



Land Exchange Update

Western Land Exchange Project
Seattle, Washington

Research, Advocacy, and Outreach
for Land Exchange Policy Reform

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Groups Sue Forest Service on Crown Pacific Exchange

On October 1, 1998, the Western Land Exchange Project, Central Oregon Forest Issues Committee, and Wild Wilderness filed suit against the US Forest Service to halt the Crown Pacific Land Exchange in Oregon's Deschutes, Fremont, and Winema national forests. The Oregon Chapter of the Sierra Club is currently filing a motion to join as co-plaintiff. Plaintiffs are represented by attorney Marianne Dugan of the Western Environmental Law Center in Eugene, Oregon.

The project entails the trade of about 37,000 acres of corporate inholdings within the Forests for about 32,000 acres of public land (see "Bending in the Corporate Wind," Land Exchange Update, Winter 1998).

The complaint, filed in the Federal District Court in Portland, charges the Forest Service with numerous violations of the National Environmental Policy Act (NEPA), including inadequate disclosure and analysis of environmental impacts, failure to address cumulative impacts, and inadequate range of alternatives. The agency also violated the Federal Land Policy and Management Act (FLPMA) requirement that the public interest be considered fully in any decision to implement a land exchange.

"There's a big emphasis with the public on old growth. It's not that we have a big concern about it."

Susan Skakel,
Deschutes National Forest

In eastern Oregon and Washington, the Forest Service is currently operating under the Eastside Screens—interim rules for eastside forest management pending finalization of the Interior Columbia Basin Ecosystem Management Project

(ICBEMP). The Screens call for no net loss of old growth, yet the CP swap would result in a net loss to the public of about 3,300 acres of old growth.

One member of the agency's environmental team for the project told the Seattle Times, "There's a big emphasis with the public on old growth. It's not that we have a big concern about it."

Current management calls for a reduction in road density in national forests, but some of the Crown lands have far higher road densities than the public lands. As usual, the cost to decommission these roads is not analyzed in the EIS or accounted for in the valuation for the trade. Much of the corporate forest the public would acquire has been heavily cut over, and the EIS offers virtually no information on the present condition or potential productivity of the private lands.

Senior officials appeared early on to treat the project as a done deal, but Forest Service records reveal that the project stirred considerable controversy among line staff within the agency. Some questioned the wisdom of acquiring damaged and roaded corporate lands; others complained that the EIS—put together by a consultant selected and paid by Crown Pacific—was fast-tracked and poorly done.

Plaintiffs have asked for a supplemental EIS and a full analysis of whether the exchange would serve the public interest. A hearing is set for February 8 in Portland. ☛

Plum Creek Land Deal Passes as Rider

On October 21, 1998, the five-month battle against legislation of Plum Creek Timber Company's I-90 land exchange came to an end with passage of the Omnibus Appropriations bill. Originally introduced as stand-alone legislation, the I-90 exchange joined a host of anti-environmental riders passed through the budget bill in the last hours of the extended legislative session.

Last June, Senator Slade Gorton and Congressman Doc Hastings introduced bills to authorize the land trade when Plum Creek (PCTC) became impatient with the normal public process for the exchange. (See "Plum Creek Says 'Jump', Gorton Says 'How High?'" Land Exchange Update, Late Summer 1998).

In July, Western Land Exchange Project director Janine Baeloch testified before House and Senate subcommittees in opposition to the exchange. Included in her testimony was a letter signed by 25 environmental organizations against legislating the swap. Also testifying were Senator Patty Murray, the Forest Service, Sierra Club Cascade Checkerboard Project director Charlie Raines, and representatives of the Mountaineers and the Alpine Lakes Protection Society (ALPS). While Murray et al. did not oppose the swap, they did express opposition to legislating the exchange.

Deal-making time

By September, however, the political ground around the trade began to shift mightily. In the frenzy to pass a budget, and with no time to move individual bills, Congress started tacking anti-environmental legislation on as "riders" on must-pass spending bills.

As the I-90 exchange appeared more and more likely to become a rider, Senator Murray's office suddenly revealed an interest in passing an "improved" land exchange bill. Murray was backed by the Sierra Club, Mountaineers, and ALPS, despite the groups' earlier opposition to the legislation.

The Clinton Administration strongly opposed the legislation/rider, on the grounds that it would set bad precedent and would effectively waive legal challenge of the exchange. This opposition eroded as Plum Creek threatened to walk away altogether and start cutting trees on their exchange lands.

The Sierra Club's support for the rider further undercut the Administration's position.

In the end, the exchange entailed the trade of about 17,000 acres of public land—reduced from the original 40,000 acres proposed—for about 60,000 acres of PCTC holdings. The bill called for a 15,000-acre Wilderness Study Area adjacent to the Alpine Lakes Wilderness and designated a Special Management Area on Kelly Butte.

The bill established a special appraisal process for the lands, assuming less regulation for endangered species and thus higher value. A "summary" of the appraisal is to be made available for public scrutiny at the Wenatchee National Forest for 30 to 45 days prior to the exchange of deeds.

The bill did not waive the NEPA appeals process, and the Forest Service will issue a Final EIS for the project in late January or early February. The right to appeal the EIS is thus nominally protected, but both the tight language of the bill and authorization of the exchange by Congress effectively shield it from any legal challenge.

The bill ordered a study for a Phase II exchange that would focus on acquiring other desirable PCTC lands. The Western Land Exchange Project will track plans for a second swap, and will oppose any effort to take another trade through Congress.☹

"...passage of this bill would send a message all across the checkerboards—and indeed, to would-be land traders across the West—that if the normal process is too burdensome, private parties to exchanges can go directly to Congress and leave citizens in the dust."

WLXP testimony on the I-90 Land Exchange before the House Subcommittee on Forests and Forest

ACT ON THIS!

You can strike a blow against bad land exchanges by supporting purchase of land through the Land & Water Conservation Fund (LWCF). The fund was created in 1964 for the purpose of acquiring lands for the public, but has been chronically under-appropriated by Congress. Each year, about \$900 million are generated to the fund through offshore oil and gas leases, yet the largest appropriation by far in twenty years was last year's \$699 million, of which only \$200 million has been released.

This year, the Clinton Administration is asking for **one billion** dollars for its Lands Legacy Initiative. Encompassing full funding of the LWCF, the initiative includes \$413 million for federal land acquisition and \$588 million in matching funds to state and local governments for open space.

We need LWCF! Full use of the fund could stop the sacrifice of public land in ill-conceived exchanges!

Please contact your congressional representatives and ask them to support the full one-billion dollar appropriation for LWCF. Letters to the editor are also effective.

Land Exchange Project Calls for Moratorium

On September 27, 1998, the Western Land Exchange Project asked Forest Service Chief Mike Dombeck to issue a moratorium on land exchanges within his agency. In a letter to Dombeck, WLXP Director Janine Blaeloch listed several issues of concern, including the agency's propensity for trading intact forest to timber companies; public acquisition of hundreds of miles of private logging roads; lack of any programmatic or long-term planning in the exchange program; faulty appraisals that favor private traders, and the agency's refusal to make appraisal information available to the public.

On October 15, WLXP received a response from Robert Joslin, Deputy Chief. "We do not agree with your position on imposing a moratorium on land exchanges. We believe that a more appropriate action would be...strengthening land exchange policies and procedures to improve our use of this tool."

Joslin stated that the Forest Service and BLM are forming National Land Exchange teams to review the programs and recommend ways to improve them (see next page).

As we stated in our letter to Chief Dombeck, the agency's recognition that improvements are needed is a step in the right direction, "[but it will not] ameliorate the problems with land exchanges already in the pipeline, involving tens of thousands of acres of our public lands and millions of dollars in potential taxpayer losses."

The Western Land Exchange Project will continue to call for a total moratorium on exchanges until swaps in progress are suspended to ensure they comply with laws and regulations, and broad reforms are put into place.

Inspector General Promises Expanded Investigation of Swaps

On October 8, 1998, the USDA's Inspector General announced that his office would expand its investigation of the Forest Service's exchange program. Roger Viadero told the Seattle Times that in the spring of 1999 his office will conclude a wide-ranging audit of trades in California, Arizona, and New Mexico, and will then consider focusing on exchanges in the Northwest.

Viadero said that investigations would look most closely at the appraisal process, at questionable land-management priorities, and lack of trained staff. "Many of these trades are a personal affront to every American," Viadero said.

He acknowledged that the Forest Service has begun to institute changes in the program, but says he has "not been overwhelmed" with their new controls.

WLXP will meet with Viadero early this spring to discuss needed reforms and specific problem areas.

Many thanks to the **Muckleshoot
Indian Tribe** and the **Deer Creek
Foundation** for their
generous support

Forest Service Sets Up Oversight Team

In response to increasing problems with land swaps, the US Forest Service has formed a National Landownership Adjustment Team to oversee the agency's exchange program. The team will review pending and future exchange proposals and formulate recommendations for improving the program.

"Many of these trades are a personal affront to every American."

Roger Viadero, USDA Inspector General

Interim team leader Mike Williams of USFS' national office says that the team's consultations at the regional and national forest levels have already resulted in several exchange proposals being dropped. Williams says that the agency wants to concentrate on exchanges that clearly have "the greatest amount of public benefit."

The team will review all land exchange proposals involving federal lands worth \$500,000 or more. They have created a detailed schedule of procedures to be used in all land trades, including team review at two stages of the exchange process. The team is also requiring an initial feasibility analysis for each swap proposal.

SEATTLE TIMES RUNS INVESTIGATIVE SERIES

From September 27 through October 1, 1998 the Seattle Times ran "Trading Away the West", a major investigative story on land swaps almost nine months in the writing. The series covered a broad range of individual projects, including Northwest forest exchanges, mine-related swaps in the Southwest, and legislated trades in Arkansas and Utah.

As a result of their work, Times reporters Deborah Nelson, Jim Simon, Eric Nalder, and Danny Westneat and editor David Boardman were given the John B. Oakes Award for "newspaper and magazine journalism that makes an exceptional contribution to public understanding of contemporary environmental issues."

Among the issues the Times scrutinized were the highly subjective appraisal process used for land trades; political pressure within and upon the agencies to complete trades; the roles of private and non-profit exchange facilitators, and multi-million dollar taxpayer losses that appear to be occurring with great frequency.

Huckleberry trade was illegal

One particularly disturbing revelation in the story regarded incompetence in the appraisal for the Huckleberry (Weyerhaeuser) exchange in Washington.

In 1997, Pilchuck Audubon Society and the Muckleshoot Indian Tribe tried unsuccessfully to stop the Huckleberry trade in court, and among the plaintiffs' issues was the appearance of unequal value in the swap.

Analysis by the Times and several forestry experts showed that in fact the cut-over Weyerhaeuser lands acquired by the public were overvalued by as much as \$10 million, resulting in an unequal (and thus illegal) exchange. Inflated discount rates applied to the federal timber further benefited the company.

Reprints of the Times series may be obtained by sending \$2.00 postage & handling to "Trading Away the West Reprints", Seattle Times, PO Box 70, Seattle, WA, 98111-0070—or through the Western Land Exchange Project. You can also visit our web site (www.westlx.org) and follow the link to the story!

WLXP Requests Audits on 4 Idaho Swaps

The Western Land Exchange Project recently submitted a request to the USDA Inspector General for an audit on **three land exchanges in the Boise National Forest**. All of the swaps—of which two were completed and one was dropped by the private party—were with prominent Idaho businessman Tom Nicholson. The Nicholson #3 exchange, discussed in previous issues of Land Exchange Update, was cancelled by Nicholson last summer.

WLXP submitted a Freedom of Information Act request for records on all three of the exchanges. The records were reviewed by members Jim Olson and Ken Vargason of Idaho, who have found reason to believe the exchanges were improperly handled and were not in the public interest. Among the issues raised in review of the files were:

- Poor (or no) environmental analysis;
- Possible conflict of interest within the Forest Service;
- Creation of a split estate on federal land, including mineral and water rights;

- Planned public acquisition of lands that Forest Service documents indicated had no value to the public.



The USFS planned to acquire this campground and burned-over hillside in the Nicholson #3 exchange. Photo: WLXP

While the exchanges are now completed or defunct, WLXP believes it is important to determine whether malfeasance and/or incompetence were at play in these projects. There is evidence of political pressure behind the trades—for Nicholson #2, a required congressional oversight review was waived at the request of Idaho Representative Mike Crapo. Nicholson #3 may be proposed again, as the private lands were acquired specifically for the purpose of trading them to the Forest Service.

We also requested an audit from the Department of Interior’s Inspector General on a **Bureau of Reclamation land swap** in Idaho called the Jasper Exchange. The private party would get 55 acres of public land plus a permanent easement to other properties, access to Cascade Reservoir, and access

to an airstrip. The public would get about 278 acres of agricultural easement, of which 239.33 acres are below the high water line, and an easement for road access to another parcel of land.

Among the 11 issues WLXP brought to the attention of the Inspector General were:

- That the Bureau had circumvented NEPA, signing an exchange agreement with the Jaspers with no environmental analysis or public process. It was only after correspondence from WLXP that the Bureau gained “a better understanding of the details of the exchange” and initiated an environmental review.
- That the 3-year-old appraisal used for the exchange did not consider the value of residential development on the 55 acres to be acquired by the Jaspers—and thus did not consider “highest and best use,” as required under appraisal regulations.

WLXP encouraged the Inspector General to expand the scope of his investigation beyond the Jasper exchange to discover whether this project is indicative of Bureau-wide problems with land exchange procedure. The Bureau is currently conducting the overdue NEPA process and will issue an Environmental Assessment this winter. 🐻

News from all over the place

Biggest trade ever

On January 8, the State of Utah and the Department of the Interior completed the biggest land exchange in U.S. history. The trade was designed to deal with 377,000 acres of Utah school trust lands that lie within federal parks and monuments. In exchange for the school trust inholdings and mineral rights on about 454,000 acres, the feds gave Utah \$50 million, \$13 million in future coal revenues, and 153,000 acres of resource-rich land elsewhere in the state.

Interior Secretary Babbitt was heard to joke that the state was getting such a good deal, he should fire members of his staff who negotiated the deal....

Congress authorizes huge BLM land sale to subsidize development

For several years, Las Vegas has been the fastest-growing metropolitan area in the US. The Bureau of Land Management (BLM) has been offloading thousands of acres it manages near the city to developers in exchange for private inholdings in other parts of the state. But recent Department of Interior investigations have revealed multi-million dollar taxpayer losses in these trades.

Believing that land sales would bring better value than exchanges, former Nevada Rep. John Ensign introduced the Southern Nevada Public Lands Management Act, which passed this year as Public Law 105-263. The law allows the BLM to *sell* about 27,000 acres it manages in the Las Vegas Valley.

Las Vegas faces a critical water problem and classic sprawl, but has no growth management regulations. Much of the area's growth has been in the form of retirement communities and golf courses.

The bill subsidizes continued development by allocating 15 percent of the sale proceeds to local government for water supply infrastructure and schools. The remaining 85 percent of proceeds will be used by the BLM to purchase open space and environmentally sensitive lands around Nevada.

All in all, the BLM manages about 55,000 acres around the city of Las Vegas that are earmarked for eventual disposal through sale or exchange.

BLM-Phelps Dodge propose land exchange/mine-expansion project

In Safford, Arizona, the BLM proposes to trade about 17,000 acres for public land for less than 4,000 acres of private inholdings offered by mining conglomerate Phelps Dodge (PD).

PD has mineral claims on the federal land, and under the 1872 Mining Law may extract copper from those claims without acquiring the land. However, outright acquisition of the federal land would allow PD to mine under less-restrictive state regulations and the BLM would lose land-management jurisdiction over the mine area.

The Southwest Center for Biological Diversity and the Western Land Exchange Project filed joint comments in opposition to the exchange as well as the mining operation. The Dos Pobres/San Juan Project would require huge amounts of surface and ground water, impacting flows in the Gila River and associated endangered species.

The questionable appraisal process gives PD more than 4 times as much acreage as the public, while copper in the mining area is expected to yield hundreds of millions of dollars in profits to PD. WLXP has filed a Freedom of Information Act request for appraisal data.

We also criticize the BLM for touting the ecological value of many of the parcels it will obtain in the trade while declaring its intent to allow continued grazing on those lands.

West Virginia treasure imperiled

Blackwater Canyon is legendary among West Virginia recreationists. While under the ownership of Allegheny Power, it was always open to citizens for hiking, rafting, and camping. But in 1997, the power company sold 3,000 acres in the canyon to Allegheny Wood Products (AWP). AWP is planning to log on about 1,600 acres and there are signs on the ground that condo development is imminent.

Local activists were appalled to see the canyon in danger, and even federal officials recognized the ecological and social significance of Blackwater Canyon. For about a year, negotiations have been underway for the Monongahela National Forest to swap public land to AWP for about 675 acres in the canyon. Activists from the WV Highlands Conservancy and Heartwood want to see the whole canyon safe, and they've promoted purchase as an alternative to a land swap. They have asked Congress to add Blackwater Canyon to the National Park system and have also sued AWP and the US Fish & Wildlife Service for failure to protect endangered species in the canyon.

In early January, AWP owner John Crites pulled out of the land exchange deal, saying that his company and the Forest Service were "millions of dollars apart" regarding the land values involved.

Conservancy members expressed relief at the scrapping of the exchange, saying the way is now clear for them to pursue the better deal—National Park status for Blackwater Canyon.

Thanks to new or renewing members Kentucky Heartwood, WA Dept. of Natural Resources, Deb and Garth Ferber, Harah Frost, and Dave Atcheson. For generous contributions, we thank *members-for-life* Howard Paine and Mark Drake. Jim and Linda Brousseau have given special support. Andy Ryan gave critical media guidance. Joann Blalock donated badly-needed computer equipment. Jill Sheldon at the Center for Environmental Law & Policy has been a real friend to the Project. Thanks, Kristine Cunningham, for help with our database and volunteer Rebecca Rundquist for your FOIA work!

Land Exchange Update is a publication of 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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NOTE NEW CONTACT INFO:

The US West strike in the fall caused some snafus in the assignment of our phone lines, and lines were changed after our last newsletter went out. (Some poor folks are still talking to our fax machine). The info in the box above is correct.

Program Coordinator Beth Fries left the Western Land Exchange Project in September to pursue other work. In addition to managing the office, Beth built our database of land exchanges and did copious research. Notably, her work on the Nicholson and Jasper exchanges laid the foundation for our audit requests on those projects. Thank you, Beth, and best of luck!

In December, we were joined by new **Program Coordinator Joe Cunningham**. Joe worked for five years as Legislative Assistant to Washington State House Minority Leader Marlin Appelwick and was research Director for a U.S Senate campaign.

Joe is a few credits shy of a Master's degree in Public Administration from Seattle University and has a strong commitment to environmental issues and grassroots advocacy. In addition to administrative duties, he will develop WLXP's funding base and membership and assist Janine in policy work. We will surely benefit from Joe's political savvy and wry humor.

New WLXP Web Site ! !

Thanks to consultant *non-pareil* Andy Ryan, we finally have a web site. Please visit us at <http://www.westlx.org>. Keep in mind that Joe and Janine are rank amateurs at web site editing and maintenance. Andy gets credit for design, fixes, and hand-holding, but please blame *us* for any flaws, as we enter this new territory.

An Unabashed Plea for Support from Joe

In the few weeks that I have worked as WLXP's Program Coordinator, I've been amazed at how much a small organization can accomplish. In its short existence, WLXP's efforts have brought a huge increase in public awareness of the land exchange issue. Media interest has been steady. Pressure for reform is building within land-management agencies.

In addition to our outreach and advocacy work, we have assisted dozens of groups in their efforts to respond to bad land swaps, and are building a network of land-exchange watchdogs in 11 states.

But to continue our uncompromising fight for public lands and against the corporate land grab, we need your membership and your financial support.

Your tax-deductible donation helps fuel the fight.

Your membership gives us the legal standing crucial to our defense of public lands across the West.

PLEASE JOIN NOW!!

“What are they doing fooling around with these properties? I don't know why they are having so much trouble. It doesn't seem to me that we're dealing with rocket science, here.”

USDA Inspector General Roger Viadero, on Forest Service land exchanges

Without your membership, we will never feel *quite whole*...

Please complete this form and return it with your tax-deductible payment. Checks should be made payable to the **Western Land Exchange Project**.

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regular \$25 _____ student/optional low rate \$15 _____ contributing \$100 _____

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