



Western Land Exchange Project
P.O. Box 95545
Seattle, WA 98145



**Public Employees for
Environmental Responsibility**
2001 S Street, NW, Suite 570
Washington, DC 20009

Kathleen Clarke, Director
Bureau of Land Management
1849 C Street 5655MIB
Washington, DC 20240

June 19, 2003

Subject: Comments on Appraisal and Exchange Work Group Final Report

Dear Ms. Clarke:

We are writing on behalf of two organizations:

- The Western Land Exchange Project (WLXP), a nonprofit, public interest-oriented organization that monitors and evaluates federal land exchanges throughout the eleven western states; and
- Public Employees for Environmental Responsibility (PEER), a national nonprofit alliance of federal, state and local employees working within land management, wildlife protection and pollution control agencies.

For several years, our two organizations have been observing and drawing public attention to the problems in the BLM land exchange program. Government watchdog agencies have issued one report after another on the faulty decision-making, political manipulation, and multi-million dollar taxpayer losses that have characterized many of the BLM's land exchanges. Our efforts to monitor and evaluate land exchanges, as well as information we have received from concerned BLM staff, have more than confirmed the depth and breadth of the problem.

By 2001, it became clear to us that the BLM was not dealing seriously with the critical audits of its land exchange program issued by the Interior Inspector General (IG) and the General Accounting Office (GAO). In fact, so entrenched was the agency on this issue that it assigned major parts of the post-audit damage control to an upper-level staffer, David Cavanaugh, who was at the center of many of the problems brought to light in the audits.

One ultimately ineffectual response to the audits was the formation of a national land exchange evaluation team whose role was to evaluate the feasibility of land trade proposals and provide basic oversight of these projects. This team started out with some promise, but by the end of 2001 it had virtually dissolved, consisting of only one member, realty specialist Terry Catlin, whom we believe does not have the breadth of experience required for the job. This was of great concern to us, because formation of the team had been heralded by the BLM as a major, substantive response to the audits. When WLXP wrote to the BLM expressing concerns about the virtual non-existence of the Team, Lands & Realty manager Ray Brady stated that the team would be reconstituted by mid-year 2002—that is to say, a year ago. However, as mentioned in the Appraisal & Exchange Work Group report, this has not occurred.

In general, the BLM has shown a smug lack of concern over the repeated (and well-documented) criticisms of its land exchange program. We might have put this down to normal bureaucratic foot-dragging, were it not for the fact that the Forest Service—also strongly reprimanded for land exchange failures—has managed to acknowledge its failings; form an effective, qualified, and permanent land exchange oversight team; institute numerous reforms; and rewrite its Handbook and Manual, all in the time it has taken the BLM to admit it has a problem.

The Appraisal Foundation's report was a breakthrough because the BLM could not claim these were people who "just didn't understand" how appraisals work, as it did regarding the Interior IG and the GAO. Likewise, the BLM cannot claim that the Appraisal & Exchange Work Group is working outside of its area of expertise. If the BLM/Interior fails to take these issues seriously and capitalize on this opportunity to institute real reform, its land exchange authority should be rescinded.

Below, you will find more detailed comments on some of the Work Group's recommendations.

APPRAISAL-RELATED RECOMMENDATIONS

Reorganize supervision and delegation of authority

We strongly agree with this first recommendation. As the Appraisal Foundation pointed out in its 2002 report, the BLM's structure has made it impossible for appraisers to work independent of managerial and political pressure. We strongly believe that neither of the alternative recommendations would be effective, and we urge the BLM to adopt this reform.

It is necessary to place the appraisal authority at the department rather than agency level, since appraisal problems have been found in other Interior Department agencies as well. A 1999 complaint by WLXP prompted the IG to review the Bureau of Reclamation's land exchange procedures. The IG also audited and found fault with appraisals conducted for land exchange and acquisition projects by the Fish & Wildlife Service and the National Park Service. Clearly, there is a department-wide problem with the integrity and oversight of the appraisal process.

Some BLM officials will doubtless chafe at the idea of putting control of appraisals at the national level and there will be resistance to such a fundamental structural change. Unfortunately, the alternative is a never-ending succession of complaints and investigations, ineffectual gestures on BLM's part, and the solidification of public distrust.

Quality of top leadership is critical

None of the recommended changes will have any meaning or effect, unless the new DOI Chief Appraiser is someone with unassailable qualifications and integrity, selected without regard to politics.

Regrettably, the BLM has a track record of tolerating, even rewarding, persons of questionable ability and integrity. The aforementioned David Cavanaugh, who was the highest-ranking appraisal official in the BLM for some twenty years, was not even a certified appraiser until his last two years in that position. Cavanaugh also held, and acted on, controversial views regarding land valuation that did not match professional and federal appraisal standards and ethics.

Cavanaugh was at the center of a protracted land-trade debacle in Nevada in the 1990s that ended up costing taxpayers more than \$12 million due to faulty appraisals. Audits criticizing Cavanaugh's Nevada activities were released in 1996 and 1998 and were followed by a 2001 audit of similar activities in St. George, Utah. Yet, through all of this, Cavanaugh remained in his position as Senior Specialist for Appraisals. When WLXP and PEER called for

Cavanaugh's resignation in late 2001, the BLM stated that it supported Cavanaugh "unequivocally and without reservation." Cavanaugh was finally forced out after the release of the Appraisal Foundation report in late 2002.

Lands & Realty Manager Ray Brady and Terry Catlin, mentioned earlier, have also been beneficiaries of the BLM's "circle the wagons" mentality. Brady was Cavanaugh's supervisor and presumably knew and approved of his actions. He, too, emerged unscathed from the numerous scandals of 1996 to 2001, but was temporarily transferred after the Appraisal Foundation report was released. He has now been returned to his job in BLM management.

Ms. Catlin is under investigation by the Inspector General for her role in negotiating the San Rafael Swell land exchange—which would have cost taxpayers more than \$100 million in lost land value—yet retains her position as the sole member of the Land Exchange Team.

Brady's reinstatement and Catlin's retention make it appear that the BLM values personal loyalty far above the public interest. If the agency truly means to confront the problems that have plagued its land exchange program, it should staff its program with competent, diligent people who understand that they are working for the public interest. We hope that, in the course of instituting a new structure for the appraisal function, the BLM and Interior will consider whether current managers and policy-makers are up to the job of bringing integrity to the land exchange program.

Contracting

We are not certain whether the Work Group is recommending that BLM stay at its current level of contracting at a minimum or a maximum. We are opposed to an increase in the use of appraisal contractors, but favor the Work Group's recommendation to develop and maintain a skilled appraisal staff. Rather than hire more contractors to deal with delays in exchange processing, we would favor staying to the number of projects that can be done with current contractor levels and qualified staff at current or greater levels. We also strongly support the Work Group's detailed recommendations regarding the relationship between the agency and contractors.

EXCHANGE-RELATED RECOMMENDATIONS

Land tenure adjustment program "improvements"

It is not clear why the Work Group believes that the BLM has the authority (or the need) to create a comprehensive national policy for land tenure adjustments or to create a policy for addressing public land ownership patterns. The Work Group complains that land sales, exchanges, and acquisitions have separate policies, but in fact the policies are the same and stem from the same statutory authority.

The Federal Land Policy and Management Act (FLPMA) states that "it is the policy of the United States that the public lands be retained in federal ownership." Regulations promulgated under that Act at 43 CFR 2200 articulate the policies under which land exchanges may be considered—including "to secure...objectives, including but not limited to...consolidation of lands and/or interests in lands." Land exchanges may be implemented "where the Secretary...determines that the public interest will be well served."

Lands sales and acquisitions are also authorized under FLPMA. Sales have their own set of regulations and criteria that are somewhat similar to those for exchanges, including one criterion that points to ownership consolidation in areas "difficult and uneconomic to manage as part of the public lands." It appears that no regulations have been promulgated for acquisitions, however the Acquisition Handbook includes policies that are completely consistent with the FLPMA mandate.

There already is a comprehensive national policy for land tenure adjustments under FLPMA. Land ownership consolidation, too, is adequately addressed in the policies and regulations. What is most needed is for BLM staff and managers to actually read and carefully interpret those policies and regulations. We strongly disagree with this recommendation.

Land tenure adjustment tools

We also strongly disagree with the recommendation that the BLM emphasize acquiring less-than-fee interest to reduce expenditures. Conservation easements only ostensibly provide protection; are notoriously susceptible to violations; and are far too expensive in acquisition costs and added monitoring requirements in proportion to their effectiveness. Land managers should spend taxpayer money and LWCF funds only to acquire fee ownership and full interest in land.

Building public confidence in the land exchange program

Some of the most effective ways to build public confidence in the BLM's land exchange program would be to:

- Adopt the recommendations of the Work Group pertaining to appraisals;
- Replace the managers and policy-makers who have presided over the last several years of scandal in the program;
- Complete the land exchange handbook, outdated since 1999.

The BLM land exchange program does not need a public relations campaign so much as it needs to remind staff that citizens who want to be involved in BLM planning and projects are not obstacles, but legitimate participants. The BLM needs to institutionalize the idea that its staff is supposed to serve the public and public lands not land exchange proponents and third-party facilitators.

Uniform notification of land exchange and other land use planning projects would also go a long way toward dispelling public distrust. Every national forest office periodically issues a Schedule of Proposed Actions that lists virtually all projects planned in the forest and provides a contact person for citizens on a mailing list who wish to stay informed. Conversely, the BLM has no consistent policy in this area. It is not surprising that citizens are infuriated when they learn too late that public land in their area is proposed for trade or has been relinquished.

As we have also suggested to the Forest Service, notices posted in local public buildings such as post offices, community centers, and libraries would be extremely helpful in keeping the public informed.

Past audit coverage

This section is disturbingly reminiscent of the BLM's approach to the IG and GAO audits. Here, the language suggests the problem to be solved is not that the BLM made mistakes and needs to stop making them—but that the miscreants merely need to clean up the paperwork with those who caught them.

Rather than "expedite closure," the Work Group should be recommending that the BLM solve the problems. The goal should not be "removing the land exchange and appraisal programs from the Interior Department's Material Weakness list," but to eliminate those factors which have caused the material weakness. The benefits of fixing the problems identified in the audits should not be articulated as "limiting the negative congressional and public impressions," but as correcting the problems so that land exchanges and appraisals serve the public and comply with the law.

National Land Exchange Evaluation and Assistance Team

In its discussion of the land exchange team mission, the Work Group provides a long list of “process weaknesses” encountered at the feasibility stage, presumably by the team. While we don’t necessarily disagree that these problems occur below the team level, the team itself, which actually consists of one person, Terry Catlin, has not done an effective job. Aside from the fact that the team needs several more members, in our opinion Catlin does not have the qualifications or conscientiousness the job requires, and in fact has either sanctioned or ignored many questionable projects and practices.

For example, Catlin’s oversight seriously failed when the BLM allowed two people paid by a Nevada land exchange proponent, NLRC, to work in the BLM’s Carson City office. These people wrote the feasibility report for a large land trade their employer is currently planning—which Terry Catlin reviewed; performed the archeological surveys; and worked to expedite several other land exchanges between NLRC and the BLM. If Catlin did not know all of this, she should have. In any case, it all ended up on the front page of the New York Times on June 17, 2002, and yet her superiors apparently did not question her oversight abilities.

The land exchange team must be reconstituted, not with mere willing foot soldiers like Terry Catlin, but with well-qualified, upstanding team members.

Like the Forest Service team, the BLM’s team should be made permanent.

Dangerous “streamlining” for state land exchanges

We strenuously disagree with the recommendation for increased authority to do land exchanges with the states. Nor do we agree that the “unique nature” of state-federal land exchanges justifies a streamlined or more lenient process. The principal uniqueness characterizing these land trades is the aggression with which the state agencies are pressuring the BLM to enact large, inappropriate deals with them.

Some of the Work Group’s recommendations are truly alarming—not just because they are wrong, but because they are indicative of the same stubborn denial that has plagued the BLM land exchange program and prevented needed reform.

“Streamlining the process” for state trades is what was proposed by Congress for the San Rafael Swell land exchange, a deal that would cost taxpayers about \$100 million in lost mineral and land value, would involve no environmental analysis, and would actually relinquish endangered species habitat on federal lands to the State of Utah.

It is one thing for members of Congress to promote a lopsided and environmentally harmful exchange, but in the San Rafael Swell case, BLM staff and DOI officials were actively downplaying the necessity of accurately appraising the land and minerals that would be traded. Agency and department people were promoting a “different” way of determining land and mineral value that they knew from their own appraisers would result in a multimillion-dollar loss to taxpayers. The Work Group’s call for “options and alternatives for establishing value” points directly back to the San Rafael exchange, and to the “alternative approach” used by Dave Cavanaugh (and sharply questioned by the Inspector General).

The BLM has adopted a mantra regarding state exchanges: they are overly complicated, require special treatment, are labor-intensive, and are not worth appraising due to land values. In addition—presumably due to political pressure coming from some state agencies—there seems to be a widespread assumption that consolidating federal and state ownership must be dealt with as soon as possible.

Expedited land ownership consolidation is a high priority for the Utah School & Institutional Trust Lands Administration (SITLA), for example, but should not necessarily be one for federal land managers. In recent years, SITLA has been working aggressively to use state-federal land trades to dump its scenic, but less developable holdings with difficult or no access, in trade for federal lands with access, buildable terrain, and exploitable resources.

In both the Utah Schools and Utah West Desert exchanges, the process was “streamlined” via federal legislation. In these purported win-win deals, environmental analysis and land appraisal were jettisoned, and it is now commonly acknowledged in Utah that the State was the clear winner in both those exchanges.

With Congress enacting such huge giveaways of public land, the BLM should be moving in the opposite direction, not attempting to compete.

Creating special regulations for state land trades may benefit SITLA and other state land management agencies, but the paramount question for the BLM is whether doing so benefits the public at large. Is it in the greater public interest to facilitate land trades that lose the public millions, because BLM and the states don't want to get bogged down in such concerns as environmental impact and land values? As you know, the statutes that established these requirements were passed precisely to protect the public interest and the environment, and while FLPMA acknowledges the needs of local and state governments, the overriding criterion for land exchanges is whether the public interest is well served.

Nor is it a given, as the Work Group suggests, that a modified process for state exchanges and exemptions from normal requirements should be implemented, “recognizing the inherent public interest.” There is no “inherent” public interest in consolidating federal and state land ownership. Consolidation may be beneficial in some, or even many cases, but by itself cannot justify an expedited process.

We're alarmed at the Work Group's suggestion that “considering...regulatory changes to benefit state land exchanges may lead to consideration of possible expansion of the concepts to all land exchanges.” This suggestion runs completely counter to the findings of numerous audits and investigations of the BLM's land exchange program, all of which have found that expediting, circumventing, and short-cutting have brought disastrous results.

Land exchange facilitators

While the Work Group acknowledges the distrust engendered by third-party land exchange facilitators, the report overstates the benefits of working with facilitators to complete land exchanges.

Our experience with land exchange facilitators has been that their involvement tends to create land deals that benefit them, rather than the public. Whether through the use of political connections (such as The Nature Conservancy, the American Land Conservancy, or the Western Land Group) or browbeating of agency staff (Clearwater Land Exchange), these operators tend to get what they want from land exchanges, including 10 to 20 percent of the exchange value for their own profit, paid for with public lands. The public interest is far down the list of these companies' concerns. If they can't get the exchange they want through the administrative process, with proper land appraisals and under the National Environmental Policy Act (NEPA), they don't hesitate to take their projects to the U.S. Congress.

The land exchange facilitator Western Land Group was almost completely responsible for the formulation and passage of the Federal Land Exchange Facilitation Act, which among other things ushered in the bargaining process for land values that has caused so many problems, as acknowledged in the Work Group report. Facilitators have also been the most resistant to releasing information on land values.

The BLM should work with land exchange facilitators only on a very limited basis, if at all, and should, as the Work Group suggests, institute much stricter standards for facilitated land exchanges.

Legislative land exchanges

In 2002, revelations regarding the San Rafael Swell land exchange legislation highlighted the issue of inappropriate involvement by BLM staff in the negotiation over land values. Terry Catlin of the BLM negotiated with staff of the Utah School & Institutional Trust Lands Administration to arrive at an agreement on land and mineral values for holdings the State and BLM would trade under proposed legislation.

As requested, BLM staff appraisers in the Utah office had provided Catlin with preliminary land and mineral values for both federal and state lands that might be included in the trade, but data were manipulated, ignored, and/or distorted by Catlin and SITLA to arrive at values more acceptable to SITLA and more conducive to swift passage of the exchange bill. Catlin's actions have been subject to an Inspector General investigation, as well as a whistleblower complaint filed by an appraiser from the BLM's Utah State Office whose data were misused in the deal.

It is not the role of BLM staff to violate statutes and standards that govern land exchanges in order to promote congressional land deals. Catlin's proper role would have been to gather the appropriate data on land values and other issues and let Congress do with this information what it wished. For example, rather than asserting that this land exchange would yield equal value to both sides of the deal, as stated in a white paper Catlin co-wrote, she should have presented accurate information—such as a \$97-117 million difference between federal and state land values—and let Congress and the public determine whether such a loss of taxpayer assets would be worth the purported benefits of the trade.

Once a piece of land exchange legislation affecting BLM land passes into law, the agency has a duty to implement it, but as long as a legislative proposal has yet to be enacted, the BLM's role is to provide accurate information and work strictly within its statutes and regulations.

CONCLUSION

We appreciate this opportunity to evaluate the Work Group's report. We support many of the recommendations in the report, but as outlined above, have serious reservations about others.

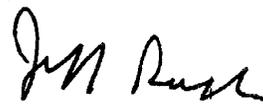
We have a strong interest in seeing a positive outcome, including meaningful reform in the BLM's land exchange program. As noted repeatedly in the report, restoring public confidence in the appraisal and exchange process is a key component of reform. We would hope that consensus could be achieved on these matters and urge you to genuinely and openly consider our concerns.

Please feel free to call us if you wish to discuss any of these issues with us.

Sincerely,



Janine Blaeloch
Director
Western Land Exchange Project



Jeffrey Ruch
Executive Director
Public Employees for
Environmental Responsibility