138	$9,368,200
FY2011	2	10,594	$2,131,600
FY2012	3	4,254	$6,553,200
FY2013	5	816	$1,308,000
FY2014	22	26,816	$21,524,000
FY2015	0	0	0
FY2006-FY2015	91	193,663	$107,720,192

Source: DOI, BLM, *Public Land Statistics*, annual volumes for FY2006-FY2015, Table 5-8b, at http://www.blm.gov/public_land_statistics/index.htm.

Pros and Cons of Land Exchanges

Exchanges can be used to change the "checkerboard" pattern of federal, state, and privately owned lands in the West that resulted from early land grants. Land consolidation can increase the efficiency of land management and decrease management costs. Exchanges allow for land transactions on a large scale; they can be used to consolidate hundreds of scattered, isolated tracts that likely would have no chance of sale to one owner. Also, exchanges may be valuable for facilitating transactions with private landowners who want land instead of cash and for reconfiguring state lands.

Exchanges can be difficult, because an agency must find another landowner who is willing to trade, wants to acquire what is being offered, and owns a desired parcel of about the same value. Also, provisions of law limiting exchanges to lands in the same state can be too restrictive to accomplish desirable land swaps. Further, other agency authorities providing for either land sale or land acquisition can be more flexible tools for meeting land consolidation and management needs.

BLM land exchanges sometimes have been controversial. Federal audits performed over the last decade (2000-2009) criticized some exchanges for short-changing the public. For instance, audits concluded that in some cases BLM did not demonstrate that the public value of the lands acquired at least matched the public value of the land disposed of. In other cases, audits found that there were political pressures to change or ignore determinations of market value to facilitate the exchange. Audits were performed by GAO, the DOI Office of Inspector General (OIG), and the Appraisal Foundation (TAF). These audits received significant attention from Congress, DOI, the media, and interest groups. In response, BLM and DOI implemented changes, perhaps most notably the consolidation of appraisal functions in a new office in 2003 and the subsequent reorganization of that office in 2010 (see "History of Exchange Controversies and Reforms," below).

Basic Rules for Exchanges

This section briefly summarizes the rules and process for conducting administrative land exchanges.[9] As noted, legislated land exchanges generally follow the process and procedures outlined below, unless Congress provides otherwise. Additional information on legislated exchanges follows this section under the heading "Legislated Land Exchanges."

Same State

FLPMA requires that the federal and nonfederal lands in an exchange must be located within the same state.[10]

Public Interest

Land exchanges must be in the public interest. Public land may be exchanged if the Secretary of the Interior determines that the public interest will be "well served." FLPMA requires that when determining the public interest, the Secretary must consider a number of factors. These factors

[9] Complete and authoritative information is contained in the pertinent authorities, for example, the Federal Land Policy and Management Act (FLPMA) of 1976and BLM's regulations, policies, and handbook.

[10] 43 U.S.C. §1716(b).

include better federal land management and the needs of state and local people for economic, community, and recreation purposes.[11] BLM often trades land to achieve better federal land management, for instance, by consolidating ownership and disposing of land that is isolated or difficult to manage. Under BLM regulations, considerations include protection of fish and wildlife habitat, cultural resources, watersheds, wilderness, and aesthetic values; enhancement of recreational opportunities and public access; consolidation of lands to improve development; and expansion of communities. Also, the Secretary must find that the resource values and public benefits of the federal lands to be conveyed are not more than those of the nonfederal lands being acquired.[12] Further, the intended use of the conveyed federal lands should not conflict significantly with management of adjacent federal and Indian trust lands.[13] In making an exchange, BLM must reserve any rights or interests that are needed to protect the public interest and may impose restrictions on the use of lands conveyed.

Equal Value

Under FLPMA, the values of the lands exchanged are to be equal or, if they are not equal, they are to be equalized by the payment of money up to 25% of the value of the federal lands conveyed in the exchange. The parties in the exchange may agree to waive this payment, within limitations, including if it involves not more than 3% of the value of the federal lands or $15,000. Another way of equalizing value is for either party to add or remove lands. Further, the Secretary of the Interior may exchange lands that are of "approximately" equal value under certain conditions, including if the value of the federal lands does not exceed $150,000.[14] The appraisal might be performed by DOI appraisers or by appraisers contracted by the department. Often the same person conducts the appraisal of both the federal and the nonfederal parcels in an exchange, although this is not required.

Costs

Typically, BLM and other parties share equally in the administrative costs of an exchange, for instance, by sharing the cost of land appraisal, mineral examinations, and cultural resource surveys and by addressing deficiencies preventing highest and best use of the land. However, the parties can agree that one party may bear costs and responsibilities typically assumed by the other, subject to certain terms.[15]

Assembled Land Exchanges

BLM regulations define an assembled land exchange as consolidation of multiple parcels of federal or nonfederal land for the purpose of one or more exchange transactions over a period of time.[16] An assembled land exchange may be used to facilitate exchanges and reduce costs, for instance, by consolidating many federal parcels of limited value. In other cases, third parties secure lands that BLM wants to acquire from multiple owners to facilitate negotiations. Both for-

[11] 43 U.S.C. §1716(a).

[12] 43 U.S.C. §1716(a).

[13] 43 C.F.R. §2200.0-6(b).

[14] 43 U.S.C. §1716(b) and 43 C.F.R. §§2201.5 and 2201.6.

[15] 43 U.S.C. §1716(f)(2)(B).

[16] 43 C.F.R. §2200.0-5(f).

profit and nonprofit organizations have facilitated assembled land exchanges, typically functioning as brokers/agents for the exchange.

Management of Exchanged Lands

Lands acquired by BLM by exchange become public lands and are to be managed under existing law, regulations, and land-use plans. Acquired lands that are within the boundaries of an area having an administrative or congressional designation, such as a national conservation area, become part of that unit or area and are managed accordingly.[17]

Overview of Exchange Process[18]

Exchanges may be proposed by BLM, private citizens, or state or local government officials, among others. However, BLM is to consider only proposals that conform to land-use plans. Additionally, the Secretary of the Interior may restrict, for up to five years, application of the mining laws and other public land laws to federal lands under consideration for exchange. The exchange process typically occurs in five phases: (1) development of a land exchange proposal, (2) feasibility evaluation, (3) processing and documentation, (4) decision analysis and approval, and (5) title transfer. BLM field offices take the lead in negotiating and processing exchanges, but BLM headquarters ultimately must concur.

The length of time generally required to complete land exchanges depends on the circumstances. The BLM handbook advises that many exchanges take between 18 months and 24 months, but the time depends on the complexities. The GAO review of BLM and Forest Service (FS) land exchanges from October 2004 through June 2008 revealed completion times for the agencies ranging from two months to 12 years. The average time to complete BLM's exchanges was about four years.[19]

Phase 1: Development of a Land Exchange Proposal

During the first phase, development of a land exchange proposal, the federal and nonfederal parties have preliminary discussions to share information about goals and constraints and to screen proposals. BLM checks the title of the nonfederal land to ensure its acceptability for acquisition and the survey and land status of the federal land to ensure its availability for disposal. The parties develop a written exchange proposal that includes a legal description of the lands to be conveyed and their responsibilities.

Phase 2: Feasibility Evaluation

During the second phase, the feasibility evaluation, BLM prepares a feasibility report. This report documents the preliminary information on all aspects of the exchange, including the public benefits, consistency with BLM's land-use plan, projection of costs, cost and processing responsibilities, anticipated land uses, analysis of value, schedule for completion, and alternatives. All exchanges require review and concurrence of the documentation at the feasibility stage. This review includes analysis of the adequacy of the feasibility report, a draft Agreement to

[17] 43 U.S.C. §1716(c).

[18] Much of the information in this section is derived from the BLM *Land Exchange Handbook*.

[19] 2009 GAO Report, p. 14.

Initiate (ATI) an exchange, and a draft Notice of Exchange Proposal (NOEP). Review and concurrence is required at several levels: the DOI Office of the Solicitor; the state director of the state where the lands would be exchanged; BLM's National Land Exchange Team; the BLM assistant director, Minerals and Realty Management; and, ultimately, the director of BLM. If the parties agree to proceed, they sign a nonbinding ATI that serves as a framework, with roles, responsibilities, and time frames. The agreement should address 17 items identified in BLM regulations (43 C.F.R. §2201.1(c)-(g)) and, for exchanges involving third-party facilitators, must include a full disclosure provision. At this stage, the BLM and nonfederal parties might consider developing a binding exchange agreement, which would be executed at a later stage of the exchange process. (See "Phase 5: Title Transfer," below.)

BLM is prevented, through Appropriations Committee direction, from completing exchanges involving federal lands valued at more than $1 million until the House and Senate Committees on Appropriations have had 30 days to review the exchange. Further, BLM is required to provide advance notice to the House and Senate Appropriations Committees of exchanges involving federal lands valued at between $500,000 and $1 million.[20]

Phase 3: Processing and Documentation

The third phase, exchange processing and documentation, centers on the evaluation and documentation of the properties and their values. This phase includes title review; public notice and comment; identification and resolution of environmental issues under the National Environmental Policy Act of 1969 (NEPA);[21] assessments of mineral, cultural, and other resources; Native American consultations; threatened and endangered species consultations; and preparation and review of appraisals. During title review, BLM seeks to confirm that it can acquire clear title to the nonfederal land. BLM is to issue an NOEP and publish it in local newspapers to give public notice of the exchange and to notify authorized land users, state and local governments, tribal governments, and the congressional delegation. The notice must invite the public to comment on the exchange. BLM also must give public notice of its decision to approve or disapprove an exchange.

The environmental analysis under NEPA and the appraisal often are the most challenging and time-consuming activities. The environmental analysis documents the impact of the exchange on the environment, taking into account the likely future uses of the lands. The analysis includes evaluations of resources on the federal and nonfederal lands. Ordinarily, these analyses evaluate mineral potential of the lands; identify wildlife and vegetation species; detail water sources, locations, and rights; assess forestry resources; catalogue cultural and historic resources; list recreational and other land uses; inventory contaminants; and address the responsibilities of the parties.[22]

Appraisals are guided by laws, regulations, policies, and other authorities. These authorities include the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.[23] BLM regulations state that an exchange of lands

[20] Consolidated Appropriations Act, 2016, Explanatory Statement, Division G, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016, *Congressional Record*, December 17, 2015, H10212.

[21] 42 U.S.C. §§4321 et seq. The analysis also is governed by regulations of the Council on Environmental Quality (40 C.F.R. parts 1500-1508) and U.S. Department of the Interior (DOI) and BLM policies and procedures.

[22] For an overview of the National Environmental Policy Act of 1969 (NEPA), see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by (name redacted)

[23] See the *Uniform Appraisal Standards for Federal Land Acquisitions*, the Appraisal Institute, Washington, DC, 2000, (continued...)

shall be based on the market value of the federal and nonfederal lands as determined by the Secretary through appraisals, bargaining based on appraisals, or arbitration. In estimating market value, the appraiser must determine the highest and best use of the property—the highest and most profitable use for which the property is physically adaptable and needed.[24] Factors include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for comparable properties in the open market. Interests in land—such as minerals or water rights—also are considered to the extent consistent with highest and best use, according to BLM regulations. In the absence of current market information, the parties may use other methods to estimate market value. FLEFA provides that disputes over the appraised values of lands can be resolved by arbitration, bargaining, or other methods.

Both federal employees and contractors may conduct appraisals. The appraiser prepares a report estimating market value that describes the work conducted and sets forth the information and analysis supporting the estimate. Each appraisal report will be reviewed by a DOI review appraiser.

Phase 4: Decision Analysis and Approval

At the decision analysis and approval stage, all proposed exchanges require review and concurrence at several levels, as at the feasibility stage. BLM issues a decision to approve or disapprove the land exchange. The decision document, called a decision record or record of decision, must contain certain information, such as a determination of the public interest value of the exchange; a legal description of the lands being exchanged; a statement that the lands are of equal value and, if not, of any cash equalization payment; a statement of conformance with the pertinent BLM land-use plan; and acknowledgement that the decision is implemented after the 45-day protest period (which begins with the publication of a Notice of Decision) and resolution of any protests.[25] BLM then publishes and distributes a Notice of Decision, in accordance with specified publication and distribution requirements.

Phase 5: Title Transfer

After approval of a land exchange decision, the parties might execute a binding exchange agreement, which legally commits them to conduct the exchange. A binding exchange agreement is optional except where the nonfederal lands contain hazardous substances, so that the agreement can address removal and other actions prior to the exchange.[26] Other actions at this final phase, called title transfer, involve reviewing the title evidence and land status, transferring the title to the federal and nonfederal lands, and closing the transaction.

(...continued)

on the website of the Department of Justice at https://www.justice.gov/enrd/selected-publications. Hereinafter referred to as *Uniform Appraisal Standards;* and *Uniform Standards of Professional Appraisal Practice, 2016-2017,* Washington DC, 2015, on the Appraisal Foundation website at http://www.appraisalfoundation.org/imis/TAF/USPAP.aspx.

[24] *Uniform Appraisal Standards*, p. 34.

[25] Land exchange decisions are subject to a 45-day protest period under 43 C.F.R. 2201.7-1 and a subsequent right of appeal to the Interior Board of Land Appeals under 43 C.F.R. Part 4. Information on protests and appeals, and on an alternative process, is contained in the BLM *Land Exchange Handbook*, pp. 9-3–9-7.

[26] BLM *Land Exchange Handbook*, p. 10-1.

Legislated Land Exchanges

Legislation can authorize exchanges that otherwise would not be allowed under law, such as the exchange of land in different states. Legislation also would be required to exempt agencies from mandates that otherwise apply, such as those pertaining to appraisals, analysis under NEPA, and the land-use-planning requirements of FLPMA. Recent Congresses typically have considered and enacted measures providing for exchange of BLM lands.[27] In its 2009 report, GAO identified provisions of legislated exchanges that affected the standard processing of exchanges, such as those directing BLM to initiate an exchange upon request of the nonfederal party, establishing a time frame for completing the exchange, and altering the appraisal requirements.[28] Legislation may provide for land exchanges even where additional authority may not be needed by BLM but where Congress wants a certain exchange to occur. Provisions of legislated land exchanges have been controversial in some cases.

BLM's *Land Exchange Handbook* states that because legislated exchanges have considerable variability, they must be handled on a case-by-case basis. The handbook notes that legislated exchanges sometimes direct that these exchanges be completed relatively quickly and that the time frame might affect the applicability of statutory and regulatory requirements. It advises BLM staff to consult with their regional solicitor as to whether typical actions (e.g., NEPA) apply in legislated exchanges. The handbook further notes that some general requirements not typically mentioned in legislation, such as hazardous materials assessments and title standards, might still need to be addressed.[29]

BLM conducted far fewer legislated exchanges than administrative ones in recent years. Of the 309 exchange transactions from FY2006 to FY2015, 56 (18%) were legislated. This figure includes 30 patents or deeds for lands conveyed by exchange and 26 deeds for lands received by exchange. Similarly, a 2009 GAO report determined that of the 76 exchanges processed by BLM from October 2004 through June 2008, 9 exchanges (12%) were specifically legislated by Congress. Legislated land exchanges also have been enacted for other agencies, including the Forest Service, Fish and Wildlife Service, and National Park Service.

History of Exchange Controversies and Reforms

Issues and Actions Prior to 2009

From 2000 to 2009, BLM land exchanges received considerable scrutiny in governmental and other reports. Prior to 2009, concerns centered on the benefits to the public, determinations of market value, and contradictions in policies and procedures. For instance, a 2000 GAO report concluded that BLM did not follow requirements to show that "the public benefits of acquiring the nonfederal land in an exchange matched or exceeded the public benefits of retaining federal land, raising doubts about whether these exchanges served the public interest."[30] Audit reports also criticized BLM for valuing its land at far less than market value, or for overvaluing nonfederal land to be acquired, to make deals more attractive to nonfederal landowners. A 2002

[27] Examples of laws authorizing land exchanges include P.L. 111-53, the Utah Recreational Land Exchange Act of 2009; P.L. 110-229, and P.L. 109-372, the Idaho Land Enhancement Act.

[28] 2009 GAO Report, pp. 23-24.

[29] BLM *Land Exchange Handbook*, pp. 12-1 and 12-2.

[30] 2000 GAO Report, p. 4.

report by the Appraisal Foundation (TAF) determined that there were political pressures to change or ignore qualified market value opinions to create the appearance that exchanges were conducted at market value.[31] TAF also concluded that inconsistencies among BLM's guidance and directives resulted in inconsistent development of market value opinions, improper management of appraisal efforts, and a lack of compliance with laws and regulations.

In response, BLM took steps to increase oversight of exchanges; demonstrate how exchanges serve the public interest; ensure that land is properly valued; and ensure that exchanges are completed in compliance with law, regulation, and policy. In 2003, BLM formed the Appraisal and Exchange Workgroup, composed of staff from federal and state agencies, to advise the agency on changes needed to address problems with appraisals and exchanges that were raised in audits.[32] BLM chose to implement many of the group's recommendations, including those to strengthen management of exchanges; build public confidence; develop new authorities; enhance training and skills; facilitate exchanges with states; strengthen the ability to reach agreement on value; define the role of facilitators; and develop guidance for processing legislated exchanges.

Beginning in 2003, a significant change at DOI involved consolidating real estate appraisal functions from several DOI agencies into a new Appraisal Services Directorate (ASD). For decades, audit reports had recommended an independent appraisal office to protect appraisers from possible political pressures. Under the reorganization, to separate the appraisal function from realty decisions, appraisers reported to the ASD rather than to DOI realty personnel. A 2006 GAO report found that this consolidation "vastly improved" the objectivity of appraisers but that some problems remained. For instance, some appraisals did not appear to comply with industry standards, making their accuracy uncertain. The extent to which any such problems applied to BLM exchanges is unclear, as these exchanges were not separately identified in the analysis.[33] In other changes, the ASD developed a web-based system for DOI agencies to submit and track requests for appraisals, DOI issued a consolidated handbook for appraisals, and BLM revised its *Land Exchange Handbook*. The ASD organization was changed in 2010, due to continued concerns with appraisal services, as discussed below.

2009 Reports and Subsequent Reforms

GAO Report, June 2009

In 2009, auditors continued to examine issues related to land exchanges and. A 2009 GAO report examined the numbers, trends, and characteristics of BLM and FS land exchanges from October 2004 through June 2008; the actions taken by the agencies to improve the exchange process; and the effectiveness of these actions. GAO concluded that the BLM and FS had taken actions to address most of the problems previously identified with the agencies' land exchange programs but that the effectiveness of the changes was mixed and additional changes were needed. Among the GAO's conclusions were the following:

- Agency reviews had at least somewhat improved the quality of exchanges and often ensured that exchanges complied with existing authorities. However, the

[31] The Appraisal Foundation, *Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management* (Washington, DC: Oct. 9, 2002), pp. 9-10.

[32] *Appraisal and Exchange Workgroup Final Report*, presented to the Bureau of Land Management, U.S. Dept. of the Interior, May 2003.

[33] GAO, *Interior's Land Appraisal Services: Actions Needed to Improve Compliance with Appraisal Standards, Increase Efficiency, and Broaden Oversight*, GAO-06-1050 (Washington, DC: Sept. 2006), p.13 and p. 15.

reviews sometimes did not document problems or how any problems were resolved, reducing transparency.

- BLM had improved procedures for those exchanges conducted in phases, such as by ceasing to use interest-bearing accounts outside the Treasury and issuing new guidance on using ledgers to track land-value imbalances in multiple phase exchanges. However, the agency did not always use ledgers in accordance with the guidance and thus could not reliably know how much was owed.
- New guidance required full disclosure of the relationship between third-party facilitators and other parties. However, the guidance did not clearly define third-party facilitators and agencies did not consistently apply the disclosure policy. This inconsistency could reduce the ability of the agencies to control the exchange process.
- Although the agencies clarified their guidance on exchanges and revised their training on exchanges accordingly, they generally did not require staff to attend the training. Therefore, the agencies could not be sure that staff members have the appropriate skills.
- BLM had acted to improve the timeliness of appraisals, but delays continued.
- The agency did not have a national strategy for land transactions and did not track costs of individual land exchanges.[34]

Stemming from its conclusions, GAO made 13 recommendations for BLM to improve its land exchanges. The recommendations focused on strengthening the review process; improving management of value imbalances in multiple phase exchanges; defining and applying disclosure guidelines to third-party facilitators of land exchanges; issuing a national land tenure strategy; tracking the costs of individual exchanges; and training land exchange staff.[35]

FY2010 Interior Appropriations Direction, June and October 2009

During consideration of the FY2010 Interior, Environment, and Related Agencies Appropriations bill, the House Appropriations Committee and the conferees noted improvements with the exchange and appraisal processes, while at the same time expressing concerns and providing related direction to DOI. In its June 23, 2009, report on the bill, the House Committee noted the GAO and DOI OIG conclusion that the consolidation of the appraisal services into the ASD improved the objectivity and quality of appraisals. However, the committee asserted that "numerous problems exist that are an unacceptable barrier to communications, collaboration, and acquisition of lands."[36] The causes of these problems, according to the committee, included a loss of realty expertise in DOI agencies, unnecessary delays in contracting for appraisals, and a reluctance to share information on the status of appraisals with landowners. The committee further observed that opportunities for agencies to make key acquisitions were missed,

[34] 2009 GAO Report, Summary.

[35] The specific recommendations, and agency actions thereon, are tracked on GAO's website at http://www.gao.gov/products/GAO-09-611#recommendations. The site identifies whether the recommendations have been implemented. See also the "Implementation of Reforms" section of this report. which addresses DOI actions to address the GAO recommendations.

[36] This quote, and the information in this section on the House Appropriations Committee's actions, is taken from House Committee on Appropriations, Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2010, H.Rept. 111-180, June 23, 2009, pp. 9-10. Hereinafter cited as H.Rept. 111-180.

partnerships with nonprofit land organizations were strained, and public confidence in the government's commitment to land acquisition was weakened.

To expedite completion of appraisals, and thus land exchanges and other acquisitions, the House Appropriations Committee directed DOI to reconsider the consolidation of the appraisal services, examine alternative organizational arrangements, and streamline the appraisal process. The committee further directed DOI to report back within 90 days of enactment of the appropriations law on its progress in improving land appraisals. Similarly, in their October 28, 2009, conference report on the bill, the conferees concurred with the House Committee in directing DOI to revisit the consolidation of the appraisal services function and to address the delays in obtaining appraisals.[37]

The House Appropriations Committee further expressed that BLM (and other agencies) needed to improve the process for land exchanges and should seriously consider the findings and recommendations of the GAO report on land exchanges.[38] The committee directed the Secretary of the Interior to ensure that land exchange decisions are fully documented and carefully reviewed by the national review team. BLM should clearly define third-party facilitators and apply disclosure policies to them, ensure that agency land exchange staff are adequately trained, and track the costs of processing individual exchanges, according to the committee. Further, the committee stated that BLM should address GAO's other recommendations, including to clarify the retention policy for exchange documents, improve management of ledgers to track imbalances in multiphase land exchanges, and develop a national land exchange strategy.[39]

DOI Office of Inspector General Report, December 2009

A 2009 DOI OIG evaluation of the appraisal services of the ASD concluded that the office had not been able to fulfill its mission to become a strong and independent appraisal organization that provides DOI with timely, independent appraisals.[40] The report cited both internal and external contributing factors. Externally, the ASD did not receive support from the National Business Center (NBC), DOI agencies, or the department. The NBC did not provide timely support and services, particularly in the key area of contracting for appraisals.[41] The DOI agencies did not agree with the need for consolidated appraisal services and made multiple attempts to regain control of this responsibility. The department did not resolve these issues or protect the independence and operational integrity of the ASD. Internally, the ASD lacked consistently strong leadership, leaving the office dependent on others to address problems with contracting and other policy and enforcement issues. The OIG attributed this leadership vacuum primarily to the placement of the ASD within the NBC.[42]

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[37] House Committee on Appropriations, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, H.Rept. 111-316, p. 78, October 28, 2009. Hereinafter cited as H.Rept. 111-316.

[38] The committee's expressions on land exchanges applied to the federal land management agencies generally and particularly to BLM and the Forest Service, according to H.Rept. 111-180, p.10. The discussion here focuses on the committee's statements in the context of the BLM.

[39] H.Rept. 111-180, p. 10.

[40] DOI, Office of Inspector General (OIG), *Evaluation Report on the Department of the Interior's Appraisal Operations*, Report No. WR-EV-OSS-0012-2009, December 2009, available on the office's website at https://www.doioig.gov/reports. Hereinafter cited as 2009 OIG Report.

[41] Due to the perceived problems with contracting by the National Business Center, in 2009 the agencies regained responsibility for contracting. Problems with contracting for appraisals continued with this arrangement, according to the OIG. See the 2009 OIG Report, pp. 7-8.

[42] 2009 OIG Report, p. 3.

The OIG asserted that, based on its evaluation and the recent concerns expressed by Congress (discussed above), DOI appraisers should remain organizationally independent of agency realty offices and staff. However, although the placement of the ASD within the NBC had appeared at first to be beneficial, it turned out to be a "hindrance to the appraisal organization," according to the OIG.[43] The OIG made three recommendations to address identified problems: (1) to provide responsibility and resources to ensure that ASD has full control over contracting; (2) to select a "strong and competent" chief appraiser for ASD to provide effective leadership and final authority on appraisals; and (3) to consider making ASD an independent office within DOI's Office of Policy, Management, and Budget.[44]

DOI Reform Plan, March 2010

On March 23, 2010, DOI responded to the congressional direction to consider alternatives to the current appraisal services organization and to address delays in obtaining appraisals. In a letter to congressional appropriators, the department presented conclusions and proposals resulting from a review of the appraisal function. The department "acknowledged [that] there are serious operational and organizational issues and action is required."[45] Issues included delays in the appraisal process leading to delays in land transactions, with a worsening trend; problems with contracting, such as the high cost, complex funding model, length of time to contract for appraisal services, and frequent inability to find qualified local appraisers; weak communication between appraisers and the DOI agencies and poor responsiveness of appraisers to DOI agencies; and difficulties in prioritization of work, such as handling of the competing and changing appraisal priorities of the DOI agencies.

To address these issues, DOI proposed a reprogramming and reforms that incorporated the OIG recommendations and went further, according to the department. DOI expressed a commitment to its reform proposals to improve the timeliness, cost-effectiveness, efficiency, and agency satisfaction with appraisals. Among the proposals were the following:

- ASD would be moved out of the NBC and would become an independent office, reporting directly to the Deputy Assistant Secretary for Technology, Information, and Business Services, within the Office of the Assistant Secretary for Policy, Management, and Budget. The office would be renamed as the Office of Valuation Services (OVS).
- The OVS would be structured so that a team of appraisers would serve each DOI agency to address problems, with prioritization of appraisal needs among the agencies.
- Contracting processes would be reformed to increase speed, reduce cost and funding complexity, and increase the number of qualified local appraisers.
- Communications processes between the appraisal office and DOI agencies would be changed and new performance plan elements would be introduced for appraisers and realty staff for timeliness, responsiveness, and other elements.

[43] Ibid., p. 9.

[44] Ibid., p. 10.

[45] DOI, Secretary of the Interior, letter to Chairman James Moran, House Appropriations Subcommittee on Interior, Environment, and Related Agencies, March 23, 2010, p. 1.

Implementation of Reforms

In 2010, DOI and BLM took actions in response to many of the recommendations and issues raised by GAO, Congress, and the OIG. For instance, with regard to appraisals, a Secretarial Order signed on May 21, 2010, made changes in the organization and operation of the appraisal services function. Specifically, the order renamed the ASD as the Office of Valuation Services (OVS) and removed it from the National Business Center.[46] The OVS now reports to the Deputy Assistant Secretary for Technology, Information, and Business Services, within the Office of Policy, Management, and Budget.[47] The order gave the OVS sole responsibility for contracting for appraisal services for DOI agencies to provide timelier, more consistent, and more centralized contracting services that capitalize on the expertise of appraisal staff.[48] Further, the OVS was restructured to assign a team of appraisers to each agency, a change from the former arrangement based on appraisal teams by geographic area.

In addition, on May 14, 2010, BLM issued a series of instruction memoranda on land exchanges that stemmed primarily from the GAO recommendations and congressional concerns.[49] The first memorandum included guidance on the processes for reviewing and approving land exchanges, documenting and resolving substantive issues raised during the exchange process, and managing and retaining exchange records.[50] A second memorandum contained direction on issues such as the processing of assembled and multiple-phase assembled land exchanges, using ledgers to manage imbalances in federal and nonfederal lands being exchanged, securing (bonding) imbalances, and minimizing cash equalization (where appraised values are not equal and payment is made to equalize the imbalance).[51] The third memorandum defined and addressed the role of facilitators in land exchanges and contained disclosure requirements for facilitated and certain non-facilitated land exchanges.[52] The fourth memorandum focused on training for agency staff involved in exchanges.[53]

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[46] In 2012, the National Business Center was restructured and renamed as the Interior Business Center. See DOI Secretarial Order No. 3322, *Restructuring and Renaming of the Department of the Interior National Business Center*, August 23, 2012, at http://elips.doi.gov/elips/0/doc/3502/Page1.aspx, and the website of the National Business Center at https://www.doi.gov/ibc/about-us/history.

[47] See DOI Secretarial Order No. 3300, *Establishment of the Office of Valuation Services*, May 21, 2010, at http://elips.doi.gov/elips/0/doc/446/Page1.aspx.

[48] In addition to BLM, these agencies are the Bureau of Reclamation, Fish and Wildlife Service, and National Park Service.

[49] These instruction memoranda are IM No. 2010-121, *Review of Land Exchange Proposals and Records Management*; IM No. 2010-122, *Processing of Land Exchanges and Management of Value Imbalances in Land Exchanges*; IM No. 2010-123, *Clarification of Facilitator Involvement and the Full Disclosure Requirement in Land Tenure Adjustments*; and IM No. 2010-124, *Training Requirements for Processing Land Exchange Proposals*. In each of the memoranda, BLM cites the specific GAO recommendations that the guidance is addressing.

[50] IM No. 2010-121.

[51] IM No. 2010-122.

[52] IM No. 2010-123.

[53] IM No. 2010-124. These four memoranda did not address two of the GAO recommendations, on which action was deferred. They did not address the GAO recommendation to track costs of individual land exchanges. Also, they did not establish a national strategy for land transactions. BLM deferred action in this area pending a congressional decision on whether to provide a long-term reauthorization for the Federal Land Transaction Facilitation Act (43 U.S.C. §2301). This authority has expired, as discussed below.

Issues for Congress

A key issue for Congress is the extent to which the reorganization of the appraisal function and the implementation of other appraisal and exchange reforms addressed perceived problems and improved land transactions. Congress continues to oversee agency processes as reformed in recent years and the underlying authorities, through authorizing and appropriating committees.

Despite the reforms implemented by BLM and DOI, continuing questions include whether to amend the FLPMA exchange authority or to discontinue exchanges. Critics assert that administrative exchanges are inherently difficult and that this difficulty has contributed to a decrease in exchanges over the past quarter century. Some seek to facilitate exchanges through changes to requirements pertaining to equal value, same state, appraisal processes, and NEPA analyses, among others.

Others have suggested ending exchanges in favor of existing authorities to buy and sell land for cash, such as those provided under other provisions of FLPMA. With cash sales, agencies could sell unwanted parcels and use the cash to buy parcels they prefer. Exchange critics believe that this approach takes the subjectivity out of estimating value through appraisal, procures the best price, and simplifies transactions because there is no requirement to equalize value or act within the same state.[54]

Still other observers assert that renewal of authority allowing BLM to sell or exchange land and keep the money in a special account for subsequent acquisitions would be preferable to exchanges under FLPMA. One such authority was contained in the Federal Land Transaction Facilitation Act.[55] This law, which expired in 2010 and was extended for one year (through July 25, 2011), provided for the sale or exchange of land identified for disposal under BLM's land-use plans. The proceeds were available to acquire certain lands containing exceptional resources.[56] A similar current authority, the Southern Nevada Public Land Management Act,[57] is more limited. It allows BLM to sell or exchange land around Las Vegas, with proceeds available to acquire environmentally sensitive lands in Nevada (as well as for other purposes in Nevada). Advocates prefer these authorities because land values can be determined through the market and agencies can purchase lands independent of annual appropriations.

BLM, among others, supports exchanging land under FLPMA for the many uses noted above under "Pros and Cons of Land Exchanges." Exchange supporters contend that controversies over valuing properties with unique attributes or in high-growth areas are as likely to occur for land that is sold or acquired under other authorities as for land that is exchanged under FLPMA. Further, BLM asserts that the majority of exchanges are not controversial. Exchange proponents also contend that for many years BLM has had limited funding for purchasing land and that BLM thus needs exchange authority to acquire additional valuable land. By equalizing value by adding or removing land parcels, BLM typically does not spend money for land exchanges. Finally, exchange proponents believe that past reforms have addressed concerns with exchanges and appraisals.

[54] This option was proposed by GAO as early as 2000. See 2000 GAO Report, p. 30.

[55] P.L. 106-248.

[56] For additional information on the law, see CRS Report R41863, *Federal Land Transaction Facilitation Act: Operation and Issues for Congress*, by (name redacted) .

[57] SNPLMA, P.L. 105-263.

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