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The Honorable James P. Moran
Chairman
The Honorable Michael K. Simpson
Ranking Member
Subcommittee on Interior, Environment,
and Related Agencies
Committee on Appropriations
House of Representatives

Subject: *Bureau of Land Management and General Services Administration—
Selected Land Transactions*

In 2009, GAO recommended that the Department of the Interior (Interior) take several steps to improve the implementation of land exchanges.¹ In connection with our 2009 review, you asked us to review land transactions in the states of Washington and California that were carried out by Interior's Bureau of Land Management (BLM) and by the General Services Administration (GSA) under an agreement with BLM.

In the state of Washington, BLM carried out what it describes as an "assembled land exchange" between 2005 and 2008 under section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA). Section 206 authorizes BLM to "exchange" public lands under specified conditions. 43 U.S.C. § 1716(a). After reviewing the documents associated with the Washington transactions, we conclude that none of the transactions was a permissible FLPMA "exchange." Instead, the assembled land exchange consisted of a series of transactions where an agent of BLM sold public lands and, instead of depositing the proceeds in the appropriate account, used the funds to purchase nonfederal lands for BLM. In the sale transactions, BLM conveyed public lands in return for money, while in the purchase transactions, BLM conveyed money in return for land. These transactions comport with the common meaning of the words "sale" and "purchase," not with the meaning of "exchange." BLM itself stated in many of the documents associated with the transactions that "sales" and "purchases" were taking place.

¹ GAO, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, [GAO-09-611](#) (Washington, D.C.: June 12, 2009).

In California, BLM, working under an agreement with GSA, has been carrying out what it describes as an “assembled land exchange” since 1995. BLM and GSA explain that these transactions were authorized by section 707 of the California Desert Protection Act (CDPA), which requires BLM, upon request of the state of California, to “exchange” particular federal lands for other particular lands owned by California. After reviewing the documents associated with the California transactions, we conclude that two of the transactions were indeed exchanges consistent with the provisions of CDPA. However, one series of California transactions, like the Washington transactions, was not an exchange but instead was a series of land sales followed by a land purchase. In addition, GSA, at BLM’s direction, has sold numerous parcels of surplus federal real property. These transactions also are not exchanges under CDPA. GSA currently has at least \$7.9 million of proceeds from these sales in a deposit fund account in the U.S. Treasury.

The transactions in which BLM and GSA sold and purchased land are not authorized under the land exchange provisions of the applicable statutes. The proceeds of these sales, under applicable statutes, are to be deposited into the appropriate funds in the Treasury, “without deduction for any charge or claim.” 33 U.S.C. § 3302(b). This BLM and GSA did not do. Instead, after selling public lands and surplus federal real property, BLM and GSA used some of the proceeds to purchase land. These actions violated the Miscellaneous Receipts Statute. To rectify this situation, BLM should transfer funds from the augmented appropriations to the appropriate accounts in the Treasury. If BLM finds that it lacks sufficient budget authority to cover the adjustments, it should report a violation of the Antideficiency Act in accordance with 31 U.S.C. § 1351.

GSA improperly deposited the proceeds from land sales into a deposit fund account in the Treasury. These accounts are intended to hold amounts that do not belong to the government. The proceeds of the California sales are funds of the United States and, therefore, must be deposited into the appropriate fund in the Treasury. GSA should deposit the balance remaining in the deposit fund account into the appropriate fund in the Treasury.

BLM’s improper practices raise key concerns. Although BLM has specific authority to sell land, this authority is separate and distinct from its authority to exchange land. BLM’s land sales transactions fall under BLM’s sale authority, not its land exchange authority. Thus, BLM was required to comply with the statutory requirements for selling land, but it did not. For example, instead of offering the land under competitive procedures as is generally required for selling land, BLM sold several of the parcels directly to parties who had been previously identified as potentially interested in buying the properties. By not using a competitive process in these sales, BLM may have lost opportunities to receive more proceeds for the land than was received through the direct sales.

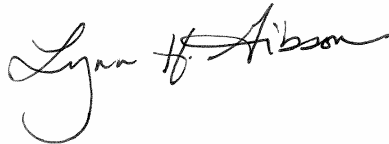
Furthermore, BLM was not authorized to use sale proceeds to purchase lands. By using these proceeds, it augmented its land acquisition appropriations. When Congress makes an appropriation, it establishes an authorized program level and the

agency may not operate beyond that level. BLM circumvented and exceeded these limitations when it augmented its appropriations from sources outside the government. One of the objectives of these limitations is to prevent agencies from circumventing Congress's power of the purse.

Our conclusions in this opinion are similar to those we reached over 10 years ago when we criticized BLM for its practice of selling public lands and using the proceeds to finance additional land purchases. GAO, *BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest*, [GAO/RCED-00-73](#) (Washington, D.C.: June 22, 2000). Then, as now, BLM improperly augmented its appropriations.

Our full analysis of these issues is enclosed. If you have any questions, please contact Susan A. Poling, Managing Associate General Counsel, at (202) 512-2667, or Julia Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely yours,

A handwritten signature in black ink that reads "Lynn H. Gibson". The signature is written in a cursive style with a large, looped initial "L".

Lynn H. Gibson
Acting General Counsel

Enclosure

ENCLOSURE

Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 707 of the California Desert Protection Act of 1994 (CDPA) both authorize the Department of the Interior (Interior) to “exchange” certain federal lands for nonfederal lands, provided that the exchange meets certain statutory criteria. Interior’s Bureau of Land Management (BLM) carried out a series of transactions in Washington (Washington transactions) and asserts that the FLPMA exchange provisions authorized these transactions. BLM also worked with the General Services Administration (GSA) to carry out a series of transactions in California (California transactions); BLM and GSA assert that the CDPA exchange provisions authorized these transactions.

For the reasons given below, we conclude that in several of the transactions, BLM and GSA purchased and sold land.² These land sales and purchases were not authorized by the exchange provisions of either FLPMA or CDPA. BLM and GSA violated the Miscellaneous Receipts Statute when they failed to deposit the proceeds of these sales into the appropriate accounts in the Treasury. 31 U.S.C. § 3302(b). In addition, BLM augmented its appropriation when it used the proceeds from the sales transactions to purchase additional land.³

The facts of the Washington and California transactions are complex and span a time frame from 1995 to the present. For ease of presentation, in the Background section

² *Surplus real property* is real property that GSA determines is not required to meet the needs or responsibilities of all federal agencies; however, the scope of the phrase *surplus real property* excludes *public lands*. See 40 U.S.C. § 102(9). Generally, GSA has authority to manage and dispose of surplus real property. *Public lands* include “any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management,” with particular exceptions not relevant here. FLPMA § 103(e), 43 U.S.C. § 1702(e).

³ Our practice when issuing opinions is to obtain the views of the relevant agencies to establish their legal positions on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. By letters, we requested the views of Interior and of GSA. Letter from Assistant General Counsel for Budget Issues, GAO, to Solicitor, Interior (Aug. 19, 2009); Letter from Assistant General Counsel for Budget Issues, GAO, to Solicitor, Interior (Sept. 10, 2009); Letter from Assistant General Counsel for Budget Issues, GAO, to Acting General Counsel, GSA (Sept. 10, 2009). GSA responded in February 2010. Letter from Regional Counsel (9L), GSA, to Assistant General Counsel for Budget Issues, GAO (Feb. 16, 2010). Despite numerous telephone requests, Interior did not respond to our letter.

we set out the facts of the Washington and California transactions in separate subsections. The Discussion section is divided into three major subsections. It starts with a subsection on BLM's exchange authority under FLPMA section 206, because ultimately all the exchanges under consideration here must be consistent with its requirements. Two subsections follow analyzing the Washington and California transactions in light of FLPMA section 206. After determining that none of the Washington transactions and most of the California transactions do not comport with FLPMA section 206 and that the transactions involve sales and purchases, we then discuss the appropriate disposition of the sales proceeds of the Washington and California transactions.

BACKGROUND

Washington Assembled Land Exchange

The BLM Oregon State Office conducted a series of seven land transactions in the state of Washington between 2005 and 2009. BLM referred to this series of transactions as the "Central Washington Assembled Land Exchange, Phase II." Prior to the first transaction, BLM and a private enterprise named Clearwater Land Exchange (Clearwater) entered into an "amended agreement to initiate an exchange" (amended agreement) which listed numerous parcels of both federal and nonfederal "lands and interests being considered for exchange." Clearwater agreed that it "will either have legal ownership, control or the ability to provide acceptable title to the non-Federal lands described" in the agreement.

In each transaction, agents of BLM and Clearwater signed documents stating the terms of the particular transaction, such as descriptions of land to be transferred and money to be conveyed. Each of these documents referred to the amended agreement. The parties made the amended agreement pursuant to section 206 of FLPMA, which authorizes BLM to "exchange" certain public lands for nonfederal lands, provided that the exchange meets particular statutory criteria. BLM carried out seven transactions. BLM referred to each transaction by number, such as "Transaction #1" or "Transaction #7." We describe each of the seven transactions below. For clarity of discussion, we group similar transactions together; therefore, the transactions are not listed in chronological order.

- Transactions #2, #5, and #7. In these three transactions, BLM sold public lands.⁴ BLM agreed to deposit the proceeds of each sale into a deposit fund

⁴ Transactions #2, #5, and #7 were completed in August 2005, February 2008, and September 2008, respectively.

account in the Treasury⁵ “until such time that the BLM and Clearwater require payment to be utilized for a subsequent transaction.”

- Transactions #4 and #6. In these two transactions, BLM purchased public lands using funds from the deposit fund account that were proceeds from earlier sales.⁶ In each of these transactions, BLM agreed to deposit with an escrow agent a sum of money “as full consideration for the purchase of the subject property,” while Clearwater agreed to deposit with the escrow agent deeds conveying title in particular lands from private parties to the United States.
- Transaction #1. In this transaction, BLM sold public lands to nine different parties, and BLM purchased land from three additional parties.⁷ Clearwater agreed to deposit with an escrow agent deeds executed by third-party grantors conveying title to the United States, while BLM agreed to deposit patents conveying title to eleven different parcels to the nine other parties. No nonfederal party to the transaction both conveyed and received land; that is, each nonfederal party either conveyed or received land in return for money. BLM and Clearwater instructed the escrow agent to hold the proceeds resulting from the “sale of federal” parcels. They also directed the escrow agent to convey funds to the private landowners and to record the appropriate deeds granting title in the land to the United States “after enough monies are deposited from the sale of federal lands.” Therefore, in effect, the escrow agent used the proceeds from the sale of public lands as payment to parties who were selling their lands to BLM.

Clearwater agreed to deposit \$92,700 in the escrow account, which was the difference between the value of the lands conveyed to nonfederal parties and the value of the lands conveyed to the federal government. BLM agreed that, after receiving this amount from the escrow agent, it would deposit the money in a deposit fund account in the U.S. Treasury “until such time that the BLM and Clearwater require payment to be utilized for a subsequent transaction.”

⁵ Deposit fund accounts record monies that do not belong to the federal government. An account may be classified as a deposit fund account if it holds monies withheld from government payments for goods and services received, monies the government is holding awaiting distribution based on a legal determination or investigation, or deposits received from outside sources for which the government is acting solely as a banker, fiscal agent, or custodian. 1 TFM 2-1535.

⁶ Transactions #4 and #6 were completed in December 2006 and March 2008, respectively.

⁷ Transaction #1 was completed in April 2005.

Accordingly, BLM received a \$102,700 “unearned equalization payment” from the escrow agent in May 2005.⁸

- Transaction #3. In this transaction, BLM sold public lands to various parties and BLM bought land from the state of Washington.⁹ Clearwater agreed to deposit \$111,800 with an escrow agent, which was the difference in value between the value of the lands conveyed to nonfederal parties and the value of the land BLM purchased from the state of Washington. The state of Washington agreed to deposit with the escrow agent a deed conveying to the United States title in a particular parcel. Meanwhile, BLM agreed to deposit in the escrow account patents conveying title in particular lands to other nonfederal parties. BLM and Clearwater agreed that, after BLM received the \$111,800 sum from the escrow agent, BLM would deposit the money into the deposit fund account in the Treasury “until such time that the BLM and Clearwater require payment to be utilized for a subsequent transaction.” BLM and Clearwater also instructed the escrow agent to pay \$390,000, minus fees, to the state of Washington.

California transactions

BLM, working in conjunction with GSA, has been conducting a series of land transactions in California since 1995. CDPA section 707 requires BLM, upon request of the state of California, to “exchange” particular federal lands for other particular lands owned by the state of California. Several classes of federal lands are eligible for CDPA “exchange,” including public lands that BLM has determined to be suitable for exchange under FLPMA as well as any land in California that is “surplus to the needs of the Federal Government.” 16 U.S.C. § 410aaa-77(b).

In 1995, citing CDPA section 707, BLM, GSA,¹⁰ and the California State Lands Commission (California) entered into a memorandum of agreement. In it, the parties declared that they would implement section 707 “by permitting the sale of Surplus [federal] Property, provided the proceeds . . . are transferred to the State.” BLM and GSA then carried out several transactions as follows:¹¹

⁸ The documents do not explain why BLM received \$102,700 rather than the \$92,700 specified in the agreements.

⁹ Agents for BLM and Clearwater signed the agreement for Transaction #3 in October 2005.

¹⁰ GSA is responsible for the disposal of surplus federal property. 40 U.S.C. § 541.

¹¹ BLM and GSA tracked the total value of many of the lands transacted in a document they referred to as a “ledger account.” The last transaction recorded was in 2003. At that time, the ledger account showed a balance of \$2,154,675 in favor of the U.S. government. However, many of GSA’s sales to third parties were not included in the ledger account.

1. Dixon transactions. In these transactions, which concluded in 1997, BLM directed GSA to sell three parcels of surplus federal real property to third parties.¹² GSA deposited the proceeds of each sale in a deposit fund account¹³ in the U.S. Treasury. GSA used some of the sales proceeds to pay the costs it incurred to conduct the sales. GSA and BLM used \$1,136,686 of the remaining proceeds to buy land from California.
2. Chocolate Mountains transaction. In this transaction, which concluded in June 1997, BLM conveyed to California title in particular public lands. The federal government did not receive any lands or money in return, and GSA had no role in this transaction.
3. Pomona transaction. In this transaction, which concluded in December 1997, BLM, GSA, and California agreed to exchange particular surplus federal real property for California lands.¹⁴ The parties agreed to consummate the exchange only if California could immediately resell the property it received in the exchange to a California municipality. At the conclusion of the transaction, California resold its land to the municipality. The municipality paid about \$13 million to an escrow agent. The agent paid GSA approximately \$107,715 from the municipality's payment, which GSA used to pay the costs it incurred in the course of the transaction; the escrow agent transferred to California the balance of the municipality's payment.
4. Metropolitan Water District transaction. In this transaction, which concluded in November 2003, California conveyed state lands to BLM, BLM conveyed public lands to a California water district, and the water district paid California the value of the public lands it received.¹⁵ GSA had no role in this transaction.
5. Additional California sales transactions. In several other transactions, GSA, at BLM's direction, sold additional parcels of surplus federal real property to third parties and deposited the proceeds into the designated deposit fund account in the Treasury after deducting the costs it incurred in the course of the sale. The federal government received no lands in these transactions.

¹² BLM and GSA referred to these transactions as the "Dixon" transactions, after the name of the properties sold.

¹³ For a definition of "deposit fund account," see note 4, *supra*.

¹⁴ These transactions concerned the former Naval Industrial Reserve Ordnance Plant in Pomona, California.

¹⁵ The parties to this transaction were BLM, the Commission, and the Metropolitan Water District of Southern California.

Many of these transactions were sales to third parties in exchange for the payment of money. As a result, GSA reports that it continues to have at least \$7.9 million¹⁶ in a deposit fund account “to exchange for” California state lands in some future transaction or transactions that BLM is reportedly negotiating with California.

DISCUSSION

BLM cites the land exchange provisions of FLPMA section 206 as authority for the Washington transactions, while BLM and GSA cite CDPA as authority for the California transactions. Under the CDPA, any exchange must be consistent with the requirements of FLPMA section 206. CDPA § 707(a), 16 U.S.C. § 410aaa-77(a). Therefore, for both the California and the Washington transactions, our analysis must begin with the exchange authority in FLPMA section 206.

BLM’s exchange authority under FLPMA section 206

To interpret the scope of BLM’s exchange authority under FLPMA section 206, we begin with the language of the statute. *See, e.g., Carcieri v. Salazar*, 555 U.S. ___, 129 S. Ct. 1058 (2009); *BedRoc Limited, LLC v. United States*, 541 U.S. 176 (2004); *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940); B-320091, July 23, 2010. We must “determine whether the language at issue has a plain and unambiguous meaning.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997). Under FLPMA section 206:

“A tract of public land or interests therein may be *disposed of by exchange* by the Secretary under this Act . . . where the Secretary concerned determines that the public interest will be well served by making that exchange.”

43 U.S.C. § 1716(a) (emphasis added). A key phrase in FLPMA section 206 is “dispose[] of by exchange.” FLPMA does not define the meaning of this phrase or of any of the terms it uses. When Congress does not specifically define the terms that it uses in a law, courts often turn to common dictionaries to find the plain, ordinary meaning of a word or phrase. *See, e.g., Mallard v. United States District Court*, 490 U.S. 296, 300–02 (1989); B-308715, Apr. 20, 2007; B-302973, Oct. 6, 2004. “Dispose of” means “to transfer or part with, as by giving or selling” while “exchange” means “to give in return for something received.” *American Heritage Dictionary of the English Language* (4th ed. 2009), at 522, 619–20. But we cannot divorce the words “dispose of” from the words that follow: “by exchange.”

¹⁶ GSA has provided us with conflicting information regarding the amount remaining in the deposit fund account. As we developed our 2009 report, GSA provided us a document stating that about \$8.39 million is remaining in the account. As we developed this opinion, GSA sent us a letter stating that about \$7.9 million remained in the account. We are unaware of any transactions that would explain this apparent discrepancy.

Although a common dictionary is a helpful aid as we interpret the meaning of the phrase “dispose of by exchange,” we also must interpret the language so that “the statutory scheme is coherent and consistent The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson*, 519 U.S. at 340–41 (internal quotation marks and citations omitted); B-318897, Mar. 18, 2010.

Therefore, we examine other provisions of FLPMA section 206 to discern the coherent, consistent meaning that Congress intended. The section provides that when exercising its exchange authority, BLM may “accept title to any non-Federal land or interests therein in exchange for such land.” 43 U.S.C. § 1716(b). This indicates that any exchange must entail an exchange of titles or interests in land, as it grants BLM authority to accept a title or interests in nonfederal land in exchange for federal land. The clause does not state that BLM may accept money in exchange for the surrender of the public lands. Section 206 also contains a limitation on BLM’s exchange authority, for it states that “the values of lands exchanged by [BLM] either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to [BLM] . . . so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership.” 43 U.S.C. § 1716(b). The requirement that the “values of lands exchanged . . . shall be equal” indicates that an exchange must entail an exchange of titles or interests in land, since “the values of lands exchanged” cannot possibly be equal if only one party surrenders an interest in land. Similarly, the provision for equalization of land values by the payment of money indicates that any exchange includes the transfer of interests out of federal ownership, as the amount of any equalization payment is limited based on the total value of interests in land transferred out of federal ownership. Congress recognized that the values of properties to be exchanged would not always be equal, but set a monetary limit on the permissible value difference under the exchange authority.

Other provisions of FLPMA section 206 also indicate that an exchange of titles or interests in land is a necessary component of any section 206 exchange. BLM must determine that an exchange will serve the public interest. 43 U.S.C. § 1716(a). To make this determination, BLM must “give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife.” *Id.* BLM must find that the nonfederal land it proposes to acquire in an exchange will serve these objectives at least as well as the public lands that it proposes to transfer out of federal ownership. To make such a finding, each party to an exchange must surrender interests in land. Similarly, FLPMA requires that “unless mutually agreed otherwise . . . all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interest therein to be transferred out of Federal ownership shall be issued simultaneously” after BLM ensures that the government will receive acceptable title. FLPMA §§ 206(b), (c). Such a simultaneous issuance of patents or titles may take place only if each party to an exchange surrenders an interest in land in exchange for another interest in land.

In interpreting FLPMA section 206, we must also ensure that we interpret the section in a manner that is consistent with FLPMA as a whole. *Robinson*, 519 U.S. at 340–41. In doing this, the meaning of “exchange” is “clarified by the remainder of the statutory scheme.” *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 217 (2001); *see also, e.g.*, B-290125.2, B-290125.3, Dec. 18, 2002; B-287158, Oct. 10, 2002. In addition, we must give all words of the statute effect, as Congress does not include unnecessary language in enactments. *See, e.g., Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995); B-261522, Sept. 29, 1995.

As we examine the statutory scheme Congress enacted in FLPMA, we note separate sections of FLPMA grant BLM authority to carry out “[s]ales of public land tracts” and to “acquire by purchase, exchange, donation, or eminent domain, lands or interests therein.” FLPMA § 203, 43 U.S.C. § 1713; FLPMA § 205, 43 U.S.C. § 1715. The common meaning of “sale” is “[t]he exchange of goods or services for an amount of money or its equivalent.” *American Heritage* at 1536. Similarly, a “purchase” is “to obtain in exchange for money or its equivalent; buy.” *Id.* at 1422. These separate grants of authority to “acquire by purchase,” “sell,” and to “acquire” and “dispose of” by “exchange” show that Congress ascribed a different meaning to the word “exchange” than it did to the words “purchase” and “sell.” Congress did not use “exchange” to include transactions in which a party surrenders land in return for money, as the separate grants of authority to “purchase” and to “sell” public lands already encompass such transactions.

There is a symmetry between FLPMA sections 205 and 206: while section 205 grants BLM authority to “*acquire* pursuant to this Act by . . . exchange . . . lands or interests therein,” section 206 states that “[a] tract of public land or interests therein may be *disposed* of by exchange” (emphasis added). This symmetry also indicates that FLPMA draws a distinction between purchases or sales of land for money and exchanges of land for land, as section 205 grants authority to acquire land both by “exchange” and by “purchase.” That Congress used these two words to grant land acquisition authority indicates that each has a separate meaning. Because “purchase” commonly means to acquire by payment of money, “exchange” as used in FLPMA does not also encompass this meaning.

Thus, a reading of the provisions of FLPMA section 206 and of FLPMA as a whole leads to the plain meaning of the FLPMA section 206 exchange authority: Congress used “exchange” in FLPMA section 206 to grant BLM authority to surrender interests in public lands in return for interests in non-Federal land, with any value imbalance in the lands exchanged being limited to 25 percent of the total value of lands transferred out of federal ownership. Each party in the exchange transaction must both acquire and surrender interests in land.

BLM characterizes the entire series of Washington transactions to be a single “assembled land exchange.” BLM also characterizes many of the California transactions as constituting a single “assembled land exchange.” This characterization suggests that a series of transactions is a permissible “exchange” under FLPMA section 206 if the entire series of transactions results in federal

acquisition of non-federal land and the disposal of federal land. However, we have shown that the word “exchange” does not encompass the sale and purchase of land.

We also note that the “meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000). After the enactment of FLPMA section 206, Congress passed the Federal Land Transaction Facilitation Act (FLTFA). Pub. L. No. 106-248, title II, 114 Stat. 598, 613 (July 25, 2000).¹⁷ FLTFA authorizes BLM to sell or exchange certain public lands which have been identified for disposal. 43 U.S.C. § 2304. BLM must deposit the proceeds of such sales or exchanges into a separate account in the Treasury known as the “Federal Land Disposal Account.” 43 U.S.C. § 2305. BLM may use funds from the Federal Land Disposal Account to purchase certain other lands or interests therein.¹⁸

BLM’s interpretation of FLPMA suggests that the Washington and some of the California purchase and sale transactions constituted a permissible “assembled land exchange” under FLPMA section 206 because the series of transactions ultimately resulted in the acquisition of non-federal land and the disposal of federal land. However, FLTFA authorized transactions of exactly this nature: under FLTFA, BLM may sell certain public lands, deposit the funds into a special account, and use the funds without further appropriation to purchase additional public lands. If BLM’s interpretation of FLPMA were correct, then FLPMA would already have authorized the transactions that Congress authorized in FLTFA. Congress would have had no need to enact FLTFA if, as BLM suggests, FLPMA already provided authority for BLM to sell land and to retain and use the proceeds to purchase additional land. Therefore, BLM’s interpretation of FLPMA would make FLTFA unnecessary—that is, render it “surplusage.” Because Congress generally does not enact unnecessary language, BLM’s interpretation of the FLPMA cannot be correct. *See, e.g., Plaut*, 514 U.S. at 211; 70 Comp. Gen. 351 (1991). FLPMA section 206 authorizes transactions in which each party to the exchange both acquires and surrenders an interest in land.

¹⁷ In June 2000, we issued a report criticizing BLM for its practice of characterizing a series of land sales and purchases as an exchange, retaining sales proceeds in violation of applicable law. [GAO/RCED-00-73](#). Under specified circumstances not present here, FLTFA authorizes some of the practices discussed in our 2000 report.

¹⁸ For example, the lands to be acquired must be lands “that are (i) inholdings; and (ii) adjacent to federally designated areas and contain exceptional resources.” 43 U.S.C. § 2305. An “inholding” is a “right, title, or interest, held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area” such as a national monument, park, or wildlife refuge. 43 U.S.C. § 2302(3).

Consistency of the Washington transactions with FLPMA section 206

We now examine the Washington land transactions to determine whether they were consistent with FLPMA section 206. Under FLPMA section 206, each party in the exchange transaction must both receive and surrender interests in land. BLM characterizes the entire series of Washington transactions as being a permissible “assembled land exchange.” However, as we discussed above, FLPMA section 206 does not authorize any transaction, whether part of an “assembled” series or otherwise, in which a party only received or surrendered an interest in land.

- Transactions #2, #5, and #7. In these three transactions, BLM sold public lands for money. These transactions were not exchanges under FLPMA section 206 because BLM did not receive an interest in land.
- Transactions #4 and #6. In these two transactions, BLM bought public lands. These transactions were not exchanges under FLPMA section 206 because BLM did not surrender an interest in land.
- Transaction #1. In this transaction, BLM both received and surrendered interests in public lands. The transaction involved multiple parties. BLM was the only party that both received and surrendered interests in land. Each nonfederal party only received or surrendered an interest in land. The documents setting forth the terms of the transaction state that the escrow agent would convey title in land from private parties to the federal government only “[a]fter enough monies are deposited from the sale of federal lands.” The escrow agent would then use funds from these sales to pay the private parties who were conveying land to the federal government.

Therefore, in actuality this transaction comprised a series of sales in which BLM sold public lands to private parties and then used the proceeds of the land sales to purchase land from other private parties. This transaction was not an exchange under FLPMA section 206 because only BLM both surrendered and received interests in land. Some of the private parties did not surrender an interest in land, and the other private parties did not receive an interest in land. Without the proceeds from the sale of public lands, no property would have been acquired.

- Transaction #3. In this transaction, BLM first sold several parcels of public lands to nonfederal parties. Proceeds from these sales financed BLM’s purchase of a parcel from another nonfederal party, with BLM receiving the remaining sales proceeds. As in Transaction #1, this transaction was comprised of a series of sales and a purchase. This transaction was not an exchange under FLPMA section 206 because only BLM both surrendered and received interests in land.

Consistency of the California transactions with CDPA and FLPMA section 206

BLM carried out the California transactions pursuant to CDPA which, in turn, requires that exchanges be consistent with FLPMA section 206. FLPMA section 206 authorizes transactions in which each party to the exchange both receives and surrenders an interest in land. BLM characterizes some of the California transactions as being part of a permissible “assembled land exchange.” However, as we discussed above, FLPMA section 206 does not authorize any transaction, whether part of an “assembled” series or otherwise, in which a party only received or surrendered an interest in land.

1. Dixon transactions. In these transactions, BLM and GSA used proceeds from sales of surplus federal real property to purchase land from California. These transactions were not an exchange under FLPMA section 206 because California surrendered an interest in land but received only money, not land, in return.
2. Chocolate Mountains transaction. In this transaction, BLM transferred public lands to California. This transaction was not an exchange under FLPMA section 206 because BLM did not receive an interest in land and California did not surrender an interest in land.
3. Pomona transaction. In this transaction, BLM and GSA surrendered surplus federal real property to California and, in return, received land from California. The parties agreed to consummate the exchange only if California could immediately resell the property it received in the exchange to a California municipality. The municipality paid California the value of the land it received. This transaction was an exchange under FLPMA section 206 because both parties (the federal government and California) both received and surrendered an interest in land. This contemporaneous exchange resulted in California selling the land it received but did not require the federal government to sell land and then retain the proceeds in order to purchase land later in time.
4. Metropolitan Water District transaction. In this transaction, BLM conveyed public lands to the Metropolitan Water District, California conveyed land to BLM, and the water district paid California the value of the land it received. This transaction was an exchange under FLPMA section 206 because it was materially identical to the Pomona transaction. BLM and California both received and surrendered an interest in land, and California sold the land interest it acquired to the Metropolitan Water District.
5. Additional California sales transactions. In the remaining transactions, GSA, at BLM’s direction, sold additional parcels of surplus federal real property to third parties. These transactions were not exchanges under FLPMA section 206 because the federal government did not receive an interest in land and the third parties did not surrender an interest in land.

Disposition of sales proceeds from the Washington transactions

As we concluded above, none of the Washington transactions were “exchanges” as authorized by FLPMA. In some of the transactions, BLM sold public lands. We now consider whether BLM disposed of the sales proceeds in a manner permitted by law. From 2005 to 2009, as BLM sold land as part of the Washington transactions, it placed the proceeds in a deposit fund account. It then withdrew the funds as it purchased land through Clearwater. Deposit fund accounts are properly used to hold funds that—

“are either (1) held temporarily and later refunded or paid upon administrative or legal determination as to the proper disposition thereof or (2) held by the government, which acts as banker or agent for others, and paid out at the direction of the depositor. Examples include savings accounts for military personnel, state and local income taxes withheld from federal employees’ salaries, and payroll deductions for the purchase of savings bonds by civilian employees of the government.”¹⁹

The proceeds of the Washington sales are none of these. These amounts are owned by the federal government from the sale of public lands. The proceeds of the sales must go to the appropriate Treasury account, not to a holding account for use years later to purchase nonfederal lands. BLM states that it deposited the net amount (after selling public lands and using the proceeds to purchase nonfederal lands) in the Federal Land Disposal Account.

The Federal Land Disposal Account was established under FLTFA in 2000.²⁰ FLTFA permits BLM to sell public lands identified for disposal under approved land use plans as of July 2000, place the proceeds in the Federal Land Disposal Account, and use the account to purchase certain other lands or interests therein. 43 U.S.C. §§ 2304, 2305. Assuming that BLM is correct that the Federal Land Disposal Account is the proper Treasury account, BLM should have deposited *all* the proceeds from the sales in the account without deduction.

¹⁹ GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: Sept. 2005), at 5–6. The definition also states that “[d]eposit fund balances are accounted for as liabilities of the federal government. These accounts are not included in the budget totals because the amounts are not owned by the government.” The TFM has a similar definition. See note 5, *supra*.

²⁰ FLTFA permits BLM to sell or exchange public land identified under approved land use plans in effect on July 25, 2000. 43 U.S.C. § 2304(a). BLM states that the lands it disposed of in the course of the Washington transactions were identified for disposal under a land use plan approved prior to July 25, 2000. Accordingly, BLM states that after the Washington transactions concluded in 2008, it deposited the amount remaining in the deposit fund account into the Federal Land Disposal Account.

Under the Miscellaneous Receipts Statute, “an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” 31 U.S.C. § 3302(b). The requirement for deposit “as soon as practicable without deduction for any charge or claim” applies whether the correct account for deposit is in the general fund of the Treasury or where, as here, the money must be deposited into a specific fund in the Treasury. B-72105, Nov. 7, 1963.²¹ Therefore, the Miscellaneous Receipts Statute required BLM to immediately deposit the proceeds of land sales into the appropriate account in the Treasury.²² B-307137, July 12, 2006; B-300248, Jan. 15, 2004.

BLM did not deposit the proceeds of land sales into the Federal Land Disposal Account “as soon as practicable” after each sale. Instead, after each sale BLM placed the money into a deposit fund account where it sat for as long as three years. BLM then used the money to purchase additional public lands. Only after several cycles of sale and purchase transactions did BLM deposit the remaining sales proceeds into the Federal Land Disposal Account. With these actions, BLM violated the Miscellaneous Receipts Statute.

BLM’s use of the proceeds of the sales to purchase additional public land was also improper, as BLM had no statutory authority to make these purchases using these proceeds. Amounts from the Federal Land Disposal Account were not available to purchase the parcels BLM acquired in the Washington transactions as, by BLM’s own admission, the parcels were not eligible for purchase under the statute creating the Federal Land Disposal Account because they were not inholdings or otherwise

²¹ Under some circumstances we have concluded that the general rule of the Miscellaneous Receipts Statute does not control. However, those cases are quite different from the one we now consider. For example, we concluded that the Department of the Treasury could use particular fee receipts to fund related administrative expenses. B-247644, Apr. 9, 1993. In that case, however, the relevant statute created no fund in the Treasury, explicitly provided that fees collected “may be applied against the administrative expenses,” and required deposit into the Treasury or to “any Federal Reserve bank” only if the funds were “not otherwise employed.” Energy Security Act, Pub. L. No. 96-294, §§ 139, 154, 94 Stat. 611, 665, 669 (June 30, 1980). Other cases apply the rule that receipts qualifying as “repayments” to an appropriation may be retained to the credit of that appropriation. *See, e.g.*, B-302366, July 12, 2004; B-230250, Feb. 16, 1990. This exception to the Miscellaneous Receipts Statute is not applicable to the case we now consider.

²² Even if proceeds of the land sales were not eligible for deposit into the Federal Land Disposal Account, BLM still would not deposit the proceeds into the general fund of the Treasury. Instead, proceeds from the sale and disposal of public lands generally must be deposited into the “reclamation fund” of the Treasury, which finances construction and maintenance of irrigation works in certain areas. 43 U.S.C. § 391.

eligible. Therefore, BLM's improper use of the sales proceeds depleted the Federal Land Disposal Account of amounts it should have received to fund qualifying land purchases. In addition, BLM's improper actions augmented BLM's appropriation. *See* B-307137, July 12, 2006 (Department of Energy augmented its appropriation when it directed its agent to receive, retain, and use proceeds from the sale of government assets to compensate the agent for expenses it incurred on behalf of the government).

To rectify its improper use of the sales proceeds in the Washington transactions, BLM should determine the total amount it used to purchase land in the course of the transactions. BLM should transfer this amount from the account that was available to finance these purchases to the Federal Land Disposal Account. If BLM finds that it lacks sufficient budget authority to cover the adjustment, it should report a violation of the Antideficiency Act in accordance with 31 U.S.C. § 1351.

Disposition of the sales proceeds in the California transactions

As in the Washington transactions, the exchange provisions of CDPA and FLPMA did not authorize most of the California transactions. Only the Pomona and Metropolitan Water District transactions were exchanges in which both the federal government and the nonfederal party surrendered an interest in land in return for the receipt of another interest in land. The Dixon transactions and the additional California sales transactions involved land sales, not exchanges, and BLM and GSA used the sales proceeds to purchase additional public lands. We now consider whether BLM and GSA disposed of the sales proceeds from the California land sales in a manner permitted by law.

GSA states that it and BLM agreed that GSA would dispose of surplus federal property "pursuant to BLM's authority under [FLPMA], if approved by BLM and the Commission." However, under FLPMA, BLM has no authority to dispose of surplus federal property. FLPMA only grants BLM authority to dispose of public lands.²³ CDPA also does not grant BLM authority to sell surplus federal property. Rather, CDPA provides that if California wishes to acquire particular federal lands by exchange, "then upon notice to the head of the agency having administrative jurisdiction over such lands or interests therein, [BLM] shall be vested with administrative jurisdiction over such land or interests therein *for the purpose of concluding such exchange.*" 16 U.S.C. § 410aaa-77(c)(3) (emphasis added).

Therefore, under CDPA, BLM acquires administrative jurisdiction over surplus federal real property for the purpose of exchanging it for California lands. Unfortunately, most of the California transactions at issue were not exchanges. Instead, the transactions involved the sale of surplus federal real property and the purchase of property from California. Since neither CDPA nor any other statute grants BLM authority to sell surplus federal property, GSA did not act pursuant to any

²³ For a discussion of the difference between "public lands" and "surplus property," see note 2, *supra*.

grant of authority from CDPA or BLM when it sold surplus federal property in the course of the California transactions. Rather, GSA acted pursuant to its own authority to dispose of surplus federal property. 40 U.S.C. § 541. As such, GSA must deposit the proceeds from the sale of surplus federal property into the appropriate fund in the Treasury.²⁴ The placing of these funds in the deposit fund account was improper, since such an account is properly used only when the funds are not government property. As we discussed earlier in the context of the Washington transactions, the Miscellaneous Receipts Statute requires GSA to deposit the proceeds of land sales into the proper fund “as soon as practicable, without deduction for any charge or claim.” 31 U.S.C. § 3302(b). To remedy the situation, GSA must deposit the proceeds from the sale of surplus federal real property in the appropriate account in the Treasury.

Unfortunately, BLM and GSA have used some of the proceeds to purchase additional public lands from California, with the balance of the proceeds remaining in a deposit fund account. Neither GSA nor BLM has authority to use the sales proceeds of surplus federal property to purchase public lands. BLM augmented its appropriation when it improperly used the proceeds of sales of surplus federal real property to fund the acquisition of land in the Dixon transactions. To rectify this situation, BLM should adjust its accounts by transferring funds from a BLM account available to acquire lands in the Dixon transactions to the appropriate account in the Treasury designated by GSA. GSA should designate the fund in the Treasury that should have received the proceeds of the land sales, since the sales were under GSA’s authority. If BLM finds that it lacks sufficient budget authority to cover the adjustment, it should report a violation of the Antideficiency Act in accordance with 31 U.S.C. § 1351.²⁵

BLM’s actions raise key concerns and circumvented Congress’s power of the purse

BLM’s improper practices raise key concerns. While BLM has specific authority to sell land, this authority is separate and distinct from its authority to exchange land. BLM’s land sales transactions fall under BLM’s sale authority, not its land exchange authority. Thus, BLM was required to comply with the statutory requirements for

²⁴ Two accounts in the Treasury may be available to GSA: the Land and Water Conservation Fund, 16 U.S.C. § 460l-5(a), or the Federal Buildings Fund, Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Pub. L. No. 108-447, div. H, § 412, 118 Stat. 2809, 3199, 3259 (Dec. 8, 2004).

²⁵ The Pomona transaction in California was, as both BLM and GSA assert, a permissible exchange under CDPA section 707. In this exchange, GSA accepted and retained \$107,715 from the escrow agent as payment for GSA’s associated expenses. We identified no statute that authorized GSA to retain this payment. If GSA was not authorized to retain this payment, then BLM should have reimbursed GSA for its expenses from an appropriation available to BLM for this purpose.

selling land, but it did not. For example, instead of offering the land under competitive procedures as is generally required for selling land, BLM sold several of the parcels directly to parties who had been previously identified as potentially interested in buying the properties. By not using a competitive process in these sales, BLM may have lost opportunities to receive more proceeds for the land than was received through the direct sales.

Furthermore, BLM was not authorized to use sale proceeds to purchase lands. By using these proceeds, it augmented its land acquisition appropriations. When Congress makes an appropriation, it establishes an authorized program level and an agency may not operate beyond that level. BLM circumvented and exceeded its authorized program level when it augmented its appropriations from sources outside the government. One of the objectives of these limitations is to prevent agencies from circumventing Congress's power of the purse.

In both Washington and California it is clear that BLM and GSA sold surplus federal real property and public lands and that BLM used the proceeds to purchase additional public lands. BLM argues that these actions are permissible if they are part of an "assembled land exchange." BLM's expansive interpretation of its authority would give it wide latitude to carry out land sales and purchases without adhering to the proper safeguards that Congress specified in BLM's authorizing statutes. These safeguards help ensure not only that the government receives fair value when public lands are sold, but also that the public lands are managed in a manner that protects the public interest. BLM argues that an "exchange" transaction may span over ten years and include routine payments of cash between the government and private parties, while featuring individual transactions that BLM itself described as being a "purchase" or a "sale." In some "purchases," as BLM itself called the transactions, BLM stated that it paid amounts "as full consideration for the purchase of the subject property."

BLM's interpretation of its authority stretches the meaning of its authorizing statutes and of common words such as "exchange" beyond plausible boundaries. BLM has entered into complex multiphase, multiparty land transactions that rely on a legal interpretation of its exchange authority that is fundamentally flawed. BLM has statutory authority to purchase land and to sell land while following specific procedures. BLM cannot avoid these procedures by simply labeling a series of purchases and sales as being an "exchange." BLM's actions circumvent the carefully crafted statutory framework governing the sale, purchase, and exchange of public land—a framework designed to protect the public interest—while also violating longstanding statutes that Congress enacted to protect its constitutional power of the purse.