



Policy Resolution 2019-05

Federal-State Land Exchanges and Purchases

A. BACKGROUND

1. Congress granted lands to states as they were admitted to the Union to be held for support of public schools and other endowed institutions. Federal land ownership in western states is widespread. Over time, the federal government has created conservation areas such as national monuments, wildlife refuges, wildlife conservation areas (i.e., sage grouse focal areas) and wilderness study areas on public lands that surround or affect many of these lands. Tribal reservations and military withdrawals have also created state enclaves within federal land holdings. In at least one case, a state has not received all of its land conveyances from the federal government pursuant to its respective statehood act.
2. The manner in which Congress granted lands to western states, as well as other forms of land disposition to railroads or other entities, created a “checkerboard” pattern of federal, state, county, and private land ownership across many areas of the West. Federal and state land managers, land users, the environmental community and the public all agree that the checkerboard land ownership pattern is a major hindrance to effective and ecologically sound management of both federal and state lands.
3. In addition to complicating and often increasing costs related to resource management issues including wildfire, federal land ownership in a checkerboard land ownership pattern increases the potential that a federal “nexus” may exist when a project proponent seeks to operate within a state. The requirement to undertake federal processes and procedures can be onerous and provide an economic disincentive for industry, even when the majority of the project is on state or deeded lands. This disincentive leads to decreased trust revenues as well as decreased state and local taxes.
4. Currently, there are three methods of resolving the checkerboard land tenure issue in the West: (1) land exchanges under existing legislation, such as the Federal Lands Policy and Management Act (FLPMA); (2) the direct federal purchase of non-federal lands within federal management areas under the Federal Lands Transfer Facilitation Act (FLTFA); and (3) individual acts of Congress. However, all three are lengthy, expensive, and inefficient.
5. Federal land exchanges – whether with states or private interests – are conducted under the FLPMA and the National Environmental Policy Act (NEPA). FLPMA requires that land exchanges be of equal value as determined by appraisal and that the public interest is “well served by making [the land] exchange.” The complex regulatory requirements associated with FLPMA exchanges and NEPA requirements create unintentional barriers to federal-state land exchanges.
6. Generally, the estimated values of lands proposed for exchange are established through appraisals, which must be done in accordance with federal standards and other requirements. If the federal land value is estimated to be less than \$150,000, an appraiser’s

statement of value (a professional assessment that is based on more limited information than is included in a full appraisal) can be used.

7. FLTFA allows the U.S. Department of the Interior agencies and the U.S. Forest Service to use the proceeds from sales of surplus federal lands to acquire inholdings in national parks, national wildlife refuges, national forests and other designated areas, including the National Landscape Conservation System. FLTFA was permanently reauthorized in the 2018 Consolidated Appropriations Act. The 2018 reauthorization largely tracks FLTFA's original format while adding provisions for the acquisition of non-federal lands that provide access for public hunting, fishing, and target shooting.
8. The Western States Land Commissioners' Association (WSLCA) has drafted proposed legislation to solve part of the land tenure problems based on a process known as "in lieu" selections. In lieu selections are established by 43 U.S.C 851-852 and allow western land grant states to select federal lands in lieu of land originally granted to the states that became unavailable due to pre-existing conveyances or federal special purpose designations. In the 115th Congress, the House unanimously approved H.R. 4257, the Advancing Conservation and Education (ACE) Act. The ACE Act incorporates WSLCA's recommendations by providing states with a streamlined process to relinquish state trust lands within federal conservation designations to the United States and select replacement lands from unappropriated federal public lands within the states.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors call on the Administration to avoid land transfers and sales that may result in diminished use or financial capacity of adjacent state or deeded lands.
2. To improve management of both federal and state lands in areas where there is checkerboarded ownership, state lands and/or minerals that are within the boundaries of a federal management area, or where the federal government owes state land conveyances pursuant to a statehood act, Western Governors call on Congress to simplify and expedite federal-state land exchange, sale and conveyance processes.
3. Western Governors encourage Congress to introduce and pass legislation that incorporates the proposed federal-state land selection improvements proposed by the WSLCA, by:
 - a. Updating, accounting for inflation, the existing \$150,000 threshold for using an expedited exchange process since the \$150,000 threshold was adopted in 1986;
 - b. Allowing the use of a statement of value to replace the appraisal process in federal-state exchanges of similar rural lands; and
 - c. Presuming any agreed federal-state land exchange as in public interest unless clear countervailing factors are present (federal-private exchanges are not included in this presumption).

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.