

# Committee on Resources

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## Testimony

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Statement of Thomas R.H. Glass, Western Land Group, Inc.  
before the  
U.S. House of Representatives Subcommittee on National Parks and Public Lands  
concerning  
BLM Land Exchange Policies and Procedures  
March 24, 1998

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify today. My name is Tom Glass, and I am a principal in Western Land Group, Inc., a national public lands consulting firm headquartered in Denver.

Western Land Group, Inc.

Since our formation in 1981, Western Land Group has assisted in the consummation of more than 100 federal exchanges, utilizing both legislative and administrative processes. We continue to help clients to facilitate dozens of new cases, involving lands ranging from tens of thousands of acres to less than one acre.

### Benefits of Land Exchanges

Working in partnership with BLM and other public land management agencies throughout the West, Western Land Group achieved fundamental public and private land objectives. These include, but are certainly not limited to:

- \* protecting municipal watersheds;
- \* placing key threatened wetlands and wildlife habitat in the public domain;
- \* eliminating private inholdings in designated wilderness areas;
- \* helping municipalities and counties acquire lands for administrative purposes and open space;
- \* facilitating responsible community growth; and
- \* improving hunting, fishing, and recreational access to federal land.

Western Land Group helps agencies to accomplish their goals, despite limited agency staff and resources. Together, we have created more coherent and logical ownership patterns, resulting in win-win situations for both the public and private sectors.

### Adequacy of Current Land Exchange Law, Regulation, and Policy

Until recently, current law, regulation, and policy governing land exchanges has worked fairly well. The

Federal Land Exchange Facilitation Act (FLEFA), which Western Land Group helped develop, has streamlined the process somewhat. The Final BLM Land Exchange Manual integrates the essence of FLEFA, and is another good tool which all BLM lands staff should review carefully.

Western Land Group is, however, concerned about several recent developments in BLM's land exchange policies.

1. Western Land Group is concerned about the newly instituted directive which relinquishes a BLM State Director's authority to approve exchanges where the value of public lands to be exchanged is more than \$500,000. The directive requires that Washington, D.C. staff approve exchanges based upon an additional level of feasibility analyses and issues papers.

In most states, BLM has talented field staff who should be supported, not reprimanded. FLEFA encourages the consideration of local issues and local politics in all exchanges. Grassroots involvement, including the dissemination of accurate, ethical information early-on, is critical to creating successful exchanges. In general, local personnel (including State directors) are better acquainted with local concerns than are Washington, D.C. personnel whose expertise may lie elsewhere. The emphasis should be on increasing the capacity and sophistication of BLM's lands staff at the state and local levels, not on developing a National Exchange Team.

BLM's new directive could slow down the process considerably. By transferring approval authority to Washington, the directive requires that an additional level of feasibility analyses and issue papers be completed for the Washington staff at three stages of the exchange process. Western Land Group maintains that the previous level of analysis, when combined with community involvement, is adequate for most exchanges, and is largely redundant. The biggest problem with the added level of analysis is that Washington, D.C. staff has no mandated response time. The lack of guaranteed response times would most certainly cause delay. The most serious consequence of delay is a reduced ability for the United States to acquire premium private lands. Exchange proponents must purchase private lands, usually within strict timeframes. If required feasibility analyses and issue papers are sent to Washington without specific guaranteed response times, it will be impossible for exchange proponents to set closing dates. Without closing dates, private landowners interested in conveying lands to the United States cannot enter into secure purchase contracts with the United States. Additional steps in the process could also lead to expiration of appraisals, which are valid for a maximum of one year.

2. Western Land Group is also concerned about the increased popularity of Competitive Exchanges, or BLM's intent to auction unwanted federal lands to the highest bidder.

As a steward of the land, BLM has a responsibility to get the best deal for the public when disposing of land. The best deal means more than just the most money. Exchanges should be driven not only by BLM priorities, but also by community priorities including development planning, infrastructure needs, open space needs, access needs, and the like. To auction a parcel could result in an outsider, who has no interest in a community's needs, acquiring the parcel simply because he or she was willing to pay the most.

The Crystal River Ranch land exchange, which Western Land Group closed in 1995, is an example of why competitive exchanges should be approached with caution. The Crystal River Ranch exchange involved the acquisition of 1,439 acres of federal lands located in the Roaring Fork Valley near Aspen, Colorado (a hot real estate market). The federal lands were situated within the ranch, accessible by public road, and managed by BLM. Following the exchange, Crystal River Ranch donated a conservation easement on the acquired

lands to the Colorado State Division of Wildlife. The conservation easement provides for public hunting on the acquired lands, as well as the protection of wildlife habitat values and continued ranching activities in perpetuity. If the public lands in this exchange had been auctioned to the highest bidder, such as a real estate speculator, the unique negotiated benefits of the transaction would never have occurred. Instead, the United States received full fair market value for the property and protection of open space and wildlife values in perpetuity.

As an alternative to competitive exchanges, Western Land Group recommends the following approach, once federal lands have been clearly identified for disposal. First, work with the community to identify acquisition priorities and generate creative options. Second, identify and obtain high priority offered lands with significant public value. Third, work with proponents who have a vested interest in the lands. Fourth, work with exchange facilitators who share the agency's goals. Fifth, complete exchanges based on appraisal rather than speculation. The appraisal process has many checks to ensure fair market value.

With regards to the appraisal process, Western Land Group has been pleased with FLEFA's arbitration provision. We believe it has been a helpful tool to resolving disputes involving value. In addition, Western Land Group commends Dave Cavanaugh, BLM's Chief Appraiser here in the District of Columbia, for his recent efforts on the City of St. George land exchange in Washington County, Utah. Mr. Cavanaugh stepped in at the right time to resolve a difficult situation involving appraisals. Serving as the review appraiser, Mr. Cavanaugh was able to insure that the local private appraiser adequately appraised the involved BLM lands while giving the City of St. George proper credit for its lands within the Mojave Desert Tortoise Preserve. His involvement is a perfect example of how knowledgeable headquarters staff can be effective in troubleshooting and overseeing difficult exchanges.

We also suggest that the amount allowable under Sec. 206(h) (1) (A) of FLPMA be increased from \$150,000 to \$500,000 to allow utilization of statements of approximate equal value rather than full appraisals in appropriate situations. This would help reduce the backlog of appraisals and appraisal reviews.

On balance, Western Land Group believes that BLM's exchange program has worked fairly well. We do have two more recommendations, however, for the Subcommittee to consider. The first relates to cash equalization moneys.

### Cash Equalization Moneys

The Federal Land Policy and Management Act requires that land be exchanged for exact equal value. Otherwise, cash equalization payments must be made. FLEFA permits certain waivers of this requirement. The biggest remaining problem, however, is that BLM in particular sometimes does not have money on hand to make equalization payments. As a result, exchanges sometimes have to be delayed to await Congressional cash equalization appropriations. In our opinion, Congress does not need to micro-manage cash equalization moneys in this matter.

We recommend that Section 203 of FLPMA be amended so a portion of the moneys received by the Secretary of the Interior from the sale of public lands be placed in a special fund. This fund would be earmarked and available to the Secretary, without need of appropriation, to provide moneys for cash equalization in land exchanges. The Forest Service already has a similar fund under the Sisk Act, and it has served them well. In that regard, we recommend that the current requirement for appropriation of all cash equalization dollars be eliminated and that the BLM be authorized to manage a fund similar to the Forest Service's. Spending from this fund could be limited to cash equalization purposes or other purposes, as

Congress deems appropriate.

### Land and Water Conservation Fund

As a final thought, Mr. Chairman, while Western Land Group is obviously a great supporter of well-crafted and well-managed exchanges, Western Land Group recognizes that exchanges are not a panacea. Land exchanges cannot substitute for Federal purchases using the Land and Water Conservation Fund. We recommend that Congress fully fund the LWCF, as was done in 1998, in order to reduce the estimated \$2-3 billion backlog of land that willing sellers would like to sell Uncle Sam for various reasons.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions that you may have. Thank you again for your sponsorship of FLEFA and your ongoing interest in land exchanges as evidenced by your holding this hearing today. It is very encouraging to us, as a small business, to have policymakers such as yourselves striving to improve the land exchange process.

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