

GAO

Report to the Ranking Minority Member,
Committee on Resources, House of
Representatives

June 2000

BLM AND THE FOREST SERVICE

Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest



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Accountability * Integrity * Reliability

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Abbreviations

FLEFA	Federal Land Exchange Facilitation Act
FLPMA	Federal Land Policy and Management Act
GAO	General Accounting Office



United States General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-284579

June 22, 2000

The Honorable George Miller
Ranking Minority Member
Committee on Resources
House of Representatives

Dear Mr. Miller:

Land exchanges—trading federal lands for lands that are owned by corporations, individuals, or state or local governments who are willing to trade—have long been used by the Department of the Interior’s Bureau of Land Management (the Bureau) and the Department of Agriculture’s Forest Service (the Service) as a tool for acquiring nonfederal land and disposing of federal land. Federal and nonfederal land can be exchanged to protect wildlife habitat or aesthetic values, enhance recreational opportunities, consolidate parcels of land owned by different parties, and promote development or community expansion. By law, for an exchange to occur, the estimated value of the nonfederal land must be within 25 percent of the estimated value of the federal land (the difference in value is paid in cash by the party with the lowest valued land), the public interest must be well served, and certain other exchange requirements must be met.¹

Recognizing the importance of land exchanges in supplementing the federal funds that were available for purchasing land, in 1988 the Congress passed legislation to facilitate and expedite land exchanges. In recent years, however, reports by the departments’ Inspectors General identified several exchanges completed by the Bureau and the Service in which lands were inappropriately valued and the public interest was not well documented. In response, in 1998 each agency announced several initiatives designed to improve its land exchange program. Concerned about how well these initiatives are being implemented, you asked us to examine the agencies’ land exchange programs. As agreed, we determined (1) the agencies’ use of land exchanges since 1989; (2) the extent to which the agencies ensure that their land exchanges meet exchange requirements; and (3) the effect of the agencies’ recent efforts to improve the management of their exchange programs. We also discuss the extent to

¹ P.L. 94-579, Oct. 21, 1976.

which the problems we saw in specific exchanges are reflective of inherent difficulties in the land exchange program as a whole. In completing our work, we reviewed (1) data maintained by each agency on its land exchange program; (2) statutory and other requirements for land exchanges; and (3) 51 exchanges (25 for the Service and 26 for the Bureau)—selected to represent a variety of acreage amounts, land values, and locations—to assess how the requirements were being implemented.

Results in Brief

The Service and the Bureau used land exchanges to acquire about 1,500 total square miles of land during fiscal years 1989 through 1999. The Service completed about 1,265 exchanges during this period, which were valued at over \$1 billion. Through these exchanges, the Service acquired a net total of about 950 square miles and generally acquired land that had lower per-acre values than the land it conveyed. The Bureau does not centrally track the number of exchanges it completes or their total dollar value; instead, the agency tracks transactions—two or more of which can occur in each exchange. The Bureau completed about 2,600 transactions in fiscal years 1989 through 1999, which resulted in the Bureau's acquiring a net total of about 550 square miles.

The agencies did not ensure that the land being exchanged was appropriately valued or that exchanges served the public interest or met certain other exchange requirements. We found numerous problems with the exchanges we examined. In particular:

- The agencies have given more than fair market value for nonfederal land they acquired and accepted less than fair market value for federal land they conveyed because the appraisals used to estimate the lands' values did not always meet federal standards.
- The agencies did not follow their requirements that help show that the public benefits of acquiring the nonfederal land in an exchange matched or exceeded the public benefits of retaining the federal land, raising doubts about whether these exchanges served the public interest. Furthermore, the Bureau did not always follow its regulations in preparing exchange initiation agreements.
- The Bureau—under the umbrella of its land exchange authority—sold federal land, deposited the sales proceeds into interest-bearing escrow accounts, and used these funds to acquire nonfederal land (or arranged with others to do so). Current law does not authorize the Bureau to retain or use proceeds from selling federal land; it instead requires the Bureau to deposit sale proceeds into the Treasury and to use

appropriations to acquire nonfederal land. In using these funds and the interest earned on them to purchase land, the Bureau augmented its appropriations. The Bureau also did not comply with its sale authority when it sold the land, and none of the funds retained in escrow accounts or used in this manner were tracked in the Bureau's financial management system.

Both agencies recently increased their management oversight of exchanges by (1) creating review teams composed of headquarters and field staff to examine proposed exchanges that are valued at \$500,000 or more and are considered to be controversial; (2) revising their policies and procedures that address exchanges; and (3) creating additional training for agency personnel involved in land exchanges. These efforts, if properly implemented, should improve how these programs are conducted. However, they do not address all land exchanges—including those valued at less than \$500,000, those not identified as being controversial, and those considered to be too close to completion to be stopped or altered. In addition, the Bureau's review team has not addressed the unauthorized selling and buying of land under its exchange program or the financial management of these funds. Furthermore, handbook revisions and enhanced training can clarify the agencies' land exchange policies and procedures, but they do not ensure that those policies or procedures are appropriate or followed.

At least some of the agencies' continuing problems may reflect inherent underlying difficulties associated with exchanging land compared with the more common buying and selling of land for cash. In land exchanges, a landowner must first find another landowner who is willing to trade, who owns a desirable parcel of land that can be valued at about the same amount as his/her parcel, and who wants to acquire the parcel being offered. More commonly, both landowners would simply sell the parcels they no longer want and use the cash to buy other parcels that they prefer. In this way, the value of both parcels is more easily established when they are sold in a competitive market, both parties have more flexibility in meeting their needs, and there is no requirement to equalize the values of the parcels. Difficulties in land exchanges are exacerbated when the properties are difficult to value—for example, because they have characteristics that make them unique or because the real-estate market is rapidly developing—as was the case in several exchanges we reviewed. Both agencies want to retain land exchanges as a means to acquire land, but in most circumstances, cash-based transactions would be simpler and less costly.

In view of the many problems in both agencies' land exchange programs and given the fundamental difficulties that underlie land exchanges when compared with cash-based transactions, we believe that the Congress may wish to consider directing the Service and the Bureau to discontinue their land exchange programs. Until such a fundamental action is taken and while the agencies continue to operate land exchange programs, we recommend that both agencies review and approve all proposed exchanges to ensure that they meet key statutory and regulatory requirements for land exchanges; that is, that they are appropriately valued, serve the public interest well, and meet other exchange requirements. We also recommend that the Bureau immediately discontinue selling and buying land under its land exchange program—a practice that is not authorized under current law—and conduct an audit of financial records associated with these sales and purchases.

In their comments on a draft of this report, both agencies concurred with the recommendations that were addressed to them and have taken steps to respond to them. However, both agencies disagreed with our suggestion for congressional consideration, believing that land exchanges are an essential and irreplaceable tool for adjusting federal land ownership. We believe that the agencies' program improvements cannot address the inherent difficulties associated with land-for-land exchanges and that the agencies' desire to continue exchanges is more than offset by their programs' continuing problems and exchanges' fundamental inefficiencies. We continue to believe that the Congress should consider directing the agencies to discontinue their land exchange programs because of the many problems identified and their inherent difficulties.

Background

The Federal Land Policy and Management Act of 1976 (FLPMA) and its amendments authorize both the Service and the Bureau to exchange federal land for nonfederal land, when certain conditions are met.² Historically, both agencies preferred to buy land outright; however, in the 1980s, owing to limits on the amount of funds available to buy land, they increasingly relied on exchanges as an alternative means of acquiring land. Since 1981, the agencies have used exchanges to dispose of fragmented parcels of land and to consolidate land ownership patterns to promote more efficient management of land and resources.³ Currently, the Bureau's policy is that land exchanges should be used whenever feasible in land acquisitions.

Statutory Requirements for Land Exchanges

FLPMA is a comprehensive land-management law that has become the statutory basis for most exchanges for the Bureau and the Service; among other things, it established uniform procedures for these two agencies to exchange land with nonfederal parties.⁴ The Federal Land Exchange Facilitation Act of 1988 (FLEFA) amended FLPMA to, among other things, facilitate and expedite land exchanges by providing more uniform rules pertaining to land appraisals and by establishing procedures for resolving appraisal disputes.⁵ In proceeding with a land exchange, the agencies must determine that the estimated values of the federal and nonfederal lands are equal or approximately equal, that the public interest is well served, and that certain other requirements are met.

² P.L. 94-579, Oct. 21, 1976.

³ *Federal Land Acquisition: Land Exchange Process Working But Can Be Improved* (GAO/RCED-87-9, Feb. 5, 1987).

⁴ Other agencies, for example, the Army and its Corps of Engineers, have different statutory authority for exchanging land.

⁵ P.L. 100-409, Aug. 20, 1988.

Estimated Value of Lands Must Be Equal or Approximately Equal

The estimated values of the federal and nonfederal lands to be exchanged must be equal or, if the estimated values are not equal, then their estimated values are equalized by a monetary payment—referred to as a cash equalization payment—which cannot exceed 25 percent of the federal land’s estimated value and should be kept as small as possible.⁶ When the federal land has a higher estimated value than the nonfederal land, the nonfederal party makes an equalization payment to the federal agency, which is to be deposited into the Treasury. When the nonfederal land has a higher estimated value than the federal land, the agency uses appropriated funds to make an equalization payment to the nonfederal party. Generally, the estimated values of lands proposed for exchange are established through appraisals, which must be done in accordance with federal appraisal standards and other requirements. If the parties to an exchange cannot agree to accept the results of the appraisal(s), they can instead determine the value of the properties by submitting the appraisal(s) to arbitration or by using a bargaining process. Under certain limited circumstances, the value of land to be exchanged can be estimated using an appraiser’s statement of value (a professional assessment that is based on more limited information than is included in a full appraisal), if the federal land value is not estimated to be more than \$150,000.⁷

If land to be exchanged is appraised, agency personnel may appraise the properties, or either party—the agency or the nonfederal landowner—may contract for the appraisal(s). In the latter instance, the Bureau or Service must review and approve the contract appraisal to ensure that it meets federal appraisal standards.⁸ These standards require that land be appraised at its fair market value, which is defined as the amount for which a property would be sold—for cash or its equivalent—by a willing and knowledgeable seller who is not obligated to sell, to a willing and knowledgeable buyer who is not obligated to buy.

⁶ If all parties to the exchange agree, the cash equalization payment by either the federal or nonfederal party may be waived if it is no more than 3 percent of the federal land’s value or \$15,000, whichever is less.

⁷ Several conditions must be met for this to occur. For example, the agency must determine that the lands to be exchanged are substantially similar in value, location, acreage, use, and physical attributes.

⁸ *Uniform Appraisal Standards for Federal Land Acquisitions*, Interagency Land Acquisition Conference (1992).

Public Interest Must Be Well Served

In proceeding with an exchange, the cognizant agency must also determine that the public interest will be well served by the exchange. In making this determination, the law directs the agency to “. . . give full consideration to better Federal land management and the needs of the State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife”⁹ Furthermore, in accordance with FLPMA, the agencies must determine that the public values and objectives to be served by acquiring the nonfederal lands are at least as great as the public values and objectives served by retaining the federal lands.¹⁰ In other words, the agency has to show that (1) it gave full consideration to better federal land management practices and the needs of state and local people and (2) the benefits to the public from acquiring the nonfederal land will match or exceed the benefits from retaining the federal land. In addition to meeting FLPMA requirements, the Bureau and the Service must complete an environmental analysis under the National Environmental Policy Act for each exchange, in which the public interest is identified and analyzed.¹¹

Other Requirements Must Be Met

In addition to the requirements regarding land values and public interest, FLPMA has other specific requirements for land exchanges. For example, the lands to be exchanged must be in the same state; titles for exchanged lands are to be transferred simultaneously (unless all parties to the exchange agree otherwise); and land acquired within the boundaries of the national forest system, national park system, or any other land system or area established by the Congress is immediately reserved for and becomes a part of that system. For example, the Bureau recently exchanged 4,322 acres of land it managed for 632 acres of nonfederal land located in the Saguaro National Park in Arizona. Because the nonfederal acres acquired in the exchange are within the park’s boundaries, they are a part of the park and managed by the National Park Service.

⁹ 43 U.S.C. 1716(a).

¹⁰ 43 U.S.C. 1716(a).

¹¹ P.L. 91-190, Jan. 1, 1970.

Statutory Requirements for Sales of Federal Land

FLPMA also has a separate provision authorizing the Bureau to sell land if the Bureau determines that (1) the land is difficult and uneconomic to manage and it is not suitable for management by another federal agency, (2) it is no longer required for a specific purpose or for any other federal purpose, or (3) its transfer to nonfederal ownership will serve important public objectives that cannot be achieved prudently on land other than public land and that outweigh other public objectives that would be served by maintaining the land in federal ownership.¹² These requirements are more rigorous than the requirements for land exchanges. If the Bureau decides to sell such land, it must obtain at least fair market value, and the land must be offered for sale under competitive bidding procedures unless specific equity or public policy considerations would support other procedures (e.g., the Bureau could decide to give preference to current users or adjoining landowners). Proceeds from the sale and disposal of public lands in the western states must be deposited into the reclamation fund of the Treasury, except for a 5-percent set-aside for educational and other purposes.¹³ In Nevada, the Bureau has the authority to sell certain land and use up to 85 percent of the proceeds to acquire environmentally sensitive lands in southern Nevada.¹⁴

FLPMA does not authorize the Service to sell national forest lands.

Overview of Agencies' Processes for Land Exchanges

Land exchanges can be initiated either by the agency, by one or more nonfederal parties who are interested in trading their land for federal land (often referred to as the exchange proponent), or by a third-party facilitator (a nonfederal party such as a for-profit corporation or a not-for-profit entity) who works with the agency and the proponent(s) to put together an exchange. Third-party facilitators can play important roles in both agencies' land exchanges—for example, they can purchase desirable nonfederal properties when they come on the market and hold them until the agency can complete all the requirements to convey federal land and consummate a land exchange. In an exchange, agencies can acquire full title to nonfederal land or can acquire a partial interest, such as a

¹² 43 U.S.C. 1713.

¹³ 43 U.S.C. 391. The western states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

¹⁴ Southern Nevada Public Land Management Act of 1998, P.L. 105-263, Oct. 19, 1998.

conservation easement that allows the nonfederal land to remain in nonfederal ownership but prevents it from being developed. Similarly, the nonfederal party in an exchange may acquire full title or only a partial interest in the federal land that is conveyed.

Agencies can only consider federal land for an exchange if the exchange conforms to the agency's land use plan. In processing a proposed exchange, the agencies must comply with various land-management requirements—for example, the agency and the proponent must execute an agreement to initiate an exchange, which must include, for example, a description of the lands to be exchanged. After the parties to an exchange sign an initiation agreement, the agency must conduct an environmental analysis, which in turn analyzes the combined effects of actions in sufficient detail to be useful to the decisionmaker (the agency official who decides whether the exchange should go forward). The agency must publish the results of its environmental analysis and solicit public comment; it must also publish public notices about the proposed exchange and meet various requirements related to transferring land titles.

The agencies' land-exchange regulations also provide for "assembled" land exchanges, in which multiple parcels of federal or nonfederal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time. The agencies may or may not use third-party facilitators in assembled exchanges to help identify and hold nonfederal parcels.

Agencies Used Land Exchanges to Acquire Land

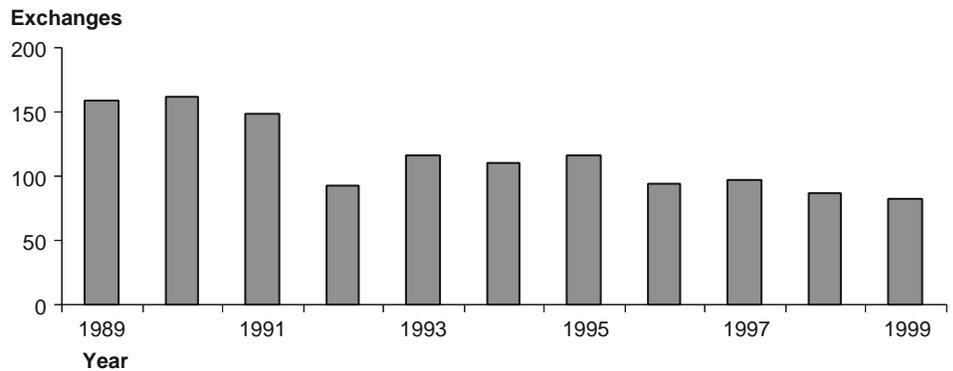
Both the Service and the Bureau conducted many land exchanges during fiscal years 1989 through 1999. The Service completed about 1,265 exchanges (valued at about \$1.066 billion) during this period, acquired a net total of about 611,000 acres (over 950 square miles of land), and generally acquired land that was of lower value than the land it conveyed. The Bureau completed about 2,600 transactions—there are two or more transactions in each exchange—during this period to acquire a net total of about 352,000 acres (about 550 square miles of land). Currently, the Bureau does not centrally track the number of exchanges it completes or their dollar value.

Land Exchanges Completed by the Service

The Service completed about 1,265 exchanges during this period, an average of about 115 each year. The number of exchanges completed each year has fluctuated—ranging from a high of 162 exchanges in 1990 to a low

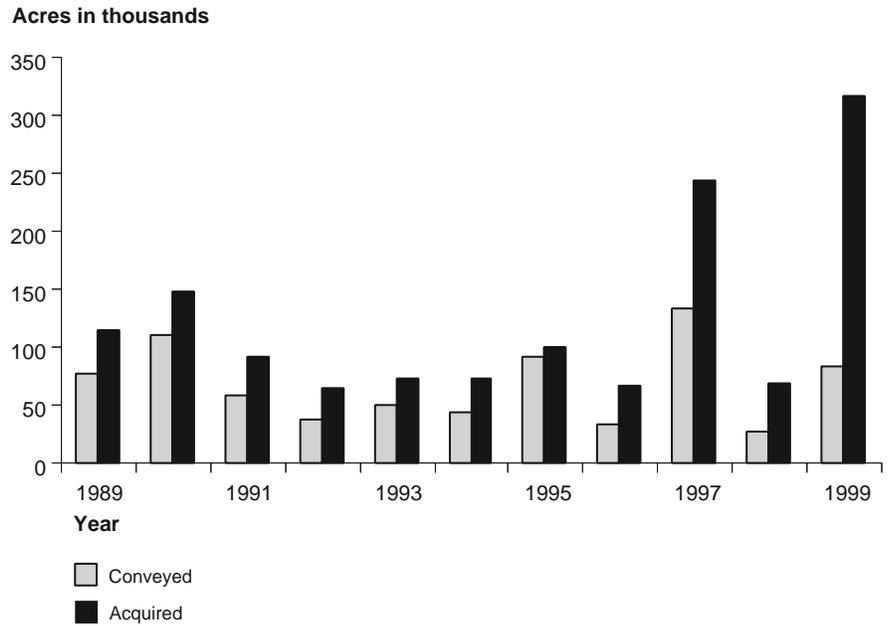
of 83 exchanges in 1999—and dropped somewhat in the last 4 years, as shown in figure 1.

Figure 1: Number of Land Exchanges by the Service, Fiscal Years 1989 Through 1999



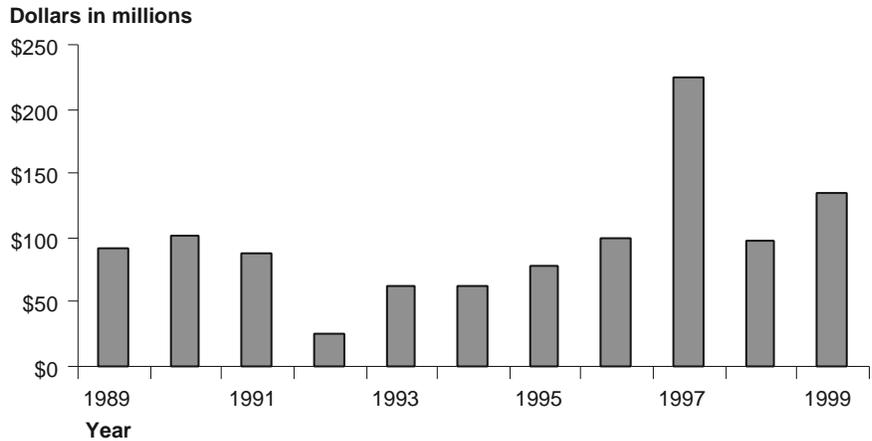
The Service acquired a net total of 611,000 acres in exchanges during this period, obtaining a total of 1,359,000 acres and conveying a total of about 748,000 acres. On average in an exchange, the Service acquired about 1,075 acres of nonfederal land and conveyed about 590 acres of federal land. The acreage acquired each year has fluctuated (ranging from a high of 316,000 acres in 1999 to a low of 64,000 acres in 1992), and the acreage conveyed each year has also fluctuated (ranging from a high of 134,000 acres in 1997 to a low of 28,000 acres in 1998)—as shown in figure 2.

Figure 2: Acreage Exchanged by the Service, Fiscal Years 1989 Through 1999



In total, the Service exchanged land that was valued at about \$1.066 billion during this period. On average in an exchange, the Service acquired nonfederal land that was valued at about \$780 per acre and conveyed federal land that was valued at about \$1,415 per acre. The total value of lands exchanged each year has fluctuated—ranging from a high of \$224 million in 1997 to a low of \$26 million in 1992—as shown in figure 3.

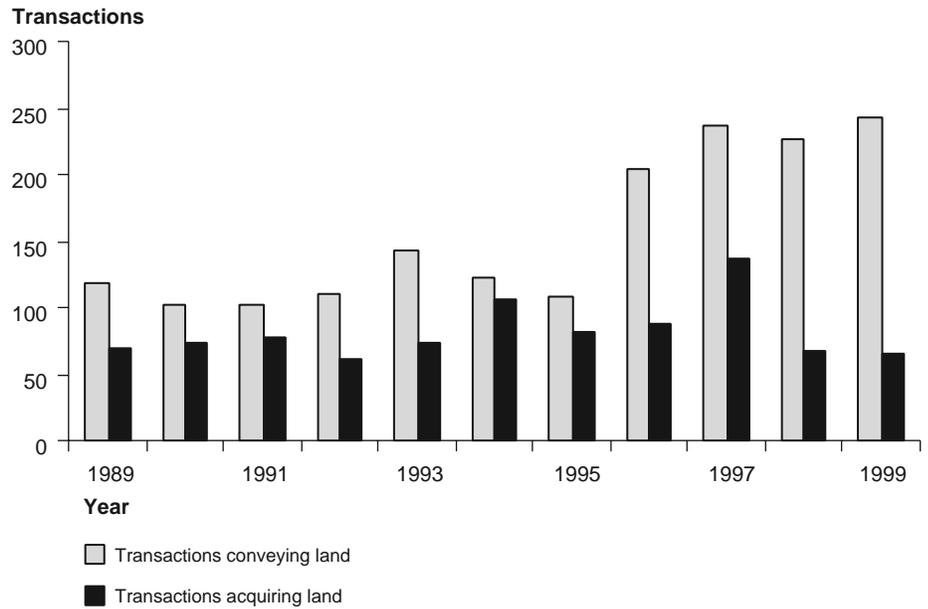
Figure 3: Value of Land in the Service's Exchanges, Fiscal Years 1989 Through 1999



Land Exchange Transactions Completed by the Bureau

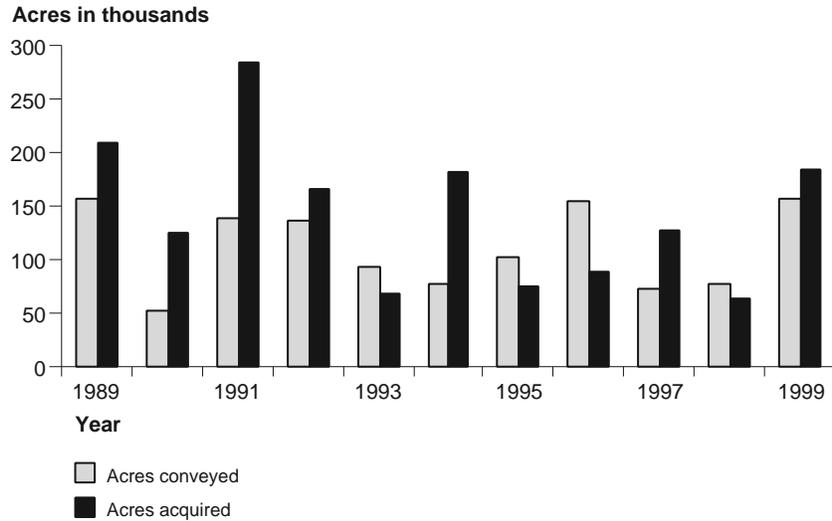
The Bureau does not track the number of exchanges it completes annually; instead it tracks the number of exchange transactions completed annually. The Bureau considers each land exchange to have at least two transactions—for example, the acquisition of land and the conveyance of land. An exchange can have more transactions if the exchange involves more than two parties or more than two parcels of land. For example, if the Bureau exchanged three small parcels of federal land for one nonfederal parcel of equal value, there would be four transactions—three federal and one nonfederal—in the exchange. The Bureau completed about 2,600 transactions during fiscal years 1989 through 1999: about 1,700 transactions conveying federal land and about 900 transactions acquiring nonfederal land. The agency completed an average of about 238 transactions annually, ranging from a high of 372 transactions in 1997 to a low of 172 transactions in 1992, as shown in figure 4.

Figure 4: Number of Land Exchange Transactions by the Bureau, Fiscal Years 1989 Through 1999



The Bureau acquired a net total of about 352,000 acres in exchanges during this period; specifically, it acquired a total of 1,571,000 acres and conveyed a total of 1,219,000 acres. On average in a transaction, the Bureau acquired about 1,750 acres of nonfederal land and conveyed about 710 acres of federal land (during fiscal years 1989 through 1999). The acreage acquired each year has fluctuated (ranging from a high of 285,000 acres in 1991 to a low of 63,000 acres in 1998), and the acreage conveyed each year has also fluctuated (ranging from a high of 157,000 acres in 1999 to a low of 52,000 acres in 1990)—as shown in figure 5.

Figure 5: Acreage Exchanged by the Bureau, Fiscal Years 1989 Through 1999



The Bureau does not centrally track the value of its exchanges. Therefore, neither the Bureau nor we could readily quantify the value of its exchanges.

Agencies Have Not Met Key Statutory Requirements

In transacting exchanges, the agencies have not always ensured that the land being exchanged is appropriately valued or that the exchange is serving the public interest. Additionally, in some instances we found that the Bureau, under the umbrella of its land exchange authority, was selling federal land for cash and using the sales proceeds to buy nonfederal land. Under this practice, the Bureau avoided depositing sale proceeds into the Treasury, circumvented congressional approval and appropriations for buying land, augmented its appropriations, and may have exceeded its budget authority.

Agencies Have Not Appropriately Valued Land

The agencies have not always appropriately valued land in exchanges. The agencies have sometimes given more than the estimated fair market value for nonfederal land they acquired and have (or would have) accepted less than the estimated fair market value for federal land they conveyed, as the following examples show:

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- The DeMar exchange in Utah, completed in 1999 by the Bureau, was to exchange federal land outside an area included in a habitat conservation plan—established to protect the desert tortoise, a threatened species—for private land held within this area.¹⁵ The private landowners hired an appraiser to conduct a preliminary value assessment of the nonfederal property, which estimated its value to be \$7,000 per acre. However, the Bureau contracted with another appraiser to conduct a full appraisal, which estimated the property's value to be only \$1,000 per acre. The two estimates differed primarily because the landowner's appraiser assumed that the presence of the tortoise would not hinder development, whereas the Bureau's appraiser assumed that development would be markedly restricted. The Bureau offered an exchange based on \$1,000 per acre for the nonfederal property. The landowners refused the offer because they believed that their land was worth more, owing to its proximity to the growing community of St. George, Utah. The Bureau then entered into a bargaining process with the landowner, as allowed by FLEFA, to negotiate a final exchange value for the nonfederal land. Through this process, 239 nonfederal acres were valued at \$7,440 per acre—an amount that exceeded both the landowners' preliminary value assessment and the Bureau's appraisal. A Bureau official explained that agency officials decided to bargain with the landowners because the officials believed that (1) the nonfederal acreage was worth more than the \$1,000 per acre appraised value because it could be developed and (2) the landowner would not otherwise reach agreement about the land's value. The Bureau's chief appraiser believed that the bargained amount exceeded a value that could be reasonably supported. We also question the basis for the final value.
 - Three exchanges in Nevada—Cashman, Deer Creek, and Red Rock II—were reported on in 1998 by Agriculture's Office of the Inspector General.¹⁶ The Inspector General found that the Service acquired nonfederal lands in these exchanges that were overvalued by a total of \$8.8 million (\$2.5 million, \$5.9 million, and \$0.4 million, respectively). The Inspector General attributed these overvaluations to the Service's reliance on appraised values that were not supported by credible evidence and appraisals that did not meet federal appraisal standards. The Service generally concurred with the Inspector General and is

¹⁵ The habitat conservation plan recommends that the Bureau acquire nonfederal lands within the area through exchanges or purchases.

¹⁶ *Humboldt-Toiyabe National Forest Land Adjustment Program*, U.S. Department of Agriculture, Office of the Inspector General (08003-02-SF, August 1998).

currently drafting new policies and procedures to address this valuation issue.

- The Zephyr Cove exchange, located at Lake Tahoe, Nevada, was completed by the Bureau in 1997. In the exchange, the Bureau acquired 47 acres of nonfederal land valued at almost \$38 million. Because the acquired land is located in the Service's Lake Tahoe Basin Management Unit, the Service is managing the land that the Bureau acquired. Agriculture's Office of the Inspector General reported that the appraisal of the nonfederal land did not consider a reservation of interest in the property's improvements, which rendered the appraisal void, according to the Service's chief appraiser. As a result, the appraisal apparently did not meet federal appraisal standards and overvalued the land by as much as \$10 million.¹⁷
- The Red Rock exchange in Nevada was completed by the Bureau in 1995. Interior's Office of the Inspector General reported that the Bureau did not use the approved nonfederal land value established by a Bureau chief appraiser from his review of the appraisal because the exchange proponent was "unhappy" with the appraised value.¹⁸ Instead, the Bureau assigned a staff appraiser to review the same appraisal, and this appraiser approved a land value that was about \$1.2 million higher than the value approved by the chief appraiser. Because the value established by the chief appraiser was overridden by a staff appraiser, the Inspector General questioned the use of the higher value for the nonfederal land. In its response to the Inspector General, the Bureau stated that there were differences in approaches by the two reviewers. However, according to the Inspector General, the Bureau did not reconcile the differences but instead decided to use the higher value.

¹⁷ *Title to Physical Improvements on the Zephyr Cove Land Exchange*, U.S. Department of Agriculture, Office of the Inspector General (08003-4-SF, August 1998).

¹⁸ *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

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- The initial phase of the Del Webb exchange in Nevada was completed by the Bureau in 1997.¹⁹ Interior's Office of the Inspector General reported that the Bureau allowed an exchange proponent to use its own appraiser to value the estimated 4,776 acres of federal land at \$43 million (about \$9,000 per acre).²⁰ The chief appraiser in the Bureau's Nevada State Office reviewed the proponent's appraisal and found it did not comply with federal appraisal standards because it used an inappropriate methodology. The Bureau's headquarters' staff removed this appraiser from the appraisal review process and then violated the Bureau's policy by hiring a nonfederal appraiser—one who was recommended by the proponent—to review the appraisal. The nonfederal review appraiser approved the appraisal, and the Bureau's chief appraiser subsequently accepted it without addressing the concerns raised in the earlier review. After the Inspector General announced that it was going to review the Del Webb exchange, the Bureau contracted for a second appraisal of the federal land. Bureau officials said that they had already contemplated preparing a second appraisal. The second appraisal used an appropriate methodology, met federal appraisal standards, and valued the actual 4,756 acres of federal land at \$52.1 million (about \$10,950 per acre). Had the Inspector General not intervened and the first appraisal been used in the exchange, the federal land would have been undervalued by more than \$9 million.
 - As part of a review of the Bureau's land exchanges in Nevada, Interior's Office of the Inspector General reviewed land documents at the offices of the Assessor and the Recorder for Clark County. The Inspector General reported that the nonfederal party in one unidentified exchange acquired 70 acres of federal land at a value of \$763,000 and sold the parcel the same day for \$4.6 million.²¹ The same proponent acquired another 40 acres from the Bureau at a value of \$504,000 and also sold this land on the same day for \$1 million. Such large and quick profits raise questions about the adequacy of the exchange valuation.

¹⁹ The exchange began in 1995 and is to be completed in multiple phases over a period of 3 to 7 years.

²⁰ *The Del Webb Land Exchange in Nevada*, U.S. Department of the Interior, Office of the Inspector General (98-I-363, March 1998).

²¹ *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

Exchanges May Not Always Serve the Public Interest

The agencies have not always shown that the benefits of acquiring the nonfederal land matched or exceeded the benefits of retaining the federal land, as shown in the following examples:

- The Cache Creek Management Area land exchange in California was started about 10 years ago and is still ongoing. The purpose of the exchange is to acquire nonfederal lands that lie within an area of roughly 100 square miles that the Bureau has identified as having high-value resources, such as habitat for bald eagles. Through December 1999, the Bureau had completed about 40 exchange transactions in which it conveyed about 20,300 acres of federal land and acquired about 4,800 acres of private land. When the Bureau initiated the exchange, it did not specifically describe the parcels of land that would be exchanged. Furthermore, the Bureau's environmental analysis for this exchange did not present the reasons for acquiring the specific parcels of nonfederal land or the public benefits of the exchange. Consequently, the Bureau has not demonstrated that the public benefits of acquiring the nonfederal land matched or exceeded the public benefits of retaining the federal land.
- In the Red Rock exchange in Nevada, the Bureau exchanged 769 acres of federal land for 3,562 acres of nonfederal land. Interior's Office of the Inspector General reported that the Bureau did not demonstrate why 2,461 acres of the nonfederal land (over two-thirds of the nonfederal parcel)—valued at \$2.7 million—were needed.²² Although the Bureau then demonstrated to the Inspector General that the nonfederal land was needed to provide habitat for endangered fish, the Inspector General estimated that this need supported the acquisition of fewer than 25 percent of the 2,461 acres in question. In addition, federal land is located near the nonfederal land that was acquired in this exchange, and the Bureau had already identified this federal land as being available for disposal.

²² *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

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- The Ricks College exchange in Idaho was completed by the Service in 1999. The Service acquired nonfederal land that it considered to be environmentally sensitive because it is surrounded by habitat for grizzly bears and contains significant wetlands. In exchange, the Service conveyed to Ricks College federal land on which several private recreational residences had been built.²³ The Service wanted to dispose of the federal land because it was difficult to manage and the Service had no funds to administer it. However, at the residence owners' request, the Service retained the development rights for the common area between the residences to ensure that the area would not be further developed. This restriction reduced the appraised value of the federal land by about \$29,000. Furthermore, in order to avoid such a reduction in appraised value, the agency's handbook for land acquisitions states it is usually undesirable to retain restrictions on lands for conveyance out of federal ownership because this connotes a responsibility to enforce the restrictions in perpetuity. During the processing of this exchange, an official raised concerns about the Service's retention of development rights but was told by other officials that the exchange was too far along to change the terms.
 - The Huckleberry exchange in Washington State was completed by the Service in 1998. The purpose of the exchange was to consolidate ownership and enhance future resource conservation and management by exchanging 4,362 acres of land in the Mt. Baker-Snoqualmie National Forest for 30,253 acres of nonfederal land owned by a large timber corporation.²⁴ Soon thereafter, the timber company began cutting timber from the lands the Service conveyed. However, in 1999, the Ninth Circuit Court of Appeals ruled that the Service failed to meet the requirements of two federal laws in processing the exchange and therefore the exchange of lands should not have taken place.²⁵ The court found that for this exchange, the Service did not adequately prepare its environmental analysis, which identifies and analyzes the public interest to be served. Specifically, the court found that the Service did not consider the cumulative impacts of the exchange, in conjunction with

²³ These residences are in accordance with a Forest Service special use permit that expires in 2008.

²⁴ In the exchange, the Service also conveyed federal mineral rights to 7,110 acres that were owned by the company, and the company donated to the United States about 2,000 acres of land it owned that was adjacent to a wilderness management area.

²⁵ *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800 (9th Cir. 1999).

past or reasonably likely future land transactions, and did not consider an adequate range of alternatives to the exchange, such as buying the nonfederal land. The court enjoined any further activities on the land conveyed by the Service (i.e., cutting timber) until the Service satisfied its legal obligations under the two federal laws.

- In the city of Elko exchange in Nevada, which is still under consideration, the Bureau plans to convey up to 140 acres of federal land that includes prime winter habitat for antelope to support community expansion for Elko. In exchange, the Bureau will acquire 10 acres of city-owned land adjacent to its Elko Field Office that will be used for additional parking and equipment storage. While one of the purposes for land exchanges is to support local needs, the Bureau's policy states, ". . . land exchanges using unimproved resource lands must not be undertaken for the acquisition of office administrative facilities." On the basis of information provided in the Bureau's environmental analysis of the exchange, we question whether the Bureau will be able to demonstrate that the public interest will be well served in acquiring this land, when such an acquisition is contrary to the Bureau's policy and may not produce benefits matching or exceeding the benefits of retaining the land. In 1996, Interior's Inspector General also raised questions about an exchange in which the Bureau acquired administrative facilities, stating ". . . management's use of the exchange process to acquire administrative property rather than lands containing significant public resources, such as critical fish and wildlife habitat or recreational opportunities, may not represent the most effective use of federal land."
- The Service has started negotiations for a possible exchange with a nonfederal party to resolve ownership of a 10,000-square-foot residence situated on federal land on the shore of Lake Tahoe that was acquired by the Bureau for the Service in the Zephyr Cove exchange. In that exchange, a nonfederal party conveyed the land and the residence to the Service. However, the nonfederal party also sold the residence to another nonfederal party, who locked the gate on the fence that surrounds 43 acres and the residence, thereby restricting the Service's and the public's access to the property. The Service had to remove part of the fence to allow public access to the property. The gate remains locked, and the second nonfederal party continues to assert that it owns the residence and its access. Although the Service was immediately aware of the subsequent "sale" of the residence and the restricted property access, it did not request legal assistance from Agriculture's Office of the General Counsel until almost a year after the exchange was completed. In April 1998, the General Counsel's Office stated that the

federal government owns the residence and all of the property. However, in its comments on a draft of this report, the Service said that the Office of the General Counsel and the Department of Justice have advised the Service that they will not support the position that the government acquired or owns the residence. To resolve the ownership conflict, the Service is considering various options, including conducting a land exchange with the second nonfederal party under which the Service would convey a small parcel of federal land associated with the residence and would acquire other shoreline property. According to the Service, the final decision on this matter will be evaluated in an environmental analysis process that will involve the public. According to Agriculture's Office of the Inspector General, the exchange option would convey environmentally sensitive property to a private interest, who may develop it, and would create an inholding (that is, a privately owned land parcel that lies within the boundaries of land managed by the federal government) that may cause management difficulties for the Service. We do not believe that such an exchange would well serve the public interest.

Some Bureau Exchanges Are Not Authorized Under Federal Law

Under the umbrella of its statutory land exchange authority and its regulations providing for assembled land exchanges, the Bureau sold federal land, retained the cash and interest in escrow accounts, and subsequently used the sales proceeds to buy nonfederal lands. In some cases, the Bureau used a third-party facilitator to, in effect, handle the transactions. The Bureau believes these actions are authorized by FLPMA, but we disagree. FLPMA authorizes exchanges of land. Nothing in FLPMA's language or legislative history indicates that the Congress contemplated sales of federal land to be a part of exchanges—regardless of whether the Bureau itself sells federal land or has a facilitator sell federal land. Because the Bureau believes these actions are allowed under its exchange authority, rather than its sales authority, it has not followed the law and regulations governing sales of federal land. None of the escrow funds are tracked by the Bureau's financial management system. Under the law, the Bureau must use its appropriations to purchase land and must deposit any proceeds from sales into the Treasury. Examples of these sale transactions and subsequent purchases follow:

- The Montrose Assembled Land Exchange in Colorado began in 1994, occurred in seven phases, and was completed in February 2000. The exchange began when the Bureau decided to purchase a conservation easement and two ranches, which in total would have cost about \$5

million. However, the Bureau only received about \$2 million in appropriations and \$315,000 from Interior's Bureau of Reclamation for the purchase. The Bureau decided to raise the difference of almost \$2.7 million through an assembled land exchange, in which it used a third-party facilitator to acquire the ranches and the easement. Under the umbrella of this exchange, in 1996 and 1997 the Bureau sold about 6,800 acres of federal land for about \$6 million. The Bureau deposited the sales proceeds into an interest-bearing escrow account and used them, over the next 4 years, to buy the original properties as well as another four properties. When the Bureau initiated the exchange, it did not prepare an initiation agreement, and it did not specifically describe the land that would be exchanged because the Bureau did not initially contemplate the full range of the exchange. The Bureau also deposited into the escrow account \$211,000 it received as a cash equalization payment in 1998 and retained earned interest of about \$216,000. In total, the Bureau bought about 16,000 nonfederal acres and the conservation easement for about \$8.7 million (\$2 million appropriated, \$315,000 transferred from the Bureau of Reclamation, \$6 million from sales proceeds, \$211,000 from a cash equalization payment, and \$216,000 in earned interest). Bureau officials in Colorado told us that they had not initially planned to buy all of the nonfederal acres they purchased; however, the sales proceeds were much higher than anticipated and they decided to keep the "excess" and use it to buy additional land, instead of depositing the proceeds into the Treasury.

- In California, the Bureau has an agreement with a third-party facilitator (a for-profit corporation) to facilitate the assembled exchange of federal lands for nonfederal lands located within the state. One exchange previously mentioned—Cache Creek—is part of this statewide agreement. The present agreement was signed in 1996 and has no termination date. Under the agreement, the Bureau appraises the value of federal land and conveys it, with no financial consideration, to the facilitator, who then sells it at a price equal to or greater than the appraised value. Under the agreement, if the facilitator obtains a price greater than the appraised value, the facilitator can use the difference (between the price and the appraised value) to cover its costs and must deposit any remaining proceeds into an interest-bearing escrow account that is jointly controlled by the facilitator and the Bureau. The proceeds and interest remain in the escrow account and are used by the facilitator to buy additional parcels of nonfederal land that are within an area designated by the Bureau as desirable. When the facilitator acquires nonfederal land, it or the landowner transfers title to the Bureau. According to the Bureau's records, on behalf of the Bureau, through

December 1999 the facilitator had sold 71,858 federal acres for about \$10.9 million and acquired 31,425 nonfederal acres for about \$9.9 million. According to a Bureau official, the difference of about \$1 million represents “land value” that the facilitator will use to acquire a portion of a ranch on behalf of the Bureau.

- The Bureau’s Two Crow assembled exchange in Montana was started in 1996 to purchase a specific ranch property and is still ongoing. The Bureau is raising the funds to purchase the ranch by using a third-party facilitator (a for-profit corporation) to sell parcels of federal land at prices that are equal to or greater than their appraised values. A cognizant Bureau official in the Montana State Office said that the Bureau does not know how much the facilitator sells the federal land for, although she said that the facilitator generally makes some kind of profit by receiving more than the appraised value. For each sale, the facilitator then deposits an amount that is equal to the appraised value in an interest-bearing escrow account and retains any sales proceeds that exceed the appraised value. The Bureau then periodically uses funds from the escrow account to purchase portions of the ranch from the current owner. In this exchange, unlike the California assembled exchange, the Bureau has identified a specific property with finite acreage to acquire and uses a facilitator only to sell federal land (not to buy nonfederal land). According to an official in the Bureau’s Montana State Office, acquiring this property is a good deal for the public whether the Bureau acquires it through exchange or purchase.

The Bureau disagrees that these transactions involve selling or buying land and is supported in this position by Interior’s Solicitor’s Office. The agency asserts that these transactions are exchanges because, ultimately, the agency has conveyed federal land in order to obtain desired nonfederal land; that is, the interim transactions involving cash serve only to support the ultimate goal of exchanging land. Bureau officials who are or have been involved in these transactions state that the practices described above provide the agency important flexibility to acquire needed nonfederal lands. Specifically, the agency has funds that are readily available to buy nonfederal land when it comes on the market, rather than having to undergo the lengthy and uncertain process of requesting and receiving appropriations.

However, current law does not authorize the Bureau’s practice of selling federal land and buying land with the proceeds. The Bureau did not comply with the sales provisions of FLPMA. The law requires sale proceeds to be deposited into the Treasury, and under appropriations acts, the Bureau is

generally required to purchase lands with appropriated funds. Our specific concerns are noted below:

- First, while the Bureau has specific authority to sell land, this authority is separate and distinct from its authority to exchange land. The transactions described above fall under the Bureau's sale authority, not its land exchange authority, as the Bureau maintains. Thus, the Bureau 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 required for selling land, the Bureau or its facilitator 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, the Bureau may have lost opportunities to receive more proceeds for the land than was received through the direct sales. Moreover, the Bureau has no authority to acquire land with the proceeds of its sales but is generally required to use its appropriations to acquire land.
- Second, as a consequence of not treating these transactions as sales, the Bureau failed to deposit the proceeds from the sales into the Treasury, which is required when the Bureau receives nonappropriated funds (for example, from the sale of land).²⁶ Generally, funds must be deposited into the Treasury as soon as practicable. In the examples above, the Bureau has retained sales proceeds in interest-bearing escrow accounts—and also retained the earned interest in those accounts—for years. Another consequence of not depositing the proceeds of the sales as required by law is that the states involved did not receive their 5-percent set-aside for educational and other purposes.
- Third, the Bureau was not authorized to use sale funds to purchase the lands. By using these proceeds, it augmented its land acquisition appropriations. When the Congress makes an appropriation, it establishes an authorized program level and limits the agency from operating beyond that level. The Bureau, by using proceeds from land it sold to purchase land, augmented its appropriations for land exchanges. Federal agencies cannot expend funds in excess of or in advance of appropriated funds.²⁷ If they do so, they must report to the President and to the Congress all relevant facts and actions taken.²⁸ The Bureau

²⁶ 43 U.S.C. 391 and 31 U.S.C. 3302, the miscellaneous receipts statute.

²⁷ 31 U.S.C. 1341(a)(1), the Antideficiency Act.

²⁸ 31 U.S.C. 1351 and 1517(b).

supplemented its appropriations by \$6.4 million in the Montrose exchange alone.

We also found that none of the funds in the escrow accounts are tracked in the Bureau's financial management system or reflected in the Bureau's general financial ledger—that is, these funds are completely “off the books.” In fact, the Bureau's deputy chief financial officer said he and the agency's chief financial officer were unaware of these accounts or their importance until Interior's Office of the Inspector General determined that these funds needed to be identified and included on the 1999 financial statements for the Bureau and for Interior. As a result, in February 2000, the Bureau requested that field offices provide information on the year-end cash balances in escrow accounts used in connection with land exchanges and certify that the reported balances are correct. In response to this request, Bureau offices in six states—the three we identified, as well as Idaho, Nevada, and Oregon—reported having about \$6.3 million at the end of fiscal year 1998 and about \$4.3 million the end of fiscal year 1999 in a total of 20 escrow accounts. However, we found inconsistencies in the reported information that raise questions about whether additional escrow accounts exist. For example, Nevada reported that it had an escrow account with a zero balance, whereas other respondents reported that they had no cash balances but did not indicate whether they had escrow accounts (i.e., that had year-end zero balances). Furthermore, cash balances that may have existed in any escrow accounts that were closed before the end of either year would not have been reported.

Also in February 2000—after we briefed the Bureau and Interior on our concerns regarding the cash transactions in assembled exchanges—the Bureau's headquarters office drafted guidance to clarify the Bureau's policy, which is that interest earned on funds held in escrow accounts associated with land exchanges should be deposited into the Treasury. The Bureau distributed this draft guidance to state and field offices and initiated an effort to identify the amount of interest earned in these accounts for 6 years, from 1994 through 1999. However, the Bureau continues to believe that it has the authority under its land exchange program to sell federal land, deposit and retain the sale proceeds in escrow accounts, and use these funds to buy nonfederal land—or to use third-party facilitators for these transactions.

Agencies Have Improved Oversight but Need to Make Additional Efforts

In 1997 and 1998, the Bureau identified its land exchange program as a material weakness in its annual assurance statements on management controls and initiated several corrective actions.²⁹ In 1998, both agencies announced they would increase management oversight of their land exchange programs. Specifically, both of the agencies established teams to review proposed exchanges that are high-value or considered to be controversial, are revising their policies and guidance, and have provided additional training to field offices that process exchanges. These efforts are worthwhile but do not fully address the concerns we raise in this report. The agencies' efforts do not ensure that lands to be exchanged are valued appropriately or that exchanges well serve the public interest; furthermore, the Bureau's efforts do not address or prohibit the unauthorized selling and buying of land in land exchanges.

The Bureau's Land Exchange Review Team summarized the result of its efforts in a draft report in November 1999. The team reported that it found "... those components of the exchange process which are most susceptible to risk lack adequate guidance, and are undertaken inconsistently and without the benefit of a quality assurance system." The review team's specific findings included (1) a lack of documentation to support certain public interest determinations, (2) misuse of escrow accounts with regard to exchange authority, and (3) inconsistent use and inadequate documentation of mechanisms such as bargaining and assembled exchanges. The team has made over 40 recommendations, including increasing management oversight over both the land exchange and appraisal programs. The Bureau plans to continue to have its review team exercise oversight reviews on land exchanges valued at \$500,000 or more.

The Service's National Landownership Adjustment Team reported that most of its review efforts focused on uncovering inadequate documentation of legal and policy compliance matters. This review team has made several recommendations to improve the land exchange program. For example, the team recommended that field offices should reject proposals for land exchanges that are not consistent with land and resource management objectives or do not clearly serve the public interest and that they should analyze the feasibility of proposed exchanges early in the exchange process. The team has also made specific recommendations

²⁹ These annual reports are required by the Federal Managers' Financial Integrity Act, specifically 31 U.S.C. 3512(d).

to improve field offices' compliance with national policies on appraisals and environmental analyses. However, the review team has expressed concern that some regional offices are still not fully performing their responsibility of providing initial guidance and oversight on proposals. The Service is incorporating these findings into its revision of its policies and guidance.

Both agencies are revising their internal guidance—that is, manuals and handbooks—on land exchanges and on appraisals and plan to issue the revisions this year. In the interim, both agencies have issued internal memorandums to field offices that clarify or summarize existing regulations and policy. Both agencies have also created additional training. For example, in conjunction with the National Appraisal Institute, the Bureau and the Service piloted a newly developed appraisal training course in the fall of 1999. The Service's review team is also planning to conduct training sessions on the Service's new draft handbook in each region during fiscal year 2000. According to the Bureau, recent changes in its appraisal manual will help reduce instances of nonfederal parties acquiring federal land through exchange and immediately reselling the land for a price that greatly exceeds its appraised value.

These efforts are likely to improve aspects of the agencies' land exchange programs, and we support them. However, they do not fully address the concerns we have expressed in this report. For example, the agencies' review teams examine only those exchanges that are identified as controversial or are valued at \$500,000 or more. However, it is unclear how or when an exchange becomes recognized as being controversial; in some of the examples highlighted in this report, the exchange did not become controversial until after it was completed and the Inspector General and public became fully aware of its terms—at which time the usefulness of a review by the review team would be limited. The rationale for the \$500,000 threshold is also unclear; although separate phases of an assembled exchange, for example, may not rise above this level, the value of the full exchange is likely to be in the millions of dollars. Because most exchanges are processed by the agencies' field offices, we also question whether the review teams would be informed enough to know about all the potentially controversial or high-valued exchanges that are being contemplated in the field offices. Furthermore, although the Bureau's team reviewed two of the three assembled exchanges in which we found that the Bureau was selling and buying land, it did not intervene or recommend that this practice be stopped. Finally, handbook revisions and enhanced training can clarify the

agencies' land exchange policies and procedures, but they do not ensure that those policies or procedures are appropriate or followed.

Land Exchanges Are an Inherently Difficult Way to Convey and Acquire Land

The continuing problems faced by the Bureau and the Service in their land exchange programs may, in part, reflect the underlying difficulties associated with exchanges when compared to a more common market-based system of buying and selling land for cash. To exchange land, a landowner must first find another landowner who owns a desirable piece of property, is interested in trading it, and is interested in acquiring the property currently owned by the first party (who may also use a third-party facilitator to locate other such landowners). Both properties must be valued at about the same amount, and both parties must be satisfied with the assigned values. In contrast, and more commonly, both landowners would more easily sell the property they no longer want—obtaining the best prices they could in a competitive market—and use their sales proceeds to buy other parcels of land that they prefer to own. In this system, both parties have flexibility to buy the property they want and there is no requirement to equalize the properties' values.

Land exchanges are further complicated by the inherent difficulties of estimating the fair market value of land. Although the values of most properties exchanged by the Bureau and the Service are established by appraisals, appraisals are only estimates of fair market value. Appraisals are generally based on data from sales of properties that are considered comparable to the property being appraised, and it is increasingly difficult to make such comparisons when the property being exchanged is unique and when the market is rapidly developing and/or is speculative. These factors were present in some of the exchanges highlighted in this report, many of which had problems associated with their appraised values. For example, Interior's Inspector General identified some exchanges in Nevada in which the nonfederal party who acquired federal land sold it the same day for amounts that were two to six times the amount that it had been valued in the exchange. These exchanges were very costly to the federal government, in terms of lost income, because they did not take advantage of a very competitive market for this federal land.

Both agencies said that they want to retain the option of exchanging land as a supplemental means of acquiring land in addition to purchasing land with appropriated funds. They said that exchanges are an important tool for them to acquire land because appropriated funds for land acquisition are limited. Even if appropriated funds were unlimited, however, they said that they would still need to conduct land exchanges, to acquire desirable nonfederal land, because some landowners will only consider exchanging their land and are not willing to sell their land. The agencies said that landowners may prefer exchanges for several reasons: For example, landowners may not want to give up their land base (e.g., a rancher may be willing to relocate but wants to continue to ranch); they may need specific land-based resources (e.g., a timber company may need land that contains enough timber to cut); or they may desire specific parcels of federal land (e.g., a real estate company may want to develop or market a specific parcel). Furthermore, Bureau officials said that the federal tax code provides a tax incentive for land exchanges by allowing private landowners to defer any capital gains taxes if they exchange their land (for land of similar or greater value) rather than selling it.³⁰ Finally, both agencies said that land exchanges are important tools in dealing with state and local governments, some of which may resist additional federal purchases of nonfederal land but will support federal-nonfederal land exchanges, and others of which want to acquire federal land but avoid lengthy appropriations processes.

Continuing the land exchange program should not hinge on these reasons because they do not generally preclude more common and less complicated buying and selling transactions. While some landowners or government entities may currently prefer to exchange their land, that preference does not necessarily mean that they would be unwilling to sell their properties if the option of a land exchange were not available to them. Furthermore, the federal tax code allows landowners to defer capital gains taxes whether they exchange their land or sell it and reinvest the proceeds by buying other land. However, because the Service—unlike the Bureau—does not have authority under FLPMA to sell its land, private parties (such as timber companies) or governments who want to acquire national forest land would only be able to do so through exchanges.

³⁰ Internal Revenue Service Code, section 1031.

We also note that the Bureau's practice of using cash in assembled exchanges—that is, selling federal land, retaining the sales proceeds, and buying nonfederal land—explicitly recognizes the difficulties and inefficiencies of exchanging land. This practice is not authorized under the law. However, it does provide the Bureau more flexibility than land-for-land exchanges because the Bureau, in effect, follows more common market-based land transactions. The Congress has also recognized the difficulties associated with land exchanges. For example, the Congress gave the Bureau limited authority to sell certain land in the Las Vegas Valley, deposit the proceeds into an interest-bearing special account in the Treasury, and use the proceeds and interest to acquire certain other environmentally sensitive land in southern Nevada. In a similar vein, the Congress is considering proposed legislation that would authorize the Bureau to sell land identified for disposal, deposit the proceeds into a special account in the Treasury, and use these proceeds to buy inholdings.³¹ In both instances, the lands to be sold are identified by the Bureau, funds resulting from selling those lands are deposited into special accounts in the Treasury, and those funds can be drawn down only for specific land acquisitions.

Conclusions

Both the Service and the Bureau have used land exchanges over the years to consolidate land ownership and acquire land. However, the agencies have sometimes acquired this land without due regard for key statutory requirements governing land exchanges and, in doing so, have disregarded congressional direction and interests. Specifically, the agencies have given more than fair market value for nonfederal land they acquired, accepted less than fair market value for federal land they conveyed, and have not demonstrated that the public benefits of acquiring the nonfederal land matched or exceeded the public benefits of retaining the federal land—thereby raising doubts about whether these exchanges served the public interest. In addition, we found that the Bureau has not prepared exchange initiation agreements in compliance with regulations. For example, it did not always specifically describe the land to be exchanged. Finally, the Bureau or its facilitators sold federal land and used the proceeds to purchase nonfederal land, a practice that is not within its land exchange authority. In doing so, the Bureau did not comply with requirements for selling federal land, failed to deposit sales proceeds into the Treasury, retained interest that was earned on those proceeds, and augmented its

³¹ Senate Bill 1892 and House Bill 3288, Title II: The Federal Land Transaction Facilitation Act.

congressional appropriations for land acquisitions. None of these funds—sales proceeds, earned interest, and other cash deposited into escrow accounts (such as cash equalization payments)—have been tracked in the Bureau’s financial management system, although they total millions of dollars. In keeping these funds “off the books,” the Bureau has not adopted appropriate financial safeguards for them and does not know whether public funds were handled improperly or used erroneously.

Measures recently taken by the agencies to strengthen their land exchange programs—most significantly, establishing review teams to examine certain exchanges—are steps in the right direction. However, we remain concerned that these improvement efforts do not go far enough to ensure that the agencies will give and receive fair market value for exchanged land and that exchanges will clearly serve the public interest. Both agencies’ efforts would be strengthened by expanding the roles and responsibilities of their review teams and by making these teams accountable for reviewing and approving all proposed exchanges (or designating other agency representatives to do so, if they believe the teams should not be assigned this accountability). We are concerned that the Bureau believes that its practice of selling and buying land under some assembled land exchanges is authorized under FLPMA. None of the Bureau’s recent land exchange reform efforts address this unauthorized practice, and in fact the Bureau recently issued draft guidance that affirms its use (but states that interest earned on sales proceeds should be deposited into the Treasury). While we identified instances in three states in which such practices occurred, information subsequently obtained by the Bureau indicates that the practice is more widespread. The Bureau has not yet determined the extent to which its field offices have established or used escrow accounts for cash transactions under the umbrella of its land exchange program or the full amount of funds that have flowed through those accounts over the years.

Procedural improvements, while useful, do not address the inherent difficulties and inefficiency associated with land exchanges. In this context, we believe there is reason to question whether land exchanges remain a viable tool for acquiring nonfederal land, especially in rapidly developing real estate markets.

Matters for Congressional Consideration

Since the Congress passed legislation to facilitate land exchanges more than a decade ago, the Bureau and the Service have increasingly relied on exchanges to acquire land. In recent years, many controversies and problems have been reported in both agencies' land exchange programs. While both agencies have taken steps to improve their programs, we believe that these problems reflect, in part, the difficulties and inefficiencies that are inherent in land exchanges. And we remain concerned that the Bureau wants to continue to sell and buy land under the umbrella of its assembled land exchanges. On the basis of these fundamental issues, the Congress may wish to consider directing both agencies to discontinue their land exchange programs.

Recommendations to the Secretaries of Agriculture and the Interior

We recommend that the Secretary of the Interior instruct the Director of the Bureau of Land Management and that the Secretary of Agriculture instruct the Chief of the Forest Service to take the following action:

- Require that all exchanges be reviewed and approved by the agencies' review teams (or other designated officials) before those exchanges are completed. In this review, the agencies must ensure that the federal and nonfederal lands proposed to be exchanged are appropriately valued, that the officials give full consideration to improving federal land management and/or addressing state or local needs, that the benefits from acquiring the nonfederal land will match or exceed the benefits from retaining the federal land, and that all statutory and regulatory requirements for land exchanges are met.

In addition, we recommend that Interior and the Bureau take the following actions:

- Identify and immediately discontinue assembled exchanges under which the Bureau is—either directly or through third-party facilitators—following the unauthorized practice of selling federal land, retaining the sales proceeds (and interest) in escrow accounts rather than depositing them into the Treasury, and using these proceeds to buy nonfederal land.

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- Conduct a full audit of financial records associated with assembled exchanges under which land has been sold and purchased—including escrow accounts and expenses deducted by third-party facilitators—to (1) determine whether sale proceeds were handled properly; (2) resolve any augmentation, erroneous use of public funds, or deficiency in accordance with appropriate laws; and (3) take appropriate actions, including reporting to the President and to the Congress, as required by law, all relevant facts and a statement of the actions taken.³²
 - Review all exchange initiation agreements for ongoing exchanges to ensure that they comply with regulations—for example, specifically and clearly describing the land that will be exchanged—and amend them if warranted.

Agency Comments and Our Evaluation

We provided the Bureau and the Service with a draft of this report for their review and comment. Both agencies concurred with the recommendations that were addressed to them and have taken steps to respond to them. The Service now requires that its national review team or regional directors review all land exchanges twice during the exchange process—once at the feasibility phase and again prior to making a formal decision. Similarly, the Bureau now requires that its national review team or state directors review and concur with all land exchanges, first in conjunction with the feasibility report and second prior to final approval, and has clarified the elements that constitute each review. Additionally, the Bureau has begun clarifying its policy on assembled exchanges, by (1) identifying all escrow accounts and earned interest and by depositing interest balances into the Treasury and (2) issuing guidance that defines the terms and elements of these exchanges and establishes more stringent financial controls. For example, the Bureau will no longer retain or use interest earned on the sales proceeds and instead now requires that such interest be deposited into the Treasury. The Bureau has also begun the process of hiring an independent firm to audit the financial records associated with assembled exchanges and has required that all exchange initiation agreements be reviewed and, if needed, amended.

The Bureau plans to continue to allow the practice of selling federal land and retaining and using the proceeds to buy nonfederal land, under the umbrella of assembled exchanges. Although the Bureau no longer allows

³² Further instructions on preparing this report are contained in the Office of Management and Budget's Circular No. A-34.

cash to be held in escrow accounts to purchase nonfederal land under assembled exchanges, it instead now allows other financial instruments—i.e., cash bonds, Treasury bonds, or corporate security bonds—to be held for this purpose. Furthermore, the Bureau has directed its staff not to refer to these transactions as “sales” or “purchases” if they are conducted as part of an assembled exchange, and has implemented stronger managerial and financial controls over the associated funds. However, we continue to believe that the Bureau lacks legal authority to sell land and retain the proceeds—whether the Bureau accepts cash or other financial instruments—and should instead deposit the proceeds into the Treasury. The Bureau’s practice generates nonappropriated funds that, by definition, augment its appropriated funds. FLPMA authorizes exchanges of land for land—not exchanges of land for cash or other financial instruments—and we remain concerned that neither the Department nor the Bureau has adequately explained why these transactions are not sales or purchases.

As previously stated, both agencies agreed with our recommendations. It should be noted that both agencies raised concerns about other aspects of our report. The Service questioned whether our conclusions were logically supported by the relatively small number of exchanges that we reviewed and asserted that our report did not consider steps that it had already taken to strengthen its land exchange program (in response to problems identified in Nevada). The Bureau asserted that it had already corrected valuation problems reported by the Inspector General, disagreed that it failed to show the public benefits associated with the land exchanges we reported, and disagreed that the assembled exchanges we reported were conducted outside of the agency’s land exchange authority or that the agency augmented its appropriations by selling land and retaining the sales proceeds. The Bureau agreed that funds associated with assembled exchanges should be tracked in the Bureau’s financial management system and plans to implement full accounting control by June 15, 2000.

We continue to believe that our conclusions, which serve as the basis for the recommendations that the agencies agreed with, were fully supported by the information presented in our report. Because it was not feasible for us to use a statistical sampling approach, the results of our analysis are not projectable; nonetheless, we believe the exchanges presented in our report demonstrate serious, substantive, and continuing problems with the agencies’ land exchange programs. Our report summarizes efforts undertaken by both agencies since 1998 to strengthen their programs; while we support those efforts, we do not believe that they fully address the problems we identify or the concerns we express in our report.

Both agencies disagreed with our matters for congressional consideration, which suggested that the land exchange programs be discontinued and, possibly, replaced with additional authority allowing the agencies to sell federal land and retain use of the proceeds to buy nonfederal land. Both agencies commented that land exchanges are an important and essential tool for adjusting federal land ownership. They noted that exchanges are the only viable tool to deal with neighboring private landowners who desire to maintain a land base and will not sell their land, and that they are a particularly effective tool to deal with state and local governments—which may resist additional federal purchases or which desire to avoid lengthy appropriations processes. Both agencies supported the concept of receiving additional authority to sell federal land and retain use of the proceeds to buy nonfederal land, but only as a complement to their existing authority to exchange land, not as a replacement. They noted that such a program would retain many of the problems reported in land exchanges, such as concerns about appraised values, and could create additional potential difficulties, such as increasing conflicts with state and/or local governments and increasing participation by third parties.

We do not believe that the agencies' best efforts to improve their programs can address the inherent difficulties associated with land-for-land exchanges. These difficulties have been present for as long as land exchanges have been occurring and are exacerbated in today's rapidly developing real estate markets. In our view, the administrative flexibility cited by the agencies as a reason to continue exchanges—that is, allowing the agencies to accommodate certain exchange proponents—is more than offset by their continuing problems and fundamental inefficiencies. For this reason, we still believe that the Congress should consider discontinuing the agencies' land exchange programs. However, we have deleted our suggestion that the Congress also consider expanding the agencies' authority to sell federal land and retain the use of the proceeds to buy nonfederal land, believing that such expanded authority would not resolve the problems identified in the agencies' land exchange programs. Under existing statutes, the Bureau is authorized to sell certain federal land and deposit the proceeds into the Treasury, and both agencies are authorized to request appropriated funds from the Congress to purchase desirable nonfederal land.

Both agencies also provided technical clarifications on the text of our report, which we incorporated as appropriate. The full text of the Service's comments and our responses are in appendix I. The full text of the Bureau's comments and our responses are in appendix II.

We conducted our review from June 1999 through May 2000 in accordance with generally accepted auditing standards. Details of our scope and methodology are discussed in appendix III.

As requested, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Thomas A. Fry III, Director of the Bureau of Land Management; the Honorable Dan Glickman, Secretary of Agriculture; and the Honorable Mike Dombeck, Chief of the Forest Service. We will also send copies to other appropriate congressional members and make copies available to others upon request.

If you or your staff have any questions, please call me at 202-512-3841. Key contributors to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Jim Wells". The signature is written in a cursive style with a large, sweeping initial "J".

Jim Wells
Director, Energy, Resources,
and Science Issues

Comments From the Forest Service

Note: GAO's comments supplementing those in the report text appear at the end of this appendix.



United States
Department of
Agriculture

Forest
Service

Washington
Office

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P. O. Box 96090
Washington, DC 20090-6090

File Code: 1420

Date: MAY 5 2000

Barry T. Hill, Associate Director
Resource, Community, and Economic Development Division
General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Hill:

In response to the General Accounting Office's (GAO) draft report to Congressional requesters titled, *BLM and the Forest Service Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest* (GAO/RCED-00-73), the Forest Service has reviewed your document and is enclosing its initial comments.

If you have additional questions, please contact our External Audit Liaison, Linda Washington, on 202-205-3761.

Sincerely,

VINCETTE L. GOERL
Chief Financial Officer
Deputy Chief, Office of Finance

Enclosure



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Response to GAO's Draft Report

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Titled: BLM and the Forest Service Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest (GAO/RCED-00-73)

We are pleased to provide the following response to the Draft Report of the General Accounting Office (GAO) dated April 2000, entitled *BLM and the Forest Service Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest*. The Draft Report primarily references and draws its conclusions from the four transactions that were noted in 1996 and 1998 Audits by the USDA, Office of Inspector of General, (1) one smaller legislated transaction involving retention of development rights and (1) one 1998 transaction that had been litigated in Ninth Circuit Court of Appeals on National Environmental Policy Act (NEPA) Process and National Historical Preservation issues. Specific comments and clarifications relative to these cases are included as attachments in this response.

See comment 1.

The Forest Service questions that the broad conclusions summarized in this Report can be logically supported based on this small representation of cases that were reviewed.

See comment 2.

We concur that some weaknesses and problems did materialize in some land exchange transactions which were noted in the two OIG Audit Reports. However, the Forest Service has taken numerous steps Agency-wide to address these unacceptable situations and problem areas. We question that the Report adequately considers or reflects the Agency's efforts and accomplishments over the last 16 months in strengthen and increase accountability in the Land Exchange Program.

The Forest Service Land Exchange Program

The Forest Service has utilized administrative land for land exchanges to improve the national forest ownership pattern since 1911. Based on historical data, the agency has completed approximately 9,100 transactions involving the conveyance of over 4 million acres of Federal lands and the acquisition of over 10 million acres of non-Federal lands. Since 1988, annually the Forest Service has completed on average 117 transactions, involving 70,755 acres of Federal lands for 124,470 acres of non-Federal lands with values estimated at over \$90 million on each side. Approximately 55% of all exchanges are completed by eastern regions and usually involve lower valued smaller transactions. The remaining 45% occur in the western states with an occasional exchange in Alaska. On average, the Agency is authorized or directed to consummate four legislative exchanges annually. The governing regulatory rules for the Forest Service Land Exchange Program are contained in the Department of Agriculture Code of Federal Regulations 36 CFR Part 254, which was finalized in March 1994.

The Land Exchange Program has been and remains the largest land ownership adjustment program in the Forest Service. Although developed in coordination with the direct

purchase program, it is the major tool for accomplishing landownership adjustments which are an essential component in the Agency's efforts in meeting individual Forest Land and Resource Management Plan goals and objectives. Each land exchange must demonstrate that the public interest will be well served when considering such factors as protection of fish and wildlife habitats, cultural resources, watersheds, enhancement of public recreation areas and public access, etc. All land exchanges are voluntary, equal value transactions. The vast majority of the processing costs associated with evaluating proposals are shared by both parties but the process itself including the valuation component is managed, reviewed and approved by the Forest Service. Some land exchanges are complex and clearly controversial. Generally the larger the exchange proposal, the more issues are raised by adjoining owners and various interest groups. In many instances, a land exchange is the only viable tool available for the Agency to meet its landownership adjustment needs. Many owners do not want to sell their property but will consider an equal value land exchange since they desire to maintain a land base. This is the typical method used in consolidating ownership with intermingled corporate owners and farming and ranching operations. In other situations, primarily due to existing large acreage of public lands, some local and state governments may resist further additions to the Federal land base, but are supportive of land exchanges since an amount of equal value of land would be retained in private ownership under a land exchange transaction.

It appears that 25 cases, either ongoing or recently closed, were reviewed and conclusions drawn from six that are noted in this report. These referenced cases or actions span the period from 1996 to 1999 and during this time period, the Forest Service consummated 358 land exchanges. We question if this is a sufficient basis to base conclusions and considerations which would have major implications on this important program for the Forest Service.

Forest Service Efforts in Strengthening the Land Exchange Program

Increased Oversight and Accountability - Upon initial awareness of the issues associated with the Land Exchange Program in Nevada and prior to the August 1998, OIG Audit Report, the Agency began a long line of initiatives to improve accountability of the Forest Service Land Exchange Program. The objective was to first address the problems that led to this breakdown in accountability and consistency in Nevada and to take appropriate action to ensure that these problems are not occurring elsewhere in the Agency.

Immediately, all authority to utilize Bargaining as means of resolving value disputes was rescinded from the Regional Foresters. This can now only be initiated at the National Director of Lands level.

To address the problems in Nevada, the Forest Service worked with the OIG and responded to the recommendations noted in the August 1998 Report. Following this, the Agency in October 1998, established a National Oversight Team whose charter is to **"to ensure that landownership adjustment transactions are consistent with national standards that fully reflect all applicable policy, regulations, and law; that transactions insure that the public's interest is protected; and that landownership adjustment transactions are developed and consummated in a timely manner."**

See comment 1.

Response to GAO's Draft Report

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The plan is that the Team will perform this Oversight until each Regional Office has clearly demonstrated that they can fully and consistently perform this function. The Team has been active in meeting this mission by completing the oversight role on pending and newly proposed transactions. Each transaction is being reviewed at two stages of the land exchange process. The first review occurs upon conception to ensure that the proposal appears "Feasible" and in the "Public Interest" and then again once the formal analysis has been completed but prior to a decision. The Team has oversight authority on all transactions over \$500,000 and below this threshold level when proposals involve high public concern, complexity or involve potential for risk or abuse. To date, the Team has completed reviews on over 90 land transactions.

See comment 2.

Expanded and Updated Policy Direction - In addition to the Oversight Role, the Team has taken the lead in developing expanded policy direction that specifically focuses on the problems and issues noted in the OIG Audit Reports. These include the following:

1. Direction on defining roles of both Forest Service and third-party's in Facilitated Landownership Adjustments.
2. Developed an Agency-wide format for Feasibility Analysis to be used in initial screening of all land exchange proposals.
3. Revised and standardized the Land Exchange Implementation Schedule to identify and track the key process steps. Use of this tracking tool will improve efficiency in case processing.
4. Developed expanded valuation direction for Phased Acquisitions, Assembled Transactions, and packaging transactions to better manage Federal Assets.
5. Developed direction for valuation, management and protecting water rights associated with land transactions.
6. Developed direction on the appropriate procedures for Sharing Costs and Assumption of Costs procedures associated with processing land exchanges.
7. Developing revised Forest Service Handbook and Manual for Land Exchanges with first draft in fall of 1999. The Team will conduct training sessions on new handbook in each Region during FY 2000 and 2001.
8. Leading Task Force effort to develop Agency-wide direction relative to making land transaction appraisals and valuation supporting documents available for public review.
9. Developed guidance on incorporating Landownership Adjustments as integrated component in Land and Resource Management Plan Revisions.

Monitoring Efforts - Through the Oversight Reviews, the National Team has noted progress being made by most Regions in strengthening their Land Exchange Program. However, the Agency needed some formal means to track each Regions progress. To

monitor Regional and Forest compliance more closely, in October 1999, Deputy Chief James Furnish directed that the Team Leader and WO Director of Lands report to him semi-annually as to the progress of each Region in meeting the full "compliance standard" in the Landownership Adjustment Program Areas. Region's are being evaluated on the following criteria:

1. Regional Landownership Adjustment (LOA) Staff demonstrates high degree of knowledge and skills and provides timely and effective case "Oversight." The Region consistently meets the "National Standard" (full compliance with law, regulation and policy) in developing and processing landownership adjustment transactions.
2. Region prioritizes cases and is the initiator of landownership adjustments based on land and resource management plan objectives.
3. Region manages roles and involvement of third-party facilitators in LOA Programs.
4. Regional Forester monitors and maintains delegated authorities to Forest Supervisors consistent with demonstrated knowledge, skill levels and adequacy of land and resource management plan direction.

The first evaluation was completed in April 2000. All Regions will remain under the Team Oversight Requirement and the Team recommended expanding the review requirements to all Assembled Transactions, regardless of the value, to give emphasis on management of this type of transaction. The Team also recommended reviews of all transactions regardless of values thresholds in the Lake Tahoe Area and in Arizona and New Mexico due to lack of staff skills and expertise.

External Review of Appraisal Procedures - In FY 2000, since some of the issues raised internally and by OIG deal with valuation, a contract was awarded for an external review of Forest Service appraisal procedures, practices and organization, etc. to the Appraisal Foundation. The independent study is to be completed by June 2000 and the Director of Lands is to review the findings with the Deputy Chief, NFS and implement actions as appropriate.

Efforts to Strengthen the Lands Cadre - The Agency has lost much of its land exchange and appraisal skill base through downsizing and retirements. In order to restore and strengthen the Forest Service Lands cadre in FY 99, six Understudy positions were created and filled. These positions were placed under our most experienced master level mentors. The intent is to expedite the development of journey level skilled personnel into master level Lands cadre which ensures a future skill base for Regional level program management positions.

Additionally, in FY 2000, the Agency created and filled six Apprentice positions. Each of these was also placed under a experienced mentor. An intensive training program has been jointly developed with BLM at their National Training Center and these apprentices are attending this "boot camp" approach to the Lands Programs of both Agencies. The goal is to put these individuals through an intensive formal training program plus

See comment 3.

hands-on training and experience over next few years to strengthen the future lands skill base. It is anticipated that further Apprentice positions will be filled in subsequent years as funding allows.

Expanded Training Opportunities - In addition to the training opportunities noted above, the Forest Service and BLM have jointly expanded the training for Line Officers and Program Managers with Lands or Realty Responsibilities. This week long National level training is offered twice annually and over the next two years attendance for all District Rangers and Forest Supervisors in the Forest Service is required. The objective of this training is to increase the awareness of the appropriate tools and processes available to Line Officers associated with the Lands and Realty Programs.

In summary, the Forest Service has taken numerous steps to address the unacceptable situations and problem areas noted by the OIG Audit Reports. We question that the GAO draft Report adequately considers or reflects the efforts and accomplishments, over the last 16 months, in strengthen and increase accountability in the Forest Service Land Exchange Program.

Forest Service Response to Considerations and Recommendations

Matter for Congressional Consideration - We strongly disagree with the proposal to discontinue the land exchange program and replace it totally with a sale of National Forest System lands authority in which receipts can be retained and utilized for acquisition of private lands. The proposal to provide another tool for Agency use for specific situations has some merit, provided it contains well defined safeguards and criteria for when it would be applicable. This could be a complementary tool to the existing purchase and exchange authorities but not a substitute for either.

Land exchanges are complicated but many of the same issues and controversies would also be involved in a sale program. Appraisal concerns, challenges relative to NEPA compliance, public interest questions, adjacent landowner concerns and competitive processes issues would all be involved in this GAO proposal as well. We also suggest that this GAO proposal would increase interest and participation by third parties (both for profit and non-profit) in purchasing the non-Federal lands.

Recommendations to the Secretaries of Agriculture and the Interior - Only one of the GAO recommendations appear to be relevant to the Forest Service. This recommendation is to "require that all exchanges be reviewed and approved by the agencies' review teams (or other designated officials) before those exchanges are completed," etc.

We have no objection to this recommendation, in that all land exchanges are currently being reviewed by either the Forest Service National Team if \$500,000 or over in value, or by delegated Regional Directors and their Staff if below that threshold. In fact, all land exchanges are reviewed twice during the exchange process, once at the Feasibility Phase and again prior to making a formal decision.

See comment 4.

Response to GAO's Draft Report

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Comments to draft GAO Audit Report, page 17, Three exchanges in Nevada

The GAO Report included these transactions as instances where Forest Service had not appropriately Valued Land.

We concur that the non-Federal lands involved in these transactions were not properly valued.

The Deer Creek transaction involved the first use of Bargaining as means of resolving value disputes in a land exchange transaction by the Forest Service. We concur that it was handled incorrectly and resulted in an excessive value being given to the non-Federal lands. Shortly after this incident, the individuals involved in this action were removed from their Lands positions and all Bargaining authority was rescinded from the Regional Forester level. The use of Bargaining in the Forest Service can only be initiated by the National Director of Lands.

The Cashman and Red Rock II cases involved incorrect data provided by private contractors that were used in the appraisals to support development costs. This data was not validated by the Forest Service review appraiser. The studies were later found to be inaccurate and their use resulted in over estimating the value of the non-Federal lands.

To ensure that this situation does not occur in the future, specific guidance was provided to all of the Forest Service Regional Appraisers, and the compliance and oversight reviews of Regional appraisal activity by the Forest Service Chief Appraiser specifically focuses on this type of unsupported supposition.

Response to GAO's Draft Report

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Comments to draft GAO Audit Report, page 19, Ricks College Land Exchange

The GAO Report included this transaction as an exchange which may not always serve the public interest.

GAO: At the residence owners' request, the Service retained development rights to assure that the area would not be further developed.

See comment 5.

Response: Under county zoning, without the easement, an additional 50 home sites could have been developed. The Forest Service's purpose in reserving the easement was to limit additional development to prevent unacceptable impacts to wildlife and the surrounding National Forest System lands.

GAO: The restriction reduced the appraised value of the Federal land by about \$22,000.

See comment 6.

Response: Reserving the easement resulted in a \$33,000 (not \$22,000) decrease, a reduction of less than 7%. In return, almost 23% of the land conveyed is restricted from future development.

GAO: Agency's handbook states that it is usually undesirable to retain restrictions on lands conveyed out of Federal ownership because of the responsibility to enforce the restrictions in perpetuity.

See comment 5.

Response: There are management responsibilities that go along with property ownership, including ownership of partial interests. Although the Forest Service's land exchange handbook suggests that generally these types of restrictions are not desirable, they are not prohibited. The Forest Service land exchange regulations (254.3(h)) clearly provided for this consideration. *Reservations or restrictions in the public interest. In any exchange, the authorized officer shall reserve such rights or retain such interest as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged as appropriate.* Each proposal is evaluated on its merits. In this case, it was determined to be in the public interest to prevent further development in the area and, because of the proximity of the site to Forest Service developments (boat takeout facility at Big Springs National Water Trail), Forest personnel will be regularly in the area and will be able to readily monitor the development restrictions.

Comments on draft GAO Audit Report, page 20, Huckleberry Land Exchange

The GAO Report included this transaction as an exchange which may not always serve the public interest.

This response outlines the background and key issues involved in this case and the Forest Service position that the exchange was in the public interest and meets the requirements of the applicable exchange authorities and other requirements, including the National Environmental Policy Act and the National Historic Preservation Act.

BACKGROUND: The Record of Decision for the Huckleberry Land Exchange was signed in November of 1996. An administrative appeal to the decision was subsequently filed by the Pilchuck Audubon Society, the Huckleberry Mountain Protection Society, and the Muckleshoot Indian Tribe. The decision was reaffirmed in March of 1997, by the Regional Forester. The appellants filed separate complaints in Federal District Court in May 1997. The Sierra Club testified before the District Court in support of the exchange.

Federal District Court Judge William L. Dwyer granted summary judgment in favor of the United States (Forest Service) and intervener (Weyerhaeuser) in December 1997. The plaintiffs filed appeals to the Ninth Circuit in February 1998, but did not seek a stay. The land exchange was finalized in March 1998, whereby 30,253 acres transferred to the USA in exchange for the conveyance of 4,362 acres to Weyerhaeuser. In addition, Weyerhaeuser donated 1,900 acres, a portion of which was added to the Alpine Lakes Wilderness. Subsequently, however, a three-judge panel of the Court of Appeals issued a decision on May 19, 1999, reversing the District court. Both the Forest Service and Weyerhaeuser have been enjoined from further activities on their lands until compliance with the Court order. Compliance includes addressing two National Environmental Policy Act issues (inadequate range of alternatives and a more complete/detailed analysis of cumulative effects) and a National Historic Preservation Act issue (impacts on the Huckleberry Divide Trail).

The Forest Service disagrees with the Court's decision and believes that the Record of Decision (ROD) for the exchange Environmental Impact Statement (EIS) clearly shows that the exchange is in the public interest and that the Forest Service went to extraordinary efforts to comply with the requirements of law, policy and regulations pertaining to land exchanges.

KEY POINTS: The key issues involved in the Huckleberry Exchange are as follows:

- **Compliance with the National Historic Preservation Act (NHPA)** – The Muckleshoot Indian Tribe had claimed that the Forest Service has violated NHPA by failure to adequately consult with the tribe, failure to nominate the Huckleberry Divide Trail to the National Register, and failure to adequately mitigate the harmful impact of the land exchange on sites of cultural significance. The Court ruled that the Forest Service had made a reasonable and good faith effort to identify historic properties and did not address the issue of nomination of the trail

See comment 7.

to the National Register. The Court, however, did rule that the Forest Service violated NHPA because mitigation measures did not preserve the trail's significant historical features. The Forest Service believes that the Court decision goes far beyond what is required by NHPA and its implementing regulations. NHPA and the regulations do not impose obligations to conduct preservation as defined by the Court.

This issue is fully discussed in two documents attached to this report. These are 1) Information Memorandum dated June 1, 1999, prepared by USDA Office of General Counsel Attorney Jocelyn Somers for Forest Service Chief, Mike Dombeck, Regional Forester Robert Williams, and Acting Forest Supervisor, Daniel Harkenrider, and 2) Request dated July 1999 from United States Attorney Katrina C. Pflaumer and Assistant United States Attorney Christopher L. Pickrell to the Ninth Circuit Court Panel to revisit its decision.

- Compliance with the National Environmental Policy Act (NEPA) – The Court ruled that the Forest Service violated NEPA in two areas, 1) by failing to consider a range of appropriate alternatives to the proposed exchange and 2) by not fully considering cumulative impacts related to other past, present or future actions.

First, concerning alternatives, the Court ruled that the Forest Service should have considered in detail two additional alternatives, 1) to impose deed restrictions requiring Weyerhaeuser to manage the lands it received under Federal standards and 2) requesting Congressional appropriation of funds to purchase the lands from Weyerhaeuser. The Forest Service did consider these alternatives in the EIS, but they were eliminated from detailed discussion because they were not feasible, were inconsistent with its basic policies and were unlikely to be implemented.

Deed restrictions of this magnitude are contrary to Forest Service policy, would be difficult to enforce and would seriously devalue the Forest Service lands in the exchange. A purchase alternative is an entirely different action from a land exchange and is beyond the scope of the action being analyzed. In addition, purchase of the Weyerhaeuser lands was extremely unlikely since Weyerhaeuser had repeatedly told the Forest Service that it was unwilling to sell the lands and since only Congress can appropriate the very large amount of funds required to purchase this land, purchase was beyond the Agency's discretion.

Secondly, concerning cumulative impacts, the Court said that the Forest Service's discussion of cumulative impacts was characterized as very broad statements devoid of specific reasoned conclusions. The Court held that the EIS's alleged failure to analyze the impacts of a 1984, (Alpine Lakes) land exchange and a presently-ongoing exchange which was Congressionally legislated in 1998 (the Plum Creek exchange), and its failure to evaluate impacts of private logging incident to the exchange violated NEPA. The Forest Service believes that these actions were appropriately addressed in the environmental documentation.

The lands acquired in the 1984 Alpine Lakes exchange became National Forest System lands upon acquisition and were assigned management areas. These lands

were properly analyzed in preparation of the EIS for the 1990, Mt. Baker-Snoqualmie Forest Plan. The Plum Creek land exchange proposal had been discussed at the time of the Huckleberry exchange analysis, however the Huckleberry ROD was signed in November of 1996, and it was not until January of 1997, that an Agreement to Initiate an Exchange was entered into on the Plum Creek exchange. Even after the Agreement to Initiate, the Plum Creek proposal went through several major changes. Since the Plum Creek exchange was not concrete at the time the environmental analysis for the Huckleberry exchange was prepared, the Forest Service could not provide any meaningful evaluation of such an ongoing proposal.

Regarding impacts of private logging, the Forest Service did not have access to specific information regarding the extent of logging or other activities on private and its environmental documentation and discussion of expected impacts had to rely upon assumptions that the private lands would be logged within a very short time. The exchange analysis was based upon the assumption that the lands would be logged within a short time.

The issues of alternatives and cumulative impacts are also fully discussed in the two documents referred to above in the NHPA discussion and attached to this report.

- **Public Interest** – The exchange meets the requirements of Federal Land Policy and Management Act and the exchange regulations at 36 CFR 254.3(b), that the public interest will be well served. The resource values and public objectives served by the non-Federal lands to be acquired exceed the resource values and public objectives served by the Federal lands to be conveyed. The exchange will meet important objectives of the Natural Resource Agenda by acquiring lands having high public values for wildlife (including T&E species habitat), recreation, watershed, riparian and wetlands areas, and wilderness. The exchange was developed to enhance late successional reserve (old growth) needs identified in the Northwest Forest Plan and resulted in the U.S. Fish and Wildlife Service issuing a beneficial effects determination on critical habitat for the Northern Spotted Owl. The specific benefits of the exchange include:
 - A net increase of 25,991 acres which will block up checkerboard ownership, provide long-term wildlife habitat and long-term timber harvest, and will increase recreation access and opportunities.
 - A net gain of 5,000 acres of Riparian Reserves.
 - A net gain of 357 acres of flood plains
 - A net gain of 94 acres of wetlands.
 - A gain of 175 miles of streams.
 - A gain of 13,637 acres suitable for long-term timber harvest.
 - Eliminates the need to locate approximately 120 property corners.
 - Eliminates approximately 400 miles of boundary line maintenance.

Appendix I
Comments From the Forest Service

In addition, the exchange received considerable public support in the Seattle area from such groups as the Mountains to Sound Greenway, the Sierra Club and many other individuals and groups.

- Equal value – The exchange meets the equal value requirement of the Federal Land Exchange Management Act and the regulations at 36 CFR 254.3(c). The values of the parcels exchanged have been reviewed and approved for Forest Service use, in accordance with Agency and Federal appraisal standards and the Uniform Appraisal Standards for Federal Land Acquisition requirements. We note that the plaintiffs had raised the appraisal issue in their original complaint before the Federal District Court, saying that the exchange did not meet the equal value requirements of FLPMA. Judge Dwyer addressed this issue in his order granting summary judgment in favor of the United States and ruled that the Forest Service appraisal was in compliance with the equal value provisions of FLPMA. The plaintiffs did not bring up this issue in their appeal to the Ninth Circuit.

The Forest Service is extremely concerned with the Court's decision and the adverse effect it may have on many other future Forest Service and Bureau of Land Management land exchanges. We believe that many of the lands we desire to protect for their resource values are only available through the land exchange process and loss of this tool will be a great hindrance to addressing ecosystem concerns. The Forest Service requested that the Ninth Circuit Court revisit its decision; however, the Court declined to do so.

While the Forest Service strongly disagrees with the decision, we realize that the decision is now the law of the land and we are already taking actions to comply with the decision. We are currently preparing a Supplemental EIS, which will address the issues raised in the decision.

In all current and future land exchange analysis, we plan to more fully address the issues of additional alternatives and cumulative impacts. In addition, the Forest Service is looking closely at how new regulations under the NHPA will be addressed in the land exchange process.

Attachments (as stated)

Comments to Draft GAO Audit Report, Page 21, Zephyr Cove Land Exchange

The GAO Report included this transaction as an exchange which may not always serve the public interest.

The GAO Report makes reference that Forest Service owns the improvements on the Zephyr Cove property. Also, the Report appears to be in error in stating that "the Forest Service is negotiating a land exchange to acquire the residence and the five adjacent acres and to convey similar shoreline property."

Response: Both the Department of Justice and Office of General Counsel have advised the Forest Service that they will not support the position that the Forest Service acquired or has ownership of the structural improvements on the Zephyr Cove property which may be contrary to the OIG Auditors initial position. Therefore, the Agency must now deal with how to resolve the issue of Federal ownership of the land and private ownership of the structures located on it. Various options are being discussed but no position has been taken by the Forest Service. These include, but are not limited to, authorizing the use of the improvements under a special use permit, acquire the structures which would likely involve condemnation action, or possibly utilize a land exchange which would involve a small parcel of Federal land immediately associated with the buildings for other higher public valued property with more useable shoreline frontage on Lake Tahoe. The final decision on this matter will be evaluated through the NEPA process with fully public involvement. To date, no firm proposal for a land exchange has been developed and no official position has been taken by the Forest Service as to its' preferred solution to this issue.

Both the Congressional Delegation from Nevada and local government officials are actively involved in resolving this issue.

See comment 8.

GAO's Comments

The following are GAO's comments on the Forest Service's (the Service) letter dated May 5, 2000.

1. We believe the exchanges highlighted in our report demonstrate serious and substantive problems with the Service's land exchange program—problems that were also documented in reports issued by Agriculture's Office of the Inspector General. The exchanges we highlighted further demonstrate the inherently difficult nature of land exchanges.
2. We acknowledge the efforts the Service has made to address problem areas and believe that they are steps in the right direction. However, these efforts have not eliminated all of the problems or our concerns. For example, the Service commented that its own national review team found that while "most" regions have made progress in strengthening their land exchange programs, none have clearly demonstrated that they fully and consistently comply with national standards reflecting applicable laws, regulations, and policies in developing and processing land exchanges. The team also recommended that it review all land exchange transactions in Arizona, New Mexico, and the Lake Tahoe area, owing to the lack of field offices' staff skills and expertise. Furthermore, we believe that establishing new policies and procedures cannot overcome the fundamental and inherent difficulties associated with the use of exchanges to acquire nonfederal land.
3. We acknowledge the Service's efforts to hire, train, and mentor staff to work in the landownership adjustment program, which will strengthen the future lands skill base over the next few years. However, according to the Service, the agency has already lost much of its land exchange and appraisal skill base through downsizing and retirements, and it anticipates that some headquarters staff who are responsible for reviewing land exchanges may be retiring soon.
4. We share the Service's concern that having expanded authority to sell certain federal land and to retain use of some or all of the sale proceeds to purchase nonfederal land would not resolve many of the problems we reported with land exchanges—most notably, concerns about appraised values—and could create additional potential difficulties, such as increasing participation by third parties or conflicts with state and local governments. For this reason, we have deleted the suggestion that the Congress consider replacing the Service's land exchange program with such expanded authority. Under existing authority, the Service is not

authorized to sell national forest land but is authorized to seek appropriated funds from the Congress to acquire desirable nonfederal land. However, we do not believe that the administrative flexibility offered by exchanges warrants continuing the program. Because of the inherent difficulties and the recurring problems that the agencies have experienced in managing their land exchange programs, we still believe that the Congress should consider directing the agencies to discontinue their land exchange programs.

5. The environmental assessment and associated documents for the Ricks College exchange did not state that an additional 50 home sites could have been developed in the area or that the Service needed to limit this potential development to prevent unacceptable impacts to wildlife and the surrounding national forest lands. In addition, cognizant Service officials told us the restriction was included at the request of the residence owners.

6. We recalculated the value of the restriction and found it to be \$29,000 and clarified our report accordingly.

7. The Service commented that it strongly disagrees with the Court's decision on the Huckleberry exchange—believing that the exchange was in the public interest and complied with applicable laws—but realizes the decision is the law of the land and is already taking actions to comply with it. Our report summarizes the Court's decision, which found that the agency did not adequately prepare its environmental analysis, which identifies and analyzes the public interest to be served.

8. We have revised our report to incorporate the updated information provided by the Service, to reflect that neither the Office of General Counsel nor the Department of Justice now supports the position that the residence was acquired or is owned by the federal government, that the Service is considering an exchange as one of several options to resolve the ownership conflict, and that the Service will develop its preferred solution through the National Environmental Policy Act process with full public involvement. Nonetheless, we are concerned that an exchange would convey recently acquired and environmentally sensitive land to a nonfederal landowner and create an inholding.

Comments From the Bureau of Land Management

Note: GAO's comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



MAY - 5 2000

Mr. Jim Wells
Director, Energy, Resources and Science Issues
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Wells:

The Department of the Interior has reviewed the General Accounting Office's (GAO) draft report entitled "BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest" (GAO/RCED-00-73). This letter and the accompanying attachments constitute the Department's response to the draft report and recommendations.

The Department is committed to improving the land exchange program, but does not believe we could achieve the same positive results of land exchanges by exclusively relying on buy/sell authority. The BLM's land base tends to be fractured and fragmented, making management difficult for the Bureau and its neighbors. Land exchanges are an invaluable tool for improving management, resolving boundary conflicts, facilitating state school trust land reconfiguration, protecting important natural resources and habitat, preserving open space, and assisting local governments. Congress recognized the importance of land exchanges as a management tool for the BLM when it passed the Federal Land Policy and Management Act (43 U.S.C. § 1701 et seq.), and reinforced this importance when it passed Federal Land Exchange Facilitation Act (43 U.S.C. § 1716(b)), which provided methods to facilitate and expedite land exchanges. However, the GAO draft report raises concerns with the program that are shared by the Department, and we are committed to responding to all of those concerns as we work to fulfill the intent of Congress.

While the Department continues to disagree with some interpretations of fact and conclusions made by GAO (See Attachment 2), the draft report raises issues and concerns – some of which the Department already identified as a result of our own internal reviews – and confirms that the BLM needs to establish more stringent controls and oversight over the land exchange processes and the handling of funds. The Department concurs with the GAO that all four recommendations require action, and we are taking immediate steps to address them.

The first and fourth recommendations would require that all exchanges and all exchange initiation agreements be reviewed and approved by the agencies' review teams or other designated officials. The BLM concurs in these recommendations. In response to concerns raised by both the GAO and the BLM's National Exchange Team, the BLM recently issued guidance which provides for the review of all land exchanges and exchange initiation agreements.

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The second recommendation is that the BLM immediately discontinue assembled exchanges under which the Bureau is selling federal land, retaining the sales proceeds (and interest) in escrow accounts, and using these funds to purchase nonfederal land. Although we believe that the examples highlighted in the draft report are components of permissible assembled land exchanges rather than separate buy/sell transactions, we have concluded that our written guidance and oversight of assembled land exchanges need to be improved and we are taking action to do so. We have begun this process by issuing guidance defining the terms and elements of permissible land exchanges, as opposed to sales and purchases, implementing immediate changes to ensure that all financial aspects of conducting assembled exchange transactions will be handled properly within the Bureau's financial management systems, and reaffirming BLM policy that any interest earned on funds held in escrow accounts must be deposited in the General Fund of the Treasury. We are also conducting a review of all land exchange accounts to determine whether there is interest in any of those accounts. Thus far, we have identified interest in one account and have deposited this interest in the Treasury. As we complete our review of the other accounts, we will continue to take appropriate action. In addition, we are revising all policy and guidance related to assembled land exchanges, which will be completed this year.

The Department concurs in the third recommendation to conduct a full audit of financial records associated with assembled exchanges, and we have already begun the procurement process to hire an independent firm to conduct an audit of all assembled land exchanges and their accompanying ledger or escrow accounts.

In addition to specific action items responding to each of the recommendations in the draft report, the BLM is establishing a review schedule to provide for increased programmatic and financial oversight of the land exchange and appraisal programs on a regular basis. These evaluations will begin in fiscal year 2001 and will assure that all BLM States' land exchange and appraisal programs are reviewed over a three to four year period.

We request your serious consideration of the material presented in this letter and the attachments before preparing the final report. Further, because of the seriousness of the Department's concerns related to the material contained in this draft report, we request that this response, including the attachments, be published as part of the final GAO report on Federal land exchanges.

If you have any questions, please call Mr. Pete Culp, Assistant Director, Minerals, Realty and Resource Protection on (202) 208-4201, or Ms. Pamela Cleary, Acting Audit Liaison Officer, on (202) 452-5196.

Sincerely,



Sylvia V. Baca

Assistant Secretary, Land and
Minerals Management

Attachment (1) Detailed response to recommendations

Attachment (2) Analysis and response to factual statements and conclusions

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Attachment 1

Detailed Response to Recommendations in GAO's Draft report (GAO/RCED-00-73)

Recommendation 1: Require that all land exchanges be reviewed and approved by the agencies' review teams or other designated officials before those exchanges are completed. In this review, the agencies must assure that the Federal and nonfederal lands proposed to be exchanged are appropriately valued, that the officials give full consideration to improving Federal land management and/or addressing state or local needs, that the benefits from acquiring the nonfederal land will match or exceed the benefits from retaining the Federal land, and that all statutory and regulatory requirements for land exchanges are met.

Response: Concur. BLM revised its land exchange review and concurrence requirements on April 11, 2000 (See Exhibit A: IM-2000-107). The requirements for review and concurrence by the National Land Exchange Team now include all land exchange transactions that are over \$500,000 in value, that are a part of an assembled land exchange, that use ledger accounts and that contemplate competitive processing. In addition, all other land exchanges will now be reviewed by State Directors using the same criteria as the National Land Exchange Team. As further quality control, the Department has requested the Solicitor's Office assistance in the review process, and the Solicitor's Office has agreed to provide additional legal review of proposed land exchanges.

The technical review process includes a review of the transactions to ensure the Federal and nonfederal lands proposed for exchange are appropriately valued. In November 1999, the BLM completed revisions of its appraisal manual to specifically address the concerns identified by the Office of the Inspector General in its report on Nevada Land Exchange Activities. New appraisal and appraisal review processes and training have been developed and implemented for properties considered to be either complex or in speculative markets. As a part of the technical review process, exchanges are reviewed to ensure the new policies and procedures are properly adhered to and that the valuation process will be supported by credible evidence.

The technical review and concurrence process is geared to ensure that all statutory and regulatory requirements for land exchanges are met. It ensures that officials give full consideration to improving federal land management and/or addressing state or local needs and ensuring appropriate documentation that the benefits from acquiring the nonfederal land match or exceed the benefits of retaining the Federal land being

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considered for disposal. The process also assists the agency in the identification of areas of land exchange processing where additional policy and guidance are needed and in determining where training can assist in ensuring adherence to requirements.

Recommendation 2: Identify and immediately discontinue assembled land exchanges under which the Bureau is - either directly or through third-party facilitators - following the unauthorized practice of selling Federal land, retaining the sales proceeds (and interest) in escrow accounts rather than depositing them into the Treasury, and using these proceeds to buy nonfederal land.

Response: Concur. Although we believe that all the examples highlighted in the draft report are components of permissible assembled land exchanges and not separate buy/sell transactions, we are concerned that our assembled land exchange processes may not have been clearly delineated and strongly concur in the GAO's recommendation to take action in this area. Our policy is to ensure that all land exchange practices, including those involving third-party facilitators, are conducted under our statutory and regulatory mandates. We have taken immediate action to ensure that BLM officials fully understand the difference between assembled land exchange transactions and sale/purchase transactions, by issuing Information Bulletin No. 2000-104 (See Exhibit B). The bulletin defines the different terms and identifies the key elements of a land exchange. To further ensure that the GAO's concerns are addressed, we have taken three actions to correct the inconsistencies and assure that they do not recur.

First, the BLM issued guidance through IM-2000-080 (See Exhibit C), which reaffirms BLM policy that interest earned on funds held in escrow accounts must be deposited in the General Fund of the Treasury. Second, we are conducting a review of all land exchange accounts to determine whether there is any interest in those accounts that must be deposited in the Treasury. Thus far, we have identified interest in one account, which has been deposited in the Treasury. As we complete our review of the other accounts, we will continue to take immediate and appropriate action. Third, as a part of implementing recommendations of the Bureau's National Land Exchange Program Review conducted in 1999, the Bureau is rewriting all policy and guidance related to assembled land exchanges prior to the end of the calendar year. The effort includes participation by the Office of the Solicitor and the BLM's business office to ensure that all appropriate financial controls and safeguards are in place to ensure that the transactions are being conducted consistent with law, regulation and guidance.

In the interim, the BLM has issued guidance contained in IM-2000-113 (See Exhibit D) which addresses the changes the BLM has committed to

See comment 1.

See comment 2.

See comment 3.

See comment 4.

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make immediately to assure that escrow accounts utilized in assembled land exchanges are handled properly within the Bureau's financial system.

Recommendation 3: Conduct a full audit of financial records associated with assembled exchanges under which land has been sold and purchased- including escrow accounts and expenses deducted by third party facilitators - to (1) determine whether sale proceeds were handled properly, (2) resolve any augmentation, erroneous use of public funds, or deficiency in accordance with appropriate laws, and (3) take appropriate actions, including reporting to the President and to the Congress, as required by law, all relevant facts and a statement of the actions taken.

Response: Concur. Based on the GAO's recommendation, the BLM has already begun the procurement process for a full audit of financial records associated with assembled land exchanges to assess the propriety of past financial activities involving these exchanges. In this regard, however, we believe that under the BLM's statutory authorities, land transactions are either land exchanges or sales and purchases, but not both, as identified in the first sentence of the recommendation. As noted in our response to Recommendation 2, we believe all of the transactions examined were components of assembled land exchanges. We do, however, concur with the need for stronger financial controls.

The audit will be conducted in accordance with generally accepted audit principles by a private sector firm. Upon completion of the audit, appropriate actions will be taken to resolve any irregularities identified in the audit.

In addition to the immediate outside audit, the BLM is also initiating a schedule to provide for increased programmatic and financial oversight of the land exchange and appraisal programs on a regular basis. These evaluations will begin in fiscal year 2001 and will assure that the land exchange and appraisal programs for all BLM states are reviewed over a three to four year period. This evaluation process will be in addition to the new technical review and concurrence process previously explained.

Recommendation 4: Review all exchange initiation agreements for ongoing exchanges to assure that they comply with regulations - for example, specifically and clearly describing the land that will be exchanged - and amend them if warranted.

Response: Concur. Pursuant to Instruction Memorandum No. 99-126 (See Exhibit E), the requirements for review and concurrence by the National Land Exchange Team now include all exchange initiation agreements that are over \$500,000 in value, that are a part of an assembled land exchange, that

See comment 1.

See comment 5.

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use ledger accounts and that contemplate competitive processing. In addition, all other exchange initiation agreements will now be reviewed by State Directors using the same criteria as the National Land Exchange Team.

Furthermore, the BLM will complete a revision of the guidance related to exchange initiation agreements requirements, content and format this year.

Matters for Congressional Consideration

Draft Report: The draft report states that there are difficulties and inefficiencies inherent in land exchanges, and the Congress may wish to consider directing both agencies to discontinue their land exchange programs, and replace them with the authorization to sell certain federal land and to use some or all of the sale proceeds to purchase nonfederal land. Such a process would enable the agencies to generate funds that may be used to acquire land while retaining congressional control over the funds. We note that the Congress has provided such authority, on a limited basis, to the Bureau for certain lands in Southern Nevada and is considering proposed legislation that provides similar limited authority for other lands.

Response: The Department does not believe that replacing the land exchange authority with buy/sell authority as the exclusive means of procuring and disposing of BLM land will achieve the same positive results of land exchanges, nor will it solve the inherent difficulties identified by the draft report. Land exchanges are an essential land management tool to resolve boundary conflicts, to assist states to reconfigure state lands, to protect open space and important natural resources and habitat, to assist local governments, and to assist states. The BLM manages vast areas of land that are fractured, fragmented and in checkerboard land ownership patterns. Often, the Federal land is completely surrounded by nonfederal lands owned by a single landowner. Repealing BLM's authority to conduct land exchanges would remove a highly efficient way for BLM to restructure land ownership patterns to provide for better management by the agency and its neighbors.

Exchanges are a particularly valuable tool for state and local governments. Buy/sell transactions with State and local governments would require simultaneous or nearly simultaneous appropriations at the Federal and State and local government levels. Such a requirement would be extremely difficult. It is likely that many highly beneficial government to government exchanges would never occur if the land exchange authority was replaced by buy/sell authority.

See comment 6.

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Many of the exchange concerns raised in the draft report involve appraisals for the acquisition of nonfederal properties. However, appraisals are also required for buy/sell transactions. Recent GAO reports related to concerns and controversies about the appraisals for Federal acquisition of the Baca Ranch (GAO/RCED-00-76) and Headwaters Forest (GAO/RCED-99-52) are evidence that appraisals for Federal acquisitions will likely remain complex and controversial regardless of the acquisition authority the agency uses.

The Department agrees that the Southern Nevada legislation is a positive land management tool and the BLM supports extending that authority. However, it could never be a replacement for land exchanges. The Las Vegas area is not typical of the BLM's land base. The BLM manages rural lands in 11 Western states and conducts the bulk of its land exchanges in real estate markets that are not at all comparable to the competitive and speculative nature of the Las Vegas market. The majority of the land BLM has identified for disposal in these states, by either sale or exchange, is positioned in a manner that will not lend itself to the kind of wholesale competitive land sale program contemplated by the draft report. The BLM's disposal land base consists of small fragmented parcels of Federal land surrounded by private lands without public access. In most cases the Federal land is under permit for use by those surrounding landowners, many of which have been authorized for generations. Wholesale competitive marketing for sale of these types of Federal holdings would likely create major problems for stakeholders in the western states and present an unmanageable situation for local governments in their efforts to address land use controls and their infrastructure support needs. Therefore, while we do not support replacing the land exchange authority with the Southern Nevada model, we do support that authority as a complement to the land exchange program.

See comment 7.

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Attachment 2

Analysis and Response to Factual Statements and Conclusions

Conclusions

Conclusions Related to Key Statutory Requirements

Conclusion: Agencies Have Not Appropriately Valued Land. The agencies have given more than fair market value for non-federal land they acquired, and accepted less than fair market value for federal land they conveyed, because the appraisals used to estimate the values did not always meet federal standards. And, the agencies have sometimes given more than the estimated fair market value for non-federal land they acquired and have (or would have) accepted less than the estimated fair market value for federal land they conveyed.

See comment 8.

Response: The appraisals used by the BLM meet Federal appraisal standards, and the draft report provides no evidence to the contrary. The examples cited in the draft report are all examples of exchanges cited by the Department's Office of the Inspector General (OIG) in a report on Nevada land exchanges from four years ago, and a report on the Del Webb exchange from two years ago. The OIG cited the exchanges as having some irregularity with the appraisals, resulting in taxpayer losses. The OIG did not assert or provide evidence that the appraisals do not meet Federal standards. The draft report also does not provide any evidence, new or old, that the purported losses were a result of inadequate compliance with federal appraisal standards.

See comment 9.

In response to the OIG reports, BLM updated the appraisal manual, instituted a training course for staff and contract appraisers, and is identifying a cyclic appraisal program evaluation schedule. Those program evaluations will be conducted with expertise from independent representatives of the appraisal industry. We believe the draft report simply restates earlier concerns regarding appraisal standards, process and procedures. By doing so, the draft report suggests that these concerns are ongoing issues. In fact, we believe they are not.

DeMar Exchange

See comment 10.

The draft report questions the basis for the value of the nonfederal land established in the DeMar exchange. The value of the nonfederal land was established utilizing a bargaining process as authorized under FLEFA and 43 CFR 2201.4. There were two approved value estimate appraisals, one at \$7,000 per acre and one at \$1,000 per acre. The administrative record for the DeMar bargaining clearly demonstrates that the market value established in the bargaining process resulted from a reconciliation of the data in these two appraisals.

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See comment 11.

Zephyr Cove Exchange

The draft report asserts that the nonfederal lands in the Zephyr Cove exchange was overvalued by as much as \$10 million. The draft report cites a 1998 Department of Agriculture OIG report as stating that the appraisal in this exchange did not meet Federal standards. We have reviewed the OIG report, and can find no such conclusion.

See comment 12.

Red Rock Exchange

Basing conclusions on a 1996 OIG report, the draft report asserts that the nonfederal lands in this exchange were overvalued. In this land exchange, there were two separate appraisals, one for \$1.5 million and one for \$2.7 million. The larger appraisal was accepted. The approval of an appraisal by a staff appraiser that was \$1.2 million higher than an earlier review does not mean that the appraisal review was inappropriate or that the agency over-valued the property. Real estate appraising is not an exact science and appraisers and reviewers may reasonably differ on their conclusion of value (Uniform Appraisal Standards for Federal Land Acquisitions, 1992, p 4). However, in response to the 1996 report, the BLM revised its appraisal manual to specifically address the concerns identified in Nevada land exchange activities. New appraisal and appraisal review processes and training have been developed and implemented for properties considered to be either complex or in speculative markets. As a part of the technical review process, exchanges are reviewed to ensure the new policies and procedures are properly adhered to and that the valuation process will be supported by credible evidence.

See comment 13.

Del Webb Exchange

The draft report cites the Del Webb Exchange as an example of giving more than the estimated fair market value for nonfederal lands, when in fact it is an example of how the BLM's standards and safeguards work to ensure that the Federal government obtains the appropriate value for land. There is no basis from the facts for the draft report to conclude that BLM's actions in contracting for a second appraisal were the direct result of OIG's review, that the appraisal did not meet Federal standards, or that the agency would have accepted less than the fair market value for the federal land in the exchange. On the contrary, the BLM's appraisal processes and safeguards worked exactly the way they are intended. Anytime that the BLM is not satisfied that the appraisal work accurately reflects the value in the lands, another appraisal may be ordered. That is what occurred here, and the lands were *not* undervalued. The appraisal fully complied with Federal standards and provided an appropriate and accurate assessment of the fair market value. Most importantly, there was no loss to the Federal government.

See comment 14.

Clark County Records

The draft report again cites the 1996 OIG report concerning land exchanges in Nevada, and repeats conclusions in that report that a nonfederal party exchanged lands with the BLM, which they sold the same day for about five times as much in one case, and twice as much in another. However, the draft report does not consider the likelihood that these were not arms length transactions. In other words, the reported increase in value as recorded is not necessarily

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reflective of true consideration for the land. For example, it could reflect a transfer of property between subsidiaries of the same corporation. Recorded sales data should not be equated with valuation without independent verification.

Conclusion: Exchanges May Not Always Serve the Public Interest. The agencies did not follow their requirements that help show that the benefits from acquiring the nonfederal lands match or exceeded the benefits of retaining federal land, raising doubts about whether these exchanges served the public interest. The agencies have not always shown that the benefits of acquiring the nonfederal land matched or exceeded the benefits of retaining the Federal land. Furthermore, the Bureau did not always follow its regulations in preparing exchange initiation agreements.

Response: The BLM followed requirements and showed that the benefits of acquiring the nonfederal land matched or exceeded the benefits of retaining the Federal lands. This was done in the NEPA and planning documents for the exchanges. The draft report's conclusion is based on three transactions, one of which is being processed and another from a transaction completed in early 1995. We disagree with the representation that either of the two completed land exchanges, Cache Creek or Red Rock, failed to document how the public interest was served by the exchange. Furthermore, the BLM has consistently prepared exchange initiation agreements ever since the requirement was promulgated in the regulations in 1993. The one example cited in the draft report where an exchange initiation agreement was not prepared was a transaction begun in 1990, before the regulation was promulgated.

Cache Creek Exchange in California

The draft report cites the Cache Creek exchange as an example of where the BLM did not document reasons for acquiring specific parcels of nonfederal land and did not prepare an exchange initiation agreement. The draft report's conclusion rests on the lack of specificity in the NEPA document. The report fails to consider that the land use plan, exchange feasibility report and exchange decision fully document how these transactions served the public interest. Furthermore, the report does not acknowledge that there was no requirement for an exchange initiation agreement when this exchange began in 1990.

The BLM considered how the public interest would be served by the disposal of Federal land in the Cache Creek land exchanges. The Federal lands in the Cache Creek exchange were identified for disposal in the BLM Ukiah field office land use plan. The analysis conducted in association with the preparation of that plan determined that the lands were generally scattered, isolated, small parcels of public land with limited public access and no significant public resource values, and they could be utilized in land exchanges to support the acquisition of private lands within special management areas identified in the land use plan.

A feasibility report was completed by the BLM to consider the acquisition of private lands in the designated Cache Creek Area of Critical Environmental Concern in September of 1991. The feasibility report determined that the exchange of public lands to acquire any of the private lands in the Cache Creek Area of Critical Environmental Concern would be in the public interest. The

See comment 15.

See comment 16.

See comment 16.

See comment 15.

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private lands within the Area contain resources that meet public land management goals, including wilderness values, Tule Elk habitat (State sensitive species), wintering bald eagle habitat, and high recreational use values of Cache Creek.

After completing the final studies and evaluations, the BLM published a Notice of Decision identifying the specific properties to be acquired in the exchange. That notice invited the public to comment on the public interest determination the BLM made related to the specific property prior to the completion of the transaction.

Red Rock Exchange in Nevada (1995)

The draft report cites the 1996 OIG report on Nevada land exchanges, which refers to the Red Rock exchange. The draft report indicates that the BLM did not determine that the exchange was in the public interest. We disagree with the draft report's interpretation of the OIG report. The OIG report concluded that the nonfederal land acquired in the Red Rock exchange were not in conformance with the current land use plan and therefore had no discernible mission related purpose. The OIG report contained no reference to the Bureau's failure to identify how the nonfederal land matched or exceeded the benefits of retaining the Federal land. The OIG report also did not address adherence to the requirements for completing a land exchange initiation agreement.

The draft report does not address the Bureau's response to the 1996 OIG report. In that response, the Bureau identified how the exchange resulted in the acquisition of lands that had mission related purposes. When the BLM considered this exchange it was in the process of revising its old land use plan to address the management needs for listed special status species. The nonfederal land acquired in the Red Rock exchange in the Virgin River and Pahrump Valleys were determined to contain important listed special status species habitat. Specifically, the land acquired was consistent with the management recommendations in the BLM's Clark County Management Framework Plan, which identified the need to manage for woundfin (an endangered fish species) habitat along the Virgin River, consistent with the U.S. Fish and Wildlife Service (FWS) Woundfin Recovery Plan for this species. The 1985 FWS Recovery Plan for the Virgin River recommended land management agencies obtain management authority over woundfin habitats. A subsequent 1995 revision of the recovery plan recommended that land management agencies "acquire land and/or protective easements along the Virgin River for preservation of important habitats for woundfin and Virgin River chub." Therefore, the exchange properly evaluated the public benefits, supported the public interest and furthered mission-related purposes pursuant to the Endangered Species Act.

City of Elko Exchange

The draft report questions whether the BLM will be able to demonstrate public interest in this proposed exchange. However, there has been no decision regarding the proposal, and the agency has not acquired any non-Federal land. Therefore, it is premature for draft report to draw conclusions that the public would not or could not benefit from the proposal.

See comment 15.

See comment 17.

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Conclusion: Some Bureau Exchanges Are Not Authorized Under Federal Law. BLM has sold land and retained the proceeds for land purchases. The Bureau has under the umbrella of its statutory land exchange authority and regulations providing for assembled land exchanges, sold Federal land, retained the cash and interest in escrow accounts, and subsequently used the sales proceeds to buy non-Federal land.

See comment 1.

Response: The Department continues to disagree with the draft report's conclusion that the three land exchanges cited in the draft report were conducted outside of existing land exchange authority as land sales. These transactions were processed under the land exchange authority of Section 206 of FLPMA and accompanying land exchange regulations (43 CFR Part 2200), and not under the land sale authority contained Section 203 of FLPMA and the sale regulations (43 CFR Part 2100).

See comment 18.

The draft report has not presented sufficient evidence to support the conclusions reached. The conclusions instead are supported only by a statement of disagreement with the Bureau and the Department. The BLM administrative records related to the three exchange transactions clearly indicate that the BLM intended to conduct and did conduct land exchanges. In each of the three cases, the BLM adhered to requisite regulatory land exchange requirements and processes found in 43 C.F.R. Part 2200. Those requirements include: (1) entering into an agreement to initiate a land exchange with a non-Federal party, (2) notifying the public that BLM is considering a land exchange proposal, (3) completing an environmental analysis for a proposed action of conducting an exchange of land, (4) making a decision that the exchange of land would serve the public interest, and (5) publishing a public notification that BLM had reached a decision on a land exchange proposal and conveying property with a consideration noting the conveyance is made for and in consideration of other lands conveyed in the exchange pursuant to the authority found in Sec. 206 of FLPMA. An identical consideration statement is included in all deeds conveying land to the United States

See comment 19.

The draft report has identified isolated incidents of land sale terminology utilized by the BLM in conducting these exchange transactions and some assembled land exchange transactions involving cash were conducted without sufficient fiscal controls. The Department agrees that assembled land exchange processes need clearer guidance and more stringent oversight. However, the facts do not support the draft report's conclusion that the BLM was conducting land sales and purchases, rather than components of assembled land exchanges. In conducting these land exchanges, the BLM clearly had no intent to circumvent exchange authority, publicly disguise its exchange actions or operate in a manner that did not consider or serve the public interest.

While the BLM has never stated it has authority to conduct sales and purchases under the umbrella of the land exchange authority,¹ the Bureau recognizes the concerns raised by the draft

See comment 20.

¹The draft report inappropriately makes reference to a legal opinion by the Solicitor's Office. See page 24 of the draft report. However, the Solicitor's Office has never issued an opinion on the legality of these transactions.

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See comments 1 through 4.

report about our processes and controls over assembled land exchanges, and has ceased to utilize the processes that have raised these concerns. The BLM identified both the need for and intention to revise assembled land exchange policies and guidance in its National Land Exchange Program Review commenced in 1999. The revisions will be completed this year. Commitments have also been made to elevate the level of oversight for all assembled land exchange transactions and a clear policy statement has been made by the Bureau that land sale terminology and processes are not to be incorporated into land exchange processing (See Attachment 1).

Montrose Assembled Land Exchange, Colorado

See comments 21.

The draft report cites this exchange as an example of a transaction not authorized under Federal law. The Montrose Assembled Land Exchange was originally envisioned and ultimately executed as a pilot effort involving a land exchange and acquisition by purchase using appropriated funds. The pilot was initiated in part as a response to a recommendation of the OIG to use competitive exchange procedures.

The concept of an assembled exchange combined with a land purchase was originally outlined in BLM's Feasibility Report. In this report, two ranches were identified for acquisition using appropriated funds and value added through transactions involving a number of tracts identified through BLM's land use plans for the area. The goals and public benefits were also identified in the initial Feasibility Report, and were discussed in greater detail in each subsequent NEPA-compliant environmental assessment prepared for this project. As the project was later expanded to include new tracts for acquisition, the goals and benefits sought remained essentially the same as in the initial phases. Throughout the seven phases of the project, BLM clearly and openly identified how the combined exchange and purchase would occur.

See comments 1, 16, and 18.

The BLM adhered to requisite regulatory requirements and processes found in 43 C.F.R. 2200 for conducting land exchanges. The following is a chronological accounting of the transactions of the Montrose Assembled Land Exchange:

- 1) Entering into an agreement to initiate (ATI) a land exchange with a non-Federal party:
 - ATI dated 4-8-97, between Bureau of Land Management and Peters for the Peters phase
 - ATI dated 10-14-98, between Bureau of Land Management and Tri-State for the Tri-State phase
 - ATI dated 10-30-98 between Bureau of Land Management and Merritt for the Merritt phase
 - ATI dated 11-8-99 between Bureau of Land Management and The Conservation Fund for the Black Canyon phase
- 2) Notification to the public that BLM was considering a land exchange proposal (NOEP)
 - Notice of Exchange Proposal, Smock phase, dated 9-23-95
 - Notice of Exchange Proposal, Thomas phase, dated 3-13-97
 - Notice of Exchange Proposal, Peters phase, dated 5-23-97
 - Notice of Exchange Proposal, Tri-State phase, dated 4-16-98
 - Notice of Exchange Proposal, Merritt phase, dated 11-12-98
 - Notice of Exchange Proposal, Black Canyon phase, 8-14-99
- 3) Completion of NEPA document to analyze proposed land exchange:

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- NEPA documents were completed to address each phase of the exchange
- 4) Issuing a decision that the exchange of land would serve the public interest:
 - Decision records were signed for each phase concurrent with or prior to Notices of Decisions
- 5) Providing public notification (Notice of Decision) that BLM had reached a decision that the exchange was in the public interest
 - Notice of Decision, Smock phase signed on 4-10-96
 - Notice of Decision, Thomas Ranch phase, signed 8-13-97
 - Notice of Decision, Peters phase, signed 4-16-98
 - Notice of Decision, Tri-State phase, signed 10-21-98
 - Notice of Decision, Merritt phase, signed 2-11-99
 - Notice of Decision, Black Canyon phase, signed 10-28-99
- 6) Transferred properties with conveyance documents (deed and patents) indicating that the conveyance was made "For and in consideration of other lands" pursuant to the authority of Sec. 206 of FLPMA.

Cache Creek Exchange, California

See comment 22.

The Cache Creek exchange was also identified by the draft report as an unauthorized exchange under Federal law. However, the BLM California facilitation agreement signed between BLM and CAL/BLM-X (proponent) on August 3, 1990, and later amended on July 7, 1992, by specifically naming the Cache Creek project, discusses the process for exchanging public lands for private lands under Section 206 of FLPMA. The agreement was amended three times to address exchange processing. It recites the statutory and regulatory requirements such as equal value, cash equalization requirements and public interest. The agreement goes on to address how land values will be monitored, when the exchange will be completed, and how the agreement will be terminated.

See comment 23.

The Department disagrees with statements in the draft report that the California statewide agreement with a for-profit facilitator, of which Cache Creek is included, has no termination date and the Bureau conveys federal lands with no financial consideration to the facilitator. In the amended agreement dated April 22, 1996, item number 17 states "This agreement shall become effective when signed by the authorized representatives of the parties hereto, and shall remain in force until the earlier of (a) completion of the final exchange transaction, (b) termination by mutual agreement, or (c) termination by either party upon sixty (60) days notice in writing to the other of its intention to terminate the Agreement upon a date indicated; provided that any such termination shall be subject to the equalization of total exchange values under the terms of this Agreement to the effective date of such termination."

See comment 24.

The draft report also indicates the Bureau conveyed lands without any financial consideration. However, conveyances were made through the issuance of patents and deeds by both parties with specific language in those documents as follows: "For and in consideration of other lands" pursuant to the authority of Sec. 206 of FLPMA.

See comment 25.

The draft report further concludes that any proceeds received by the facilitator that exceeds fair

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See comments 1 and 18.

market value, when competitive procedures are employed, are deposited in a jointly controlled escrow account. This is not the case. Any proceeds the facilitator may be entitled to have been deposited in an escrow account solely controlled by the facilitator. Any imbalance owed to the Bureau is accounted for using a ledger that BLM maintains.

The BLM adhered to requisite regulatory requirements and processes found in 43 C.F.R. 2200 for conducting land exchanges. The following is a chronological accounting of the transactions of the Cache Creek land exchanges:

- 1) Entering into an agreement to initiate (ATI) a land exchange with a non-Federal party
 - “Cooperative Land Exchange Agreement” signed with CAL-BLMX on 8-3-90 pursuant to Section 307 of FLPMA, since this agreement pre-dates the exchange regulations that implemented FLEFA. A general agreement on assembled land exchange processes.
 - Amendment I signed on 7-7-92 naming the Cache Creek project and identifying three case files that contain legal descriptions (CA-27838, CA-30108, CA-30111).
 - Amendment II signed on 3-9-93 addressing competitive processes to be utilized by the proponent and how values will be addressed.
 - Amendment III 5-6-93 addressing haz mat potential and conveyance method anticipated.
 - Amendment IV 4-22-96 providing for termination of agreement, and addressing other aspects of the assembled exchange process
- 2) Notification to the public that BLM was considering a land exchange proposal (NOEP)
 - Notice of Realty Action (NORA) published (pre-FLEFA requirement for exchange notification) on 1-31-91 for exchange case CA-27838, describing specific lands being considered for exchange.
 - NORA published on 12-16-93 for exchange case CA-30108, adding additional non-Federal lands to exchange case CA-27838.
 - NORA published on 1-12-94 that identified specific land to be exchanged for CA-27838, and stated that additional notices would be published for subsequent phases.
 - Notice of Exchange Proposal (NOEP) published on 12-30-96 for CA-30111 which identified additional land being considered for exchange.
- 3) Completion of NEPA document to analyze proposed land exchange
 - NEPA documents were completed for each of transaction of the assembled exchange.
- 4) Issuing a decision that the exchange of land would serve the public interest:
 - Decision Record and Finding of No Significant Impact, Cache Creek Management Area signed 10-8-98.
- 5) Providing public notification (Notice of Decision) that BLM had reached a decision that the exchange was in the public interest
 - Notice of Decision, Cache Creek Management Area exchange signed on 10-14-98.
- 6) Transferred properties with conveyance documents indicating that the conveyance was made pursuant to Section 206 of FLPMA: All patents stated that “CAL-BLMX, Inc. is entitled to a land patent pursuant to Sec. 206 of the Act of October 21, 1976, as amended, 43 USC 1716, for the following described land:” and all conveyance documents to the United States contained the following language: “For and in consideration of the exchange of certain lands and interests as authorized by Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended (43 USC 1716).”

See comment 24.

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Two Crow Ranch, Montana

See comment 26.

The draft report includes the Two Crow Ranch exchange as an assembled land exchange that used buy/sell transactions, rather than land exchange transactions. The BLM is conducting this transaction as an exchange and not a sale of public land. This exchange began when a ranch property was offered for sale in 1996. The owner expressed an interest in seeing the ranch come under public ownership to protect its valuable wildlife habitat and recreational values. The Rocky Mountain Elk Foundation (RMEF) negotiated to purchase the ranch with the intention of transferring the property to BLM through an assembled exchange. The BLM solicited the assistance of Clearwater Land Exchange-Montana to serve as a third party exchange facilitator to assist RMEF in conducting an assembled land exchange with BLM. The report is incorrect in asserting that Clearwater is acting as an agent for BLM in selling land. Clearwater's role in facilitating the exchange is under the direction of RMEF.

See comment 27.

The 1997 exchange Agreement to Initiate (ATI) and Clearwater's agreement with the RMEF provides for conveyance of the Two Crow Ranch to the BLM through a phased series of closings in exchange for specifically identified Federal lands. The ATI includes a provision for conveyance of the ranch directly from RMEF to the U.S., and direct conveyance of the Federal lands to third parties identified by the facilitator. The conveyance documents are issued in the name of the eventual patentee(s), not the facilitator, and the executed documents are delivered directly to escrow at the title company. The executed warranty deed and the patents are all held in escrow until a closing is scheduled. Title to the non-Federal and Federal lands in Phase I was transferred simultaneously through escrow procedures. Subsequent phases have not necessarily been closed simultaneously, but the value differences are tracked on an approved ledger. However, the escrow instructions associated with the Two Crow exchange transactions provide for the exchange of documents only. No monies are collected or held by BLM as a part of the escrow closing process.

See comments 1 and 18.

The BLM adhered to requisite regulatory requirements and processes found in 43 C.F.R. 2200 for conducting land exchanges. Those requirements include:

- 1) Entering into an agreement to initiate (ATI) a land exchange with a non-Federal party:
 - ATI dated 11-12-1997, between Bureau of Land Management and Clearwater Land Exchange for the Two Crow Exchange, MTM-87193
- 2) Notification to the public that BLM was considering a land exchange proposal (NOEP),
 - Notice of Exchange Proposal, Phase I dated 7-30-1997
 - Notice of Exchange Proposal, Phases II & III dated 1-13-1998
- 3) Completion of NEPA document to analyze proposed land exchange:
 - NEPA documents were completed for each of the three phases of the Two Crow Land Exchange
- 4) Issuing a decision that the exchange of land would serve the public interest:
 - Decision Record and Finding of No Significant Impact, Two Crow Exchange-Phase I signed 10-10-1997.
 - Decision Record and Finding of No Significant Impact, Two Crow Land Exchange-Phase II signed 6-8-1998.
 - Judith-Valley-Phillips Resource Management Plan Amendment and Environmental

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Assessment, Finding of No Significant Impact and Decision Record signed 10-6-1999, providing plan conformance.

-Decision Record and Finding of No Significant Impact, Two Crow Land Exchange-Phase III signed 10-12-1999.

5) Providing public notification (Notice of Decision) that BLM had reached a decision that the exchange was in the public interest

-Notice of Decision, Two Crow Exchange-Phase I signed on 10-14-97.

-Notice of Decision, Two Crow Exchange-Phase II signed on 6-8-98.

-Notice of Decision, Two Crow Exchange-Phase III signed on 10-12-99.

6) Transferred properties with conveyance documents (deed and patents) indicating that the conveyance was made "For and in consideration of other lands" pursuant to the authority of Sec. 206 of FLPMA.

Conclusion: The Bureau failed to record financial transactions involving cash in its financial management system. None of the funds in the escrow accounts are tracked in the Bureau's financial management system or reflected in the Bureau's general financial ledger. The BLM did not adopt appropriate financial safeguards to assure that public funds were handled properly or used correctly.

Response: The Department acknowledges that all financial transactions should be under accounting system control and is taking appropriate corrective actions to ensure that any cash, bonds, or other sureties associated with assembled land exchanges are placed under the accounting controls of the BLM's financial accounting processes, thus conforming with Treasury requirements and generally accepted accounting principles. Full accounting control will be in effect by June 15, 2000. As noted earlier, the BLM is engaging an outside firm to perform a land exchange program audit. Results of that audit will be reviewed for possible violations of law and appropriate actions will be taken at that time.

Conclusion: The Bureau was not authorized to use sale funds to purchase lands. By using these proceeds, it augmented its land acquisition appropriations. When the Congress makes an appropriation, it establishes an authorized program level and limits the agency from operating beyond that level. The Bureau, by using proceeds from land it sold to purchase land, augmented its appropriations for land exchanges. Federal agencies cannot expend funds in excess of or in advance of appropriated funds. If they do so, they must report to the President and to the Congress all relevant facts and actions taken. The Bureau supplemented its appropriations by \$6.4 million in the Montrose exchange alone.

Response: The Department disagrees with the premise that the Department augmented its appropriations. The transactions in question were not sales and purchases, but were instead components of an assembled land exchange. Therefore, we have not augmented appropriations. The draft report suggests that management of the land exchange program may have resulted in a violation of the Anti-Deficiency Act (ADA).² The pertinent ADA provision prohibits an officer

²See footnote 27 on page 25 of the draft report.

See comments 1 through 4.

See comment 28.

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or employee of the United States from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation (31 U.S.C. § 1341(a)(1)). The Department believes that these transactions were exchanges and did not augment appropriations, and therefore there was no authorization or expenditure exceeding appropriations. Furthermore, even if these transactions had been purchases and sales rather than components of assembled land exchanges, the Department believes that at all times there were sufficient appropriations available to cover the transactions in question. Based on this information, the Department believes that it has not violated the ADA.

Statements of Fact

Statement: The Bureau's review team has not addressed the unauthorized selling and buying of land under its exchange program or the financial management of these funds. Furthermore, handbook revisions and enhanced training can clarify the agencies' land exchange policies and procedures, but they do not assure that those policies or procedures are appropriate or followed."

See comment 29.

Response: The Bureau's review team identified concerns with the way exchange transactions were occurring as part of the program review it conducted last year, and found that there was insufficient guidance concerning ledgers and assembled exchanges, and that escrow accounts had been misused in some cases. As a result, the implementation plan developed in conjunction with the program review identified 44 actions, seven of which are geared to strengthening these program aspects. Continued and enhanced centralized review is viewed as an adequate mechanism to provide assurance that policies will be adhered to.

Statement: The Bureau does not track the number of exchanges it completes annually; instead it tracks the number of exchange transactions completed annually.

See comment 30.

Response: The Bureau does centrally track land exchange information and this tracking system was the basis for GAO's information. However, its information tracking system shows the Federal and the non-Federal sides of the exchange as part of separate data records in order to provide adequate information for the agency's needs. Sometimes multiple transactions are associated with a single case file. Without this information system, the GAO would have been unable to present the data reflected in the draft report.

Statement: The Bureau does not centrally track the value of its exchanges. Therefore, neither the Bureau nor we could readily quantify the value of the Bureau's exchanges.

See comment 30.

Response: The Bureau does centrally track land exchange data, including value, as necessary for its program reporting and management needs. The Bureau does not track the data in a manner that GAO would prefer. The Bureau does not report or track a national average of land value exchanged as it does not view such an average as relevant to analysis or management of the land exchange program.

Statement: A Bureau official explained that agency officials decided to bargain with the landowners because the officials believed that (1) the nonfederal acreage was worth more than

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the \$1,000 per acre appraised value because it could be developed, and (2) the landowner would not otherwise reach agreement about the land's value.

See comment 10.

Response: The statement seems speculative. The administrative record of this case reflects the rationale for bargaining.

Statement: In total, the Bureau bought about 16,000 nonfederal acres and the conservation easement for about \$8.7 million (\$2 million appropriated, \$315,000 transferred from the Bureau of Reclamation, \$6 million from sales proceeds, \$211,000 from a cash equalization payment, and \$216,000 in earned interest)."

See comment 21.

Response: While the Bureau acquired 16,000 acres and the conservation easement, much of that was obtained by exchange. The only purchased lands in this area were those purchased through the Land and Water Conservation Fund \$2 million appropriation and the \$315,000 Reclamation funds.

Statement: In response to this request, Bureau offices in six states—the three we identified, as well as Idaho, Nevada, and Oregon—reported having about \$6.3 million at the end of fiscal year 1998 and about \$4.3 million the end of fiscal year 1999 in a total of 17 escrow accounts. However, we found inconsistencies in the reported information that raise questions about whether additional escrow accounts exist. For example, Montana did not report that it had an escrow account for the Two Crow assembled exchange that we discuss in this report, although it reported that it had an escrow account for a different exchange. In another example, Nevada reported that it had an escrow account with a zero balance, whereas other respondents reported that they had no cash balances but did not indicate whether they had escrow accounts (i.e., that had year-end zero balances)."

See comment 31.

Response: The draft report misinterprets the data in making this statement. Montana reported the escrow account balance for the Two Crow assembled land exchange, and further reported that it was conducting another assembled land exchange referred to as Crow Boundary Settlement, for which there was a ledger imbalance that was not secured by funds in escrow. Nevada reported that it currently is conducting one assembled land exchange with a ledger imbalance, however that ledger imbalance is not secured by funds in escrow. In both of these cases and in the other "no cash balance" escrows referred to in the draft report, the escrow instructions associated with the assembled land exchange are specific to the exchange of deeds and patents facilitating the assembled land exchange. The existence of an escrow process in association with an assembled land exchange is not evidence that the data related to funds exist as the draft report states.

See comment 32.

GAO's Comments

The following are GAO's comments on the Department of the Interior's Bureau of Land Management's (the Bureau) letter dated May 5, 2000.

1. Although concurring with our recommendations regarding its unauthorized practice—under the umbrella of assembled exchanges—of selling federal land, retaining the proceeds and using these funds to buy nonfederal land, the Bureau believes that the examples highlighted in our report are components of permissible assembled land exchanges rather than buy/sell transactions. While the Bureau undertook these transactions under the umbrella of its regulations governing assembled land exchanges, we disagree that these transactions are allowed under the agency's statutory authority governing land exchanges. FLPMA authorizes exchanges of land for land—not exchanges of land for cash—and these transactions were the latter: The Bureau or a third-party facilitator sold federal land for cash, retained the cash in escrow accounts rather than depositing it into the Treasury, and used the cash to purchase nonfederal land. Our assessment is clearly supported with evidence from ledger and escrow balances, documents prepared by the Bureau in support of these transactions (such as environmental analyses), dates when federal land was disposed and nonfederal land was acquired, and testimonial evidence from Bureau employees responsible for the transactions.

2. Information Bulletin No. 2000-104 (dated April 24, 2000) notes that Bureau employees have made occasional references to assembled land exchange transactions as sales and purchases. To avoid further misunderstandings, the bulletin (1) clarifies that these transactions should be referred to as "disposals," rather than "sales," and "acquisitions," rather than "purchases," in any documents related to exchange transactions and (2) requires that these transactions adhere to certain basic principles and mandatory process steps in order to be considered by the Bureau to be a land exchange. Some of these principles/steps address issues we raise in this report; for example, the lands proposed for an exchange must be specifically described, and initiation agreements must involve all parties. However, we believe that the Bureau's transactions involving cash (or other financial securities) are accurately described as selling and buying land—that is, giving or receiving land for money (or other financial securities)—rather than exchanging land—that is, conveying land and receiving other land.

3. Instruction Memorandum No. 2000-080 (dated Feb. 17, 2000) noted that the Bureau's land exchange handbook encourages depositing funds

received from nonfederal land exchange partners into interest-bearing accounts, reaffirmed the Bureau's policy that interest earned on escrow accounts should be deposited into the Treasury, and stated that the handbook was being revised to provide more specific guidance on handling earned interest. The Bureau also notes that it is rewriting all policy and guidance related to assembled exchanges. While clear and consistent policies are important in managing any program, it is uncertain whether Bureau employees were confused when they conducted cash transactions in the past under the umbrella of land exchanges. Furthermore, while we support the Bureau's efforts to implement financial controls over these funds, we disagree with its apparent decision to continue sell/buy transactions under the umbrella of assembled exchanges despite having no legal authority to do so.

4. Instruction Memorandum No. 2000-113 (dated May 2, 2000) supplements and replaces guidance on managing funds associated with assembled exchanges and requires state directors to bring all accounts into compliance with the revised guidance by June 15, 2000. In summary, the Bureau no longer allows cash to be held in escrow accounts to purchase nonfederal land; instead, it now requires other financial instruments—for example, cash bonds, Treasury bonds, or corporate security bonds—to be held for this purpose. The Bureau acknowledges the nonfederal exchange partner or facilitator may have cash in the escrow account—for example, if she or he has sold federal land at a price exceeding the appraised value—but now requires that escrow instructions clearly indicate that the Bureau has no control of or interest in these funds. We do not believe that the Bureau is operating within its statutory authority in exchanging land for cash or near-cash financial instruments and retaining those instruments for subsequent land purchases. Instead, the Bureau should deposit all sales proceeds into the Treasury.

5. Instruction Memorandum No. 99-126 (dated May 19, 1999) was superseded by Instruction Memorandum No. 2000-107 (dated Apr. 11, 2000), a copy of which the Bureau also provided in its comments on our draft report. The more recent memorandum revised and expanded requirements that all land exchanges will be reviewed twice—first, in conjunction with the feasibility report and second, prior to approval of the land exchange decision—and must receive concurrence at each review.

6. We share the Bureau's concern that having expanded authority to sell certain federal land and to retain use of some or all of the sale proceeds to purchase nonfederal land would not resolve many of the problems we

reported with land exchanges—most notably, concerns about appraised values—and could create additional potential difficulties, such as increasing conflicts with local governments in their land-use controls and their infrastructure support needs. For this reason, we have deleted the suggestion that the Congress consider replacing the Bureau’s land exchange program with such expanded authority. Under existing authority, the Bureau is authorized to sell certain federal land, deposit the proceeds into the Treasury, and seek appropriated funds from the Congress to acquire desirable nonfederal land. We disagree with the Bureau’s comment that land exchanges are a highly efficient way to restructure land ownership patterns. In fact, our work has shown that they have inherent difficulties that make them noticeably inefficient, and we do not believe the administrative flexibility cited by the agencies as a reason to continue exchanges outweigh their many problems. Because of these inherent difficulties and the recurring problems that the agencies have experienced in managing their land exchange programs, we still believe that the Congress should consider directing the agencies to discontinue their land exchange programs.

7. We did not intend to endorse the Southern Nevada legislation—which we have not reviewed or evaluated—but to suggest it as a possibility if the Congress wanted to consider alternatives to the Bureau’s land exchange program. As noted above, we have deleted this suggestion from our report.

8. Interior’s Office of the Inspector General reported in 1998 that two Bureau exchanges highlighted in our report—Zephyr Cove and Del Webb—involved appraisals that did not apparently meet federal appraisal standards (see comment 11 below). According to the Inspector General reports, the Bureau used the Zephyr Cove appraisal, which resulted in nonfederal land being overvalued by as much as \$10 million, but contracted for a second Del Webb appraisal, which avoided federal land being undervalued by more than \$9 million.

9. We disagree with the Bureau’s assertion that the efforts it has made in response to the reports of the Office of the Inspector General have fully addressed all concerns raised about land valuation and appraisals. Although these efforts are worthwhile, they have not eliminated all concerns; for example, the Bureau commented that its own national review team made over 40 recommendations in November 1999 to improve the land exchange and appraisal programs. And as the Bureau noted elsewhere in its comments, we have raised questions about appraisals used in the

agencies' recent involvement in two other properties (the Headwaters Forest¹ and the Baca Ranch²).

10. While the Bureau is authorized to use a bargaining process to determine land values in exchanges, in the DeMar exchange this process resulted in a value for the nonfederal land that was higher than either the landowners' preliminary value estimate or the Bureau's appraised value. The Bureau's administrative record for the exchange did not provide the basis for this value, and the Bureau's chief appraiser believed that it could not be reasonably supported.

11. The Department of Agriculture's Office of the Inspector General reported that the Zephyr Cove appraisal did not consider a reservation of interest in the property's improvements (a 10,000-square-foot residence that encumbered about 6 acres), which would have reduced the land's value by as much as \$10 million. The Inspector General reported that the Service's chief appraiser said the appraisal was void because the estate had been appraised as if it included the improvements, which was not the same estate that had been conveyed to the Service, and that leaving the appraisal unchanged would result in the public's paying more than fair market value for the property. According to this analysis, the appraisal did not apparently meet federal standards, which require (among other things) that the appraiser (1) consider restrictions and encumbrances and (2) not commit a substantial error of omission or commission that significantly affects an appraisal. We have clarified the report to reflect this situation.

12. We do not assert that the nonfederal land in the Red Rock exchange was overvalued. We do share the Office of the Inspector General's concern that the Bureau (1) assigned a second appraisal reviewer—in response to the exchange proponent's unhappiness with the initial estimate—who estimated a value for the nonfederal property that was 80 percent higher than the initial appraisal reviewer's estimate, and (2) used the higher estimate without reconciling it with the lower estimate.

13. We cite the Del Webb exchange as an example of potential undervaluation of federal land. Interior's Office of the Inspector General

¹ *Federal Land Management: Appraisals of Headwaters Forest Properties* (GAO/RCED-99-52, Dec. 24, 1998).

² *Federal Land Management: Land Acquisition Issues Related to the Baca Ranch Appraisal* (GAO/RCED-00-76, Mar. 2, 2000).

reported that the chief appraiser in the Bureau's Nevada State Office reviewed the proponent's appraisal of the federal land and found that it did not comply with federal standards, that the Bureau removed Nevada's chief appraiser from the appraisal review process and replaced him with a nonfederal appraiser—recommended by the proponent—who approved the appraisal, and that the Bureau's chief appraiser then accepted the second reviewer's results. In its comments, the Bureau states that it then ordered a second appraisal, not as a direct result of the Office of the Inspector General's announced review, but because it was not satisfied with the first appraisal. Importantly, the second appraisal met federal standards, estimated the federal land's value to be \$9 million higher than the first appraisal, and was used by the Bureau in completing the exchange.

14. Although the Bureau suggests that the subsequent sales reported in Clark County were not arm's-length transactions and the resale prices did not indicate the properties' market values, it provided no information to support this position. In the absence of information to the contrary, we believe that resale prices from county land records are reasonable indicators of the properties' market values.

15. The Bureau disagreed with our assessment that in two exchanges—Cache Creek and Red Rock—it did not show that the benefits of acquiring the nonfederal land matched or exceeded the benefits of retaining the federal land, stating that this analysis was done in the environmental and planning documents for the exchanges. We continue to believe that our assessment is correct. When the Bureau initiated the Cache Creek assembled exchange, it did not specifically know which nonfederal lands it would acquire—only that they would lie within an area of roughly 100 square miles that has high-value resources, such as habitat for bald eagles—and environmental and planning documents prepared by the Bureau for the exchange did not identify the benefits of acquiring specific nonfederal parcels. For the Red Rock exchange, the Bureau commented that it had responded to the 1996 report of Interior's Office of the Inspector General that the nonfederal land was acquired to provide habitat for endangered fish, a management recommendation contained in several land-use plans. We found that, in turn, the Inspector General estimated that these plans supported the acquisition of fewer than 25 percent of the 2,461 nonfederal acres that were questioned. We have clarified our report.

16. The Bureau commented that exchange initiation agreements were not required before 1993 and that they have been consistently prepared ever since. We have clarified our report and do not indicate that such an

agreement was needed for the Cache Creek assembled exchange, which began in 1990. However, initiation agreements were needed for each of the seven phases of the Montrose assembled exchange, which began in 1994, but were not prepared for the first three phases.

17. While the Bureau has not yet acquired any nonfederal land in the city of Elko exchange, in April 1999 the Bureau's Elko Field Office Manager signed a Decision Record approving the exchange. In addition, documents we obtained from the Bureau indicate the agency's support for this exchange.

18. We disagree that the cash transactions conducted under the umbrella of assembled land exchanges are authorized under the Bureau's statutory authority to conduct land exchanges. We believe that the Bureau's analysis—for example, that these transactions are land exchanges because they followed the Bureau's requisite regulatory requirements for land exchanges—is circular and unconvincing. FLPMA authorizes exchanges of land for land, not land for cash or other financial instruments.

19. Bureau officials who are or have been involved in conducting cash transactions under the umbrella of assembled exchanges told us that these transactions provide the agency important flexibility to acquire nonfederal lands; specifically, they have readily available funds to buy nonfederal land when it comes on the market and avoid the lengthy and uncertain process of requesting and receiving appropriations from the Congress.

20. Our report does not refer to a legal opinion by Interior's Office of the Solicitor. Representatives of the Solicitor's Office have verbally expressed support for the position taken by the Bureau and Interior on this issue during several discussions with us.

21. We disagree with the Bureau's characterization of the Montrose assembled exchange as a ". . . pilot effort involving a land exchange and acquisition by purchase using appropriated funds" because it primarily involved sales and purchases using nonappropriated funds. In total, the Bureau sold about 6,800 acres of federal land and bought about 16,000 acres of nonfederal land—and exchanged 240 acres of federal land for 113 acres of nonfederal land. The Bureau generated and used about \$6.4 million in nonappropriated funds, compared to about \$2.3 million in appropriated funds.

22. The Bureau commented that the statewide facilitation agreement between the Bureau and the third-party facilitator, which includes the

Cache Creek assembled exchange, discusses the process for exchanging federal and nonfederal land. We do not agree that this agreement gives the Bureau any legal authority to conduct cash transactions under the umbrella of the assembled exchange. We also found that the current agreement was not reviewed by Interior's Office of the Solicitor and are troubled by certain provisions—such as allowing the facilitator to sell federal land at greater than appraised value and retain any amounts exceeding the appraised value to cover miscellaneous costs.

23. Although the statewide facilitation agreement (which includes the Cache Creek exchange) lists three provisions under which it can be terminated, our concern is that the assembled exchanges conducted under the agreement have no definite end—that is, a specific date or event. An official in the Bureau's California State Office told us that the Bureau can keep this assembled land exchange going for as long as the Bureau has federal land it wants to dispose of and nonfederal land it wants to acquire in California.

24. The Bureau commented that it conveyed federal land to the facilitator through documents (deeds and patents) stating “for and in consideration of other lands.” Although the facilitator may have an agreement to subsequently give the Bureau land, at the time of the transfer of federal land, the facilitator did not give financial consideration to the Bureau.

25. The cognizant official in the Bureau's California State Office told us in December 1999 that the Bureau and the facilitator issue joint instructions for the escrow account and that neither party has sole authority or total control. It is unclear from the Bureau's comments whether this situation has been changed since that time. If the facilitator now solely controls the escrow account, we question the propriety of the Bureau's allowing the facilitator to (1) retain sales proceeds that exceed the appraised value of the federal land and (2) deduct any portion of the sale proceeds to cover its costs. The Bureau should receive all proceeds from selling federal land, should pay the facilitator's fee from available appropriations if warranted and supported by an invoice, and should promptly deposit the proceeds into the Treasury.

26. We disagree with the Bureau's comment that the Two Crow assembled exchange is not a sale of public land—see comments 1 and 18 above. We also found an April 1997 letter in which the Bureau describes its plan to sell federal land to raise funds to buy the ranch under the umbrella of an assembled land exchange: “It is our intention to make the Rocky Mountain

Elk Foundation [the landowner] whole by selling as many disposal acres as are required to meet the \$3,000,000 purchase price. The BLM proposes to reimburse the Elk Foundation through a process called a ‘pooled’ or ‘assembled’ land exchange. This entails disposing of isolated parcels of public land to willing buyers. The proceeds from these sales would transfer directly to the Elk Foundation as reimbursement for the purchase price of the Two Crow property.”

27. The Bureau commented that it solicited the third-party facilitator to assist the landowner in the Two Crow assembled exchange, that the landowner—not the Bureau—directs the facilitator in this regard, and that the facilitator is not acting as the Bureau’s agent in selling federal land. However, a representative of the facilitator told us that its role in this exchange is to market the federal land to potential buyers and that it does not have a contract with the landowner to market the nonfederal land. Based on this, we question the Bureau’s assertion that the landowner directs the facilitator.

28. The Bureau presents no support for its position that retaining and using proceeds from selling federal land in assembled land exchanges does not augment the agency’s appropriations, and we continue to believe that this practice does just that. This practice generates nonappropriated funds that, by definition, exceed appropriated funds. It is now the agency’s responsibility to report to the President and the Congress all relevant facts and actions taken and to determine whether the Bureau violated the Antideficiency Act.

29. The Bureau’s national review team’s recommendations addressed clarifying guidance for and improving management controls over land exchanges—including assembled land exchanges. However, they do not address the lack of statutory authority for selling and buying land under the umbrella of assembled land exchanges, which is our concern.

30. Our report did not state that the Bureau does not centrally track land exchange information; we state that the Bureau does not centrally track the number or value of exchanges it completes annually. We think it is important to explain this for the reader, but we do not draw any conclusions or make any recommendations regarding the Bureau’s program data.

31. We have revised our report to reflect updated information recently provided by the Bureau.

32. While we agree that the presence of an escrow account does not necessarily mean that the account includes cash, neither does a year-end zero balance in an escrow account necessarily mean that the escrow account never included cash. The Bureau's revised policy on and ongoing review of escrow accounts, as well as its planned audit of all financial records associated with assembled exchanges, should clarify any reporting inconsistencies and, more importantly, determine whether sales proceeds were handled properly and public funds were used appropriately.

Scope and Methodology

To determine the trends in the land exchanges completed by the Department of the Interior's Bureau of Land Management (Bureau) and the Department of Agriculture's Forest Service (Service) during fiscal years 1989 through 1999, we reviewed data maintained by each agency regarding (1) the number of exchanges or exchange transactions, (2) the acreage acquired and conveyed, and (3) the dollar value of the Service's exchanges, for each of those fiscal years. The Bureau does not centrally track the value of its exchanges. We completed several analyses to ascertain whether there were any clear trends and to identify any other meaningful relationships in the data. Although we did not verify the accuracy of all of these data, due to time constraints, we did validate the information to the extent that we could by cross-checking with other data sources.

To determine whether the agencies can assure that their land exchanges appropriately value the land, serve the public interest, and meet other requirements, we first reviewed statutory and other requirements for land exchanges. To categorize the concerns that had been raised by others regarding the agencies' land exchanges, we (1) reviewed prior audit reports addressing land exchanges that had been issued by the Departments' Offices of Inspectors General and by GAO and interviewed cognizant staff from the Offices of Inspectors General, (2) reviewed several articles that were published in the media in 1998, (3) reviewed other information obtained by the Western Land Exchange Project (a nonprofit organization that gathers and disseminates information on land exchanges) and interviewed the Project's Director, and (4) interviewed representatives of both agencies. To assess whether agencies were meeting statutory requirements in completing exchanges, we selected 51 exchanges (both recently completed and still in process) and reviewed them in light of these requirements. In selecting the exchanges, we considered the following factors: the acreage, the complexity (such as the presence of legal or environmental concerns), the value of land, the purpose, the geographic location, the extent of controversy, and the involvement of third parties (such as real estate companies who facilitate exchanges). We identified 25 Service exchanges, located in 7 of the Service's 8 administrative regions in the lower 48 states, and 26 Bureau exchanges, located in the 11 contiguous western states covered by the Bureau. Table III.1 shows the number and location of these exchanges and compares the Service's regions with the Bureau's states.

Table 1: Number and Location of Selected Exchanges

Service		Bureau	
Region	Exchanges	State	Exchanges
1 Northern	4	Montana	2
2 Rocky Mountain	1	Colorado	1
		Wyoming	1
3 Southwestern	5	Arizona	5
		New Mexico	1
4 Intermountain	7	Idaho	2
		Nevada	4
		Utah	2
5 Pacific Southwest	0	California	6
6 Pacific Northwest	4	Oregon	1
		Washington	1
8 Southern	3		
9 Eastern	1		
Total	25		26

Note: The Service does not have a Region 7. Region 10 is Alaska, and we did not review any exchanges in Alaska.

To determine the effect of the agencies' recent efforts to improve management of their land exchange programs, we interviewed the leaders and some members of the agencies' national review teams and reviewed reports issued by both teams. We also accompanied the Bureau's team during its review of one state office. We also reviewed revisions to the agencies' policies and procedures that have been drafted or issued.

We conducted our work by visiting the following locations: Interior's Solicitor's Office and Office of the Inspector General (Washington, D.C.); the Bureau's Washington Office (Washington, D.C.), Colorado State Office (Lakewood, Colorado), Utah State Office (Salt Lake City, Utah), St. George Field Office (St. George, Utah), and Uncompahgre Field Office (Montrose, Colorado); Agriculture's Office of the Inspector General (Washington, D.C.); and the Service's Washington Office (Washington, D.C.), Region 2 Office (Lakewood, Colorado), Region 4 Office (Ogden, Utah), Region 8 Office (Atlanta, Georgia), and National Forests in North Carolina Supervisor's Office (Asheville, North Carolina). We also spoke with realty officials in the following agency offices: the Bureau's Arizona State Office (Phoenix, Arizona), California State Office (Sacramento, California),

Montana State Office (Billings, Montana), Nevada State Office (Reno, Nevada), Wyoming State Office (Cheyenne, Wyoming), Casper Field Office (Casper, Wyoming), Elko Field Office (Elko, Nevada), Safford Field Office (Safford, Arizona), and Worland Field Office (Worland, Wyoming); and the Service's Region 5 Office (San Francisco, California), Region 6 Office (Portland, Oregon), Boise National Forest Supervisor's Office (Boise, Idaho), Bridger-Teton National Forest Supervisor's Office (Jackson, Wyoming), Fishlake National Forest Supervisor's Office (Richland, Utah), Targhee National Forest Supervisor's Office (St. Anthony, Idaho), and the Wasatch-Cache National Forest Supervisor's Office (Salt Lake City, Utah). In addition, we attended a Service Land Adjustment Workshop (Lake Tahoe, California); met with the Director of the Western Land Exchange Project (Seattle, Washington); and had discussions with an appraiser from the Farm America Appraisal Services (Omaha, Nebraska), officials of assessors offices and clerk and recorder offices for three Colorado counties (Delta County, Gunnison County, and Montrose County), an official of Gunnison Savings and Loan (Gunnison, Colorado), and a former Deputy State Director of Natural Resources for the Bureau's Nevada State Office (Reno, Nevada).

We performed our work from June 1999 through May 2000 in accordance with generally accepted government auditing standards.

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