



Land Exchange Update

Western Land Exchange Project
Seattle, Washington

Summer 2003

Research, Advocacy, & Outreach for Land Exchange Policy Reform

Vol. 7, No. 1

WLXP, Kentucky grassroots groups sue on coal-mining land trade

WLXP has joined Kentucky Heartwood, Heartwood, Kentuckians for the Commonwealth and Resource Stewardship Council in suing the Forest Service over the proposed Leslie Resources land trade on eastern Kentucky's Daniel Boone National Forest (DBNF). If the trade goes through, Leslie Resources would use mountaintop removal (MTR) to mine coal on at least one of the two parcels it would acquire from the Forest Service. The trade would also open up additional Leslie lands to MTR mining that cannot currently be surface-mined because of access issues.

You may ask why the *Western* Land Exchange Project has taken an interest in a land trade in a part of the country that hasn't been considered "the West" since Lewis and Clark's expedition. We learned of the trade from WLXP member and Kentucky activist Chris Schimmoeller, and while we focus primarily on the West because of its vast public lands, we also assist grassroots groups across the country.

With this exchange, the Forest Service would trade proponent Leslie Resources two parcels totaling approximately 92 acres at the edge of the DBNF boundary, for a 98-acre private inholding far inside the Forest's boundary. The Forest Service admits the private parcel has no outstanding attributes and faces no development threat, but says the benefit of consolidating ownership outweighs the impacts of MTR (see next article). The Army Corps of Engineers—not normally a vocal critic of MTR mining—disagrees. It says the planned mining would conflict with its management of Buckhorn Lake, a nearby reservoir popular for recreation. To make matters worse, until 2010 a third party would retain rights to extract oil and gas below one of the parcels the FS would acquire.

WLXP appealed the Forest Service's Record of Decision in February, arguing that the agency failed to analyze the possible impacts of MTR mining on both parcels (Leslie Resources claims to have no "current" plans to mine one of the parcels) and failed to analyze water quality impact in Buckhorn Lake. The Forest Service also violated the Federal Land Policy and Management Act (FLPMA) "public interest" requirement, due to the Army Corps' issues.

The Forest Service denied all appeals, and in April we joined the other groups in filing a complaint in the Eastern District of Kentucky federal court. Appalachian Citizens Law Center is representing the plaintiffs in the suit. WLXP staff attorney Chris Krupp is assisting the Center.

Mountaintop Removal Coal Mining

Mountaintop removal/valley fill mining is an incredibly destructive form of strip mining used to take coal out of the Appalachian Mountains of southern West Virginia and eastern Kentucky, where it is often found in thin seams too narrow to be extracted by traditional deep mining methods. The MTR mining process begins with razing the hardwood forests and stripping away the topsoil. The mountaintop is then blasted off with explosives. Draglines—huge digging machines up to 20 stories high, capable of moving 130 tons of rock in a single scoop—are brought in to scoop the coal out of the decapitated mountain, while the former mountaintop, or "overburden," is deposited in an adjacent river/creek valley as "fill."

MTR mining has permanently destroyed more than 500 square miles of forest in West Virginia alone. More than 1,000 miles of Appalachian headwater



—*Mountaintop removal continued*

streams have likewise been destroyed—forever buried by valley fills.

MTR is devastating in other ways. Separating and cleaning the coal produces liquid waste containing arsenic, mercury and other carcinogens that is stored in impoundments that frequently leak and sometimes burst. In 2000, 306 million gallons of liquid waste from the Big Branch Impoundment in Martin County, Kentucky, spilled into Coldwater and Wolf Creeks and then the Big Sandy and Ohio Rivers. Called one of the worst environmental disasters in the Southeastern US, the spill killed all life in Wolf Creek and the upper portion of Coldwater Creek and left more than 27,000 people without drinking water.



Photo: Vivian Stockman/OVEC

The devastation of MTR mining.

WLXP protest blocks BLM handout

Last fall, WLXP filed a protest against the BLM's St. George, Utah office for a decision to unnecessarily compensate Western Resources Management (WRM), a company with whom BLM was exchanging land. Shortly before BLM was to issue its decision on the land exchange, it amended its agreement with the company, proposing to compensate WRM for more than \$14,000 it had spent preparing for the trade. According to BLM, WRM had incurred these costs in "the assemblage of lands for the exchange."

The original exchange agreement already had the agency paying more than \$34,000 in exchange costs, and WRM only \$7,500. BLM land exchange policy dictates that the agency and the private party are to split costs evenly, so it escaped us why taxpayers should reimburse WRM in excess of its underpayment.

In cases where compensation is proposed, the BLM must meet five "public interest" criteria, which the agency failed to do in this case. In response to WLXP's protest, BLM asked that we withdraw our challenge, lest the exchange miss its closing deadline and fall apart. We offered to withdraw the protest if the 14K were dropped from the agreement. BLM's nail-biting over the delicacy of the issue was unwarranted, as WRM quickly agreed to our terms. Apparently the company was capable of acknowledging a rip-off the BLM pretended not to recognize.

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The *Land Exchange Update* is published by the Western Land Exchange Project, a non-profit charitable organization conducting research, outreach, and advocacy for the reform of federal land exchange policy.

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San Rafael debacle unearths more corruption

BLM's resistance to reform is breaking

For nearly 5 years, we've had the privilege to work with Kent Wilkinson, a steadfastly honest civil servant who is a senior appraiser in the Utah State Office of the BLM. Beginning in 1998, Kent and now-retired Chief Appraiser Jack MacDonald provided us with invaluable information on land exchanges between the State of Utah and the BLM, particularly on the alarming under-valuing of federal lands being exchanged to the state (See past issues of *Land Exchange Update*, all available on our website). Kent and Jack have also patiently educated us in the complexities of federal land appraisal. Since Jack's well-earned retirement, Kent has continued to risk his career and personal comfort to funnel important information to us and to our friends at Public Employees for Environmental Responsibility (PEER), who have protected Kent's interests as a federal whistleblower.

At last, after enduring relentless harassment and witnessing constant malfeasance within his own agency, Kent Wilkinson's vindication is taking shape.

In our last newsletter, we reported that Kent was instrumental in exposing the \$100 million rip-off known as the San Rafael Swell Land Exchange, and that a whistleblower disclosure filed on his behalf by PEER was awaiting response by the Department of the Interior. Kent had submitted evidence that political operatives in Interior had manipulated land and mineral value data to make Congress believe the proposed legislative exchange between the U.S. and Utah was equal.

While the San Rafael story was making front-page news in Utah and Washington, D.C., the Appraisal Foundation, a quasi-governmental body that oversees appraisal standards, issued a damning report on the BLM's land valuation practices and pointed deftly to the political contamination of the San Rafael appraisals.

Notwithstanding the firestorm of media coverage of the debacle (see our In the Media

web page), the San Rafael bill was rammed through the House of Representatives last October, although it failed to move in the Senate.

These events followed a series of scandals that had beset the BLM's exchange program for years, with little result. Long inured to the BLM's entrenchment and institutional lack of shame, the last thing we expected was a move in the right direction. But beginning in late 2002, the agency started budging.

Out went top appraiser Dave Cavanaugh, whose resignation WLXP and PEER had been calling for since 2000. Ray Brady, the manager of the agency's realty program, was also moved out. Interior then formed an interagency Work Group to examine possible reforms in both appraisal and land exchange practices. The group consisted of highly qualified people, some of noted integrity.

One needed change was a fundamental restructuring of the BLM appraisal organization that would shield appraisers from political pressure by managers who wanted to get land deals through quickly, and might care less about whether the public was getting the short end. Kent Wilkinson had faced and resisted such pressure—but so had appraisers in other Interior agencies, such as the Park Service, Bureau of Reclamation, and Fish & Wildlife Service. In cases where management won out, the public lost through land trades that low-balled public land value, overvalued private land, or both.

When the Work Group issued its recommendations in May 2003, the most significant one was to create a new department-wide Interior appraisal office, which would ideally be insulated from the local politics that too often drive federal land deals. This and other Work Group ideas—some excellent, some falling short—are now under deliberation by a task force in Interior, which is scheduled to create the new system by September 30, 2003. WLXP and PEER have watched the reform efforts very closely, submitted copious input, and will continue to monitor the outcome.

[Whistleblowers] need to be treated with the utmost respect for their actions and not be treated like skunks at a picnic.

—Sen. Chuck Grassley (R-IA) in letter to Gale Norton



You'll find a list of most of our current projects on our website at www.westlx.org under "What We Do."

In the meantime, Kent Wilkinson's claims about the San Rafael land exchange have been verified at, shall we say, "the highest levels." On July 23, Interior Secretary Gale Norton released the results of an internal investigation of the Swell deal conducted by her department's Inspector General (IG) as a partial response to Wilkinson's disclosure. The report describes the concerted effort among Interior officials—apparently as far up the chain as Assistant Secretary J. Steven Griles—to deceive Congress about the supposed equity of an exchange the perpetrators knew was unfair to the public. Senator Chuck Grassley, Chair of the Senate Finance Committee, dispatched a letter to Norton, urging her to hold the miscreants accountable and protect whistleblowers.

As an offshoot of the IG report, BLM Director Kathleen Clarke is now under investigation to determine what part she may have played in the scheme. Clarke came to the BLM in 2000 from her position as head of the Utah Department of Natural Resources, before which she had worked for Utah Governor Leavitt and now-retired Utah Rep. Jim Hansen. Clarke was to have recused herself from the Swell deal, but may have been involved.

Simultaneously with the report, Secretary Norton released a letter to Utah Governor Leavitt confirming that Interior and the State of Utah have withdrawn from their agreement to do the land trade. The San Rafael deal is dead, at least for now. What remains to be seen is how and whether the plotters in Interior will be punished, and how Wilkinson's whistleblower case will be resolved.

Here's an idea: how about promoting Kent Wilkinson to a high position in the new Interior appraisal department? As Kent's representatives, PEER is pushing for just that result, reasoning that this is a rare opportunity to put a whistleblower in charge of the reforms he has worked so hard to bring about. To be sure, those of us who are plagued by appraisal nightmares would sleep more soundly if the value put on our public land were under Wilkinson's watchful eye.

Idaho conservation groups using land trades, disposals to "buy" wilderness

The Western Land Exchange Project and 34 other environmental organizations from across the country are closely watching two Idaho land deals being promoted by Boise conservation groups. In early July, the 35 groups issued a joint letter of concern to Idaho Conservation League (ICL), the Wilderness Society (TWS), and the Sierra Club regarding "consensus" wilderness proposals for the Owyhee canyonlands, southwest of Boise, and for the Boulder and White Clouds mountains in central Idaho.

The Owyhee Initiative is under negotiation between conservation groups, ranchers, right-wing county commissioners, and other public land users. Participants have been working on an agreement under which part of the canyonlands would be designated wilderness in exchange for concessions to the ranching industry and off-road vehicle enthusiasts. Senator Mike Crapo (R-ID) would sponsor a bill to ratify this agreement.

Apparently, about 450,000 acres in the Owyhees would be designated wilderness in the as-yet unseen bill, but up to 250,000 acres now protected as Wilderness Study Areas would be "released" to more intensive uses, including grazing and related livestock developments. Ranchers and others are also pushing for special provisions that would allow damaging uses in the new "wilderness" areas designated in the proposal.

Land trades have been discussed, as has the idea of giving public land to ranchers in exchange for conservation easements, grazing permits, or even simple access routes. WLXP opposes legislation that includes land trades, because it invariably bypasses environmental laws that would normally apply to the exchanges. The idea of trading land for less-than-land, however, is anathema.



The *Boulder-White Clouds* project—under discussion between the ICL, TWS, the Nature Conservancy, and anti-environmental interests—would create a wilderness area in the Boulder, White Clouds, and Pioneer mountains in central Idaho, but at a heavy price. One precedent-setting provision under consideration is the *outright conveyance* of up to 16,000 acres of federal land to Custer County, Idaho to bolster its failing economy. The County would sell the formerly public land to facilitate second-home development. WLXP and others loudly protested the land disposal, and ICL, at least, has now denounced that part of the deal—although that is unlikely to be enough to keep it out of the bill.

A particularly objectionable aspect of both of these deals is their secretive nature. Conservationists engaged in the negotiations have kept the details to themselves, allowing for little public scrutiny and virtually no public participation in the projects.

The Owyhee and B-WC proposals exemplify a growing tendency among environmental groups to take a “flexible” stance on their

issues. They often make concessions that can dilute or even negate the potential benefit of their work. Wilderness advocates recently pushed through projects in Oregon and Nevada that were based on the idea that wilderness must be “paid for” through concessions—including land giveaways—to anti-wilderness interests.

In actively promoting the bypass of environmental laws, keeping the public at arm’s length, and “buying” wilderness, these groups are lowering the bar for future wilderness legislation. If the Owyhee and B-WC go through, it will be more difficult, if not impossible, to obtain wilderness protection without paying a high price for it. Worse, the price the public pays is more likely to come in the form of yet more public land that consensus groups consider “disposable.”

Laying another water pipeline in the Owyhees to expand the grazed area even further. Ranchers favor the Owyhee Initiative because it will “release” many areas that are currently off limits to pipelines, roads, and other developments. Photo: Katie Fite



The Reading Room of our website, www.westlx.org, features project news, press coverage, and access to our newsletters and publications.

BLM still pushing bad trade for power project

The BLM's Ely, Nevada Field Office has released the Final EIS for the Toquop Energy Project and Land Exchange. The FEIS identifies the agency's preferred alternative as exchanging up to 640 acres of public land in Lincoln County, southeastern Nevada, for 640 acres of land in the Pah Rah Mountains east of Reno, Nevada. The private party, Nevada Land and Resources Company (NLRC), is the largest private landowner in the state. NLRC subsidiary Toquop Energy would construct and operate a water-cooled electric power generation plant on the land NLRC would acquire in the exchange. Vidler Water Company (a sister company of NLRC), in a public-private partnership with Lincoln County, would supply the estimated 7,000 acre-feet of water needed annually for cooling purposes.

Last year, WLXP discovered that the Bureau of Land Management allowed two NLRC employees to work in the agency's Carson City office, with full access to all BLM land files, to facilitate trades between their company and the agency. BLM apparently abandoned this agreement after the *New York Times* reported on it last summer.

The Toquop trade is clearly aimed at the interests of NLRC/Vidler, with no clear benefit to the public. The land NLRC would acquire is conveniently located at the junction of a natural gas pipeline and an electrical transmission line. The power plant made possible by the exchange would also provide NLRC with a "beneficial use,"

required to obtain water rights in the area.

Conversely, there is little public benefit in acquiring the private parcel, apparently unremarkable from a conservation standpoint. In fact, the Nevada Department of Conservation and Natural Resources has chastised BLM for overstating the desirability of the Pah Rah parcel, noting that land adjacent to the private parcel is rapidly being developed, two of the three sage grouse leks (courting grounds) touted by BLM have been abandoned, and the parcel is "of little long-term value to wildlife."

The Toquop Project was first proposed at the height of California's so-called electrical power crisis, when numerous new plants were proposed for the western US. Since then, many have been cancelled or delayed. Cogentrix Energy—the original owner of Toquop Energy—was to purchase or lease the Toquop land (and purchase Vidler/Lincoln water) for the power plant. When Cogentrix backed out, NLRC purchased Toquop Energy, albeit with no previous experience with power plants.

The proposal is also notable for the BLM's selection of a water-cooled, rather than air-cooled plant as the preferred alternative—obviously at NLRC's behest—and its claim that an air-cooled plant was not feasible for the region's climate. After being reminded that air-cooled plants are already operating in the region, BLM has now analyzed, but still does not support, an air-cooled alternative.

Have you visited www.westlx.org lately?

We've had lots of positive feedback on our newly designed website. If you haven't visited yet, it's time you did so. It is simple, direct, and very aesthetically pleasing. You can join our membership, order our publications, read back issues of our newsletter, sign up to receive email alerts, and read topical newspaper articles that go back to 1998. Every two weeks we update our

Project News. We provide links to the latest news **In the Media.** Through **Essential Links** you can find case studies, land exchange laws, and federal agency information. Need to know if there's a bad land exchange planned in your neighborhood? See our **Take Action** page to learn, step by step, how to take effective action to protect your public lands!

—LTC



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Eleven-plus states, millions of acres...and a staff of three.

There simply is no other organization that does the work WLXP does to oversee federal land deals in the interests of citizens and the land. Our scrappy, strategic approach has worked! But like many non-profits, we're feeling the pinch of decreased financial support, and your contribution is more important than ever. YOU are the public in "public lands." Help us keep them in public hands!

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By the way...

The **Martin's Cove Land Transfer Act**, which would have allowed the sale of about 900 acres of BLM land in Wyoming to the Mormon Church, has languished. Utah Rep. Jim Hansen's retirement from Congress may have taken some of the momentum out of the bill, but we expect to see it again. The Church wants to control the land, which has historical significance for Mormons, but also encompasses a segment of the Oregon & California Trail.

Ex-Interior Secretary Bruce Babbitt hasn't lost his touch as the consummate land dealer. Babbitt is working to facilitate land exchange legislation that would give Arizona developer Don Diamond more land to develop in exchange for inholdings in the Ironwood National Monument. Environmentalists have complained the bill would sidestep environmental laws, but Babbitt's

fine with that. Last year, we found Babbitt registered as a lobbyist for land shark Jim Doyle, who has been trying to squeeze the US government for tens of millions of dollars for some desert tortoise habitat he owns in southwest Utah.

WLXP is working with the ACLU, PEER, and others to oppose the protection of a Christian cross on public land in the Mojave National Preserve. A 2002 court decision called for removal of the cross because it violates the First Amendment's **separation of church and state**. Rep. Jerry Lewis (R-CA) is threatening legislation to privatize the public land the cross sits on so that it can remain. The issue was brought to light by Frank Buono, an ex-National Park Service employee who keeps a sharp eye on Park Service projects, including land trades.



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