

**A Fair Trade:  
Observations and Recommendations for Improving the Land Tenure Adjustment Process  
between State and Federal Agencies in the West**

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## **Abstract**

Land tenure adjustment between federal land management and state trust land management agencies is sorely needed throughout the Intermountain West. Given the history of problems created by checkerboard land ownership patterns and trust land in-holdings within federally designated conservation lands, an efficient and fair method of reconciling these issues is needed. The current, cash-strapped nature of state and federal agencies makes the outright sale and purchase of replacement lands an unrealistic option. Agencies have come to consider land exchanges as a tool of choice, but find the hurdles surrounding the process daunting. The barriers to the process have significantly slowed trust land and federal land management agencies in rationalizing land use patterns or achieving landscape scale, contiguous conservation goals. The barriers have also prevented trust land agencies from making the most of their assets in providing revenues for public schools. The annual total number of land exchanges conducted by the Bureau of Land Management and the United States Forest Service during the last 16 years has varied significantly, with a peak in 1998 and generally decreasing to a very low number in 2011.

This working paper examines the limitations associated with the land exchange process, and explores potential solutions that would address those failings. Recommendations are made that would improve and streamline the land exchange process in order to facilitate state to federal land exchanges in the interests of conservation as well as the public beneficiaries of state trust lands. These would include reforming the appraisal process to appropriately capture conservation values in exchange transactions, thus enabling the parties to account for those benefits in the land exchange process. Other improvements could be made to train and retain knowledgeable staff at the federal and state levels to manage land exchange transactions. Lastly, both state and federal agencies could reduce public controversy by engaging in public outreach early to build support for land exchanges.

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- State Trust Land Management
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**Introduction: The Case for Continuing Land Tenure Adjustment in the West**

Land tenure adjustment is a perennial issue in the West, with both state and federal agencies eager to engage in land exchange transactions in order to consolidate land ownership, promote conservation goals, and eliminate management challenges. The West, more than any other region in the United States, retains a legacy of particularly problematic land ownership challenges that result from the method of conveyance of the public estate to state and private hands. In the case of state trust lands, a unique category of lands granted by Congress to newly admitted states in order to provide support for public institutions, the conveyance process itself created a scattered system of holdings, where new western states received sections 16 and 36, and in later cases sections 2 and 32 as well, of each township.<sup>1</sup>

The railroad land grants also contributed to this checkerboard land ownership pattern. Railroad companies received the most significant amount of public lands in the nation's history. In the period of 1850 through 1871, the federal government gave multiple grants of public lands to incentivize the construction of railroads throughout the nation.<sup>2</sup> Railroad companies were granted odd numbered sections extending 5 to 20 miles out from the railroad right-of-way.<sup>3</sup> This created vast swaths of land in a checkerboard ownership pattern along railroad lines throughout the West.

During this same period, and before many states had formally entered the union, Congress or the Executive designated federal lands within those states for special purposes, such as tribal reservations, parks, national forests, railroad land grants, and other uses, or federal lands were acquired by homesteaders. This led to the Congressional practice of allowing states to make *in lieu* selections of trust lands when the identified section in a township had already been conveyed to another entity for other purposes.<sup>4</sup> Originally, this excluded state selection of federally reserved lands, but later was expanded to include those lands as well. While some states benefited from *in lieu* selections, and acquired valuable, large-scale contiguous parcels that were more efficient to manage, the *in lieu* selection process was applied inconsistently, and often not retroactively; some states were unable to recover their full trust land conveyance through the process.<sup>5</sup>

Now, a decade into the 21st century, state trust land managers must cope with the land management challenges, inefficiencies, and consequent losses to the public beneficiaries that

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<sup>1</sup> Souder, Jon A, and Sally K Fairfax. *State Trust Lands: History Management, and Sustainable Use*. University

<sup>2</sup> Maley, Terry S. *Mineral Law, 6<sup>th</sup> Edition*. Mineral Lands Publications, 1996.

<sup>3</sup> *Id.*

<sup>4</sup> Culp, Peter W., Diane B. Conradi, and Cynthia C. Tuell. *Trust Lands in the American West: A Legal Overview and Policy Assessment*. Cambridge: Lincoln Institute of Land Policy, 2005.

<sup>5</sup> *Id.*

result from the legacy of land ownership patterns established by prior federal conveyance strategies. The checkerboarded state/federal lands and in-holdings that exist in the West create obstacles for federal agencies responsible for managing those lands as well, and can negatively impact their conservation and multiple-use missions. Resolution of these conflicts to create a more rational and efficient land ownership pattern would benefit both the trust beneficiaries, through securing more appropriate lands for revenue generation within the trust portfolio, as well as the public interest in securing land with high conservation, ecological or recreational values in larger, contiguous blocks that can be more easily managed at the landscape level.

The process of land exchanges has come under fire in recent years. Criticism of land exchanges has emerged as a result of a handful of egregious exchanges that generated substantial public controversy, and subsequent findings of weaknesses in the federal agency appraisal process. The majority of land exchange proposals which have evoked such controversy involved private interests that received significant economic windfalls at the public expense due to failures in agency management of the appraisal process.

Over the past two decades, these controversies have been investigated at both the federal and local levels. The General Accounting Office (GAO) completed reviews of land exchanges involving the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) and found the process to be riddled with inefficiencies and mismanagement that lead to significant losses to the public, in some cases.<sup>6</sup> At the local level, individual exchanges can draw fire from community interest groups, conservation organizations, or other public stakeholders. In the state of Arizona, land exchange authority was deemed to be unconstitutional, the result of a 1990 Arizona Supreme Court decision in a controversial exchange transaction.<sup>7</sup>

In spite of the high-profile controversies that highlight the limits and flaws in the exchange process, this type of transaction remains a valuable tool, especially under circumstances where the state and federal agencies have significant funding constraints. Land exchanges enable each party to resolve land ownership problems and achieve management goals that benefit the public. In recent years, with the cuts to federal agency funding and the recession hitting state budgets hard, options for land tenure adjustment using other means are limited. In the case of state to federal exchanges, however, there is a public interest being served on both sides of the transaction.

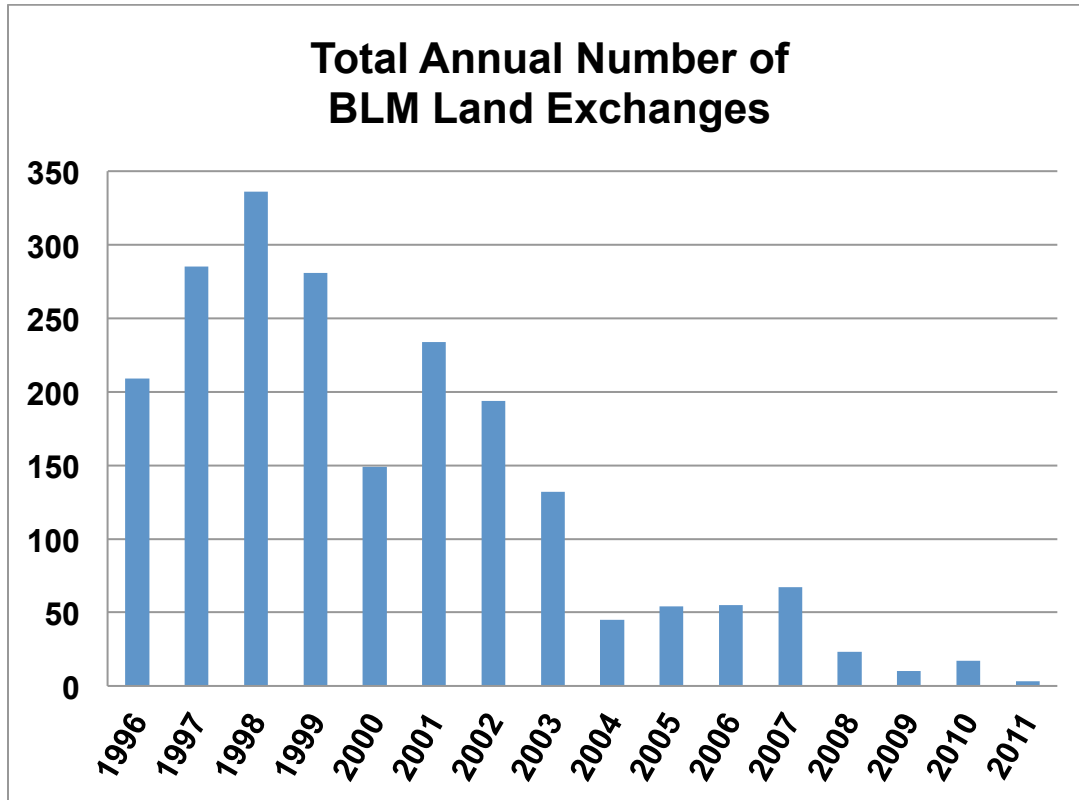
From 2000, the date of the GAO's report on the problems inherent to land exchanges, through the present, federal agencies made efforts to improve the process and address the GAO's concerns. During this same time period, the number of completed land exchanges declined—including those exchanges that occur between federal and state trust land management agencies. State land managers also expressed dissatisfaction with the land exchange process, in spite of the reforms made. Land exchanges are frequently regarded as onerous, time-consuming and resource

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<sup>6</sup> U. S. General Accounting Office. *BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest*. A Report to the Ranking Minority Member, Committee on Resources, House of Representatives. GAO/RCED-00-73. June 2000; and U.S. General Accounting Office. *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*. Report to the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives. GAO-09-611. June 2009.

<sup>7</sup> *Fain Land & Cattle Co. v. Hassell*, 790 P.2d 242 (Ariz. 1990).

intensive. Moreover, trust land managers believe that too often federal agencies do not give adequate priority to resolving land tenure issues that are to the detriment of the trust's interests. The annual total number of land exchanges completed by the BLM over the last 16 years has varied greatly, peaking in 1998 at 336 and generally decreasing to a low of 3 completed exchanges fiscal year 2011.<sup>8</sup>



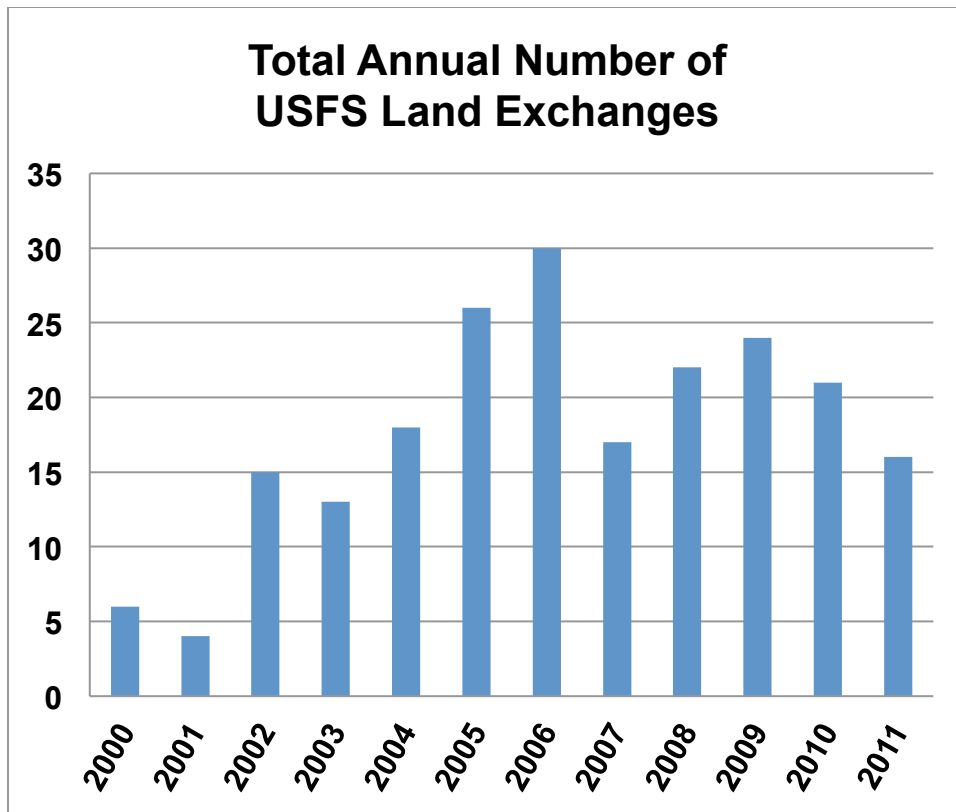
Source: BLM Public Land Statistics, Annual Reports 1996 through 2011

Far fewer land exchanges were completed by the U.S. Forest Service during the period 2000–2011, with a peak of 30 in 2006.<sup>9</sup>

<sup>8</sup> BLM Public Land Statistics, Annual Reports 1996 through 2011.

<sup>9</sup> Unpublished database of land exchanges provide by U.S. Forest Service.





Source: Unpublished database of land exchanges provided by USFS

This working paper will examine the range of options available to state and federal agencies to achieve land tenure adjustment, as well as the recent changes made to the land exchange process to address concerns by the GAO. We will also explore how the system might be improved in order to accomplish needed resolution of land ownership issues between state trust land agencies and federal land management agencies in order to serve both the broader public interest in public lands, and the direct financial beneficiaries of state trust lands.

### Types of Land Tenure Adjustment Transactions

Although many different agencies and departments of the federal government are authorized to acquire and dispose of land, the primary federal land management agencies involved in land tenure adjustment are the BLM and the USFS. As such, this working paper will focus on these two federal agencies and the tools at their disposal to implement land tenure adjustment.

A range of mechanisms for land tenure adjustment are available to state trust agencies. Most state land agencies have authorities for exchange, sale and purchases, but there are differences among the states depending on their enabling acts, constitutions, and statutes. In addition to the standard forms of land exchange, sales, and purchases some state agencies are authorized to use trust land banking and non-simultaneous land exchanges, which are described in the following sections.

## Administrative Land Exchanges with Federal Entities

The primary law governing land exchanges for the BLM and the USFS is the Federal Land and Policy Management Act (FLPMA) and its amendments. Although several other laws provide legal authority for various types of exchanges, the statutory basis for most BLM and USFS land exchanges is the FLPMA.<sup>10 11 12 13 14</sup>

### Federal Land and Policy Management Act

Congress recognized the broad range of public values under the BLM's stewardship by passing the FLPMA in 1976 and amending it in 1988 with the Federal Land Exchange Facilitation Act (FLEFA). The FLPMA lays out a comprehensive federal land management policy that closed the western frontier by repealing the homesteading laws and declaring a federal policy of retaining all public lands except for parcels whose disposal would serve the national interest.<sup>15</sup> Through the FLPMA, Congress also introduced the concept of multiple-use management, defined as management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

The 1988 FLEFA amendment to FLPMA was intended to streamline and accelerate the land exchange process in order to promote more efficient surface and subsurface land management, protection of wildlife and aesthetic values, improve recreation and allow expansion of communities.<sup>16</sup> Provisions of the act include:

- requirement of promulgation of comprehensive regulations for land exchanges;
- allowance for arbitration and negotiation to settle disputes over valuation;
- low-value exchanges to proceed as “approximately equal value”;
- adjustment of land values to incorporate disproportionate exchange costs borne by a party to the exchange;
- authorization of simultaneous land title transfers; and
- requirement that application of national appraisal standards includes the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).<sup>17</sup>

The Federal Land Transaction Facilitation Act, passed in 2000 and authorized through 2010, was intended to facilitate acquisition of in-holdings within specific federal land designations (national parks, national forests, national conservation areas, among others) and adjacent to those lands. It authorized the use of revenues generated from sale or exchange of BLM lands that had already been identified for disposal by July 25, 2000 to be used by the Secretaries of Interior and Agriculture to acquire the in-holdings and adjacent land.<sup>18</sup> The act has not yet been reauthorized.

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<sup>10</sup> BLM Land Exchange Handbook H-2200-1 (Public), 2005

<sup>11</sup> USFS Land Acquisition Handbook, FSH 5409.13

<sup>12</sup> CRS Report RL 34273

<sup>13</sup> GAO Report 00--611, 2009

<sup>14</sup> GAO Report 00-73, 2000

<sup>15</sup> <http://www.blm.gov/flpma/FLPMA.pdf>

<sup>16</sup> 43 U.S.C. §§1715-1716

<sup>17</sup> *Id.*

<sup>18</sup> 43 U.S.C. § 2301 et. seq.

The FLPMA sets out a long-range planning process that requires the BLM to inventory resources and values, and identify lands to be exchanged, sold, or otherwise conveyed.<sup>19</sup> This process of assessment and selection of lands for disposal and use is a public process, culminating in the development of a resource management plan (RMP) that addresses the full range of land management issues within a defined planning area.

Exchanges of lands or interests in land are authorized by FLPMA. Interests in land are defined as partial ownership, such as access rights; water, timber or mineral rights; or easements. FLPMA requires that the public interest be well served in any exchange and consideration be given to:

- improved Federal land management; and
- the needs of the country as well as those of the local population, including economic needs such as for community expansion, recreation areas, food, fiber, minerals, and fish and wildlife.<sup>20</sup>

The lands or interests being exchanged are required to have equal value or in the case of unequal value, that an equalization payment be made of up to 25 percent of the value of federal lands being conveyed.<sup>21</sup> If the value of the federal lands is less than \$15,000, or if the value differential is less than 3 percent of the federal lands value, the equalization payment may be waived. Also, FLPMA provides an option in which lands of approximately equal value may be exchanged if the value of federal lands is less than \$150,000.<sup>22</sup>

Types of authorized land exchange transactions include two-party exchanges and assembled exchanges. Traditional two-party transactions are between a single landowner and the BLM or USFS in which the BLM or USFS acquires a parcel of non-federal land in exchange for a parcel of federal land. Assembled land exchanges allow for more complex situations that may involve multiple parcels, multiple owners and multiple transactions occurring in phases over a period of time. Exchanges must go through an environmental review under the National Environmental Policy Act (NEPA).

### The Exchange Process

In order to exchange land through an administrative process, the BLM or USFS must complete the following steps.<sup>23 24</sup>

- **Develop an exchange proposal**  
This written proposal includes legal descriptions of the federal lands to be exchanged along with a information regarding the responsibilities of the parties to the exchange. The exchange proposal is developed based on discussions between the federal and non-federal entities to be involved in the exchange.

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<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> BLM Land Exchange Handbook H-2200-1 (Public), 2005.

<sup>24</sup> USFS Land Acquisition Handbook, FSH 5409.13.

- **Evaluate the feasibility of the exchange**  
This involves preparation of a feasibility report providing documentation on the various aspects of the exchange. This includes evaluation of the public interest, costs, compatibility with the area BLM RMP or forest land and resource management plan in the case of the USFS, preliminary analysis of value, timeline for the exchange and potential alternatives. The feasibility evaluation also involves review by appropriate legislative committees, Department of Interior or Agriculture solicitor, state BLM directors and Deputy Director of BLM, among others. The USFS requires additional review by Congress and the Secretary of the Interior for exchanges when the federal land value is \$500,000 or more.
- **Conduct a complete resource inventory and NEPA analysis**  
The BLM must conduct land title reviews, resource inventories and NEPA analysis of the parcel to determine if any significant resources are present, including but not limited to mineral, cultural, water and timber resources, federally listed or sensitive plant and animal species and/or critical habitat and riparian areas. Inventories must also be completed to assess outstanding third party rights and to confirm that there are no hazardous materials or other liabilities on or associated with the property. Environmental impacts of completing the exchange are evaluated.
- **Property appraisal**  
The BLM or USFS must have the property appraised by a qualified appraiser to determine the current market value of the property. This involves determination of the highest and best use of the property based on market evidence. The appraisal must then be reviewed and approved by the Department of Interior's Appraisal Services Directorate. The minimum acceptable bid amount for a parcel of land will be established by the federal appraiser.
- **Public notice**  
Public notice of the proposed exchange must be provided and public comment solicited.
- **Notice of Decision**  
After a decision to complete the exchange had been made, the BLM or USFS must then publish and distribute a notice of decision.
- **Title Transfer**  
The final stage is title transfer. The title review and land status are examined and the federal land patent is transferred.

Once these steps are met, the land exchange can proceed between the federal agency and the state party or private interest.

### **Legislative Land Exchanges**

Legislative exchanges are substantially different from administrative land exchanges in that they are more typically negotiated transactions that rely on the political process to complete. As such,

it is often the preferred method for engaging in more complex exchange transactions where the goals of either party may be quite different, but are still attainable through an exchange process. In most legislative exchanges, informal discussions between a Senator or member of Congress, local citizens and elected officials begin regarding the desirable lands for exchange. These conversations may focus on future growth accommodation, economic development stimulation, achievement of conservation outcomes, or other desired outcome for the parties. Other primary motivations, especially from the standpoint of state trust land managers, are to consolidate land positions, improve management, and acquire developable land, or transfer land with conservation values to a federal entity.

State and county officials are likely to play a lead role in the discussions, as most federal lands fall within county boundaries, but municipal leaders may also play an important role, particularly if federal lands are perceived as constraints to growth. The process by which these conversations eventually develop into a legislative proposal can take many forms, but successful efforts seek to build a broad base of support among diverse interests.

Eventually, legislation may be introduced in the House or the Senate, or in both, by one or more members of the state's congressional delegation. The legislation is then referred to the appropriate committee and assigned to a subcommittee. The subcommittee generally holds hearings, either in Washington or in the field, after which it may amend the bill and vote on it. At this point, the bill is referred to the full committee, which may also amend it before voting on it. The full committee also issues a report on the bill, which describes the measure and why it deserves Congressional action.

Next, legislation is voted on by the full House and/or Senate, during which additional amendments may be introduced and voted on. If each body passes a different bill, then these bills are sent to a conference committee composed of members of the House and Senate to be reconciled. Once differences are resolved and both chambers pass the revised legislation, the bill is sent to the President for signature. If signed and approved, the agencies are then directed to implement the provisions of the exchange measure.

### **Non-simultaneous Land Exchanges**

State of Colorado law allows the Colorado State Board of Land Commissioners (SLB) to engage in “non-simultaneous” land exchanges for the purposes of consolidating ownership or to acquire higher yield properties. In a non-simultaneous land exchange, the SLB is allowed to sell or otherwise dispose of state trust parcels and use the funds generated to acquire non-state trust land as long as the process is completed within two years of the land sale or disposal. Any funds generated are held in a separate account during the exchange process and remaining funds are not deposited in the permanent fund until the exchange is complete.<sup>25</sup>

Non-simultaneous land exchanges are similar to the assembled land exchanges employed by the BLM that can accommodate multiple landowners and multiple transactions occurring in phases over a period of time. The availability of a process for non-simultaneous land exchanges improves the ability of the SLB to employ land exchanges as a tool to improve management of

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<sup>25</sup> Colo. Rev. Stat. § 36-1-124.5.

trust lands and meet its fiduciary obligations. SLB records indicate that this approach is now the most common form of land exchange used by the SLB for land tenure adjustment.

## **Trust Land Banking**

Land banking is another mechanism for land tenure adjustment that is authorized in three states: Montana, Idaho and Washington. It has some similarities to Colorado's non-simultaneous land exchanges, but is a generally less restrictive process. Land banking is implemented differently in each of the three states.

In 2003, the Montana legislature passed a law that allowed land banking and subsequently established land banking rules.<sup>26</sup> The law allows the Board of Land Commissioners to sell state trust land parcels and place the proceeds in a special land banking account. These proceeds can only be used for acquisition of other real property interests: land, easements, or improvements. The number of acres of state land that can be sold under the law is capped at 250,000. As of January 2012, approximately 51,000 acres of state trust land have been sold under the program.<sup>27</sup>

There are additional statutory requirements in Montana's land banking law.

- 75 percent of the 250,000 acres sold must be isolated land, meaning that there is no public access to the parcel.
- Sales are limited to 20,000 acres until replacement properties are purchased.
- Replacement land must generate as much or more revenue than the land sold.

In Idaho, revenue from the sale of state trust land is deposited into a "land bank fund" and is available to purchase other land. Revenue not expended for purchasing replacement land within five years is deposited into the permanent fund.<sup>28</sup>

The State of Washington's Land Bank program allows the purchase of up to 1,500 acres at fair market value to be held in a "land bank."<sup>29</sup> The land purchased should add to the value of state lands based on the natural resource or income production potential of the property.<sup>30</sup> This property may be sold or exchanged for any other public or private lands of equal value, including lands held in trust.<sup>31</sup> Lands held in the land bank for potential commercial, industrial, or residential use are subject to the payment of an "in-lieu of real property tax" to the county where the land is located.<sup>32</sup>

Another aspect of the land bank is that when Washington state trust lands are sold to private entities, the funds are deposited in the land bank, from which the legislature appropriates funding for reinvestment in other land. In a similar manner, funds generated from transfer of lands to

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<sup>26</sup> §77-2-361 through 367, Montana Code Annotated.

<sup>27</sup> Land Banking Report, January 2012, MT DNR, downloaded from <http://dnrc.mt.gov/Trust/LandBanking/>.

<sup>28</sup> Idaho Statutes §58-133.

<sup>29</sup> Wash. Rev. Code § 79.11.020.

<sup>30</sup> Wash. Rev. Code § 79.11.020.

<sup>31</sup> Wash. Rev. Code § 79.11.030.

<sup>32</sup> Wash. Rev. Code § 79.11.030.

other public ownership are deposited into the Real Property Replacement Account. The legislature also appropriates funds from this account for reinvestment.

Trust land banking may be a workable solution for situations where land exchanges are hindered or complicated by unequal valuations of the packages to be exchanged between the Federal land management agencies and state land departments. If a process similar to those conducted by some states could be implemented at the Federal level, land tenure adjustment on state land might be greatly facilitated.

### **In-Lieu Selection Process for Trust Lands**

When new states received their state trust land conveyances from Congress some sections that were otherwise designated to be awarded to the states were already occupied by homesteaders, railroad grantees, or other interests. In such cases, Congress would allow the states to select *in lieu* lands, also called “indemnity lands” from elsewhere in the public domain to replace those sections that were unavailable for conveyance.<sup>33</sup> However, many other federal reservations were being made, for national parks, Indian reservations, military reservations, and other federal uses. Originally, states were not provided *in lieu* selections for lands that were unavailable as part of federal reserved lands, which caused many states to lose significant acreage due to previous federal designations.<sup>34</sup> However, by the end of the state trust land granting process, Congress expanded the *in lieu* selection process to include federally reserved lands as well.

For the states that received *in lieu* selections, it turned out to be a mixed blessing. Initially, state selections through the *in lieu* process were made last, after most other federal reservations were made and significant portions of the most valuable lands were locked up.<sup>35</sup> Of late, however, some states that were not able to secure their *in lieu* selections have since been able to gain larger, contiguous parcels of land instead of the scattered one, two or four sections per township that states with limited *in lieu* selection opportunities received. In this way, the *in lieu* selection process has provided a means for states to consolidate some of their holdings, in some cases, providing them with lands that are easier to manage or more advantageously located.

Additionally, there are a handful of state trust land agencies that still have *in lieu* selection lands due to them. A 2004 report by the Children’s Land Alliance Supporting Schools identified at least eight western states with outstanding *in lieu* selection claims, totaling over 60,000 acres.<sup>36</sup> A process to resolve those indemnity claims could potentially assist state trust land managers in reconciling land tenure adjustment issues as well. In fact, the Western States Land Commissioners Association (WSLCA), a member organization of 23 state trust land management agencies in the western U.S., has developed such a proposal, which will be discussed in further detail later in this working paper.

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<sup>33</sup> Culp, Peter W., Diane B. Conradi, and Cynthia C. Tuell. *Trust Lands in the American West: A Legal Overview and Policy Assessment*. Cambridge: Lincoln Institute of Land Policy, 2005.

<sup>34</sup> *Id.*

<sup>35</sup> Chasan, Daniel. *A Trust for All the People: Rethinking the Management of Washington’s State Forests*. 24 Seattle University L.R. 1. 2000.

<sup>36</sup> Bird, Margaret R. *In Lieu Lands for Schools in Some Western States*. July 2004.  
<http://www.childrenslandalliance.com> accessed 6/22/12.

## **Fee Simple Purchase and Sale**

The use of fee simple purchases and sales of parcels may be the most straightforward approach to achieve land tenure adjustment objectives. This approach obviates many of the constraints and complexities associated with land exchanges, such as approximately equal valuation, specific parcel availability and satisfying the various requirements of all parties involved in the exchange. State trust land agencies are authorized to conduct fee simple purchases and sales as a means for land tenure adjustment, with various constraints arising from state enabling acts, constitutions and public land statutes. As described above, state land agencies that are authorized to conduct non-simultaneous exchanges and land banking are essentially using fee simple purchases and sales to achieve these ends.

On the federal side, BLM has the authority to sell and purchase properties under FLPMA. The USFS does not have authority under FLPMA to sell land and sales authority under other laws is highly constrained.<sup>37</sup> As a result, fee simple purchases and sales is rarely a viable option for land tenure adjustment involving USFS land.

A potentially significant problematic aspect of BLM using this approach is the requirement to use appropriated funds for purchasing properties. This may prove challenging in the current and likely future fiscal and political environments. These same factors may also affect those state trust land agencies required to use appropriated funds for land purchases.

### **Barriers to Achieving Land Tenure Adjustment on State Lands**

State trust land managers continue to be interested in engaging in land tenure adjustment through the exchange process to resolve in-holdings and checkerboard ownership problems. Many of the non-exchange options outlined above have hurdles and challenges that are just as significant, and for some states, there is limited authority to use many of the other tools available for reconciling land ownership. So, while other methods besides exchanges are technically available, they may not be logistically or financially viable for trust land agencies. The focus remains on land exchanges which, while difficult, offer a more practical option.

Several issues have been cited as barriers to the successful completion of land exchange transactions. These hurdles include: the complexity of land exchange regulations; the significant cost of processing and completing the transactions; and the lack of experienced and knowledgeable staff responsible for managing the exchange transaction at both the state and federal levels. There is also concern that in recent years, the timely processing and consideration of land exchange proposals has been a relatively low priority for federal agencies.<sup>38</sup> Federal and state budget constraints will likely continue to make outright sale and repurchase of alternate lands to reconcile land tenure issues unrealistic for the foreseeable future.

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<sup>37</sup> CRS Report RL 32393

<sup>38</sup> Boetsch, Alden, and Susan Culp. *State Trust Land Exchanges in the Intermountain West*. Cambridge: Lincoln Institute of Land Policy, 2010.



This makes it difficult to resolve land management conflicts that exist between state lands and federal public lands—particularly in instances where state lands are in-holdings within federally protected areas such as national parks, monuments, lands within the BLM’s National Landscape Conservation System (NLCS), wilderness areas or study areas, and wildlife refuges which have been designated to preserve ecological integrity, wildlife habitat, or other environmental values that are at odds with the revenue generation activities on state trust lands. The case of the San Rafael Swell exchange in Utah summarizes some of the challenges that the parties face in negotiating a mutually agreeable land exchange transaction that can meet both state and federal land management goals. The state to federal exchange involving San Rafael Swell was put forward as a legislative proposal, the Federal-Utah State Trust Lands Consolidation Act (H.R. 4968/S. 2745), in 2002.<sup>39</sup> The San Rafael Swell was a large scale area of central Utah possessing significant wilderness characteristics with the potential to become a federal wilderness area or monument. State trust land comprised 102,000 acres within the nearly 1 million acre region of San Rafael Swell that was largely under BLM management, and designation of the area as wilderness would have created significant management conflicts between state trust land managers and the BLM.

While both agencies supported the exchange to meet their respective land management goals, and support from the Utah Congressional delegation was secured to introduce the legislative measure, the proposal failed due to allegations made that the appraisals were poorly done and grossly undervalued the federal lands to be exchanged for the trust lands in the area. Changing political circumstances and rules of process governing land exchanges were also cited as obstacles leading to the dissolution of the negotiated deal, and heralded a period of stricter rules for the BLM exchange process.

The intent of changes to the land exchange process was to create a more consistent process that adhered to higher standards for appraisals and increased transparency, but these changes also had the unfortunate effect of adding to the length of time and resources required to complete land exchange transactions. The following section will further explore the barriers and obstacles to both state and federal agencies in pursuing these transactions as a means to resolving land ownership and management conflicts.

### **Arizona Case Study: State Limits on Exchange Authority**

Unique among the western state trust land management agencies, the Arizona State Land Department (ASLD) does not currently have the legal authority to engage in land exchanges. This is as a result of a decision made by the Arizona Supreme Court in 1990, *Fain Land and Cattle Company v. Hassell*, where the Court ruled that an exchange involving state trust lands would have constituted a “sale” in violation of the public auction requirements of typical trust land sales.<sup>40</sup> While exchanges are permitted by Arizona’s Enabling Act, the transactions are not allowed based on provisions governing trust land management set out in Arizona’s Constitution. In the case, the Fain Land & Cattle Company proposed to exchange private lands within its ownership for state trust land parcels within Yavapai County. The ASLD, upon counsel from the Attorney General’s office that such an action was constitutionally prohibited, did not proceed

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<sup>39</sup> Federal-Utah State Trust Lands Consolidation Act. H.R. 4968, § 2745.

<sup>40</sup> *Id.* at 7.

with the exchange. Fain then sued the ASLD, and sought an order for the agency to complete the exchange transaction. However, the court ruled with the ASLD and Attorney General in their interpretation of the Arizona Constitution, and after 1990, no subsequent administrative land exchanges involving state trust lands were made.<sup>41</sup>

However, prior to the court ruling, Arizona had a long history of land exchanges, and it had been a valuable tool in achieving the beneficiary interest in state trust lands as well as federal interests in conservation management. Since statehood, the ASLD had exchanged nearly two million acres of state trust lands in transactions with the federal government.<sup>42</sup> This achieved public conservation goals by consolidating federal ownership of lands within national parks, wilderness areas, and wildlife refuges, and achieved trust goals of acquiring valuable lands near growing Arizona cities and towns. Many of these trust land parcels were then subsequently sold for development, bringing significant revenues for the trust. The ASLD and the University of Arizona also used land exchanges in order to secure the lands for the Santa Rita Experimental Range—an important outdoor laboratory enabling University programs to test land management and grazing practices, as well as conduct long term ecological research, on arid grasslands in the Southwest.<sup>43</sup>

Since the court ruling in 1990, many attempts were made to pass constitutional amendments in the state to restore land exchange authority. However, none have yet been successful. Land exchange transactions since 1990 have relied on the legislative process to gain Congressional approval for specific exchanges, which has not been without controversy as well.

It will continue to be exceedingly difficult for Arizona to efficiently reconcile state/federal land ownership problems, in-holdings, or achieve broader public interest in conservation management goals for ecologically sensitive state trust lands unless a workable solution to land tenure adjustment in the state is developed.

## **Challenges Associated with State to Federal Exchanges**

### Reviews of Land Exchanges and the Process

In response to a congressional request, in 2000 the United States General Accounting Office (GAO) reviewed statutory and other requirements for land exchanges; internal BLM and USFS data on exchanges; and land exchanges conducted in the preceding 10 years (1989–1999).<sup>44</sup>

GAO identified several issues with the land exchanges they analyzed including problems with valuation, serving the public interest and meeting other statutory requirements. Specific issues identified were:

- appraisals that overestimated value for non-federal parcels acquired and underestimated the value of federal land transferred;

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4.

<sup>43</sup> <http://ag.arizona.edu/srer/>.

<sup>44</sup> GAO/RCED-00-73 Land Exchanges.

- the agencies didn't clearly establish that all exchanges were in public interest;
- internal agency regulations were not always followed; and
- improper treatment of sales proceeds by BLM in that the proceeds were retained instead of being deposited into the Treasury.

In 2009 GAO was asked to take another look at BLM and USFS land exchanges and analyze the effectiveness of the agencies' responses to key problems identified in earlier reviews and audits. The GAO reviewed land exchanges occurring from October 2004 through June 2008; reviewed GAO, DOI and USDA inspector general reports, Appraisal Foundation reports, and BLM and USFS internal reviews; interviewed BLM and USFS staff; and conducted a detailed examination of 31 land exchanges. Findings noted in the 2009 GAO report include.<sup>45</sup>

- reviews of land exchanges by the agencies' headquarters improved the quality of land exchanges, but problems identified in those reviews were inconsistently documented and resolved;
- the agencies updated internal documentation on how to process land exchanges and improved training on the subject, but didn't require staff to attend the training, nor did they track participation in training;
- new guidance on full disclosure of the use of third-party land exchange facilitators was issued by both agencies, but the policies were not consistently applied;
- BLM stopped retaining sales proceeds outside of the Treasury and issued new policies for handling proceeds from multiphase land exchanges, but the policies were not always followed;
- both agencies improved the time it takes to complete land appraisals, but the process still delays completion of land exchanges; and
- neither agency tracks costs associated with individual land exchanges.

From the perspective of state land agencies, three aspects of these findings seem particularly relevant: appraisals, timelines and costs.

### Appraisals

Problems with the conduct and management of appraisals by the BLM and USFS have been noted in reviews and audits from 1987 through 2009. Identified issues include: the use of non-standard appraisal procedures; lack of independence of staff appraisers; management of appraisal processes by non-appraisers; and injection of advocacy and bias into the process.<sup>46 47 48 49 50</sup> These problems have led to appraisals that often do not represent fair market value and/or take a

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<sup>45</sup> GAO-09-611 Federal Land Management.

<sup>46</sup> GAO/RCED-87-9, Federal Land Acquisition: Land Exchange Process Working But Can Be Improved, Washington, D.C., Feb. 5, 1987.

<sup>47</sup> GAO/RCED-00-73 Land Exchanges.

<sup>48</sup> GAO-09-611 Federal Land Management.

<sup>49</sup> The Appraisal Foundation, Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management (Washington, D.C., Oct. 9, 2002).

<sup>50</sup> The Appraisal Foundation, Evaluation of the Appraisal Organization of the USDA Forest Service (Washington, D.C., Mar. 28, 2000).

very long time to complete, which in turn create delays in processing land exchanges, loss of value to the federal government, and transactions that were not in the public interest.

In response to reviews and audits in the early 2000s, the agencies restructured their appraisal functions and included goals to improve the appraisals, increase staff appraiser independence, and speed up the appraisal process. The 2009 GAO review found that changes within the agencies have improved the quality of the appraisals and increased appraiser independence. Regarding timeliness of appraisals, GAO found that, particularly with the BLM, the appraisal process continues to delay the completion of land exchanges.

In addition to timeliness issues created by the appraisal process, perhaps a larger problem is the nature of the appraisals required for land exchanges. These are required to estimate fair market value and must follow the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), which states:

“The appraiser’s estimate of highest and best use must be an *economic* use. A noneconomic highest and best use, such as *conservation, natural lands, preservation*, or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value.”<sup>51</sup>

The Appraisal Foundation review found that, notwithstanding this guidance, BLM appraisals often incorporated such noneconomic highest and best uses.<sup>52</sup> This raises a significant question in the appraisal process—whether approximately equal fair market value is truly the best measure of achieving public interests and goals in rationalizing land ownership in the West. The preservation of natural landscapes and extensive, connected wildlife habitats are not values taken into consideration in a fair market estimation, but have distinct public values and meet the long-term needs of public land management agencies. Thus, the market value standards adhered to by the UASFLA may not be entirely appropriate in evaluating the benefit of an exchange completed for conservation purposes.

Land exchanges between state trust land agencies and federal land managers that are intended to acquire lands for conservation purposes for the state land portfolios would yield better outcomes if the supporting appraisals explicitly and consistently incorporated conservation values. Although the noneconomic values, such as conservation or preservation of natural values, including the establishment of critical wildlife habitat or wetlands, are often considered in the appraisals, the practice is contrary to established standards.

Per-acre pricing for wetland banking and conservation banking credits range widely, with prices reported from \$1,500 to \$650,000 per acre, depending on availability, particular species, type of habitat and other factors.<sup>53</sup>

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<sup>51</sup> UASFLA, 2000, p.18.

<sup>52</sup> The Appraisal Foundation, Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management (Washington, D.C., Oct. 9, 2002).

<sup>53</sup> [http://www.ecosystemmarketplace.com/pages/dynamic/web.page.php?section=biodiversity\\_market&page\\_name=uswet\\_market](http://www.ecosystemmarketplace.com/pages/dynamic/web.page.php?section=biodiversity_market&page_name=uswet_market) and <http://www.speciesbanking.com/>.

## Length of the Land Exchange Process

The 2009 GAO review discovered that completion times for land exchanges ranged widely from two months to more than 12 years, with the BLM process averaging about four years and the USFS process taking an average of roughly two years. The completion times were almost always longer than agency estimates. Extended timelines may cause a need for new appraisals when land markets are rapidly changing; negatively affect adjacent landowners; increase costs to state land agencies; and generally decrease the likelihood that the exchange will be completed.

## Costs Associated with Land Exchanges

The 2009 GAO review found that neither BLM nor USFS track costs associated with individual land exchanges, even though GAO recommended this as early as 1987. Lack of information regarding expected costs associated with exchanges with federal agencies is a barrier to state trust land agencies pursuing exchanges with federal agencies because budgeting becomes difficult for trust land agencies that have to plan for funding needs and request appropriations for land exchange programs.

Although all specific costs are not tracked for individual exchanges, both BLM and USFS provide estimates of costs associated with specific tasks, as well as the party responsible for each task, in the Agreement to Initiate (ATI). These estimates provide some cost information useful for trust land agencies' budget planning.

Table 1 provides an example of estimated costs as published in the ATI for the Emerald Mountain land exchange in Colorado, which was completed in 2007.<sup>54</sup> As is typically the case with these estimates, there is no information or detail concerning personnel costs, which are usually the largest cost component of land exchanges.<sup>55</sup>

**Table 1**

<b>Cost Estimates</b>				
<b>Step</b>	<b>Completion Date</b>	<b>Responsible Party</b>	<b>BLM</b>	<b>SLB/WLG</b>
Feasibility Report/Draft ATI	October 2003	BLM/WLG	\$6,000	
Preliminary Title Evidence	October 2003	SLB/WLG		\$500
Preliminary Title Opinion	November 2003	BLM/Sol	\$500	
WO Feasibility Review	July 2004	BLM		
Notice of Exchange Proposal	August 2004	BLM/WLG	\$100	\$1,000
Cultural Resources Inventory	July–September 2003	WLG (Federal)		\$172,000

<sup>54</sup> United State Department of the Interior, Bureau of Land Management, Serial No. COC-66879. Agreement to Initiate a Land Exchange.

<sup>55</sup> GAO-09-611.

Cultural Resources Inventory	July–September 2003	BLM (Offered)	\$1,000	
Hazardous Materials Survey	July–September 2003	BLM	\$1,250	
CERCLA Report	July–September 2003	BLM	\$1,250	
Biological Assessment	July–September 2003	WLG		\$107,000
Mineral Reports	February 2004	BLM	\$5,000	
Survey, If Required	April–July 2004	SLB		
Appraisal Preparation	TBD	WLG		\$158,000
Appraisal Review	TBD	DOI Staff	\$15,000	
Environmental Assessment	March 2005	BLM/WLG	\$5,000	\$75,000
WO Approval to Proceed	May 2005	BLM		
Notice of Decision Publication	June 2005	BLM		\$1,000
State Title Certification/Policy	July 2005	WLG		\$500
Preparation of Patents	July 2005	BLM	\$1,500	
Final Title Opinion	July 2005	BLM/Sol	\$750	
Closing	August 2005	BLM/WLG	\$1,000	\$10,000
<b>Total Estimated Costs</b>			<b>\$38,350</b>	<b>\$525,000</b>

Source: United State Department of the Interior, Bureau of Land Management, Serial No. COC-66879. Agreement to Initiate a Land Exchange. Note: WLG indicates Western Land Group, Inc., a firm that acted as a facilitator for this land exchange.

### **Efforts to Streamline Land Tenure Adjustment in the West**

The cumulative effect of the barriers created in the land exchange process in conjunction with the funding difficulties state agencies face in securing dollars for sale and repurchase of lands to reorganize land ownership has dramatically slowed the process of rationalizing land patterns in the West. Thus, for many states, management of in-holdings within federally designated conservation areas continues to limit trust land managers ability to produce revenues from those lands. Many traditional revenue generating activities, such as grazing, agriculture, energy or mineral development, or real estate development would be clearly at odds with the conservation management goals of the broader public land unit, whether it is a park, monument, or wilderness area. Likewise, checkerboard land ownership patterns are a potential deterrent to the management objectives of both parties.

State trust lands that are locked within federal lands managed for conservation are unlikely to have any productive use or flexibility in supporting the beneficiaries as intended by the trust responsibility. Access alone can be a significant issue in making those lands available for revenue generation, not to mention the restrictions governing the surrounding lands. For those in-holdings that are available for revenue producing activities, there may only be one viable lessee. This is often the case for large-scale grazing or agricultural units. Thus, lack of competition in bidding can also reduce the amount of revenue that can be reasonably obtained from such lands.

As the feasibility and political salability of currently available methods for conducting land tenure adjustment transactions have become increasingly limited, state trust land managers have sought other approaches to resolve problematic land management issues. The following section will examine some of those proposals and approaches, and evaluate how well they might achieve those goals, while simultaneously maintaining high standards in transactions that meet the GAO’s recommendations for transparency and service to the public interest.

### State Level Trust Land Reform in Arizona

As mentioned in the previous section, the state of Arizona has constitutional limitations on land exchange authority involving state trust lands managed by the ASLD. This has led to numerous ballot measures put before Arizona voters to amend the constitution to allow the ASLD to engage in land exchanges once again. Since the Arizona Supreme Court’s ruling in 1990, eight different measures have been placed on the ballot to restore the ASLD’s authority. Some of these measures have been part of comprehensive reform packages intended to modernize state trust land management and agency operations, but others have been specifically written only to grant land exchange authority. However, all of these measures have been defeated by voters, although sometimes by quite slim margins, as shown in table 2.

**Table 2**

<b>Arizona State Trust Land Exchange Ballot Measures 1990–2010</b>				
<b>Year</b>	<b>Proposition Number</b>	<b>Description</b>	<b>Yes</b>	<b>No</b>
1990	100	Proposed constitutional amendment regarding state trust lands. Would allow for the exchange of state trust lands with private or other public lands.	45%	55%
1992	102	Proposed constitutional amendment to allow for the exchange of state trust lands with private or other public lands, provided the lands were of equal value and the purpose of the exchange was to consolidate state lands or to acquire land for public purposes.	47%	53%
1994	101	Proposed constitutional amendment to allow for the exchange of state trust lands with private or other public lands, provided the lands were of equal value and the purpose of the exchange was to consolidate state lands or to acquire land for public purposes. Substantially similar to Proposition 102 in 1992, which was rejected.	41%	59%
2000	100	Proposed constitutional amendment making several changes regarding state trust lands. Among the changes: conservation of up to 270,000 acres (1,100 km <sup>2</sup> ) as protected lands; ability to transfer trust lands to school districts without compensation; and change the manner in which lands are sold or transferred.	49%	51%
2002	101	Proposed constitutional amendment to allow for the exchange of state trust lands with other public lands, provided the exchange was for land of equal or greater value and conservation of lands was maintained.	49%	51%

2004	100	Proposed constitutional amendment to allow for the exchange of state trust lands with other public lands. Substantially similar to Proposition 101 of 2002.	48%	52%
2006	106	Proposed constitutional amendment to allow the creation of 694,000 acres (2,810 km <sup>2</sup> ) of trust land for conservation while permitting the conveyance of other state lands without auction.	49%	51%
2010	110	Proposed constitutional amendment to allow land exchanges with federal government to protect military bases and for conservation and management purposes.	49.6%	50.4%

Source: Sonoran Institute

Given the checkered history of land exchanges, particularly in recent decades with attention focused on cases where private interests gained significant windfalls at public expense, it is not surprising that voters have been hesitant to reinstate land exchange authority. Most trust land stakeholders believe, however, that it is unfortunate that a handful of egregious misuses of the tool have poisoned the atmosphere for appropriate uses to rationalize land ownership patterns in the state.

Another measure to restore land exchange authority has recently been passed by the Arizona State Legislature. The constitutional amendment, SCR 1001, will be on the November 2012 ballot, and its companion statutory measure SB 1001 passed with broad legislative support and was signed by Governor Brewer on April 17, 2012. The constitutional amendment directs the Arizona Legislature to provide for a statutory process for exchanges involving state lands so long as the exchange is in the best interests of the trust and promotes improved management of state trust lands, or helps to preserve and protect military installations in the state.

The statutory measure requires all exchanges to be subject to independent appraisal and analysis, public notice and hearings, and specifies that any exchange must be referred to and approved by the voters. These process safeguards have garnered broad support for the measure and little to no opposition from state trust land stakeholders and interest groups. If passed in November, the measure would reinstate limited land exchange authority in Arizona. Constitutional and statutory language of these measures can be reviewed in appendices A and B.

While passage of these measures would allow Arizona to take part in administrative land exchange transactions between state and federal agencies once more, it will not address the larger problems associated with the length, cost, and cumbersome nature of the land exchange process itself. Those issues need to be addressed on a higher level to systematically improve the overall land exchange process.

### **Extension of State In Lieu Selection Rights—Congressional Proposal**

In 2011, members of the WSLCA, a consortium of 23 state trust land management agencies in the western U.S., began discussions on a proposal to extend the in lieu selection process to resolve checkerboard land ownership with the BLM and exchange in-holdings within federally designated conservation areas for lands outside of those units that are more suitable for revenue



production. A 2012 WSLCA resolution expressed support for the proposal on behalf of its membership.

The proposal, intended to be introduced as Congressional legislation, provides a supplementary strategy to current land tenure adjustment approaches such as exchanges and sales. Simply put, the proposal would allow states that have trust lands holdings within federal conservation designations—such as national parks, monuments, wilderness areas, NLCS lands, and so forth—to relinquish those lands back to the federal government, and select replacement lands from among the unappropriated federal public lands within the state. The replacement lands could come from BLM lands that are not subject to any special designations for particular public or conservation values. Such lands are reviewed under FLPMA and evaluated for present and future use, and BLM Resource Management Plans developed under FLPMA will often include a subset lands identified for disposal or exchange as being in the best interests of the federal land portfolio.

The process of valuation laid out in the proposal requires that exchanged lands be roughly equivalent in value, but the use of formal appraisals is not required. The proposal presumes state selections of indemnity (or *in lieu*) lands to be in the national interest, and limits NEPA applicability to an assessment of the proposed action (state selection and exchange package) and a “no action” alternative, thus simplifying the process of evaluating the transaction. Existing mineral rights or grazing rights on federal lands conveyed to the states will be continued.

WSLCA and other stakeholders supporting the proposal have been discussing the proposal with western Congressional delegates, and hope to gain bipartisan support for the bill. It could be introduced into Congress as early as summer of 2012.

### **Reform of the Appraisal Process**

As discussed above, GAO and the Appraisal Institute review of the appraisal process at BLM and USFS identified issues including the use of non-standard appraisal procedures, as well as the lack of independence of staff appraisers. Also cited were the management of appraisal processes by non-appraisers, and the injection of advocacy and bias into the process. As a result of these issues, appraisal timelines have become extended, market values have not been accurately established, taxpayers have lost value and transactions have occurred that are not in the public’s best interest.

While extensive improvements in the appraisal process have occurred as a result of GAO and Appraisal Institute recommendations, additional reform would help to ensure more timely appraisals, which is perhaps the most important problem from the perspective of state trust land agencies. This reform should include:

- increasing the number of properly qualified staff appraisers at the agencies;
- improved training of existing staff appraisers; and
- streamlining the process for contracting outside appraisers.

The Appraisal Institute and GAO reviews of the appraisal process at BLM and USFS identified a range of issues, primarily with BLM appraisals. Staff appraisers at BLM were not sufficiently independent due to organizational problems with inconsistent delegation of authority and interference by management in appraisal processes by circumventing established procedures for appraisals and reviews. This resulted partly from a politicized and transaction-driven process in which the independence of appraisers was secondary to the push of management and realty staff to complete land transactions. As a result of appraisers lacking independence, management of the appraisal process by people not trained in appraisal and the drive to complete land transactions, non-standard appraisal procedures were used. These included ignoring market value, changing appraised value, accepting appraisals from land exchange proponents and substituting other values for fair market value.

Another key issue identified was insufficient numbers of qualified appraisal personnel due to staff attrition and lack of replacement of highly experienced appraisers. This led to an increasing use of contract appraisers unfamiliar with Federal appraisal standards as specified in the UASFLA. The types of land and character of BLM transactions demand specific expertise that is not generally available with contract appraisers. Furthermore, the bidding process required for contracting outside appraisers often results in the selection of less qualified appraisers. These problems result in extended appraisal timelines, inaccurately established market values, lost value to taxpayers, and transactions that are not in the public's best interest.

While extensive improvements in the appraisal process have occurred as a result of GAO and Appraisal Institute recommendations, additional reform would help to ensure more timely appraisals, which is perhaps the most important problem from the perspective of state trust land agencies.

Increasing the number of properly qualified staff appraisers at the agencies would entail appropriating funding and hiring additional appraisers. This would result in a more reasonable work load for appraisal staff which would likely improve quality and timeliness of appraisals. Improved training of existing staff involved in land transactions regarding agency guidance on the appraisal process would facilitate conformance with established appraisal procedures, ensure the public interest was served in land transactions and decrease the time necessary to complete the appraisal process.

### **Consideration of Ecosystem Services and Conservation Values in Land Appraisals**

Economic values arising from services provided by ecosystems present on land parcels are not considered in the appraisal process and thereby are not incorporated into the appraised value of the land, despite the fact that economic values associated with conservation, restoration and ecosystem services is increasingly recognized in investment and real estate transactions.<sup>56</sup> This disconnect exists partly due to appraisal standards that guide professional appraisers, the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Appraisal (UASFLA). As referenced earlier, the UASFLA highlights the issue:

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<sup>56</sup>Adam Davis, personal communication.

“The appraiser’s estimate of highest and best use must be an *economic use*. A noneconomic highest and best use, such as *conservation, natural lands, preservation*, or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value.”<sup>57</sup>

For many years, environmental and ecological economists have measured the economic value of a wide range of ecosystem goods and services in specific spatial and social contexts.<sup>58</sup> In general, the academic literature on valuation has found clear evidence that ecological systems and the services they produce are economically valuable.<sup>59</sup>

Although it is likely to be a long process, changing appraisal standards to explicitly consider conservation and ecosystem services values would be an important step in ensuring that land appraisals incorporate ecological values that are already recognized in the markets.

### **Resolving the Issue of Timeliness in the Process**

Attempts to reform the land exchange process should seek to decrease the time it takes to complete land exchanges. Although GAO in its reviews did not suggest a reasonable length of time for completing land exchanges, the BLM’s land exchange handbook estimates an average time to complete a land exchange of 18 to 24 months. As discussed in detail above, most of the delays stem from the appraisal process, so this is the first place to begin improving the process timeline; suggestions for appraisal reform are detailed above.

An additional key reform that would improve appraisal timeliness is to require periodic meetings between staff working on land exchanges and appraisal personnel. Discussion content for these meetings would include coordination of requests for appraisals, timelines for appraisal completion, and updates on status of appraisals currently in process. Along with this, a prioritization process for time-sensitive appraisals would help to ensure timely appraisal delivery.

A critical requirement for completing land exchanges in a reasonable time frame is adequate staff to process the land exchange. This applies to the Federal agencies as well as the state land agencies. If funding for additional dedicated land exchange staff is not feasible, then a portion of existing staff could be cross-trained in land exchange processing tasks.

### **Changing the Concept and Expectation of “Fair Market Value” to a More Inclusive Model**

At the conceptual level, an inherent problem with land exchanges as currently constituted by the applicable laws is the requirement for the exchanged land parcels to have equal value as measured by fair market value. This standard is often difficult to meet, especially when locations, characteristics, and attributes of the parcels are radically different, as they frequently

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<sup>57</sup> *Id.* at 45.

<sup>58</sup> Freeman, 2003.

<sup>59</sup> Paraphrased from “The Nature of Value and the Value of Nature”, an unpublished document by Adam Davis, 2012.

are. In the situation where land with high conservation value is being exchanged for land with high development value, the requirement for equal value as judged by fair market value seems extremely difficult to meet.

Directly exchanging land is similar to bartering, where items are exchanged without using a medium of exchange such as money. A barter transaction occurs when both sides are satisfied with the exchange. That the exchange occurs indicates that the items exchanged are of “equal value” to each party. The unique perspective and situation of each party of a barter transaction assigns the value to the item received, and that value would be deemed different by others.

A solution to these equal-value difficulties could involve a different approach to valuation that incorporates conservation value into fair market value or a different set of metrics indicating when an exchange is equitable. Ultimately, what is needed is some system that can accommodate transactions meeting both parties’ goals and that ensures that public interest is well-served.

### **Conclusion and Recommendations**

As discussed throughout this working paper, a strong rationale can be made for facilitating improvements to the land exchange process to enable more efficient and successful land tenure adjustment transactions between state and federal entities. The current land ownership patterns of broad swaths of checkerboarded lands, state trust land in-holdings within federally designated parks and areas of conservation concern, and access and management problems attendant to these land patterns speaks to the need for consolidation to achieve both trust objectives and the public interest in large landscape conservation. Under the current system, land tenure adjustment is likely to proceed quite slowly and will continue to impede landscape-scale conservation efforts on federal lands and stymie the efforts of trust land managers to achieve the full value of their holdings for the public beneficiaries they serve.

There are multiple efforts underway throughout the West to identify, map, and conserve critical wildlife linkages to ensure that the iconic species of the region will persist and thrive now and for future generations. Montana’s Crown of the Continent initiative represents one of these large landscape initiatives involving a broad coalition of landowners and interest groups. At a regional level throughout the West, the Western Governors Association’s initiative on wildlife corridors and habitat is working at a larger regional scale to identify and conserve linkages to support wildlife. The success of these efforts, as well as similar initiatives, depends on the participation of all affected landowners, including state trust land managers, and a broad range of tools that will enable those landowners to carry out the vision of large landscape conservation. A functional land exchange process is one of the tools that can help facilitate these efforts and meet the objectives of each party.

Several methods for streamlining and improving the land exchange process have been discussed, and if implemented, would address some of the key problems identified by stakeholders. Most promising of these would involve changes to the appraisal process, particularly the incorporation of appropriate recognition of the value of conservation and natural landscapes in appraisals for land exchange transactions. As illustrated by the UASFLA’s own description of the limitations

of appraisals in accounting for conservation values in fair market estimations, significant public benefits that arise from ecosystem services values, preservation of natural landscapes, and stewardship of wildlife and the habitats they depend upon are simply unable to be considered.

Given that the appraisal process does not factor in conservation values, it seems that some of the criticism that has been levied against the land exchange process for missteps in valuation should be reexamined more closely. Exchanges that had been executed to achieve conservation goals may have significantly underestimated the conservation value of the exchanged lands due to UASFLA's appraisal standards. While such an exchange would seem to highlight a public interest loss according to current appraisal practice, closer inspection and inclusion of environmental values in the valuation process could potentially reveal that the public interest was well served. It would be enlightening to prepare a series of pro forma case studies reexamining previous land exchanges between federal agencies and state land departments in which ecosystem services values are included in the appraisal to see how the appraised land values change.

This limit in the appraisal process does a disservice to conservation efforts and state trust land managers who seek to exchange trust land holdings with conservation values for lands more appropriate for development or other means of revenue generation. Our recommendation would be to research and identify how the appraisal standards and guidelines could be modified adequately and appropriately to account for conservation values in land transactions. A research roundtable consisting of experts in land value appraisals, state trust land managers, and public land managers interested in pursuing land exchange transactions could be convened to develop a set of priorities for further research and investigation to improve the process.

In addition, expanding the appraisal process to better account for all values in play during a land exchange transaction is also recommended. For example, the parties in a land exchange may have quite different values and goals that they are trying to meet through the transaction. However, since federal guidelines only provide for roughly equal exchanges based on a fair market value metric, the different objectives held by the parties of the exchange ultimately end up being shoe-horned into a model of economic value that may not fit the circumstances. Some of these shortcomings could be addressed by the inclusion of conservation values in the appraisal calculation, but understanding of the unique nature of exchanges or trades, and their similarity to a barter-style transaction, could also benefit the process.

It is worth noting that, in the case of state to federal land exchanges, the public interest is still served when one party comes out slightly ahead from a strict, economic standpoint. Since both agencies serve public beneficiaries—the K–12 schools and other public institutions in the case of state trust land management agencies, and the broader public in the case of federal agencies—there is a smaller risk of private gain at the taxpayers' expense. Such transactions also have additional benefits to both parties. For example, exchanges allow state trust land management agencies to divest themselves of parcels that, in most cases, have significant costs connected with their management. Because the lands are in-holdings, or are scattered and far from other holdings, they create an administrative burden for the trust land management agency in coping with lands that are mismatched to their fiduciary mandate and mission. Federal agencies, by turn,

have a chance to consolidate their holdings in a more rational manner, and receive gains through more efficient land management.

Other recommendations to improve the process would not involve substantive policy reforms, but simply practical changes in the approach taken by state and federal agencies. For example, the lengthiness of the land exchange process, often cited as a barrier to success, can be linked to the lack of experienced and knowledgeable staff in state and federal agencies. To the extent that accomplishing land tenure adjustment remains a priority for state and federal agencies, agency leaders could ensure effective training programs are offered and utilized to build the skills staff need for constructive engagement in exchange transactions.

Another approach that would not require fundamental policy change to improve the process would be to minimize the public controversy around land exchange proposals by engaging the public early and effectively. With better stakeholder processes designed to help affected communities understand the objectives and goals of the exchange, it is possible to prevent much of the public backlash that can occur when citizens are taken by surprise by a transaction. It is recommended that state and federal agencies include best practices for effective community engagement in the aforementioned training programs.

The process of land banking, as carried out by several states in the West, as well as the process of non-simultaneous land exchange transactions as performed by Colorado, can be a more efficient means to resolving land tenure issues. However, many states do not have programs or statutory authority to retain sales proceeds in order to purchase replacement lands to build their portfolios. Broadening the reach of such approaches would involve constitutional changes to the provisions governing state trust land management in states that do not already have these tools in place. Such a strategy would require a piecemeal approach of amending state constitutions on a state by state basis. Some of the federal level changes discussed in this working paper might instead provide a more systemic solution to the barriers to land exchanges.

While it is clear that there is room for improvement in the land exchange process, federal agencies have taken some important steps to date in addressing the problems identified with past exchanges. Some of the criticism that has been directed toward the land exchange process that allowed exchanges involving private windfalls, questionable appraisals, and political pressure to pursue some transactions over the past couple of decades has been valid. Many of the policies and protocols enacted to ensure that further abuse of the system does not take place were needed. Thus, care should be taken in improving and streamlining the process to ensure the maintenance of those safeguards.

Well thought out and rational improvements to the process would yield significant benefits. These benefits would accrue to the state trust lands beneficiaries, since allowing state trust land managers to add lands with high development values to their portfolio would enable them to increase the revenues streams for public education. Benefits would also accrue to large landscape scale conservation efforts by allowing the consolidation of lands that have high values for wildlife habitat and connectivity. Given the changing climate, the impacts of which are already being seen throughout the Intermountain West, preservation of intact, functional habitat and critical migration corridors may be essential for the continued health and persistence of many of

the region's most cherished and iconic species. While the approach should be cautious in nature, given past controversy surrounding land exchange transactions, improvement of this tool and expansion of its appropriate use could serve vital public interests in both conservation and education. With the appropriate reforms, the land exchange process could resolve problematic land ownership issues and conflicts, and ensure that exchanges between state and federal entities constitute a truly fair trade, one in which significant public value is created.

**Appendix A: Arizona Senate Concurrent Resolution 1001**



House Engrossed Senate Bill

**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

## **SENATE CONCURRENT RESOLUTION 1001**

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE X, CONSTITUTION OF ARIZONA, BY ADDING SECTION 12; RELATING TO STATE TRUST LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of  
2 Representatives concurring:

3 1. Article X, Constitution of Arizona, is proposed to be amended by  
4 adding section 12 as follows if approved by the voters and on proclamation of  
5 the Governor:

6 12. Land exchanges; purposes; notice; hearings;  
7 submission to the voters

8 SECTION 12. A. THE LEGISLATURE SHALL PROVIDE A PROCESS  
9 BY LAW FOR EXCHANGING LANDS GRANTED OR CONFIRMED BY THE ENABLING  
10 ACT FOR PUBLIC LANDS IN THIS STATE UNDER THE TERMS AND  
11 CONDITIONS PRESCRIBED BY THIS SECTION.

12 B. THE PURPOSE OF THE EXCHANGE MUST BE EITHER:

13 1. TO ASSIST IN PRESERVING AND PROTECTING MILITARY  
14 FACILITIES IN THIS STATE FROM ENCROACHING DEVELOPMENT.

15 2. TO IMPROVE THE MANAGEMENT OF STATE LANDS FOR THE  
16 PURPOSE OF SALE OR LEASE OR CONVERSION TO PUBLIC USE OF STATE  
17 LANDS.

18 C. BEFORE THE PUBLIC HEARINGS ARE HELD PURSUANT TO  
19 SUBSECTION D, PARAGRAPH 3 OF THIS SECTION:

20 1. AT LEAST TWO INDEPENDENT APPRAISALS MUST BE MADE  
21 AVAILABLE TO THE PUBLIC SHOWING THAT THE TRUE VALUE OF ANY LANDS  
22 THE STATE RECEIVES IN THE EXCHANGE EQUALS OR EXCEEDS THE TRUE  
23 VALUE OF THE LANDS THE STATE CONVEYS.

24 2. AT LEAST TWO INDEPENDENT ANALYSES OF THE PROPOSED  
25 EXCHANGE MUST BE MADE AVAILABLE TO THE PUBLIC SHOWING:

26 (a) THE INCOME TO THE TRUST BEFORE THE EXCHANGE FROM ALL  
27 LANDS THE STATE CONVEYS AND THE PROJECTED INCOME TO THE TRUST  
28 AFTER THE EXCHANGE FROM ALL LANDS THE STATE RECEIVES.

29 (b) THE FISCAL IMPACT OF THE EXCHANGE ON EACH COUNTY,  
30 CITY, TOWN AND SCHOOL DISTRICT IN WHICH ALL THE LANDS INVOLVED  
31 IN THE EXCHANGE ARE LOCATED.

32 (c) THE PHYSICAL, ECONOMIC AND NATURAL RESOURCE IMPACTS  
33 OF THE PROPOSED EXCHANGE ON THE SURROUNDING OR DIRECTLY ADJACENT  
34 LOCAL COMMUNITY AND THE IMPACTS ON LOCAL LAND USES AND LAND USE  
35 PLANS.

36 D. LAND MAY NOT BE EXCHANGED UNLESS:

37 1. THE EXCHANGE IS IN THE BEST INTEREST OF THE STATE LAND  
38 TRUST.

39 2. PUBLIC NOTICE OF THE PROPOSED EXCHANGE INCLUDES FULL  
40 DISCLOSURE OF ALL DETAILS OF THE TRANSACTION, THE OWNERSHIP OF  
41 ALL PARCELS OF THE LANDS INVOLVED IN THE EXCHANGE, INCLUDING  
42 INDEPENDENT AND ANCILLARY PARTIES, A LEGAL AND GENERAL  
43 DESCRIPTION OF THE LOCATION OF ALL PARCELS OF THE LANDS AND THE  
44 APPRAISED VALUE OF ALL PARCELS OF THE LANDS.

1           3. PUBLIC HEARINGS ARE HELD AT THE STATE CAPITAL AND IN A  
2 LOCATION OF GENERAL ACCESSIBILITY IN THE VICINITY OF THE STATE  
3 LANDS BEING EXCHANGED. NOTICE OF THE TIME AND PLACE OF THE  
4 HEARINGS MUST BE GIVEN BEGINNING AT LEAST SIX WEEKS BEFORE EACH  
5 HEARING IN A MANNER PRESCRIBED BY LAW. DURING THIS PERIOD, A  
6 PROCESS SHALL BE PROVIDED FOR PUBLIC COMMENT ON THE PROPOSED  
7 EXCHANGE.

8           4. THE EXCHANGE IS APPROVED BY THE QUALIFIED ELECTORS OF  
9 THIS STATE IN THE MANNER OF A REFERENDUM PURSUANT TO ARTICLE IV,  
10 PART 1, SECTION 1 AT THE NEXT REGULAR GENERAL ELECTION. TO BE  
11 APPROVED, THE PROPOSITION MUST RECEIVE AN AFFIRMATIVE VOTE OF A  
12 MAJORITY OF THE QUALIFIED ELECTORS VOTING ON THE MEASURE.

13           E. LAND EXCHANGES ARE NOT CONSIDERED TO BE SALES FOR THE  
14 PURPOSES OF THIS ARTICLE.

15           2. The Secretary of State shall submit this proposition to the voters  
16 at the next general election as provided by article XXI, Constitution of  
17 Arizona.

PASSED BY THE HOUSE APRIL 23, 2012.

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE APRIL 25, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2012.

Passed the House April 23, 2012,

Passed the Senate February 27, 2012,

by the following vote: 50 Ayes,

by the following vote: 25 Ayes,

0 Nays, 9 Not Voting  
1 vacant

5 Nays, 0 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

S.C.R. 1001

~~EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Secretary of State~~

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 25, 20 12

by the following vote: 17 Ayes,

11 Nays, 2 Not Voting

Steve Pierce  
President of the Senate

Charmian Ballington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Resolution received by the Secretary of State

this 1<sup>st</sup> day of May, 20 12

S.C.R. 1001

at 8:10 o'clock a M.

John Blumenthal  
Secretary of State

## **Appendix B: Arizona Senate Bill 1001**

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

**CHAPTER 278**  
**SENATE BILL 1001**

AN ACT

AMENDING SECTION 37-604, ARIZONA REVISED STATUTES; RELATING TO STATE TRUST  
LAND EXCHANGES; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 37-604, Arizona Revised Statutes, is amended to  
3 read:

4 37-604. Exchange of state land; procedure; limitation and  
5 exceptions; definition

6 A. ~~The state land department and selection board,~~ STATE LAND MAY BE  
7 EXCHANGED FOR PUBLIC LAND IN THIS STATE ~~for proper management, control,~~  
8 ~~protection~~ TO IMPROVE THE MANAGEMENT OF STATE LANDS FOR THE PURPOSE OF SALE  
9 OR LEASE or CONVERSION TO public use of state lands, ~~may exchange state lands~~  
10 ~~managed by the department for any other land within the state. The state~~  
11 ~~land department and selection board, to encourage compatible use of lands~~  
12 ~~near military airports, may exchange state lands managed by the department~~  
13 ~~for private lands near military airports~~ OR TO ASSIST IN PRESERVING AND  
14 PROTECTING MILITARY FACILITIES IN THIS STATE. Exchanges may be made for land  
15 owned or administered by other state agencies, counties, municipalities ~~and~~  
16 ~~private parties~~ OR THE UNITED STATES OR ITS AGENCIES. Exchanges with the  
17 United States or its agencies shall be in conformance with section 37-722,  
18 but the department shall also follow the procedures ~~for notifying interested~~  
19 ~~parties~~ AND REQUIREMENTS prescribed by ARTICLE X, SECTION 12, CONSTITUTION OF  
20 ARIZONA, subsection C, paragraph ~~5- 7~~ of this section and the classification  
21 procedures in section 37-212.

22 B. The department shall adopt rules governing the application and  
23 procedure for the exchange of state land. Such rules shall include the  
24 following requirements:

25 1. The application shall include:

26 (a) The name, ~~age and residence~~ MAILING ADDRESS, TELEPHONE NUMBER AND  
27 RELEVANT AFFILIATION, IF ANY, of the applicant.

28 (b) A legal description of all lands to be considered for exchange.

29 (c) A list of permanent improvements on the state lands to be  
30 considered for exchange.

31 (d) A list of the leasehold interest in the state land to be  
32 considered for exchange.

33 (e) Accompanying agreements, if any, with the leaseholder or owner of  
34 improvements on the state land to be considered for exchange.

35 2. Payment of fees prescribed for that purpose pursuant to section  
36 37-107.

37 3. Such additional requirements as the department determines to be  
38 necessary. ~~Upon~~ ON DETERMINING THAT THE APPLICATION IS COMPLETE AND CORRECT,  
39 INCLUDING PAYMENT OF THE REQUIRED FEES, AND ON completion of processing and  
40 analyzing the application, and on determining that the proposed exchange  
41 would benefit the applicable trust, the department shall notify and deliver a  
42 report containing details of the proposed exchange to ~~members of the~~  
43 ~~selection board. At the same time the department shall also notify and~~  
44 ~~provide the report to~~ THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE  
45 OF REPRESENTATIVES AND the state legislators from the legislative districts  
46 in which the lands proposed to be exchanged are located.



1 C. Exchanges of state lands are subject to the following requirements:

2 1. The commissioner shall determine by at least two independent  
3 appraisals that the state lands being considered for exchange are of  
4 substantially equal value or of lesser value than the land offered by the  
5 applicant. ~~However, the commissioner may determine that rural lands being~~  
6 ~~exchanged to consolidate land ownership for management purposes require only~~  
7 ~~one independent appraisal. The commissioner may require the applicant to pay~~  
8 ~~the cost of appraisals.~~

9 2. AT LEAST TWO INDEPENDENT ANALYSES OF THE PROPOSED EXCHANGE MUST BE  
10 CONDUCTED TO DETERMINE:

11 (a) THE INCOME TO THE TRUST FROM THE LANDS BEFORE THE EXCHANGE AND THE  
12 PROJECTED INCOME TO THE TRUST AFTER THE EXCHANGE.

13 (b) THE FISCAL IMPACT OF THE EXCHANGE ON EACH COUNTY, CITY OR TOWN AND  
14 SCHOOL DISTRICT IN WHICH ALL THE LANDS INVOLVED IN THE EXCHANGE ARE LOCATED.

15 (c) THE PHYSICAL, ECONOMIC AND NATURAL RESOURCE IMPACTS OF THE  
16 PROPOSED EXCHANGE ON THE SURROUNDING OR DIRECTLY ADJACENT COMMUNITIES AND THE  
17 IMPACTS ON MILITARY FACILITIES, LOCAL LAND USES AND LAND USE PLANS.

18 3. THE COMMISSIONER MAY REQUIRE THE APPLICANT TO PAY THE COST OF THE  
19 INDEPENDENT APPRAISALS AND ANALYSES REQUIRED BY THIS SUBSECTION.

20 ~~2-~~ 4. No county or municipality may be permitted to select lands in  
21 another county or municipality.

22 ~~3-~~ 5. State lands known to contain oil, gases and other hydrocarbon  
23 substances, coal or stone, metals, minerals, fossils and fertilizer, in  
24 paying quantities, and state lands adjoining lands ~~upon~~ ON which there are  
25 producing oil or gas wells, or adjoining lands known to contain any of such  
26 substances in paying quantities shall not be exchanged. These prohibitions  
27 against exchange shall not prevent the exchange of lands where the state does  
28 not own such substances, minerals or metals in the lands to be considered for  
29 exchange.

30 ~~4-~~ 6. All state lands offered for trade pursuant to this section must  
31 be located in the same county as the lands offered to the state. However,  
32 lands in adjoining counties more than three miles outside the corporate  
33 boundaries of incorporated cities and towns having a population of ten  
34 thousand people or less and lands in adjoining counties but more than five  
35 miles outside the corporate boundaries of incorporated cities and towns  
36 having a population in excess of ten thousand people may be exchanged to  
37 facilitate consolidating land ownership if the boards of supervisors of the  
38 counties in which lands are to be exchanged give their prior approval.

39 ~~5-~~ 7. Prior to public notice of a proposed exchange of state lands  
40 for other lands, the department ~~and selection board~~ shall give thirty days'  
41 notice in writing to other interested state agencies, counties,  
42 municipalities, THE MILITARY AFFAIRS COMMISSION ESTABLISHED BY SECTION  
43 26-261, EACH MILITARY FACILITY AT THE ADDRESS ON RECORD AT THE DEPARTMENT and  
44 TO leaseholders on state lands that are ~~or may be affected by the exchange~~ TO  
45 BE EXCHANGED AND ON STATE LANDS THAT ARE ADJACENT TO THE LANDS TO BE  
46 EXCHANGED.

1           ~~6-~~ 8. Before any state land may be considered for exchange under ~~the~~  
2 ~~provisions of~~ this article, the land shall be classified as suitable for such  
3 purposes in accordance with ~~the provisions of~~ section 37-212. Any person  
4 adversely affected by such classification may appeal from the decision as  
5 provided in section 37-215.

6           ~~7-~~ 9. AFTER DETERMINING THAT THE APPLICATION IS COMPLETE AND CORRECT  
7 AND ALL REQUIRED PAYMENTS, APPRAISALS AND ANALYSES HAVE BEEN COMPLETED, the  
8 department shall publish notice of ~~all~~ THE proposed ~~exchanges~~ EXCHANGE in the  
9 same manner and places as is required for the sale of state lands pursuant to  
10 section 37-237, except that the notice shall be published once each week for  
11 ~~four~~ SIX consecutive weeks. The notice shall contain a legal description of  
12 the properties involved and other pertinent terms and conditions of the  
13 exchange. The department shall also schedule ~~a~~ AT LEAST TWO public ~~hearing~~  
14 HEARINGS on the exchange contemplated in the notice. ~~The hearing shall be~~  
15 ~~held at the county seat of the county in which the state lands proposed to be~~  
16 ~~exchanged are located or in the county in which the majority of the state~~  
17 ~~lands is located.~~ ONE HEARING MUST BE HELD AT THE STATE CAPITAL AND ANOTHER  
18 HEARING MUST BE HELD IN A LOCATION OF GENERAL ACCESSIBILITY IN THE PROXIMATE  
19 VICINITY OF THE STATE LANDS BEING EXCHANGED. ~~The hearing shall be held not~~  
20 ~~less than fifteen days prior to the date of the selection board's~~  
21 ~~consideration of the proposed exchange, and~~ Any person may appear and ~~protest~~  
22 COMMENT ON the proposed exchange at that time.

23           10. WITHIN SIXTY DAYS AFTER THE CONCLUSION OF THE LAST HEARING, THE  
24 COMMISSIONER SHALL DETERMINE AND ISSUE A WRITTEN FINDING RECOMMENDING EITHER  
25 THAT THE EXCHANGE BE DENIED OR APPROVED AND SHALL TRANSMIT THE FINDING TO THE  
26 GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF  
27 REPRESENTATIVES AND THE SECRETARY OF STATE.

28           D. EACH EXCHANGE TRANSACTION MUST BE APPROVED BY THE QUALIFIED  
29 ELECTORS OF THIS STATE IN THE FORM OF A REFERENDUM SUBMITTED AND CONDUCTED  
30 PURSUANT TO ARTICLE IV, PART 1, SECTION 1, CONSTITUTION OF ARIZONA, AT THE  
31 NEXT REGULAR GENERAL ELECTION. TO BE APPROVED, THE PROPOSITION MUST RECEIVE  
32 AN AFFIRMATIVE VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS VOTING ON THE  
33 MEASURE.

34           ~~D-~~ E. Lands conveyed to the state under this article shall, ~~upon~~ ON  
35 acceptance of title and recording, be dedicated to the same purpose and  
36 administered under the same laws to which the lands conveyed were subject,  
37 but may be reclassified as provided in section 37-212.

38           F. THIS SECTION APPLIES WITH RESPECT TO THE EXCHANGE OF LANDS HELD IN  
39 TRUST BY THIS STATE PURSUANT TO THE ENABLING ACT AND THE CONSTITUTION OF  
40 ARIZONA AND DOES NOT APPLY WITH RESPECT TO ANY OTHER STATE LAND UNDER THE  
41 JURISDICTION OF THE DEPARTMENT OR THE COMMISSIONER.

42           G. THE PROVISIONS OF THIS SECTION DO NOT DIMINISH OR OTHERWISE AFFECT  
43 THE COMMISSIONER'S FIDUCIARY RESPONSIBILITIES WITH RESPECT TO LANDS HELD IN  
44 TRUST BY THIS STATE AS PROVIDED BY THE ENABLING ACT AND THE CONSTITUTION OF  
45 ARIZONA.

46           H. FOR THE PURPOSES OF THIS SECTION, "MILITARY FACILITIES" INCLUDES:

1           1.   MILITARY AIRPORTS, ANCILLARY MILITARY FACILITIES, MILITARY TRAINING  
2    ROUTES, HIGH NOISE OR ACCIDENT POTENTIAL ZONES AND TERRITORY IN THE VICINITY  
3    AS DEFINED IN SECTION 28-8461.

4           2.   MILITARY RESERVATIONS OR OTHER REAL PROPERTY OWNED BY, LEASED TO,  
5    DESIGNATED FOR, RESERVED TO OR UNDER THE JURISDICTION OF AN ACTIVE UNIT OF  
6    THE UNIFORMED SERVICES OF THE UNITED STATES OR ANY RESERVE OR NATIONAL GUARD  
7    COMPONENT OF THE UNIFORMED SERVICES OF THE UNITED STATES.

8           3.   MILITARY ELECTRONICS RANGES AS DEFINED IN SECTION 9-500.28.

9           4.   MILITARY RESTRICTED AIRSPACE IDENTIFIED PURSUANT TO SECTION 37-102.

10          5.   THE BARRY M. GOLDWATER RANGE AS DESCRIBED IN SECTION 37-620,  
11   SUBSECTION D, PARAGRAPH 3.

12          Sec. 2.   Conditional enactment

13          This act does not become effective unless the Constitution of Arizona  
14   is amended by vote of the people at the next general election to authorize  
15   exchanges of state trust land for other public lands.

APPROVED BY THE GOVERNOR APRIL 17, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2012.