Policy Analysis Group – College of Natural Resources

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Public Land Exchanges:

Benefits, Challenges, and Potential for Idaho

by

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Role and Mission. The Idaho Legislature created the Policy Analysis Group (or "PAG") in 1989 as a way for the University of Idaho to provide timely, scientific and objective data and analysis, and analytical and information services, on resource and land use questions of general interest to the people of Idaho. The PAG is a unit of the College of Natural Resources Experiment Station, administered by William J. McLaughlin, Director, and Dean, College of Natural Resources.

PAG Reports. This is the twenty-ninth report of the Policy Analysis Group (see inside cover). The PAG is required by law to report the findings of all its work, whether tentative or conclusive, and make them freely available. PAG reports are primarily policy education documents, as one would expect from a state university program funded by legislative appropriation. The PAG identifies and analyzes scientific and institutional problems associated with natural resource policy issues. In keeping with the PAG's mandate, several alternative policy options are developed and their potential benefits and detrimental effects are analyzed. As an operational policy the PAG does not recommend an alternative.

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Executive Summary

Idaho shares a land ownership legacy with many western states—a pattern of intermingled public and privately owned lands, often described as a "checkerboard." The legacy has left public land management agencies striving to find more efficient and effective ways to accomplish a diverse set of social, economic and biological mandates and objectives. In many cases a different land ownership pattern would help them better accomplish their goals. Public land management agencies have two options to reconfigure land ownership patterns: buy and sell land, or engage in land exchanges.

The objectives of this report are to explain land exchanges, examine their benefits and challenges, provide case examples, and present options for overcoming challenges associated with land exchanges. The report analyzes land exchanges by replying to a series of focus questions. They are:

- What are land exchanges?
- How did the current land ownership pattern develop?
- How have land exchanges worked in Idaho?
- What are the land management objectives and missions of agencies in Idaho?
- What are the legal requirements agencies must follow to undertake land exchanges?
- What are the benefits of land exchanges?
- What are the challenges of land exchanges?
- What are some options for overcoming the challenges of land exchanges?

Chapter 1 replies to the first two focus questions. Land exchanges, or land swaps, are transactions in which land ownership, or an interest in land (e.g., mineral right), is traded, as opposed to being bought and sold. Public land exchanges can include federal, state, or local government agencies, either trading amongst themselves, or with private entities. Public land exchanges can be accomplished either administratively using established agency procedures, or legislatively, where Congress or other legislative body enacts a law authorizing a specific exchange. This report focuses on administrative land exchanges involving the three major public land management agencies in Idaho: the U.S. Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the Idaho Department of Lands (IDL). It also looks at exchanges involving the Idaho Department of Fish and Game (IDFG) because of its interest in protecting fisheries and wildlife habitat.

The current land ownership pattern for Idaho is a result of historic western public land disposal policies that were geared toward encouraging settlement and development and helping new western states fund educational institutions. The resulting land ownership pattern has left current public land managers with a patchwork of public lands, intermixed among different agencies as well as privately owned lands.

Chapter 2 provides case examples from Idaho that illustrate both the benefits and challenges of land exchanges. These case examples are referred to often in the chapters that follow.

Chapter 3 addresses the land management objectives and missions of land management agencies in Idaho and the legal requirements they must follow to undertake land exchanges. More than 61% of Idaho is federal land managed by either the BLM or USFS. These two agencies have multiple-use land management objectives that include outdoor recreation, range, timber, watershed, and fish and wildlife purposes. IDL is responsible for almost 5% of the state, with the objective of managing state trust lands to maximize long term financial return for the beneficiary institutions, primarily the public schools. IDFG owns less than 0.5% of the state, but the lands are important for wildlife and fisheries habitat, which the department is mandated to protect and manage. The BLM and USFS have numerous legal authorities that grant them the power to conduct land exchanges. Both agencies currently follow the land exchange requirements outlined in the Federal Land Policy and Management Act (FLPMA) for

most of their land exchanges. The authority for IDL to conduct land exchanges is granted by the Idaho Constitution, with further powers outlined in Idaho Code. IDFG, through the Idaho Fish and Game Commission, is also authorized by Idaho Code to conduct land exchanges for fisheries- and wildlife-related purposes. All four agencies have extensive, agency-specific procedures that guide the land exchange process.

Chapter 4 identifies the benefits of land exchanges, which include increased management efficiency as well as environmental quality, enhanced societal benefits, and land acquisition with reduced financial costs. Chapter 5 discusses the challenges of completing land exchanges, including the identification of lands for exchange, appraisals, identifying and protecting the public interest, financial costs, and timeliness.

Chapter 6 identifies several options for overcoming the challenges of land exchanges. The options include ceasing land exchanges entirely in favor of buying and selling lands, improving appraisal processes, using large-scale regional planning approaches to land exchanges, using third-party facilitators, and considering legislated exchanges rather than administrative exchanges. Each option potentially could be used to address the challenges associated with land exchanges, but none is a panacea without challenges of its own.

Chapter 7 presents our conclusions. We find that land exchanges can be an appropriate tool for reconfiguring land ownership in Idaho. The challenges of land exchanges can be anticipated and controlled by following a well-planned and transparent process that results in exchanges that serve the public interest.

Chapter 1. Introduction and Background

The objectives of this report are to explain public land exchanges and the processes for undertaking them, examine the benefits of land exchanges and the challenges to completing them, and suggest options for overcoming the challenges associated with public land exchanges. Land exchanges are potentially a key component in land ownership reconfiguration in Idaho and other western states.

This chapter briefly describes land exchanges and examines current land ownership patterns in Idaho and the history behind them. The land ownership pattern of Idaho, and many other western states, is a result of historical government land "disposal" policies designed to increase settlement and development of the western United States (see O'Laughlin et al. 1998 [PAG #16]). While homesteaders settled the most desirable land, railroad companies and state public school systems were granted many other sections of land. Public land management agencies, such as the U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS), were charged with managing the remaining federal lands (Wilkinson 1992). The result is an intermingled pattern of federal, state, and private land ownerships (Map 1-1).

Sometimes federal, state, or private landowners' objectives for their lands could be served better by ownership of different land parcels. Land exchanges provide an opportunity to obtain parcels that further a landowner's management objectives without purchasing them, while disposing of lands that are not meeting the owner's objectives.

The BLM, USFS, Idaho Department of Lands (IDL), Idaho Department of Fish and Game (IDFG), and other state and federal agencies, and many private landowners have been involved in thousands of land transactions, as millions of acres have transferred ownership over time via selling, buying, and exchanging. While buying and selling transactions are commonplace, exchanges are more unusual and noteworthy.

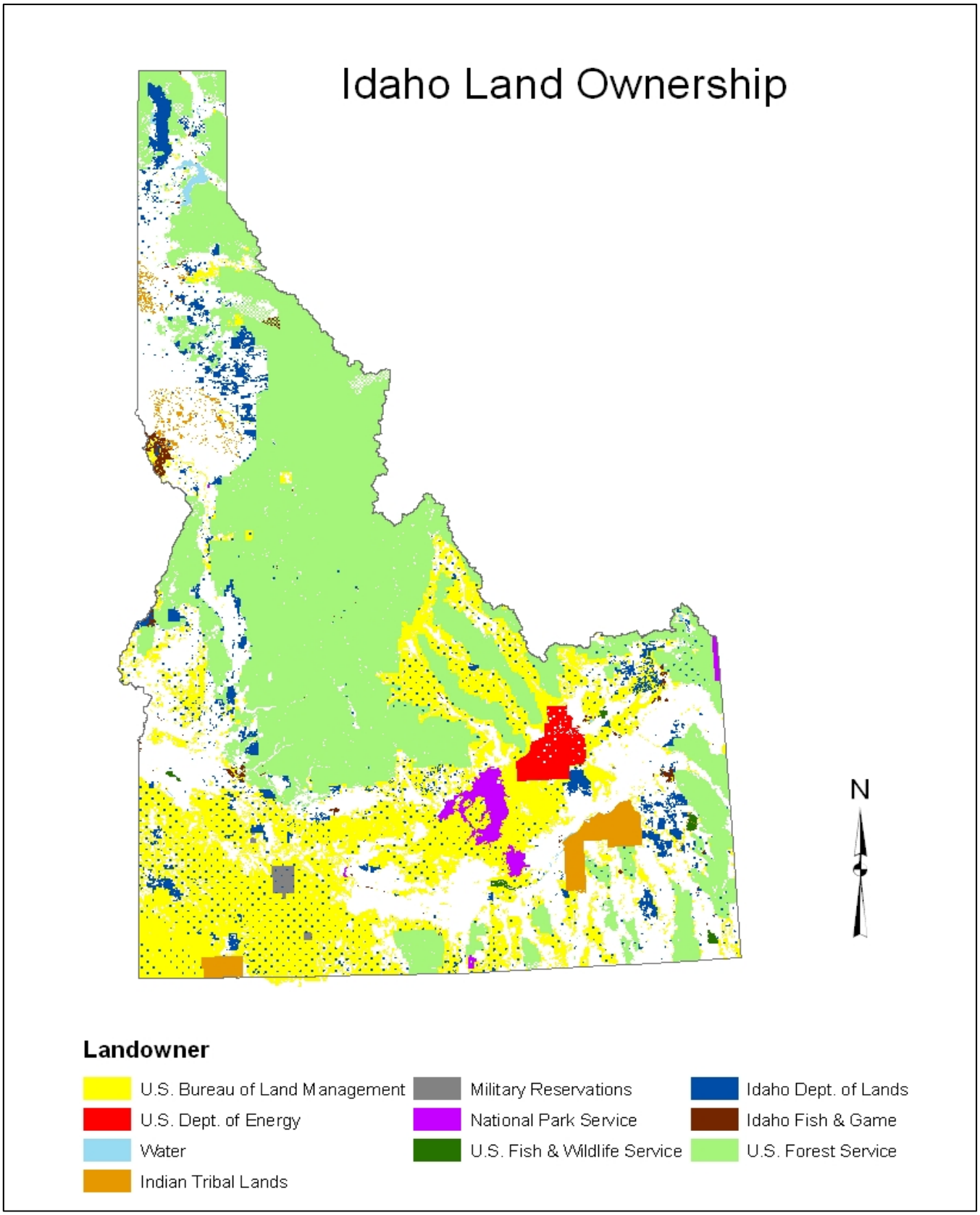
1.1. What are Land Exchanges?

In its simplest form, a land exchange is a transaction whereby one owner trades land with another owner for land of equal value. Land exchanges also can involve trading interests in land (e.g., mineral rights, easements) rather than the land itself. The owners involved in land exchanges can include federal government agencies, state agencies, and/or private entities. Frequently land exchanges are referred to as land trades or swaps.

Land exchanges can be categorized by who participates in them. Public-public exchanges occur between two governmental land management agencies. For example, IDL and IDFG completed a land exchange on Craig Mountain in February 2008 (see Section 2.1). We use the term "public" broadly here, to include federal, state, and local government agencies that have been assigned the responsibility for administering land in which fee title is not held by private entities such as individuals, corporations, and non-governmental organizations.

Public-private exchanges take place between non-governmental parties and federal, state, or local governments. This is the most common type of land exchange. An example of a public-private exchange is the 2006 Brundage Mountain exchange between the USFS and the Brundage Mountain Resort near McCall (see Section 2.2).

Land exchanges involving public agencies also can be characterized by how they are accomplished—administratively or legislatively. An administrative land exchange follows the public agency's administrative rules and process for the exchange. A legislated exchange is accomplished



Map 1-1. Idaho land ownership.
Source data: BLM (2009).

through an act of Congress, a state legislature, or other governmental body. Legislation may be used to complete a land exchange when it is complicated by desires for special provisions or other complications (Draffan and Blaeloch 2000, Stengel 2001). An example of a legislated exchange is the Idaho Land Exchange Act of 1993 (P.L. 103-17) in which the USFS and the University of Idaho exchanged approximately 80 acres of land.

Land exchanges also can be characterized by the number of parties, parcels, and transactions involved. Direct land exchanges involve two parties exchanging lands in a single transaction. Assembled land exchanges involve the consolidation of multiple parcels of land into a single package for purposes of completing one or more exchange transactions over a period of time. Assembled land exchanges can range from those that involve multiple parcels under the same ownership to complex multiownership, multi-transaction exchanges with facilitators (BLM 2005b). An example of an assembled land exchange is the Boise Foothills/North Idaho Exchange (see Section 2.3).

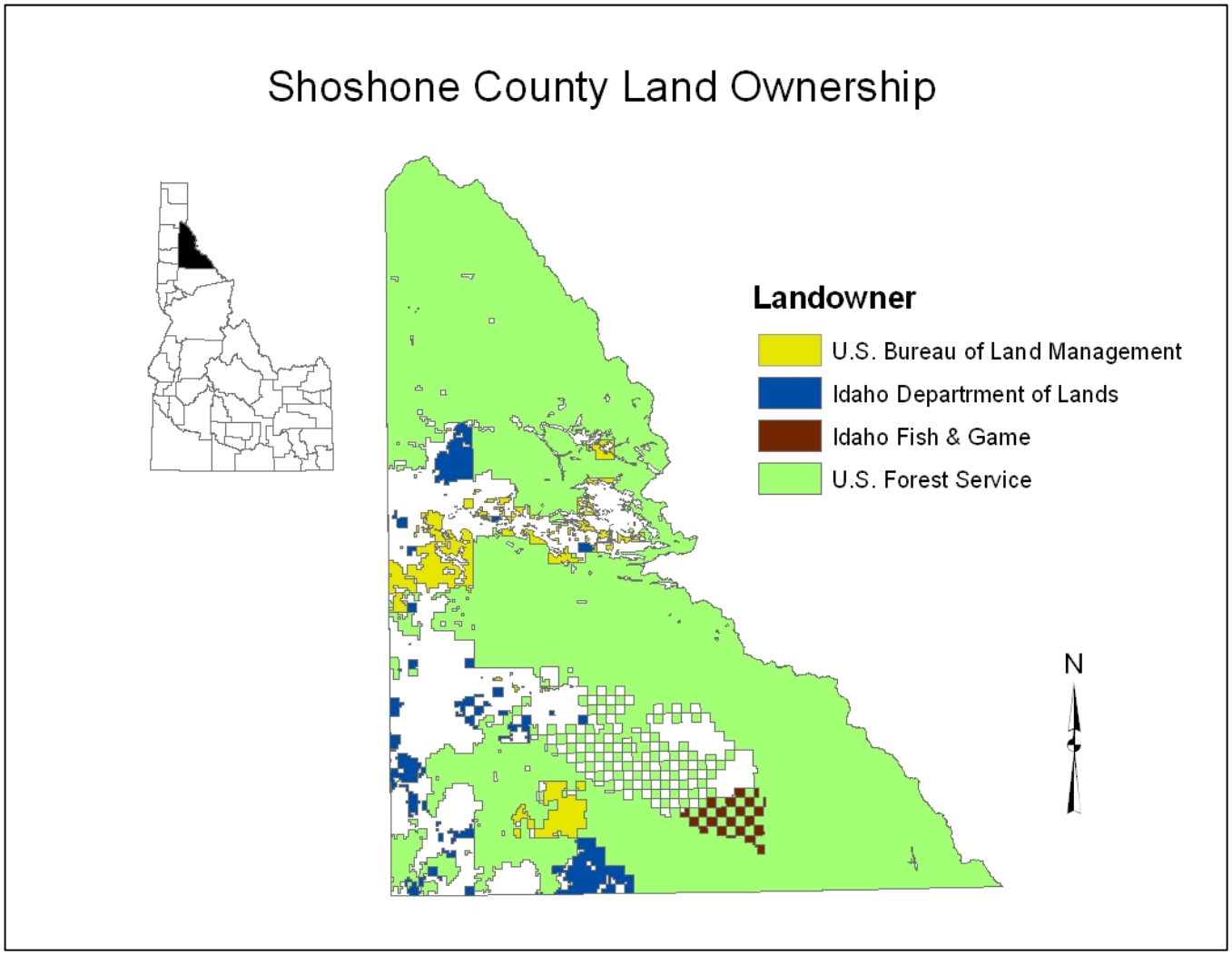
1.2. How Did the Current Land Ownership Pattern Develop?

To understand why land ownership reconfiguration might provide benefits and why land exchanges occur, a historical look at how the land ownership pattern in Idaho evolved is helpful. The current land ownership pattern of Idaho and many western states is a myriad of inholdings, checkerboards, intermingled landowners, and sometimes conflicting land uses (Map 1-1). This is a direct result of western public land laws and their impacts on Idaho.

The relevant history of Idaho land ownership, and other western states, begins with the General Land Ordinances of 1785 and 1787. These ordinances were designed to settle state land claims on western territories while providing the U.S. Congress regulatory authority (Davis 2001). These decisions by the federal government were a move toward disposal of federally owned land in the west (Paul 2006). The disposal effort was intended to increase settlement and development of the west, labeled as a "peculiarly American brand of imperialism called manifest destiny" (Kemmis 2001). Settlement of the west, including Idaho, began sporadically with the best, highest valued, most livable land settled first and becoming privately owned.

The second ingredient to the land ownership pattern in the west resulted from the desire to further develop the west by creating efficient transportation for supplies and people and creating a means of communication. In the mid 1800s, railroads and telegraph lines were built. Congress enacted the first of several land-granting acts in 1864 to help establish the Northern Pacific Railway from Wisconsin to the Oregon coast (Cotroneo 1979). The Northern Pacific Charter of 1864 awarded to the Northern Pacific Railway Company 20 odd-numbered sections of land per mile of rail built within a 40-mile strip along the planned route of the rails. The intent was to create revenue for the railway company through the sale of the lands; however, selling all the land did not become necessary because rail lines became a lucrative investment. In 1870, Congress enacted a second land grant for the Northern Pacific, allowing substitution for lands claimed by other owners along the route that resulted in the potential for claims along a strip as wide as 120 miles. The result of these railroad land grants is a checkerboard mix of public and private land, particularly evident in the north-central region of Idaho (see Map 1-2, for example, Shoshone County).

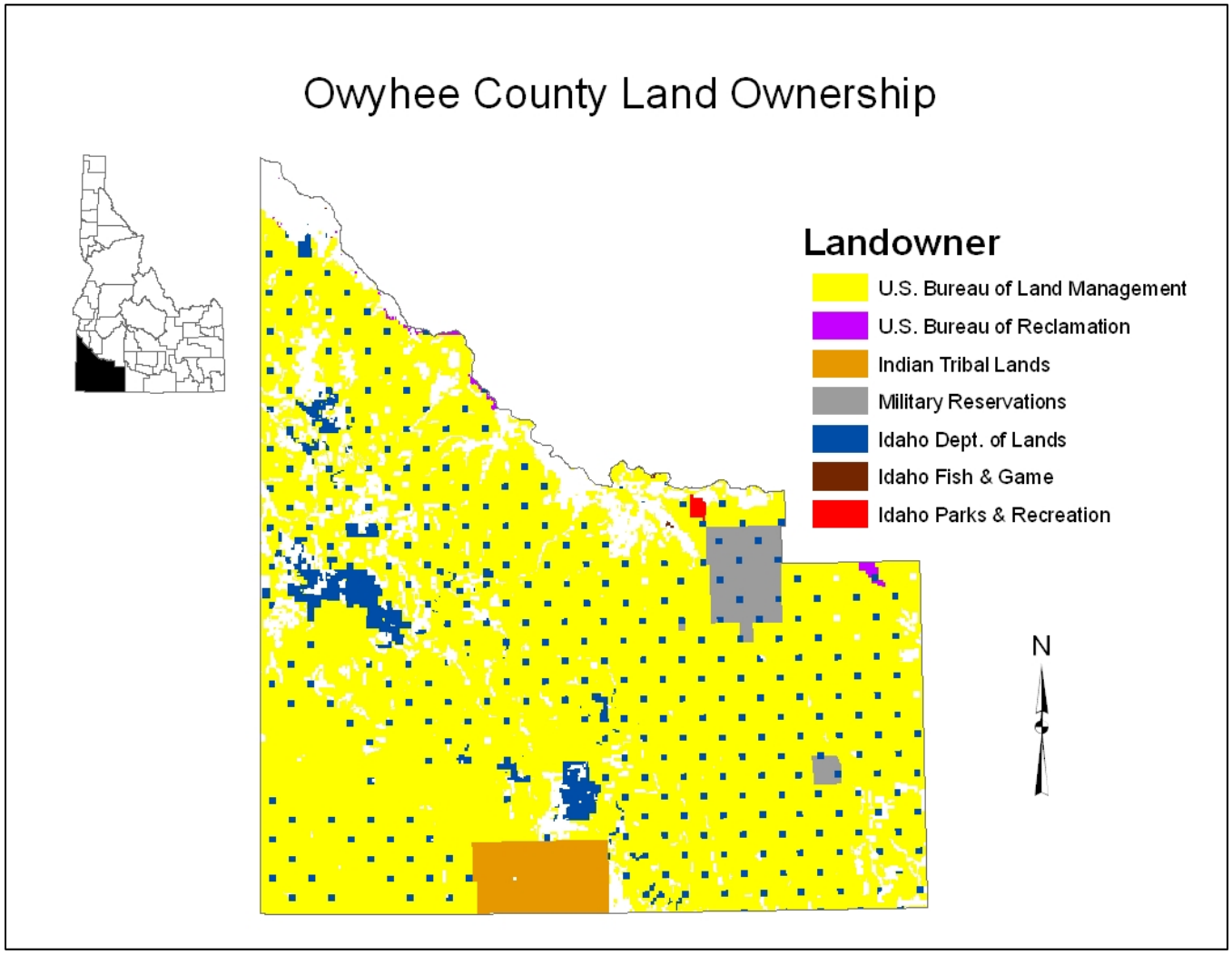
Congress used other ways to encourage citizens to move westward, including conveying title to land for little or no cost. For example, the Homestead Act of 1862 awarded claims of 160 acres to citizens, provided the land was settled and maintained. Again, settlers chose the most productive and livable land, settling near rivers and other productive lands, while the unsettled lands remained in the public domain.



Map 1-2. Shoshone County land ownership.
Source data: BLM (2009).

Sometimes private lands came back into public ownership due to tax defaults by the private owners. For example, it was not uncommon for railroad companies, and their timber company successors, to harvest all the trees on a parcel and then attempt to get rid of the land as soon as possible in order to avoid paying taxes on it. Sometimes the companies relinquished the land back to the government in lieu of paying the taxes (Peterson 1976). Sometimes private owners either donated the cut-over lands to the federal government or traded them for cutting rights on National Forest System lands (NEA 1950).

Another piece of the land ownership puzzle in Idaho came with the institution of state land grants under the enabling acts for admission to statehood. Idaho became a state on July 3, 1890. Idaho, and other western states, were granted land upon admission to help establish a system of public education and for reclamation of lands, rails, roads, and support of universities and other government buildings (O'Laughlin 1990 [PAG #1], Bruce and Rice 1994). Idaho was granted sections 16 and 36 of each 36-square mile township in the state. The legacy of these square parcel land grants is evident throughout southern Idaho (see Map 1-3, for example, Owyhee County). The result is federal and private lands interspersed with isolated state school sections (Coggins 1994).



Map 1-3. Owyhee County land ownership.
Source data: BLM (2009).

Despite grants, homesteading, and other settlement incentives, much of Idaho and other western states remained unsettled, leaving millions of acres of federally owned lands. Beginning in the late 1800s and continuing throughout the twentieth century, the policy direction of the federal government changed from disposal to retention and management of public lands (O'Laughlin et al. 1998 [PAG #16]). For example, in 1891 Congress granted the President the authority to create forest reserves, later renamed national forests, and in 1897 Congress created a management mission for the forest reserves and the U.S. Forest Service. The shift to retention and management of public lands means millions of acres continue to be owned and managed by the federal government in Idaho.

Today, the federal government administers 63.6% of the land in Idaho (Table 1-1). The BLM and USFS are responsible for 96% of those federally administered lands. The state of Idaho owns 5.1% of the state, and IDL administers 91.3% of state owned lands (Table 1-1).

Due to the large amounts and percentages of land in Idaho managed by the BLM, USFS, and IDL, this report primarily focuses on their roles in land exchanges. In addition, we also focus on the Idaho Department of Fish and Game (IDFG) because it is actively pursuing land exchanges. Other public land management agencies in Idaho also engage in land exchanges, including the U.S. Fish and Wildlife Service, U.S. Department of Energy, National Park Service, and Idaho Department of Parks and

Table 1-1. Idaho state/federal land ownership distribution by acres/percentage.

Land Agency	Acres	Percent of Total State
Federal Agencies	33,688,107	63.6%
U.S. Forest Service	20,458,276	38.6%
Bureau of Land Management	11,836,481	22.4%
Department of Energy	569,134	1.1%
Bureau of Reclamation	475,590	0.9%
U.S. Air Force	111,741	0.2%
National Park Service	97,296	0.2%
U.S. Army Corps of Engineers	54,472	0.1%
U.S. Fish and Wildlife Service	52,007	0.1%
Agricultural Research Service	33,110	<0.1%
State Agencies	2,693,260	5.1%
Idaho Department of Lands	2,458,405	4.6%
Idaho Department of Fish & Game	187,769	0.4%
Other (Idaho Dept. of Parks & Recreation)	47,086	0.1%
Non-governmental ownership	16,551,753	31.3%
Total Land Area	52,933,120	100%

Source: O'Laughlin et al. (1998), IDOC (2004)

Recreation. Each agency follows laws, policies, and processes similar to those of the BLM, USFS, IDL, and IDFG.

1.3. Summary and Conclusions

A land exchange occurs when landowners exchange or trade lands, or interests in lands, rather than buying and selling them. Public land exchanges can be categorized by the parties involved—public land agencies only, or public agencies and private owners—or by the process that led to completion of the exchange—administrative or legislative. Land exchanges facilitate land ownership by either a government agency or a non-governmental entity that recognizes a specific need for the lands.

The current landownership pattern in Idaho is a result of laws and policies that encouraged disposal into private and state ownerships throughout much of the nineteenth century and then retention of ownership and management by the federal government in the twentieth century. The mosaic land ownership pattern of Idaho creates opportunities for reconfiguring ownership to better meet the management objectives of both public and private landowners. Land exchanges are one way to change ownership patterns.

Chapter 2. How Have Land Exchanges Worked in Idaho?

In order to better understand land exchanges, we present five case examples from Idaho involving two federal agencies—U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS)—and two state agencies—Idaho Department of Fish and Game (IDFG) and Idaho Department of Lands (IDL). We look at four completed exchanges, and one that is currently in the proposal stage. Each example has unique properties and illustrates the benefits and challenges of exchanges.

2.1. Craig Mountain Exchange

A land exchange between IDL and IDFG in the Craig Mountain area of north central Idaho illustrates a relatively simple, non-controversial exchange with many benefits and few challenges. Land ownership in the Craig Mountain Wildlife Management Area (WMA) is mixed between four primary landowners: IDFG, IDL, BLM, and the Nez Perce Tribe. This mixed ownership increases land management complexities and expenses for the respective management agencies. To address some of the management issues, IDFG proposed an exchange with both IDL and the Nez Perce Tribe. After the Nez Perce Tribe declined the invitation to participate, IDFG and IDL moved forward with a direct exchange (Cousins et al. 2008).

The exchange was completed in 2008 (Land Board 2008). In the exchange, IDFG received 4,991 acres within the Craig Mountain WMA and $21,000 from IDL. IDL received 2,866 acres from IDFG. The exchange benefitted IDFG by: decreasing its ownership of isolated land parcels and their associated management costs; acquiring 48 acres of old growth ponderosa pine habitats; improving access management; reducing administrative costs for maintaining easements and right-of-ways; acquiring four miles of Class 1 streams; and increasing the amount of priority canyon grasslands habitats for conservation and protection. IDL benefitted by increasing its ownership of primary timberland by 1,600 acres, primarily on the east side of Craig Mountain. The timberlands acquired by IDL are on stable slopes that are more easily accessible for timber harvest and away from fish bearing streams (Cousins et al. 2008).

Public access did not change on Craig Mountain because all lands remained in public ownership. The public was supportive of the exchange as demonstrated through open house sessions held in Lewiston. County commissioners in the vicinity also were supportive of the exchange (Cousins et al. 2008).

2.2. Brundage Exchange

In August 2006, the Payette National Forest and the Brundage Mountain Company completed a land exchange within Adams and Valley counties. The exchange brought into federal ownership two tracts of wetlands that are designated critical habitat for chinook salmon, steelhead, and bull trout, and conveyed lands to the Brundage Mountain Company that include base area facilities at the ski resort including the lodge, maintenance shops, parking lots, lift terminals, and ski shop. The federal parcel was 388 acres valued at $3,105,000, and the private parcels totaled 350 acres valued at $3,080,000. A cash equalization payment of $25,000 was made to the federal government (USFS 2006).

The public interest benefits from this exchange include the protection of critical habitat for imperiled fish species, and protection of McCall's watershed for drinking water. The private landowner was provided the opportunity to modernize and expand its ski resort facilities (USFS 2006).

2.3. Boise Foothills/North Idaho Exchange

The Boise Foothills/North Idaho land exchange between BLM, USFS, and IDL became a reality in November 2006 when the U.S. Congress passed the Idaho Land Enhancement Act (P.L. 109-372). In the exchange, BLM transferred 605 acres in northern Idaho to IDL; USFS transferred 7,087 acres of national forest in northern Idaho to IDL; IDL transferred 3,054 acres in northern Idaho and 640 acres in southern Idaho to USFS; and IDL transferred 3,761 acres in northern Idaho and 3,894 acres in southern Idaho to BLM. The legislation also transferred jurisdiction for 2,110 acres in northern Idaho from BLM to USFS. The northern Idaho parcels are forested and much of their value is derived from commercial timber. The southern Idaho parcels in the Boise Foothills lack timber and derive much of their value from the potential for residential development, even though the purpose of the exchange was to preserve the foothills from development (BLM et al. 2004).

For the BLM a major objective in acquiring the lands in the Boise Foothills was to protect and enhance watershed resources, wildlife habitat, recreation opportunities, and scenic values in accordance with its resource management plan and goals for the Boise Front Area of Critical Environmental Concern (BLM et al. 2004). The exchange continued a 30-year effort by the City of Boise to conserve the Boise Foothills. For the USFS, a major objective of the exchange was to "convey out" isolated parcels in the Clearwater and Idaho Panhandle National Forests. For IDL, the exchange increased its holdings of high-productivity timberlands that have greater potential for long term financial return (BLM et al. 2004).

The exchange was unique because it used both BLM and USFS lands to balance the value of IDL land (BLM et al. 2004). No administrative mechanism exists for the USFS and BLM to undertake such an exchange, so federal legislation was required to accomplish it. The exchange was also unique because it was initiated by the City of Boise, even though they were not one of the landowning partners. Proponents of exchanges often pay a significant portion of the administrative costs of an exchange, and in this case the city paid most of the administrative costs of the exchange using funds generated by a voter-approved property tax levy (Foothills Conservation Advisory Committee 2005).

The proposal received widespread support, although some interests in northern Idaho expressed concern (BLM et al. 2005). The Idaho State Board of Land Commissioners approved the exchange in March 2006 (Land Board 2006), and the Idaho Land Enhancement Act was signed into federal law on November 27, 2006 (P.L. 109-372). The exchange was to be completed in September 2008 (BLM 2008a), but problems with undisclosed encroachments and clearing IDL's land title came up late in the process and delayed completion of the exchange. The exchange will be completed in January 2010.

2.4. Squirrel Meadows/Grand Targhee Exchange

Until this exchange, the Grand Targhee ski resort was located on National Forest System lands managed by the Caribou-Targhee National Forest. Since the late 1980s, land exchanges had been proposed five different times to privatize the resort. In 1994, after studying the environmental impacts the USFS decided an exchange was not in the public interest. In 1996, a new owner took over the resort and the idea of an exchange was revived (Western Lands Project 1998b).

The Caribou-Targhee National Forest proposed to exchange 120 acres of national forest lands at the base of Grand Targhee Resort for 400 acres of privately owned land in Squirrel Meadows, east of Ashton, Idaho (USFS 2002). Squirrel Meadows is important grizzly bear habitat and a unique wetland area. The exchange would fulfill the forest plan's direction to acquire prime grizzly bear habitat, as well as reduce the potential for human/bear conflicts. Squirrel Meadows also provides important habitat for

other wildlife species, such as sandhill cranes, great gray owls, spotted frogs, elk, moose and deer (USFS 2004b, Williamson 2003).

An unusual feature of this exchange was that the Targhee National Forest lands that the USFS wanted to convey were in Wyominig, but the private land it wanted to receive was in Idaho. Federal legislation was required to deal with this inter-state situation. A bill allowing the exchange to take place was introduced in January 1995 and became law in November 1996 (P.L. 104-333).

In 1997, the USFS published its first notice of intent to prepare an Environmental Impact Statement for the exchange (62 FR 54039). Issues identified in the EIS included: impacts from potential development of the exchanged lands at Grand Targhee on the base area and in Teton Valley, Idaho; impacts on wildlife from potential development and increased use of the area in general; impacts on the Jedediah Smith Wilderness; creation of a private inholding within the national forest boundary; and the effects on grizzly bears and other threatened, endangered and sensitive species (62 FR 54039). The final EIS and record of decision were released in December 2000 (USFS 2002).

In February 2001, the Greater Yellowstone Coalition, Citizens for Teton Valley, Jackson Hole Conservation Alliance, Wyoming Outdoor Council, The Wilderness Society, and five other groups filed an appeal over the exchange. The organizations said the 120 acres at the base of the Grand Targhee ski resort, valued by the USFS at $3.3 million, was worth 15 to 50 times that much, and they challenged USFS's valuation of the lands (Greater Yellowstone Coalition 2001, Matheson 2001a). The organizations also claimed that the decision was not consistent with what they believed was USFS policy to phase out private inholdings, and that the ski area itself was important habitat for grizzly bears and a host of rare and sensitive species such as wolverines, lynx, and great grey owls. The road to the resort passes through elk winter range, and high-density development at the base of the resort would effectively eliminate wildlife habitat (Greater Yellowstone Coalition 2001, Matheson 2001b). The groups also challenged the USFS decision-making process, claiming that other alternatives were not looked at fairly (Matheson 2001b, Greater Yellowstone Coalition 2001). The groups also charged that the USFS overestimated the impacts of development if the "no action" alternative was chosen, thus making it look less favorable (Western Lands Project 2002).

The groups' administrative appeal was denied by the USFS, so the groups took their case to court. In August 2001, the federal district court ruled that the USFS had failed to adequately outline four critical factors that might constrain development on the land it wanted to acquire and issued an order putting the exchange on hold until the USFS properly analyzed the "no action" alternative in light of specific development constraints (Greater Yellowstone Coalition v. Reese, No. 01-0176-E-BLW, D.Idaho, Aug. 8, 2001; Associated Press 2001b; USFS 2002; Western Lands Project 2002).

In December 2001, the USFS released a notice of intent to prepare a supplemental EIS for the land exchange (66 FR 60181). In November 2002, the USFS released the supplemental EIS and record of decision that addressed the concerns of the court, including further analysis of the effects of different market scenarios and development constraints (USFS 2002; Williamson 2002, 2003). That decision was appealed administratively, too, but upheld (USFS 2003c). In June 2003, the court found that the supplemental EIS and record of decision were sufficient and lifted the injunction against the exchange (USFS 2003d, Williamson 2003). The court also let stand its earlier ruling that the USFS properly appraised the values of the lands to be exchanged (Williamson 2003). In May 2004, the Squirrel Meadows/Grand Targhee exchange was completed (Thornberry 2004, USFS 2004b).

2.5. Upper Lochsa Exchange

As part of the Northern Pacific Railroad land grant (see Section 1.2), the railroad company obtained title to alternating sections of the public domain in upper Lolo Creek in Montana and at the headwaters of the Lochsa River in Idaho. The company surveyed this route in 1873, and did a small amount of grade construction on the Montana side of the border around 1900. However, no railroad was constructed across Lolo Pass. These lands were later acquired by Plum Creek Timber Company, which was at one time a wholly-owned subsidiary of the Northern Pacific Railroad. Timber on the lands was clearcut rapidly beginning in the mid-1980s (Thompson 2000), and the lands were sold to Western Pacific Timber LLC (WPT).

In April 2006, the USFS received a proposal from WPT for a large land exchange. The WPT proposal included approximately 40,000 acres of the company's lands near Lolo Pass that are intermingled in checkerboard fashion with Clearwater National Forest lands. These lands are of interest to the USFS because they encompass the headwaters of the Lochsa River and hold outstanding values for many fish and wildlife species. The lands also hold significant cultural resources including the Lewis and Clark National Historic Trail and Nez Perce Tribe treaty area (73 FR 73902; Baird, no date).

In September 2008, the Clearwater National Forest completed a feasibility analysis of the proposed exchange as a first level screen to review forest management plans and identify: public benefits, availability of resources to complete the proposed exchange, title and property descriptions, and potential support and opposition. The outcome of the feasibility analysis was a recommendation to enter into an "Agreement to Initiate" a land exchange with WPT. The agreement, signed by both parties, specifies the roles and responsibilities of each party involved in the exchange (73 FR 73902).

In the proposed land exchange, the USFS would acquire approximately 39,371 acres of land in the upper Lochsa River drainage in exchange for up to approximately 28,212 acres of National Forest System land. It is anticipated that this is more than adequate federal acreage to complete an equal value land exchange. The USFS lands are located on the Clearwater, Nez Perce and Idaho Panhandle National Forests (73 FR 73902).

The USFS's purpose for this proposed land exchange is to consolidate land ownership in the upper Lochsa River drainage to provide more efficient and effective resource management. The current ownership pattern has a considerable effect on how the USFS manages its lands in the upper Lochsa River drainage. Differing management practices on the private lands have influenced resource management decision on USFS lands. The mixed ownership pattern also reduces the ability to apply ecosystem management principles across the landscape. More effective conservation and management of natural resources can be achieved by consolidating these lands and managing the ecosystem as a whole. For example, current ownership hinders cost-effective wildland fire and fuels management. Also more efficiency can be gained by reducing administrative costs associated with boundary and road maintenance (73 FR 73902).

In December 2008, the USFS announced its intent to prepare an EIS for the exchange (73 FR 73902). The USFS has identified several potential issues for analysis, including: impacts to the tax base in Idaho County by reducing the amount of private lands; treaty rights; the loss of the Elk City USFS compound and associated impacts to the Nez Perce National Forest and the community of Elk City; cultural resources; threatened and endangered species; public access; and timber management (73 FR 73902).

The proposed exchange illustrates how various public interests could be served, or not, by the exchange. Despite the benefits to USFS management outlined above, the proposed exchange has encountered opposition, particularly from local and regional interests.

The Nez Perce Tribe has not taken a position to endorse or oppose the proposed exchange. The tribe has agreed that the land in question carries reserved treaty rights. Under the tribe's Treaty of 1855, members reserved the right to hunt, fish and gather on open and unclaimed land and in usual and accustomed places on and off the Nez Perce Reservation. That right has typically included federal lands, but both federal and tribal attorneys are researching possible effects the exchange may have. Federal government officials also are researching issues including if those reserved rights would extend to land once held privately, and whether those rights extend to federal land that shifts into private hands. The tribe is also doing a cultural assessment of properties to be exchanged to determine the uses of those lands by tribal members (Gary 2009).

Opponents of exchanging parcels in the Palouse Ranger District of the Clearwater National Forest include several former USFS employees who want the lands kept in public ownership because they believe the lands represent the "epitome of multiple-use management" and feel that none of these lands should be exchanged, especially for the mostly logged-over parcels in the upper Lochsa River drainage (Johnson 2008, 2009a, 2009e, 2009f). There is also concern about parcels of national forest land near McCroskey State Park being shifted into private ownership (Johnson 2009g).

As part of the exchange process (see section 3.3.2), county and city officials in the region have been asked about the proposed exchange. The Idaho County Commission has not voted on the exchange proposal (Associated Press 2009), but county officials are concerned because of the effect reduced private lands would have on property tax revenues (Walker 2006, Hedberg 2007, 2008a, 2008b). Idaho County collects about $2 per acre on privately owned land, but receives only about 33 cents per acre for federal lands through the federal payment-in-lieu-of-taxes program (Hedberg 2009a). Idaho County Commissioners also are concerned about the potential loss of recreational access to lands around Elk City (Hedberg 2009b).

The Clearwater County Commission endorsed the concept of the land exchange by a 2-1 margin (Johnson 2009d). The Latah County Commission voted unanimously (3-0) to oppose the exchange (Johnson 2009c). Much of its concern reflected that of small-town businesses in the county that depend on recreational traffic for income. Business interests are skeptical over the long-term consequences of the exchange that includes parts of northern Latah County and eastern Clearwater County (Williams 2009a). Part of their concern is that WPT will harvest the timber on the land around Elk River and then sell the land for residential development (Johnson 2009d). Elk River's City Council voted unanimously to oppose the land exchange proposal (Johnson 2009b).

Some opponents of the proposal are concerned about the upper reaches of the American River near Elk City going into private ownership. The area is relatively pristine, and they believe it should not be logged or developed. In response to criticism, the USFS may decide to offer a contiguous block of land near Elk City rather than the independent parcels that circle the township, or it may buy the property from WPT outright, rather than exchange it for public land (Hedberg 2009a). Some opponents also suggest that the checkerboard lands in the Lochsa River headwaters also should be purchased rather than exchanged (Weber 2009). Idaho County officials are opposed to outright purchase because the county would lose all tax revenue from the land (Hedberg 2009a).

In response to opposition to specific parts of the exchange proposal, the USFS has encouraged people to help select the lands to be exchanged rather than oppose the exchange outright (Barker 2009). Whether the challenges to completion of the Upper Lochsa exchange, including balancing the various public interests, can be overcome remains to be seen. The USFS is expected to complete the Environmental Impact Statement on the proposed exchange in March 2010 (Williams 2009b). That will likely trigger new discussions on this exchange project rather than resolve all the issues.

2.6. Summary and Conclusions

The cases outlined above show that land exchanges take place in Idaho, provide a range of benefits, and can overcome challenges. Although some cases illustrate the difficulties in completing exchanges, dozens of land exchanges are completed every year without significant problems.

Chapter 3. What are the Land Management Objectives and Missions of Agencies in Idaho, and the Legal Requirements Agencies Must Follow to Undertake Land Exchanges?

The BLM, USFS, and IDL manage most of the publicly owned lands in the state of Idaho. Each agency has statutorily defined objectives for managing its lands. The two federal agencies have multiple-use mandates to manage their lands for water, timber, vegetation, wildlife habitat, financial returns, historical and cultural significance, recreation, and countless additional attributes (Loomis 1993; USDOI and USDA 2005). IDL manages its lands for financial return. IDFG owns nearly 200,000 acres in Idaho that it manages for its wildlife benefits. Land exchanges are one tool land managers can use to help achieve their objectives.

Achieving multiple objectives can be complicated by land ownership patterns that reduce the effectiveness and efficiency of management. Obtaining lands that are located so they are conducive to agency objectives improves opportunities to better meet management objectives (Shea 1998). The desire to exchange lands is often driven by the need to meet multiple objectives.

The land exchange process is guided by policies and laws designed to ensure that the disposing and acquiring of lands serves the public interest and leads the land management agency towards achieving its management objectives. The land exchange processes for each of the four agencies examined in this chapter are similar.

3.1. Land Management Objectives

BLM and USFS land management objectives are described in federal laws that have evolved. IDL and IDFG derive their management objectives from state law.

3.1.1. U.S. Dept. of the Interior, Bureau of Land Management (BLM) Objectives. The Taylor Grazing Act of 1934 provides one of the original statutory directions for the lands that are now managed by the BLM. The act created grazing districts from the public domain, which are to be managed to "preserve the land and its resources from destruction or unnecessary injury" and to "provide for the orderly use, improvement, and development of the range" (43 U.S.C. 315a). The Classification and Multiple Use Act of 1964 (43 U.S.C. 1411-1418) clarified that BLM lands would remain federal lands and be managed for "domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, or preservation of public values that would be lost if the land passed from Federal ownership" (43 CFR 2420.1). The Federal Land Policy Management Act of 1976 (FLPMA) emphasizes that public lands are to remain in federal ownership unless specific parcels are identified for disposal through a planning process, mandates multiple-use management of lands under BLM's jurisdiction, and requires comprehensive long-range planning for the use of the lands (Cubbage et al. 1993). FLPMA states that BLM lands are to be "managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide outdoor recreation and human occupancy and use" (43 U.S.C. 1701(a)(8)). To aid the BLM in achieving the objectives set forth in FLPMA, policies for sale, acquisition, and exchange of federal and non-federal lands are included (43 U.S.C. 1713, 1715 1716).

3.1.2. U.S. Dept. of Agriculture, Forest Service (USFS) Objectives. The earliest management objectives for USFS lands were laid out in the Organic Administration Act of 1897, which stated that

national forests were established "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States" (16 U.S.C. 475). The Multiple-Use Sustained-Yield Act of 1960 added that national forests are to be "administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes," and these purposes are "supplemental to, but not in derogation of" the purposes laid out in the Organic Act of 1897 (16 U.S.C. 528).

The Resources Planning Act of 1974 and amendments to it in the National Forest Management Act of 1976 (NFMA) established planning processes for the USFS to follow in the management of the National Forest System lands the agency administers. Regulations implementing NFMA state that the overall goal for managing national forests "is to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long term productivity of the land. Resources are to be managed so they are utilized in the combination that will best meet the needs of the American people. Maintaining or restoring the health of the land enables the [National Forest System] to provide a sustainable flow of uses, benefits, products, services, and visitor opportunities" (36 CFR 219.1).

3.1.3. Idaho Department of Lands (IDL) Objectives. IDL has a clear mandate for managing state endowment lands to ensure maximum long term financial return to the beneficiary institutions, primarily the public schools (Idaho Constitution Article 9, Section 8; see also O'Laughlin 1990 [PAG #1] and O'Laughlin and Cook 2001 [PAG #21]). With respect to land exchanges specifically, IDL objectives include increasing net cash flows, reducing management costs by improving land management efficiency, obtaining all purpose legal access to state properties, and diversifying the asset types to reduce risk and reduce single industry or asset dependence. Each of these additional objectives complements the Idaho constitutional mandate by promoting increased long term financial return. The net cash returns are intended to meet or exceed the target return on asset (ROA) for the asset type as defined by the State Board of Land Commissioner's *State Trust Lands Asset Management Plan* (Land Board 2007).

Although IDL's objectives may appear one sided, the trust mandate to maximize long-term financial return is clear, and the Idaho State Board of Land Commissioners acting as trustee has an obligation to protect the revenue-producing capability of the land assets and must exercise undivided loyalty to the beneficiaries. Long term financial gains can come from land management for timber production, outdoor recreation, wildlife habitat, grazing, farming, or watershed protection. The adoption of sound business principles helps ensure financial returns over the long term and can include side benefits such as multiple uses and revenue streams, as well as supporting local jobs and industry infrastructure.

3.1.4. Idaho Department of Fish and Game (IDFG) Objectives. IDFG's mission is to preserve, protect, perpetuate, and manage wildlife within the state of Idaho, including wild animals, wild birds, and fish (Idaho Code 36-103). As part of its management objective to increase the capacity of habitat to support fish and wildlife, IDFG acquires interest in property where its management can provide exceptional benefits to fish and wildlife and associated recreation (Idaho Fish and Game Commission 2003, IDFG 2005). Department priorities for land acquisition are: key habitats for game animals and fish, access for recreational use of fish and wildlife, mitigation for unavoidable impacts to fish and wildlife resources, habitats identified in state or regional fish or wildlife conservation plans, and additions to existing wildlife management areas, easements or ownerships (Idaho Fish and Game Commission 2003).

3.2. Legal Authority for Land Exchanges

The BLM, USFS, IDL, and IDFG are authorized to undertake land exchanges under multiple statutes. As with agency objectives, federal authority is different than state authority. The BLM and USFS have multiple authorizations pertaining to specific areas, but our review concentrates on the general policies that affect Idaho.

3.2.1. Federal Authorizations. Authority for the BLM and USFS to conduct land exchanges comes from laws passed by the U.S. Congress. Congress derives the authority to permit public land ownership reorganization from the U.S. Constitution's Property Clause (Article IV, Sec. 3, Clause 2) which grants Congress the power to dispose of land and make all rules necessary for lands belonging to the United States (Vaskov 2001).

The first of many statutes allowing for federal land exchanges was the Weeks Act of 1911 (16 U.S.C. 515), which permits the USFS to exchange lands to protect water rights and support timber production. The General Exchange Act of 1922 (16 U.S.C. 485) allows the USFS to exchange public lands for private lands providing the exchange is in the public interest. These policies did not apply to the BLM because the agency did not exist at the time the laws were passed.

The Federal Land Policy and Management Act of 1976 (FLPMA) is the foremost legal authority for land exchanges conducted by both the BLM and USFS (Paul 2006). Section 206 of FLPMA includes authorization to conduct exchanges and requirements for implementation (43 U.S.C. 1716). Congress enacted Section 206 because as the need for land reconfiguration grew, definitive policy on land exchanges was needed (Beaudoin 2000).

FLPMA requirements include that the values of the lands exchanged are equal, or if they are not equal that the values become equalized by a payment of money between the parties so long as payment does not exceed 25% of the total value of the lands or interests transferred out of federal ownership. The federal agencies also must try to reduce the payment to as small an amount as possible (43 U.S.C. 1716(b)).

FLPMA also requires assessment of potential environmental impacts under the National Environmental Policy Act of 1969 (NEPA) for all administrative land exchanges. The NEPA process, including environmental assessments and/or environmental impact statements, allows for public input and appeals, which have become significant parts of a few highly publicized land exchanges.

Additional amendments to FLPMA were passed in the Federal Land Exchange Facilitation Act of 1988 (FLEFA; P.L. 100-409). This act amended Section 206 of FLPMA for the purpose of "providing more uniform rules and regulations pertaining to land appraisals," and establishing "procedures and guidelines for resolutions of appraisal disputes." FLEFA set guidelines for bargaining, negotiations, and arbitration for settling valuation disputes. The goal of FLEFA was to expedite land exchanges and provide an annual appropriation to the USFS and BLM to facilitate land exchanges.

Several other policies authorizing land exchanges were enacted between the passage of the General Exchange Act in 1922 and the passage of FLPMA in 1976. These other land exchange authorities typically address specific or special circumstances, but have the potential to impact land exchanges within the state of Idaho. These authorities include:

- Bankhead Jones Farm Tenant Act (1937; 7 U.S.C. 101-1012) authorizing exchanges of special title lands and National Grasslands;
- Forest Service Omnibus Act (1962; 16 U.S.C. 555a) authorizing land exchanges in instances where no other authority applies;

- Wilderness Act (1964; 16 U.S.C. 1131-1136) authorizing acquisition of non-federal lands in wilderness areas;
- Exchange for Schools Act (1967, "Sisk Act"; 16 U.S.C. 484a) authorizing exchanges up to 80 acres with states, county or municipal governments, or public schools;
- National Trails System Act (1968; 16 U.S.C. 1241-1249) authorizing acquisition of non federal land within the National Trail System;
- Wild and Scenic River Act (1968; 16 U.S.C. 1271) authorizing property acquisition within the National Wild and Scenic River system; and
- Endangered Species Act (1973; 16 U.S.C. 1534) authorizing the Secretaries of the Interior and Agriculture departments to acquire land to implement programs to conserve fish, wildlife, and plants.

In 1983, Congress passed the Small Tracts Act (P.L. 97-465; 16 USC 521d et seq.) in order to facilitate exchanges of small tracts of land by the USFS. Lands exchanges under these provisions are limited to lands valued at no more than $150,000 and no more than 40 acres for fragments of mining lands, 10 acres for accidental encroachment, and road right of ways. The impacts of these laws that address smaller tracts or special circumstances require a case-by-case analysis and do not fit within the scope of this report.

3.2.2. State Authorizations. Authority for the Idaho State Board of Land Commissioners (Land Board) to conduct land exchanges is found in the Idaho Constitution (Article 9, Section 8): "The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof." Additional authority is found in the Idaho Admission Bill (Section 5 b.): "Such lands may be exchanged for other lands, public or private. The values of such lands so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of money by the appropriate party." The Idaho legislature has authorized land exchanges by the Land Board and IDL under several sections of Idaho Code:

- *State Land Board Powers and Duties* (Idaho Code 58-104). Grants power to the Land Board "to exchange any public lands of the state, over which the board has power of disposition and control for lands of equal value, the title to which, or power of disposition, belongs or is vested in the governing body or board of trustees of any state governmental unit, agency or institution."
- *Acquisition, Sale, Lease, Exchange or Donation of Public Land Creation and Operation of Land Bank Fund* (Idaho Code 58-133). Authorizes the Land Board to acquire state lands, and sets up a fund for the proceeds of land sales that can be used for purchasing other lands.
- *Exchange of State Land* (Idaho Code 58-138). Allows the IDL to participate in land exchanges with any state lands for similar lands of equal value public or private, so as to consolidate state lands or aid the state in the control and management or use of state lands. This statute also sets provisions for exchanges of leased lands.

The procedural requirements for IDL land exchanges are provided under Idaho Code 58-104, granting the Land Board authority to set rules and regulations for management of state lands. In addition, Idaho Code 58-505 grants the Land Board power to exchange lands associated with state forests or parks.

The IDFG, through the Idaho Fish and Game Commission, is authorized to conduct land exchanges for specific purposes, including:

- fish hatcheries, nursery ponds, or game animal or game bird farms;
- game, bird, fish or fur bearing animal restoration, propagation or protection;
- public hunting, fishing or trapping areas; or
- to extend and consolidate lands or waters suitable for the above purposes (Idaho Code 36-104(b)7).

IDFG is not authorized to sell lands. Land sales for IDFG must be approved by the Land Board and handled using IDL's procedures.

3.3. Land Exchange Processes

The BLM, USFS, IDL, and IDFG each have specific guidelines to follow when completing land exchanges. The processes for each agency are similar in many ways, but vary in others (Tables 3-1 and 3-2).

3.3.1. BLM Exchange Process. BLM requirements for land exchanges are covered in the Code of Federal Regulations (43 CFR 2200), and the process is described in detail in the 162-page Land Exchange Handbook (BLM 2005b). In brief, the process is divided into five phases (Table 3-1): [1] developing the exchange proposal; [2] evaluating the feasibility of the exchange proposal, including a non-binding Agreement to Initiate (ATI); [3] preparing appraisals, environmental documentation (NEPA), and equalization agreements; [4] preparing and documenting the decision; and [5] transferring title. The handbook outlines tasks and responsibilities for officials within the BLM. Field managers are responsible for much of the work in processing land exchanges. However, the individual State offices of BLM, as well as the Washington Office of BLM, must review and approve the feasibility analysis and decision documents. The Appraisal Services Directorate (ASD) must review and approve the appraisals for land exchanges. The Regional Solicitor must review feasibility and decision documents and provide a preliminary and final title opinion for each exchange.

3.3.2. USFS Exchange Process. The USFS process is similar to the BLM process. USFS requirements for land exchanges are covered in the Code of Federal Regulations (36 CFR 254), and the process is described in detail in the USFS Land Acquisition Handbook (FSH 5409.13, USFS 2004a). The process is briefly described in 15 steps in the handbook (Table 3-1); however, for different types of exchanges more detailed implementation schedules are provided that could include as many as 50 to 70 steps.

The USFS land exchange process begins with an exchange proposal that identifies the lands involved. The agency then conducts a feasibility analysis that ensures compliance with the applicable forest land and resource management plan, identifies the public benefits, ensures the availability of resources to complete the proposed exchange, identifies title and property description problems, and identifies potential support and opposition. A nonbinding Agreement to Initiate (ATI) is finalized and signed by all prospective parties to the exchange after the feasibility analysis is completed. The feasibility analysis and a draft ATI are reviewed by the appropriate Regional Office and/or the Washington Office of the USFS.

The USFS then must begin soliciting public input on the proposal including publishing a Notice of Exchange Proposal (NOEP) in newspapers in the area where the lands are located. Congressional representatives from the district where the land is located also must be notified, and for some types of

Table 3-1. Summary of land exchange processes for federal land management agencies.

U.S. Bureau of Land Management	U.S. Forest Service
1. Develop Exchange Proposal • Engage in informal discussions • Develop formal proposal **2. Evaluate Feasibility of Exchange Proposals** • Prepare feasibility report • Project land exchange processing cost • Prepare Agreement to Initiate Exchange (ATI) • Establish case file • Submit to State Office and Washington Office for feasibility review **3. Exchange Processing and Documentation** • Execute ATI • Publish notice of exchange proposal (NOEP) • Request appraisal from Appraisal Services Directorate (ASD) • Conduct resource analysis and environmental documentation (including NEPA requirements) • ASD reviews and approves completed appraisal • Equalize the exchange by subtracting lands or paying an equalization payment **4. Decision Analysis and Approval** • Prepare decision documents for approval by State and Washington offices • Publish and mail Notice of Decision (NOD) **5. Title Transfer** • Execute a Binding Exchange Agreement • Make equalization payments (if necessary) • Close land exchange transaction • Complete post-conveyance actions and land status updates	• Exchange Proposal • Feasibility Analysis • Oversight Review • Execute Agreement to Initiate (ATI) • Public Notification • Congressional Review • Scoping (NEPA) • NEPA Analysis • Appraisal Preparation and Approval • Oversight Review • Decision • Title Clearance • Transaction Closing • Final Title Clearance • Close Case

Sources: BLM 2005b, USFS 2004a.

exchanges more formal congressional review and oversight is required. Like the BLM, the USFS also must undertake public scoping to identify issues that need to be addressed in the NEPA analysis.

Appraisal preparation can begin before the NEPA analysis is complete. The USFS is encouraged to involve the other parties to the exchange early in the appraisal process to minimize the potential for dispute over values. NEPA analysis documentation and the appraisal are both subject to review by the Regional Office and Washington Office of the USFS. A NEPA decision document is required, as well as a notice of the exchange decision.

After the exchange decision is reached, an exchange agreement between the USFS and the other party or parties is drafted. The exchange agreement is a contract where the terms and conditions of the exchange are agreed to, including such things as values, cash equalization payments, and responsibilities of each party. The exchange then proceeds through the closing process during which property titles are cleared and exchanged. The land exchange is then complete and the case closed.

3.3.3. IDL Exchange Process. The *State Trust Lands Asset Management Plan* approved by the State Board of Land Commissioners (Land Board) on December 20, 2007, and updated July 30, 2008, provides the foundational basis for IDL's exchange process.

IDL updated its exchange process during 2009 through development of *Asset Acquisition Strategy and Process and Exchange Application* documents (Table 3-2). Exchanges are anticipated to occur as a result of two general processes, either through an application process or a directed process. Exchanges with private parties will typically be initiated by the proponent completing an exchange application. Once the application has been reviewed and approved by the IDL Supervisory Area a nonrefundable application fee is collected. The proposal is subsequently presented to the IDL Asset Management Steering Committee (AMSC) for conceptual approval. The AMSC decides if the proposal meets the needs of the trust as outlined by the *State Trust Lands Asset Management Plan* and internal strategy documents. If acceptable, the AMSC directs how the IDL should proceed with performing due diligence and under what terms and conditions. A due diligence team is appointed to process the exchange proposal.

Exchanges involving federal agencies generally are more complex, involve more acreage and more stakeholders. These exchanges are reviewed by the AMSC and then taken to the Land Board for conceptual approval. The AMSC has conceptual approval authority for directed exchanges, i.e., those directed by the Land Board or IDL executive staff. The Land Board is briefed regarding all potential exchanges whether they come through the application process or the directed process.

The next step includes the exchange proponent and IDL entering into a nonbinding Agreement to Initiate (ATI) or Term Sheet which includes the legal descriptions for the properties to be exchanged, responsibilities of all involved parties, identification of transaction costs and cost responsibilities associated with financial analysis, timber cruises, phase 1 environmental site assessments, boundary surveys, and appraisals, and general processing requirements. IDL then notifies lessee(s) and other potentially affected agencies such as the USFS, BLM, and IDFG of the proposed exchange.

Upon completion of due diligence, the parties negotiate a final exchange package that is presented to the Land Board for approval. Once the Land Board approvals a complete proposal, a *Land Exchange Agreement* is executed and the final deed preparation and title work is processed to close the exchange.

3.3.4. IDFG Exchange Process. The IDFG exchange process is a combination of two parallel processes: a land disposal process and a land acquisition process (IDFG 2003). The two processes are similar. In each case, the process begins with a proposal submitted to a regional wildlife habitat manager (Table 3-2). The proposals are then reviewed by regional staff and the Lands Committee, made up of the IDFG Deputy Director, Natural Resource Policy Bureau Wildlife Program Coordinator, Bureau of Wildlife State Game Manager, and a representative from each region and the Fisheries Bureau. The IDFG Director also reviews the proposals (IDFG 2003).

IDFG schedules public hearings and also notifies the Idaho Fish and Game Commissioner representing the exchange location(s), County Commissioners, and other interested parties about the proposed exchange. The department also notifies members of the Idaho House of Representatives Resource and Conservation Committee and the Idaho Senate Resources and Environment Committee, as well as state senators and representatives from the exchange location(s) (IDFG 2003).

The IDFG Land Acquisitions Coordinator contracts out the appraisal work and conducts negotiations for the exchange. The Lands Committee, Land Acquisition Coordinator, and Director review the

Table 3-2. Summary of land exchange processes for state land management agencies in Idaho.

Idaho Department of Lands	Idaho Department of Fish and Game
• Proposal developed • Application submitted for review • Nonrefundable fees collected • Preliminary Financial Analysis and Value Estimate • Asset Management Steering Committee review/conceptual approval • Land Board executive briefing (nonfederal exchanges) • Prepare nonbinding Term Sheet or Agreement to Initiate (ATI) • Property title review • Notify lessees • Perform due diligence • Negotiate final exchange package • Final Land Board Approval • Execute Land Exchange Agreement • Prepare deeds and close transaction	• Proposal submitted to IDFG Regional Wildlife Habitat Manager • Review and recommendation by regional IDFG staff • Review and recommendation by IDFG Lands Committee • Review and recommendation by IDFG Director • Notify local Idaho Fish and Game Commissioner, County Commissioners, and other interested parties; schedule public hearings; notify appropriate Legislative committees and members • IDFG Land Acquisitions Coordinator contracts out appraisal and conducts negotiations • IDFG Lands Committee, Land Acquisition Coordinator, and Director review appraisal • IDFG Lands Acquisition Coordinator presents exchange proposal to Idaho Fish and Game Commission. • Final exchange decision rests with Idaho Fish and Game Commission.

Sources: Opp, review comments; IDFG 2003.

appraisal once it is completed. The Lands Acquisition Coordinator presents the exchange proposal to Idaho Fish and Game Commission, which makes the final decision about completing the exchange (IDFG 2003). Once the Commission approves the exchange proposal, the Lands Acquisition Coordinator working with others prepares the final deed and title work necessary to close the exchange.

3.4. Summary and Conclusions

Land exchanges must further the land management objectives of the agencies participating in them. Both the BLM and the USFS have multiple-use land management objectives. The IDL's management objective is to maximize long-term financial return to the beneficiary institutions. The IDFG's management objective is to protect and manage Idaho's wildlife and fish.

Numerous federal laws authorize the BLM and the USFS to participate in land exchanges. Both agencies follow the rules laid out in FLPMA when conducting administrative land exchanges. NEPA analyses are required for all administrative exchanges. The IDL and IDFG are authorized to participate in land exchanges by the Idaho Constitution, Idaho Admission Bill, and Idaho Code. The IDL's and IDFG's procedures for land exchanges are relatively similar to those of the federal agencies.

Chapter 4. What are the Benefits of Land Exchanges?

The complexity of land exchange processes could lead some observers to question why public land managers would willingly undertake a land exchange. The answer is that an abundance of benefits can be gained through reconfiguration of land ownership using land exchanges. The potential benefits include: the ability to obtain land without expending public funds for acquisition, increasing management efficiency, increasing environmental quality, and societal benefit gains.

4.1. Obtaining Desirable Land Parcels with Less Funding

Land exchanges give public land agencies an opportunity to reconfigure land ownership at potentially lower costs than purchasing desirable lands outright, while allowing managers to dispose of less desirable lands. Exchanges allow lands to be acquired for the administrative costs of completing the exchange as opposed to market value plus the administrative costs of a purchase. In an exchange, the real estate values of the lands being traded (plus any cash equalization payments) must be equal. The value of the agency's estate stays the same, and the only financial costs to the agency are those associated with processing the transaction. Although the processing costs of land exchanges can be two or more times that of a purchase because of the procedural requirements to complete an exchange (USDOI and USDA 2005; see Section 5.4), the administrative costs for an exchange can be much less than the market value of the land. Also, the administrative costs of exchanges are shared among the participants in an exchange (BLM 2005b, USFS 2004a). Land exchanges can help overcome the challenges of budget constraints and limited appropriations for land acquisition for public land management agencies (Amaditz 1999).

4.2. Increasing Management Efficiency

Larger, contiguous land parcels can be managed more efficiently than smaller, scattered parcels. For example, in Montana, state agencies were found to have increased income from land trusts and consolidated holdings after land exchanges were completed (Legislative Audit Division 2001). In another example, the Clearwater National Forest in Idaho was involved in seven land exchanges in the ten-year period ending in 2003. During that time, 34,183 acres were acquired and 23,551 were traded away. These exchanges saved the federal government more than $1 million in administrative costs such as land line location, rights-of-way acquisition, and trespass cases (USFS 2003b). In the Coeur d'Alene River/Chain Lakes exchange, the USFS stated that "consolidate[ing] federal land holdings, [made] them easier and less costly to manage" (Drumheller 2001).

BLM likewise generally looks to complete exchanges to create larger parcels of land as opposed to managing multiple smaller parcels, but depending upon resource objectives, there may be exceptions (Landers 2002; USDOI and USDA 2005). IDL also engages in exchanges to increase management efficiency (e.g., Land Board 1999), resulting in increased long-term net income for the trust beneficiaries.

Land exchanges benefit public land agencies by eliminating inholdings and scattered parcels that limit flexibility and make management difficult (Fitzgerald 2000; Western States Land Commissioners Association, no date). For example, the BLM and IDL have addressed the problems associated with inholdings through a strategy of land exchanges to improve land management potential, eliminate conflicts generated by ownership patterns, and facilitate management by realigning scattered state parcels and "creating solid block ownership" (IDL and BLM 1986).

Land ownership patterns of intermingled public and private lands can lead to conflicts over access management and development. Conflicts can lead to litigation, which increases the cost of managing small land parcels (Stuebner 1998). Land exchanges provide the opportunity to avoid conflict.

4.3. Increasing Environmental Quality

By using land exchanges to consolidate landholdings, public land management agencies can promote environmental quality. For example, increased biodiversity is often associated with larger land parcels, which in turn are more likely to promote stable, resilient ecosystems. Protecting habitat through creation of larger parcels designated for habitat management can be essential for wildlife, fish, and plant survival (Keiter 2002). Land exchanges can be a key to protecting biodiversity (Paul 2006). Land exchanges can also increase environmental quality by creating continuous corridors of protected lands that benefit wildlife species (Cutler 1993).

A 2007 land exchange between IDL and the Wood River Land Trust is an example of an exchange done primarily to protect environmental quality. However, in this case, it was the private landowner that was looking to protect lands for environmental purposes. In the exchange, the Wood River Land Trust received 120 acres of land previously owned by IDL, including a half-mile of frontage along the Big Wood River in Hailey. The exchange protected a cottonwood forest in Hailey, created a greenway along the river, protected the area from future development, and maintained the healthy floodplain functions near the river (Wood River Land Trust 2007). In exchange, IDL received a 4.6-acre lot in Indian Creek, a residential development, which it can sell to fulfill its mission of generating financial returns for the benefit of Idaho's public schools.

4.4. Enhancing Societal Benefits

In some cases, moving lands into public ownership can promote societal gains, with benefits including public access to land, protection of cultural resources, and increased opportunities for recreation (National Research Council 1993). While private land ownership is important to individuals, public ownership can promote societal good by allowing public input and use (Sierra Club 2001). Additional societal benefits can result from land exchanges that settle property disputes (Kochan 2002, Lewis 2006). When public agencies enter exchange agreements with private landowners, they also can improve perceptions of government agencies as uncooperative and unwilling to work with private landowners to meet their needs. For example, legislated land exchanges with private landowners have been used to make the designation of new federal wilderness areas more politically feasible (Leshy 2005).

Land exchanges can enhance societal benefits by improving recreational opportunities. Acquiring desirable lands and placing them in public ownership may allow public access for recreational activities that previously were unavailable when the lands were in private ownership. An example of an exchange beneficial for recreation occurred in southern Idaho where BLM exchanged 141 acres of public land for a conservation easement that provides access to the South Fork of the Owyhee River (BLM 2000b). Transactions such as this provide recreational opportunities while disposing of lands that were inefficient to manage due to their small size.

Land exchanges can support local community needs by acquiring lands deemed important to community identity. For example, the Boise Foothills/North Idaho exchange protected lands important to the people of Boise (see Section 2.3).

Land exchanges can promote economic development, particularly in areas of the West where fast-growing cities are surrounded by public lands, and the land is needed to accommodate growth (Burr

2006). For example, BLM land is included in a proposed exchange in Blaine County for a new, larger airport in the area (74 FR 12890; Murphy 2009).

4.5. Summary and Conclusion

Benefits of land exchanges range from reconfiguring land ownership patterns for more efficient management to improving environmental qualities on federal and state lands. Exchanges can relieve the budget constraints placed on the BLM, USFS, IDL, and IDFG while helping to achieve land management objectives. As one conservation interest group has noted, land managers may find land exchanges are a useful tool to "eliminate cumbersome ownership patterns and consolidate large blocks of lands into public ownership to facilitate ecologically sound management of the area" (Wilderness Society 2000).

Chapter 5. What are the Challenges of Land Exchanges?

Although many benefits of land exchanges exist, there are numerous challenges to completing them, including: identifying suitable lands, identifying and protecting the public interest, complications in completing environmental requirements, inherent problems with appraising lands, timeliness, and costs associated with land exchanges (Blaeloch 2001). The challenges of land exchanges may be reflected in the downward trend in the number of exchanges completed by the BLM, USFS, and IDL between 1996 and 2007 (Figure 5-1), but it may be that there are not as many desirable land exchange possibilities as a result of the hundreds of exchanges that already have been completed.

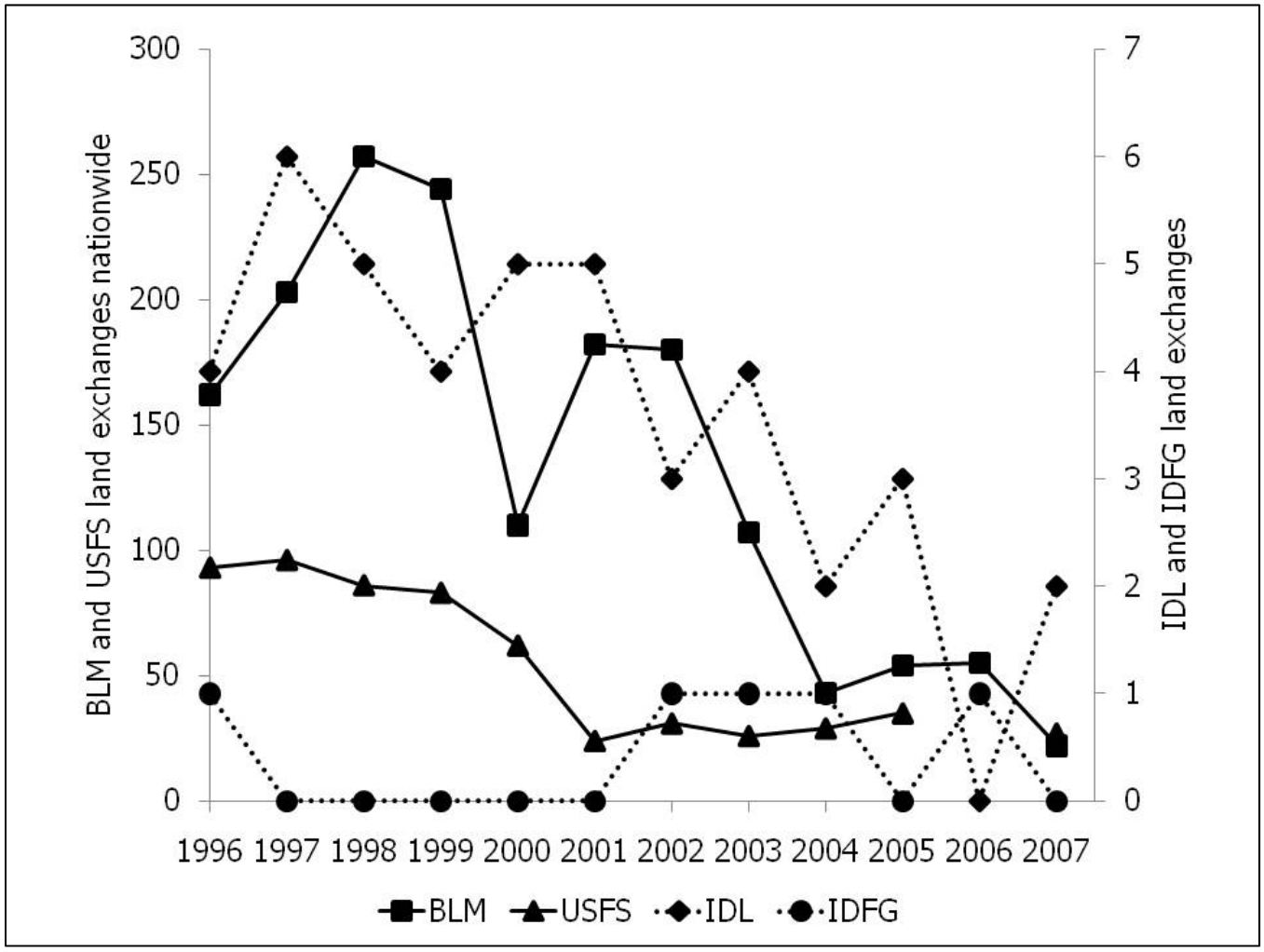


Figure 5-1. Number of land exchanges completed in the U.S. by the Bureau of Land Management (BLM) and the Forest Service (USFS), and completed in Idaho by the Idaho Department of Lands (IDL) and the Idaho Department of Fish and Game (IDFG), 1996-2007.

Data sources: BLM (1996, 1997, 1998, 1999, 2000a, 2001, 2002, 2003, 2004, 2005a, 2006); USFS (2009); IDL (1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005); IDFG (2009).

5.1. Availability of Suitable Lands for Exchange

Before a land exchange can begin, a public land management agency must identify land that meets its objectives, identify the landowner of the desirable parcel, determine if the landowner is willing to

dispose of the land, and then identify and offer lands it is willing to exchange that meet the desires of the landowner (GAO 2000). This process can be complex. Although Idaho's land ownership pattern consists of many inholdings and other intermingled ownerships—some in a "checkerboard" pattern—this does not automatically make these lands either suitable for disposal or desirable for exchange. For example, the trend for IDL over the last decade has been a decreasing number of acres exchanged (Figure 5-2). The drop-off in acreage may be attributable to the increasing difficulties in identifying suitable lands and willing parties as more of the exchanges by IDL are with private landowners (Whittaker 2004). USFS and BLM exchanges are also decreasing (Figure 5-1), but it is unclear if lack of suitable lands for disposal or acquisition via exchange is a reason. The need for land exchanges may also be decreasing due to the many exchanges completed in the past (Taylor, review comments).

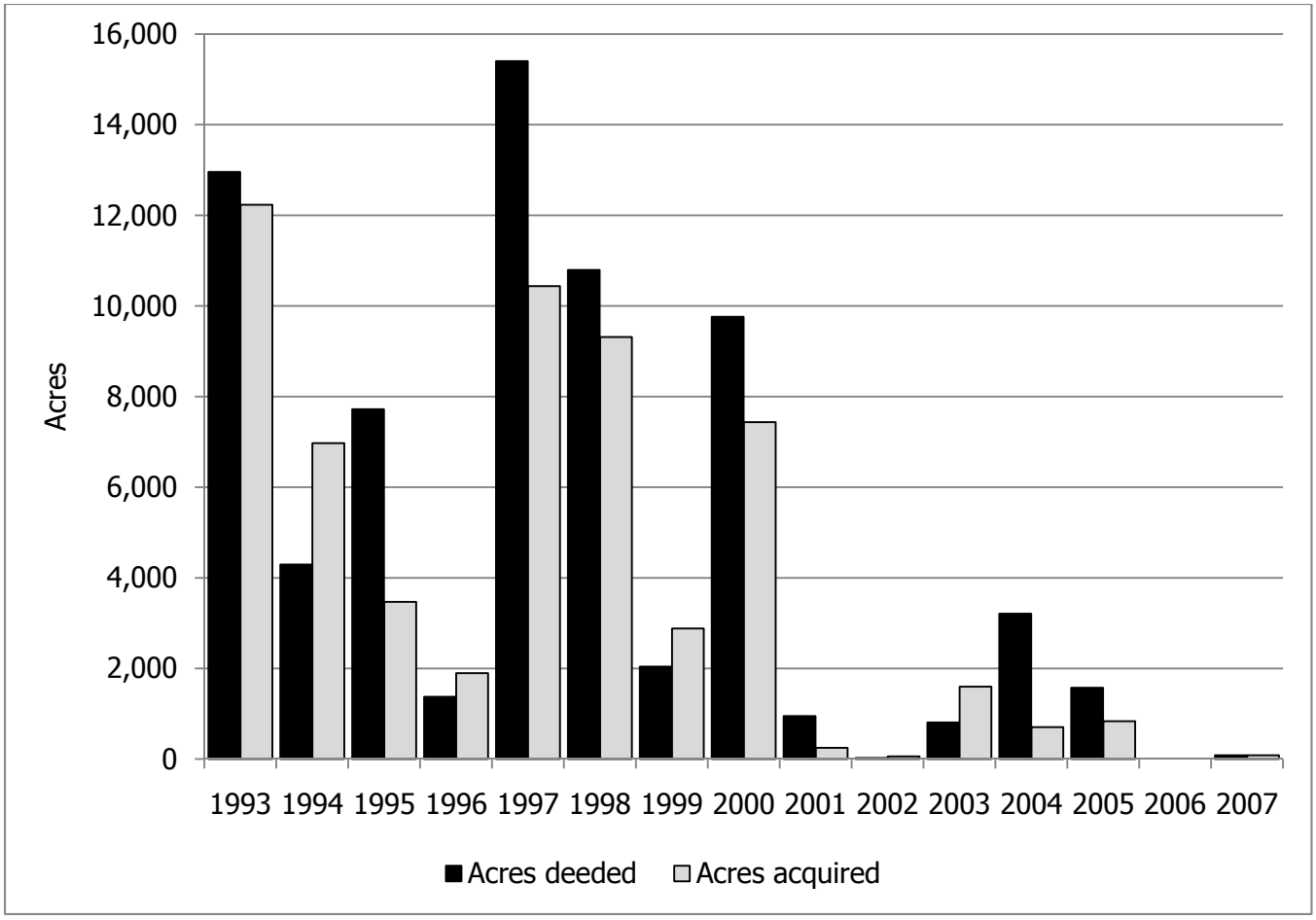


Figure 5-2. IDL acreage exchanged, FY1993-FY2007.

Data source: IDL (2009).

5.2. Appraisal

Appraisal is the act or process of developing an opinion of value, or the opinion of value itself (Appraisal Institute 2002). We recently completed a review of appraisal methods for cottage sites on Idaho's endowment lands, an enduring controversial issue (Cook and O'Laughlin 2008 [PAG #28]). Similarly, no issue about land exchanges raises more questions than appraisal.

In the past, public land management agencies have been accused of regularly entering into lopsided deals where the values of the lands being exchanged were not equal (St. Clair 2001). Such accusations arise from exchanges that are valued by different appraisal methods or by sales on the

open market that generate different values. On occasion public land agencies have been accused of purposely distorting land value (Appraisal Foundation 2002, Paul 2006, Dansie 2008). For example, during the process of completing the Squirrel Meadows/Grand Targhee exchange (see Section 2.4), the Greater Yellowstone Coalition (2001) referred to the appraised land values as "[a] deal [that] smacks of being pre-ordained" and that the "public would be cheated financially." In this case, the Coalition charged that the USFS's appraisal valued the land at $28,000 per acre while "at other Wyoming ski resorts, undeveloped lots…are selling for 15 to 50 times that much." Accusations similar to these abound throughout the literature associated with land exchanges. As a matter of fairness, it is necessary to look at the nature of appraisals and the values that appraisers are attempting to estimate.

In 2000, discontent with BLM and USFS appraisals for land exchanges led the U.S. Government Accountability Office (GAO) to call for a moratorium on land exchanges (GAO 2000). Laying the shortcomings of appraisals upon the BLM and USFS may not be fair. Viewed by some as a flaw of the land exchange process, appraisal is valuation of land in the absence of a market transaction. "Any appraisal is subject to question because it is an estimation of value rather than a price determined by a market [and the] substitution of an appraisal for a price is a fundamental weakness of the system" (Fitzgerald 2000). The actual, realized value of any good, including land, is what someone is willing to pay. Willingness to pay is the true determination of value, and appraisals are merely a best guess of this willingness. This is the nature of the appraisal process.

To conduct appraisals, the BLM and USFS rely on the *Uniform Appraisal Standards for Federal Land Acquisition* (Interagency Land Acquisition Conference 2000). The IDL follows the *Uniform Standards of Professional Appraisal Practice* (Appraisal Standards Board 2008); however, the *Uniform Appraisal Standards for Federal Land Acquisition* is used for exchanges with federal agencies. Both standards follow accredited, generally accepted appraisal practices. These standards typically involve three methods of land valuation: the sales, income, and cost approaches. Each method uses different techniques to estimate land values (Table 5-1), sometimes achieving different results for the same property. Each method has its own shortcomings that arise because an appraisal is an estimate of land value, and the only sure way to determine actual value is by finding out what bids and offers are made on the land in an open market (Barlowe 1986, Fitzgerald 2000).

The shortcomings of the sales, income, and cost appraisal methods depend on land types and use. Appraisal techniques work well on improved lands with structures or housing present or with predictable revenue flows (Appraisal Institute 2001), but lands involved in exchanges are often unimproved, nonrevenue-producing lands. In addition, public land management agencies must base valuation on the "highest and best use" (Interagency Land Acquisition Conference 2000). Determining this use can be as difficult as determining the estimation of its value. In the following sections we describe the three major valuation methods utilized by public land management agencies and look at the determinants of highest and best use, the inherent difficulties in valuing various types of public lands, and why market transactions are the only way to determine the actual value of land.

5.2.1. Sales Approach. The sales approach is often referred to as either the sales comparison, market comparison, or comparable sales method. Value estimates are based upon comparing an actual sale of land or property that shares similar characteristics with the parcel being appraised. The estimate is then modified by making adjustments for dissimilar characteristics. This approach is most reliable when recent market transaction data are available. The sales approach assumes that the substitution principle applies—i.e., properties with similar characteristics have similar values (Appraisal Institute 2001).

Table 5-1. Comparison of three major appraisal techniques utilized in land exchanges.

Method	Basis of method	Theoretical basis	Main disadvantage
Sales (Comparison)	Compares value characteristics and sales with similar properties recently sold.	Economic principle of substitution.	Depends on availability of comparable properties sold under similar market conditions.
Income (Capitalization)	Value is determinant of relationship between annual net returns and capitalizing rate of interest.	Property value is approximate to value of all future income.	Assumes perfect future knowledge in relation to predictable net return flows and rates of interest.
Cost (Replacement)	Value determined by comparison of cost to replace existing property less depreciation.	Property value is approximate of production costs.	Utilizes sales (comparison) approach for replacement cost, in addition to, complications in determining depreciation.

Sources: Appraisal Institute (2001), Barlowe (1986), Interagency Land Acquisition Conference (2000).

The sales approach will be deficient when there is a lack of market transactions that are similar to and accurately portray the specific property being appraised. This can occur with highly specialized properties, including some of those found in public ownership. Additionally, the sales approach has no mechanism for adjusting for fluctuations in market prices, i.e., peaks and valleys in market price trends (Barlowe 1986). The sales method works well for urban and suburban houses, apartments, farms, or other properties that are sold in great numbers. The comparable sales method may be a challenge in appraisals for land exchanges unless recent specific data exist for public land sales that share closely related characteristics.

5.2.2. Income Approach. The income approach is also referred to as the income capitalization method. The approach estimates value by determining the present worth of all future incomes, minus future costs (Barlowe 1986). The value is determined by the relationship between annual net revenue flows and a capitalizing interest rate. The IDL utilizes a land/soil expectation value formula which is representative of the income appraisal method (IDL, no date; see O'Laughlin and Cook 2001 [PAG #21]). The reliability of the estimate lies in accurate portrayal and data on revenue flows and accurate selection of a capitalizing interest rate that reflects a rate of return necessary to attract investment capital and incorporate risk (Appraisal Institute 2001). The income approach is most accurate and reliable for commercial or industrial properties that have regular income streams.

The deficiencies of the income approach can exist in the estimates of revenue flows and capitalization rates. Revenue flows that are irregular, difficult to predict, fluctuate to extremes, or have no known pattern are difficult to project into the future. The income approach relies heavily on perfect knowledge about the future (Barlowe 1986), or simplifying assumptions that the future may be like the

past. Another problem is that lands involved in exchanges destined for conservation, wilderness, or other protected status generate no revenue flow so their income-producing value is difficult to estimate using this method (Barlowe 1986).

5.2.3. Cost Approach. The cost approach is also referred to as the replacement cost method. The cost approach estimates value using production costs, or the cost of replacement minus depreciation (Appraisal Institute 2001). The method relies on the same principles as the sales approach. A value is estimated by comparing the values of similar properties, assuming one is a sufficient substitution for the other. A value is determined by estimating the cost to construct a reproduction or replacement for existing structures and subsequent deduction of depreciation (Appraisal Institute 2001). The procedures for this method are similar to those of the sales approach, with the addition of accurately estimating the depreciation of property or land.

Because it shares similar attributes to the sales approach, the cost approach can share the same shortcomings. The accuracy of the value estimate remains tied to the ability to find sufficient data for property that shares similar characteristics with the land being appraised. The best method to predict market value as closely as possible may be to use more than one appraisal method as applicable for a specific property type and develop an aggregate appraisal value (Appraisal Institute 2001).

5.2.4. Determining Highest and Best Use. Highest and best use is defined as the "most profitable use for which the property is adaptable and needed or likely to be needed in the future" (Interagency Land Acquisition Conference 2000). Under normal circumstances, this use is assumed to be the current use of the property. Issues of highest and best use most often arise for public land management agencies when land is being exchanged with the intent of altering its use, which creates difficulties in estimating value (Stengel 2001). For example, in the Squirrel Meadows/Grand Targhee land exchange (see Section 2.4), much of the controversy over the valuation had to do with a change in land use. The determinants for highest and best use are that the use be physically possible, legally permissible, financially feasible, and maximally productive (Appraisal Institute 2001). The latter characteristic of maximally productive can be the source of significant conflict for multiple-use lands. Timber, wildlife habitat, recreation opportunities, and watershed protection all have maximum capabilities, yet each has distinctly different values, and some are generally traded off for others, as it is not possible to maximize more than one objective. Despite the difficulties, determination of highest and best use must be accomplished before the appraisal process begins.

5.2.5. Summary and Conclusions about Appraisal. Problems with appraisals can be a challenge to completing land exchanges. Appraisals are estimates of market value, and proponents and opponents of land exchanges need to understand the nature of appraisals and their limitations. Only a market transaction in which a buyer and a seller reach agreement on value can be said to represent land value. An exchange of two parcels of property is not the same thing as a market transaction.

Not all problems with appraisal and valuation are due to methodological shortcomings. For example, in the past, BLM has been accused of colluding with private landowners in determining land values in exchanges and the agency's organizational structure that ensures appraisers' independence has been criticized (Appraisal Foundation 2002). Public land management agencies need to ensure that the best available data and methods are used in appraisals in order to generate confidence in the process.

5.3. Identifying the Public Interest

Another challenge of land exchanges is the federal land management agency's ability to meet the mandate to "determine that the public interest will be well served by making that exchange" (FLPMA; 16 U.S.C. 1716). While the known goal of an appraisal is a value estimate, attempting to determine how two different parcels of land serve the public interest can create confusion, incite debate, and force land exchanges into litigation. Public land management agencies have been accused of compromising the public interest in order to complete land exchanges (Gregory 1999, GAO 2000, Paul 2006).

When considering the public interest, federal agencies "shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, mineral, and fish and wildlife" (43 U.S.C. 1716). BLM and USFS land exchanges must conform with existing land and resource management plans (36 CFR 254.3(f) and 43 CFR 2200.0-6(g)). The agencies must find that the public values and objectives to be served in the non-federal lands being acquired are greater than those of the federal lands being conveyed (43 U.S.C. 1716).

Negotiated exchanges of federal land are subject to NEPA analysis, which requires public notification, public input and reviews, and avenues for appeals and litigation. Courts have leaned toward accepting agency determinations of public interest when challenged in court (Eyre 2003). However, challenges to land exchanges through litigation based upon NEPA analysis can focus on specific aspects of the public interest. For example, litigation in the Squirrel Meadows/Grand Targhee land exchange (see Section 2.4) focused on the public interest in protecting wildlife (Associated Press 2001a).

Determining the public interest generally involves finding some balance between competing interests in the resource. For example, in the proposed Upper Lochsa exchange in northern Idaho (see Section 2.5), some conservation interest groups are advocating the exchange to improve fish and wildlife habitat, but Idaho County officials view the exchange less favorably because it would result in a loss of property tax revenue to the county if private land becomes federally owned and potentially result in the loss of recreational access to existing public lands around Elk City (Barker 2006, Walker 2006, Hedberg 2009b). Balancing a broad range of public interests can be a formidable challenge for completing land exchanges.

5.4. Costs

Costs are a challenge for all actions conducted by public land management agencies, and land exchanges are no exception. Land exchanges involve financial expenditures, although the outlays likely will be less than if a desirable parcel were purchased outright. Public land management agencies must consider administrative and staffing costs, analysis costs, and transaction costs associated with land exchanges. The land exchange itself may require cash equalization payments on behalf of the public land agencies to make up for differences in appraised values. If an exchange is challenged through the court system, litigation expenses are additional costs.

Adding to the cost challenge is a general decline in federal funding that has resulted in decreased staffing and resources to process exchanges (GAO 2009; Western Land Group, no date). Higher priority items for federal agencies, such as processing special-use permits and energy rights-of-way, sales and other land adjustments, and boundary and title management, have led to fewer land exchanges being completed (GAO 2009).

It is difficult to track agency costs specific to land exchanges (GAO 2009). For example, BLM's report of administrative costs also includes cash equalization payments, and USFS did not begin to track administrative costs for land exchanges until FY 2005 (USDOI and USDA 2005). BLM reports the administrative costs of exchanges are typically at least twice as much as for land purchases because both the disposal of land and acquisition of land require review, analysis, and clearances to complete the transactions (USDOI and USDA 2005). Both BLM and USFS require that land exchange processing costs be shared with the private landowners or third parties involved in exchanges (BLM 2005b, USFS 2004a). Cost sharing, particularly if the private party is asked to bear the majority of the up-front costs and the exchange proposal is unsuccessful, can serve as a disincentive for private landowners to propose exchanges (Andersen, review comments).

One significant and unpredictable cost is that associated with the NEPA process (Dansie 2008). Land exchanges with significant environmental impacts require the preparation of an environmental impact statement. Exchanges are sometimes litigated based on the environmental review process, which adds to the cost of the exchange. For example, in the Squirrel Meadows/Grand Targhee exchange (see Section 2.4), the USFS sued under NEPA and as a result of court action required to produce a supplemental environmental impact statement before the exchange could be completed, adding costs to the exchange.

5.5. Timeliness

In addition to financial expenditures, time is an additional cost that can be a challenge to land exchanges (GAO 2009). For example, discussions regarding an exchange of 6,000 acres between BLM and Thompson Creek Mine near Clayton, Idaho began in 2006, but an EIS is not expected until 2010 with a Record of Decision expected in 2012 (Adams 2009, BLM 2008b).

The time frame to complete exchanges appears to be lengthening. Arlen Olson, an experienced facilitator of land exchanges in northern Idaho, stated that in 1988 land exchanges took, on average, six to nine months to complete. By 2002, exchanges began to take "two, three even five years in today's time" (Olson 2002). Even exchanges heralded as successes take significant amounts of time. For example, the Brown's Meadow land exchange in the Clearwater National Forest was viewed favorably by most parties and received little opposition, but its schedule for completion was a year and a half (USFS 2003a).

Timeliness is a challenge in relation to appraisals, particularly in volatile land markets where values change rapidly. Lands may have different values at the end of the exchange process than they had at the time the appraisals were done. Delays in completing appraisals, due to both a lack of qualified appraisers on staff and under outside contract, are a challenge for both the BLM and USFS (GAO 2009).

Congress attempted to facilitate more timely exchanges of small parcels by the USFS through the 1983 Small Tracts Act (P.L.97-465). However, even simple, small exchanges take a significant amount of time to get through the administrative process, and in 2005 Congress began to question why they are taking so long (Berman 2005, U.S. Senate 2005). Timeliness will always be a challenge to land exchanges for public agencies because of the many administrative requirements they must go through to complete an exchange (GAO 2009).

5.6. Policy Disincentives

Policies can create disincentives for agencies to participate in land exchanges. For example, in 2000 Congress passed the Federal Land Transaction Facilitation Act (FLTFA, P.L. 106-248) that places

proceeds from land sales by BLM into a "Federal Land Disposal Account" that is available to BLM, USFS, National Park Service, and U.S. Fish and Wildlife Service to purchase inholdings and lands adjacent to existing federal lands. Although some of the proceeds from sales can be used to offset the administrative costs of exchanges, the bulk of the proceeds must go to the purchase of other lands. FLTFA can serve as a disincentive for BLM to engage in the land exchange process because it creates an incentive to buy and sell lands instead (GAO 2009, Tang 2002). As an additional example, the Forest Service Facility Realignment and Enhancement Act of 2005 (P.L. 109-54) has contributed to a significant priority shift within the USFS from exchanges to administrative site sales (GAO 2009).

Policies can also serve as disincentives for public support of land exchanges. For example, counties in Idaho are reluctant to support exchanges that will increase the amount of federal and state lands in their counties because of the resulting decrease in private lands and the property tax revenues they provide that fund schools, roads, and other county government services. (See Section 2.5 Upper Lochsa Exchange, for example.) Although the federal and state governments compensate counties to some degree through programs such as Payments in Lieu of Taxes (PILT, P.L. 97-258) and the Secure Rural Schools program (P.L. 110-343), the future and funding of such programs can be uncertain.

5.7. Summary and Conclusions

Land exchanges can be complex and time consuming, and managers face numerous challenges to complete them. Identifying lands for exchange and whether parties are willing to engage in the process of exchange can prove difficult. Appraisals can be controversial, particularly where lands have unique characteristics not seen often in the marketplace. Public land management agencies must be mindful of expenses and budget realities. Identifying public interest requires in-depth analysis, not only of the lands involved in exchanges, but of the affected segments of the public. Even then, some public interests can be contradictory to the goals and objectives of public land management agencies. Lack of public support for an exchange may be a difficult challenge to overcome.

Chapter 6. Overcoming the Challenges of Land Exchanges

Public land management agencies can increase the potential for beneficial gains from land exchanges by dealing effectively with the challenges they create. Below, we examine several options that agencies in Idaho could consider to reduce or avoid challenges and thereby improve the land exchange process and change the landownership pattern when it would be beneficial to do so.

6.1. Option: Do Not Engage in Land Exchanges

Public land management agencies could choose not to engage in land exchanges at all. The result would be either that land ownership patterns remain as they are, or buying and selling takes the place of exchanges. Eliminating land exchanges would eliminate the challenges of completing them, but also eliminate their benefits.

In 2003, the GAO recommended that the BLM and USFS terminate their land exchange programs because of past problems (GAO 2003). Since then, both the BLM and USFS have addressed many of the problems identified in land exchanges completed in the 1990s and early 2000s. Both agencies have updated their land exchange procedures and training and increased oversight of exchanges in the field. While challenges still remain with land exchanges completed by both agencies, the GAO is no longer calling for abandonment of the practice (GAO 2009).

Perhaps the greatest challenge that would arise if public land management agencies abandoned land exchanges as a way to acquire and dispose of land would be the inability to acquire new land due to the cost of acquisition. Obtaining sufficient acquisition funds for purchases has been problematic and would continue to be so, whether the funding comes from the Land and Water Conservation Fund (16 U.S.C. 460l-4 et seq.; CRS 2006) or the Federal Land Disposal Account (43 U.S.C. 2305) that have been established for the purpose of purchasing land or through other congressional budget appropriations. State funds for land acquisition also are very limited, and to stop using land exchanges as a method of land acquisition would severely limit IDL's and IDFG's management options.

6.2. Option: Improve Appraisal Process

General challenges with appraisals are described elsewhere in this report (see section 5.2), and addressing them can be difficult because an appraisal is an estimate of value in the absence of a market transaction. Often lands involved in exchanges are remote, undeveloped, and have unique characteristics that make appraisals challenging because there is not a fully developed market for the lands. Public land management agencies involved in exchanges must ensure that appraisals accurately estimate the values of lands involved.

The past problems the BLM and USFS have had with appraisals are well documented (GAO 1987, GAO 2000, GAO 2003, GAO 2006, GAO 2009). In 2000, the USFS's appraisal practices were subject to review by the Appraisal Foundation, and lack of independence for USFS staff appraisers was found to be a problem (GAO 2009). The USFS partially addressed this problem by changing reporting lines and requirements for its appraisers (GAO 2009). In 2002, the appraisal practices of the BLM were analyzed by the Appraisal Foundation (2002). As a result of the BLM study, the Department of the Interior consolidated the real estate appraisal functions for all its agencies into the Appraisal Services Directorate in 2003 (Berman 2003, NBC 2006). Appraisal practices within the Department of the Interior have improved since creation of the Appraisal Services Directorate, but some problems still exist (GAO 2006, 2009).

In 2009, the GAO reviewed all BLM and USFS land exchanges from 2004-2008 and found that timeliness of appraisals was an issue (GAO 2009). Lack of in-house staff and lack of qualified, willing

private appraisers under contract were cited as reasons for appraisal delays. Increasing agency staff devoted to land exchanges and appraisals, as well as increasing staff training could help alleviate the challenge. To attract qualified, private appraisers, the agencies may need to consider changing contracting procedures so that appraisers are paid in a more timely manner (GAO 2009).

The GAO (2009) also found that land value imbalances were not being tracked appropriately by the BLM in some multi-phase assembled land exchanges. Recommendations for process improvement include better documentation, revisions to the BLM land exchange handbook, and improving field office compliance via higher level review (GAO 2009).

6.3. Option: Use Large-Scale Regional Planning Approaches

Land exchanges focused on large scale projects may be able to accomplish more diverse goals than smaller-scale land exchanges. Smaller, more localized exchanges may not sufficiently address issues of public importance such as habitat connectivity, habitat corridors, and other ecosystem-based considerations. Public interests in land exchanges that include preservation of water quality and supply, health and abundance of fish and wildlife, biological integrity of ecosystems, and preservation of habitat may require looking at larger scales than one forest stand or stream reach (Western Lands Project 1998a). Public land management agencies can generate multiple benefits by planning exchanges at large-scale regional levels that can incorporate desirable public interests such as habitat protection, watershed management, and conservation practices (Dadswell and Stewart 1999).

Public agencies may be able to get more out of each dollar spent by focusing on larger exchanges (Clearwater Land Exchange, no date). Increasing the scale of land exchanges can increase the complexity of the transaction process; however, costs are spread over more acres which many result in a lower per-acre cost. Identifying and understanding the costs associated with an exchange are important for determining if larger-scale exchanges are more cost-effective.

One of the problems identified in the GAO's 2009 review of BLM and USFS land exchanges was the lack of a national strategy to guide either agency's land tenure decisions and transactions, including land exchanges (GAO 2009). Large-scale, regional planning approaches could be used to guide decisions across jurisdictions, watersheds, and political boundaries to obtain larger regional goals for land ownership reconfiguration.

6.4. Option: Use Third-Party Facilitators

Public land management agencies in Idaho have effectively used third-party facilitators for land exchanges. Third-party facilitators have helped complete numerous land exchanges in the state including the Panhandle National Forest/Riley Creek and Coeur d'Alene River/Chain Lakes assembled land exchanges.

Third-party facilitators can offer communications and real estate expertise that benefit all parties involved in exchanges (Blaeloch 2001; GAO 2009). BLM and USFS officials have reported that third-party facilitators helped assure commitment of non-federal landowners to complete exchanges, served as knowledgeable parties for the non-federal landowner to work with, and enhanced communications between the agencies and non-federal landowners (GAO 2009). In addition, third-party facilitators may help alleviate staffing and funding constraints for agencies, but agencies still must oversee and meet regulatory requirements for exchanges. Using third-party facilitators may or may not reduce administrative costs for exchanges because facilitators must be paid for their services.

Some problems with third-party facilitators have been reported. In a few cases BLM and USFS officials reported that involvement of third-party facilitators increased pressure to complete exchanges

and inhibited agency communication with nonfederal landowners (GAO 2009). In addition, some organizations that monitor land exchanges are concerned that facilitators might try to skew appraisals in order to offset the costs they have incurred, and they can create an unhealthy push to process legislated exchanges quickly without sufficient public scrutiny (GAO 2009).

The use of third-party facilitators should be carefully considered and closely monitored (Nalder et al. 1998). Although third-party facilitators provide expertise, public land management agencies must ensure that they, not the facilitator, make decisions about the nature, process, and ultimate completion of land exchange transactions. Public land management agencies must always be aware that, ultimately, the agency is responsible for the management of public lands, serving the public interest, and maintaining public trust.

6.5. Option: Consider Legislated Land Exchanges

Land exchanges may be effectively accomplished using legislative rather than administrative processes, particularly if the proposed exchange has unusual characteristics. Legislated exchanges can provide flexibility that is not available under administrative exchange laws and regulations (Paul 2006, Dansie 2008, GAO 2009). In addition, historical evidence suggests that legislated exchanges typically receive greater consideration in district or appellate courts should litigation occur (Stengel 2001).

In its 2009 review of BLM and USFS land exchanges, the GAO found the most frequent differences between administrative and legislated exchange processes involved: identifying specific lands to be exchanged, requiring the agencies to conduct exchanges if requested by a non-federal party, and establishing time frames for completion of exchanges (GAO 2009). Other differences in the exchange processes included assigning the costs of the exchange, placing conditions on the federal land once conveyed, and altering appraisal requirements (GAO 2009).

When designing a legislated exchange, Congress may, or may not, require compliance with the provisions of FLPMA, NEPA, and other existing laws. Critics of legislated exchanges argue that waiving well-established laws to expedite exchanges is unsatisfactory; however, Congress is free to require compliance with existing laws in the text of legislated land exchanges (Dansie 2008).

Legislated land exchanges can use market forces to their advantage. For example, sometimes Congress has provided authority to federal land management agencies to sell certain parcels of land, retain the proceeds directly, and use those proceeds to acquire other parcels of environmentally sensitive lands in the state. This type of sell-then-buy flexibility is not available under traditional agency administrative land exchanges (Dansie 2008). However, critics charge that this flexibility may result in a net decrease of public lands (Dansie 2008).

Legislated changes also may create there own set of rules for how equalization payments or other revenues are to be distributed. Some view this as creating a inequitable system among the states or local entities that are involved (U.S. Senate 2005). Funding legislated exchanges is also a concern because generally the proponent of the exchange pays the appraisal costs, and Congress does not always include funding for those costs in exchange legislation (U.S. Senate 2005).

Critics have argued that legislated land exchanges have injected an overly political component into the exchange process. However, administrative exchanges can also be highly politicized. It seems likely that any process government uses to address land management issues will be touched to some extent by politics (Dansie 2008). However, politicized issues often have the advantage of being magnets for increased involvement by the public. There is some evidence that groups representing a wide spectrum of interests, including those not traditionally considered political action groups, have become politically active because of the issues raised by land exchange legislation (Dansie 2008).

Chapter 7. Conclusions

Land ownership patterns in Idaho are a legacy that other western states also have. Federal, state, and private lands are often intermixed in a pattern that can lead to management conflicts because of the different land management objectives of each owner. Land exchanges provide an opportunity to reconfigure land ownership patterns.

The advantages of land exchanges for public land managers are numerous. They allow more desirable land ownership patterns to occur without the lands being bought and sold. This is an important benefit for public land management agencies that tend to be "land rich and cash poor." Larger, contiguous parcels of land also can be more efficient to manage than smaller, scattered ones. Land exchanges can create such larger, single-ownership parcels. Improved environmental quality, such as more habitat for wildlife, and increased societal benefits, such as better recreational access, may also result from the larger, contiguous public ownerships that land exchanges usually create.

Despite the benefits that result from land exchanges, the process of trading lands can be challenging and controversial. Land exchanges made by the BLM and USFS must serve the public interest, as FLPMA mandates. Often there are multiple public interests in a parcel of land and sometimes they are in conflict. Choosing which public interests to serve can be controversial. In addition it takes time to complete an exchange, and there are transaction costs. Appraisal methods and values also can lead to controversy.

Our review suggests that land exchanges involving the federal agencies tend to be more controversial than those involving IDL and IDFG. Perhaps this is because state agencies have more narrowly focused missions than the multiple-use mandates of the BLM and USFS. Regardless, numerous land exchanges are completed each year by both federal and state agencies without controversy.

We also observe that most of the challenges associated with the land exchange process seem to be in the execution or implementation of the process, and are not inherent in either the underlying structure or procedures used. Although at times land managers may have allowed their desire to complete exchanges to compromise the process, exchanges can take place with relatively few problems and only minimal controversy, provided that the mandated steps in the formal process are followed.

Clearly identifying the public interest that is being served in a land exchange early in the process is perhaps the best way to avoid controversy. For federal agencies, FLPMA identifies what is in the public interest. Federal agencies must give full consideration to "better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife" (FLPMA, 43 U.S.C. 1716). For IDL, the opportunity to increase net revenue to state trust land beneficiaries is the primary goal. For IDFG, the opportunity to protect wildlife and fisheries habitat or increase wildlife- or fisheries-associated recreation are the main objectives. If gains in the public interest from a land exchange do not clearly outweigh its costs, which will be reflected in a well-conducted feasibility analysis, abandoning the exchange idea early in the process seems prudent.

In the past, issues with appraisals and the values they estimate for lands in exchanges have been controversial, particularly for the BLM and USFS. Both federal agencies have taken steps to address problems with their appraisal processes and ensure the independence of appraisers. Timeliness of appraisals continues to be an issue and must be addressed so that the public and private lands being traded are appropriately and accurately valued.

Appraisals estimate market value, but lands also can have values not captured in market transactions. People value specific places for personal, cultural, and non-monetary reasons (Williams and Vaske 2003). When a public land management agency is considering trading into private hands a public place that has special meaning to people, controversy seems certain. Public land managers need to understand the attachment people have to specific parcels of land before considering them for exchange.

Transparency in the land exchange process may improve chances for success. A transparent process that keeps the public informed might increase trust between those involved in exchanges and the public, thereby generating public support or at least less controversy. Legislated exchanges, with their ability to alter or forego administrative requirements, seem to go in the opposite direction—decreasing transparency and public trust, rather than increasing it.

Although large exchanges may be less costly on a per-acre basis because the environmental assessment, appraisal, and transaction costs are spread over a larger area, it also seems that larger, more complex exchanges generate more public controversy. Perhaps this is because people see less direct connection between the benefits of trading one parcel for another. Smaller, simpler exchanges may be less controversial and easier to accomplish.

Despite problems and controversies, land exchanges can be a useful and appropriate tool for reconfiguring land ownership in the state of Idaho. It is possible to realize the many public benefits of land exchanges by anticipating, controlling, and minimizing the problems and controversies that pose challenges to such transactions.

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