

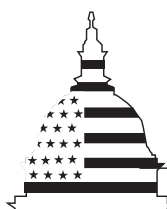
GAO

Report to the Ranking Minority Member,
Committee on Resources, House of
Representatives

June 2000

BLM AND THE FOREST SERVICE

Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest



G A O

Accountability * Integrity * Reliability

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Abbreviations

FLEFA	Federal Land Exchange Facilitation Act
FLPMA	Federal Land Policy and Management Act
GAO	General Accounting Office



United States General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-284579

June 22, 2000

The Honorable George Miller
Ranking Minority Member
Committee on Resources
House of Representatives

Dear Mr. Miller:

Land exchanges—trading federal lands for lands that are owned by corporations, individuals, or state or local governments who are willing to trade—have long been used by the Department of the Interior’s Bureau of Land Management (the Bureau) and the Department of Agriculture’s Forest Service (the Service) as a tool for acquiring nonfederal land and disposing of federal land. Federal and nonfederal land can be exchanged to protect wildlife habitat or aesthetic values, enhance recreational opportunities, consolidate parcels of land owned by different parties, and promote development or community expansion. By law, for an exchange to occur, the estimated value of the nonfederal land must be within 25 percent of the estimated value of the federal land (the difference in value is paid in cash by the party with the lowest valued land), the public interest must be well served, and certain other exchange requirements must be met.¹

Recognizing the importance of land exchanges in supplementing the federal funds that were available for purchasing land, in 1988 the Congress passed legislation to facilitate and expedite land exchanges. In recent years, however, reports by the departments’ Inspectors General identified several exchanges completed by the Bureau and the Service in which lands were inappropriately valued and the public interest was not well documented. In response, in 1998 each agency announced several initiatives designed to improve its land exchange program. Concerned about how well these initiatives are being implemented, you asked us to examine the agencies’ land exchange programs. As agreed, we determined (1) the agencies’ use of land exchanges since 1989; (2) the extent to which the agencies ensure that their land exchanges meet exchange requirements; and (3) the effect of the agencies’ recent efforts to improve the management of their exchange programs. We also discuss the extent to

¹ P.L. 94-579, Oct. 21, 1976.

which the problems we saw in specific exchanges are reflective of inherent difficulties in the land exchange program as a whole. In completing our work, we reviewed (1) data maintained by each agency on its land exchange program; (2) statutory and other requirements for land exchanges; and (3) 51 exchanges (25 for the Service and 26 for the Bureau)—selected to represent a variety of acreage amounts, land values, and locations—to assess how the requirements were being implemented.

Results in Brief

The Service and the Bureau used land exchanges to acquire about 1,500 total square miles of land during fiscal years 1989 through 1999. The Service completed about 1,265 exchanges during this period, which were valued at over \$1 billion. Through these exchanges, the Service acquired a net total of about 950 square miles and generally acquired land that had lower per-acre values than the land it conveyed. The Bureau does not centrally track the number of exchanges it completes or their total dollar value; instead, the agency tracks transactions—two or more of which can occur in each exchange. The Bureau completed about 2,600 transactions in fiscal years 1989 through 1999, which resulted in the Bureau's acquiring a net total of about 550 square miles.

The agencies did not ensure that the land being exchanged was appropriately valued or that exchanges served the public interest or met certain other exchange requirements. We found numerous problems with the exchanges we examined. In particular:

- The agencies have given more than fair market value for nonfederal land they acquired and accepted less than fair market value for federal land they conveyed because the appraisals used to estimate the lands' values did not always meet federal standards.
- The agencies did not follow their requirements that help show that the public benefits of acquiring the nonfederal land in an exchange matched or exceeded the public benefits of retaining the federal land, raising doubts about whether these exchanges served the public interest. Furthermore, the Bureau did not always follow its regulations in preparing exchange initiation agreements.
- The Bureau—under the umbrella of its land exchange authority—sold federal land, deposited the sales proceeds into interest-bearing escrow accounts, and used these funds to acquire nonfederal land (or arranged with others to do so). Current law does not authorize the Bureau to retain or use proceeds from selling federal land; it instead requires the Bureau to deposit sale proceeds into the Treasury and to use

appropriations to acquire nonfederal land. In using these funds and the interest earned on them to purchase land, the Bureau augmented its appropriations. The Bureau also did not comply with its sale authority when it sold the land, and none of the funds retained in escrow accounts or used in this manner were tracked in the Bureau's financial management system.

Both agencies recently increased their management oversight of exchanges by (1) creating review teams composed of headquarters and field staff to examine proposed exchanges that are valued at \$500,000 or more and are considered to be controversial; (2) revising their policies and procedures that address exchanges; and (3) creating additional training for agency personnel involved in land exchanges. These efforts, if properly implemented, should improve how these programs are conducted. However, they do not address all land exchanges—including those valued at less than \$500,000, those not identified as being controversial, and those considered to be too close to completion to be stopped or altered. In addition, the Bureau's review team has not addressed the unauthorized selling and buying of land under its exchange program or the financial management of these funds. Furthermore, handbook revisions and enhanced training can clarify the agencies' land exchange policies and procedures, but they do not ensure that those policies or procedures are appropriate or followed.

At least some of the agencies' continuing problems may reflect inherent underlying difficulties associated with exchanging land compared with the more common buying and selling of land for cash. In land exchanges, a landowner must first find another landowner who is willing to trade, who owns a desirable parcel of land that can be valued at about the same amount as his/her parcel, and who wants to acquire the parcel being offered. More commonly, both landowners would simply sell the parcels they no longer want and use the cash to buy other parcels that they prefer. In this way, the value of both parcels is more easily established when they are sold in a competitive market, both parties have more flexibility in meeting their needs, and there is no requirement to equalize the values of the parcels. Difficulties in land exchanges are exacerbated when the properties are difficult to value—for example, because they have characteristics that make them unique or because the real-estate market is rapidly developing—as was the case in several exchanges we reviewed. Both agencies want to retain land exchanges as a means to acquire land, but in most circumstances, cash-based transactions would be simpler and less costly.

In view of the many problems in both agencies' land exchange programs and given the fundamental difficulties that underlie land exchanges when compared with cash-based transactions, we believe that the Congress may wish to consider directing the Service and the Bureau to discontinue their land exchange programs. Until such a fundamental action is taken and while the agencies continue to operate land exchange programs, we recommend that both agencies review and approve all proposed exchanges to ensure that they meet key statutory and regulatory requirements for land exchanges; that is, that they are appropriately valued, serve the public interest well, and meet other exchange requirements. We also recommend that the Bureau immediately discontinue selling and buying land under its land exchange program—a practice that is not authorized under current law—and conduct an audit of financial records associated with these sales and purchases.

In their comments on a draft of this report, both agencies concurred with the recommendations that were addressed to them and have taken steps to respond to them. However, both agencies disagreed with our suggestion for congressional consideration, believing that land exchanges are an essential and irreplaceable tool for adjusting federal land ownership. We believe that the agencies' program improvements cannot address the inherent difficulties associated with land-for-land exchanges and that the agencies' desire to continue exchanges is more than offset by their programs' continuing problems and exchanges' fundamental inefficiencies. We continue to believe that the Congress should consider directing the agencies to discontinue their land exchange programs because of the many problems identified and their inherent difficulties.

Background

The Federal Land Policy and Management Act of 1976 (FLPMA) and its amendments authorize both the Service and the Bureau to exchange federal land for nonfederal land, when certain conditions are met.² Historically, both agencies preferred to buy land outright; however, in the 1980s, owing to limits on the amount of funds available to buy land, they increasingly relied on exchanges as an alternative means of acquiring land. Since 1981, the agencies have used exchanges to dispose of fragmented parcels of land and to consolidate land ownership patterns to promote more efficient management of land and resources.³ Currently, the Bureau's policy is that land exchanges should be used whenever feasible in land acquisitions.

Statutory Requirements for Land Exchanges

FLPMA is a comprehensive land-management law that has become the statutory basis for most exchanges for the Bureau and the Service; among other things, it established uniform procedures for these two agencies to exchange land with nonfederal parties.⁴ The Federal Land Exchange Facilitation Act of 1988 (FLEFA) amended FLPMA to, among other things, facilitate and expedite land exchanges by providing more uniform rules pertaining to land appraisals and by establishing procedures for resolving appraisal disputes.⁵ In proceeding with a land exchange, the agencies must determine that the estimated values of the federal and nonfederal lands are equal or approximately equal, that the public interest is well served, and that certain other requirements are met.

² P.L. 94-579, Oct. 21, 1976.

³ *Federal Land Acquisition: Land Exchange Process Working But Can Be Improved* (GAO/RCED-87-9, Feb. 5, 1987).

⁴ Other agencies, for example, the Army and its Corps of Engineers, have different statutory authority for exchanging land.

⁵ P.L. 100-409, Aug. 20, 1988.

Estimated Value of Lands Must Be Equal or Approximately Equal

The estimated values of the federal and nonfederal lands to be exchanged must be equal or, if the estimated values are not equal, then their estimated values are equalized by a monetary payment—referred to as a cash equalization payment—which cannot exceed 25 percent of the federal land’s estimated value and should be kept as small as possible.⁶ When the federal land has a higher estimated value than the nonfederal land, the nonfederal party makes an equalization payment to the federal agency, which is to be deposited into the Treasury. When the nonfederal land has a higher estimated value than the federal land, the agency uses appropriated funds to make an equalization payment to the nonfederal party. Generally, the estimated values of lands proposed for exchange are established through appraisals, which must be done in accordance with federal appraisal standards and other requirements. If the parties to an exchange cannot agree to accept the results of the appraisal(s), they can instead determine the value of the properties by submitting the appraisal(s) to arbitration or by using a bargaining process. Under certain limited circumstances, the value of land to be exchanged can be estimated using an appraiser’s statement of value (a professional assessment that is based on more limited information than is included in a full appraisal), if the federal land value is not estimated to be more than \$150,000.⁷

If land to be exchanged is appraised, agency personnel may appraise the properties, or either party—the agency or the nonfederal landowner—may contract for the appraisal(s). In the latter instance, the Bureau or Service must review and approve the contract appraisal to ensure that it meets federal appraisal standards.⁸ These standards require that land be appraised at its fair market value, which is defined as the amount for which a property would be sold—for cash or its equivalent—by a willing and knowledgeable seller who is not obligated to sell, to a willing and knowledgeable buyer who is not obligated to buy.

⁶ If all parties to the exchange agree, the cash equalization payment by either the federal or nonfederal party may be waived if it is no more than 3 percent of the federal land’s value or \$15,000, whichever is less.

⁷ Several conditions must be met for this to occur. For example, the agency must determine that the lands to be exchanged are substantially similar in value, location, acreage, use, and physical attributes.

⁸ *Uniform Appraisal Standards for Federal Land Acquisitions*, Interagency Land Acquisition Conference (1992).

Public Interest Must Be Well Served

In proceeding with an exchange, the cognizant agency must also determine that the public interest will be well served by the exchange. In making this determination, the law directs the agency to “. . . give full consideration to better Federal land management and the needs of the State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife”⁹ Furthermore, in accordance with FLPMA, the agencies must determine that the public values and objectives to be served by acquiring the nonfederal lands are at least as great as the public values and objectives served by retaining the federal lands.¹⁰ In other words, the agency has to show that (1) it gave full consideration to better federal land management practices and the needs of state and local people and (2) the benefits to the public from acquiring the nonfederal land will match or exceed the benefits from retaining the federal land. In addition to meeting FLPMA requirements, the Bureau and the Service must complete an environmental analysis under the National Environmental Policy Act for each exchange, in which the public interest is identified and analyzed.¹¹

Other Requirements Must Be Met

In addition to the requirements regarding land values and public interest, FLPMA has other specific requirements for land exchanges. For example, the lands to be exchanged must be in the same state; titles for exchanged lands are to be transferred simultaneously (unless all parties to the exchange agree otherwise); and land acquired within the boundaries of the national forest system, national park system, or any other land system or area established by the Congress is immediately reserved for and becomes a part of that system. For example, the Bureau recently exchanged 4,322 acres of land it managed for 632 acres of nonfederal land located in the Saguaro National Park in Arizona. Because the nonfederal acres acquired in the exchange are within the park’s boundaries, they are a part of the park and managed by the National Park Service.

⁹ 43 U.S.C. 1716(a).

¹⁰ 43 U.S.C. 1716(a).

¹¹ P.L. 91-190, Jan. 1, 1970.

Statutory Requirements for Sales of Federal Land

FLPMA also has a separate provision authorizing the Bureau to sell land if the Bureau determines that (1) the land is difficult and uneconomic to manage and it is not suitable for management by another federal agency, (2) it is no longer required for a specific purpose or for any other federal purpose, or (3) its transfer to nonfederal ownership will serve important public objectives that cannot be achieved prudently on land other than public land and that outweigh other public objectives that would be served by maintaining the land in federal ownership.¹² These requirements are more rigorous than the requirements for land exchanges. If the Bureau decides to sell such land, it must obtain at least fair market value, and the land must be offered for sale under competitive bidding procedures unless specific equity or public policy considerations would support other procedures (e.g., the Bureau could decide to give preference to current users or adjoining landowners). Proceeds from the sale and disposal of public lands in the western states must be deposited into the reclamation fund of the Treasury, except for a 5-percent set-aside for educational and other purposes.¹³ In Nevada, the Bureau has the authority to sell certain land and use up to 85 percent of the proceeds to acquire environmentally sensitive lands in southern Nevada.¹⁴

FLPMA does not authorize the Service to sell national forest lands.

Overview of Agencies' Processes for Land Exchanges

Land exchanges can be initiated either by the agency, by one or more nonfederal parties who are interested in trading their land for federal land (often referred to as the exchange proponent), or by a third-party facilitator (a nonfederal party such as a for-profit corporation or a not-for-profit entity) who works with the agency and the proponent(s) to put together an exchange. Third-party facilitators can play important roles in both agencies' land exchanges—for example, they can purchase desirable nonfederal properties when they come on the market and hold them until the agency can complete all the requirements to convey federal land and consummate a land exchange. In an exchange, agencies can acquire full title to nonfederal land or can acquire a partial interest, such as a

¹² 43 U.S.C. 1713.

¹³ 43 U.S.C. 391. The western states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

¹⁴ Southern Nevada Public Land Management Act of 1998, P.L. 105-263, Oct. 19, 1998.

conservation easement that allows the nonfederal land to remain in nonfederal ownership but prevents it from being developed. Similarly, the nonfederal party in an exchange may acquire full title or only a partial interest in the federal land that is conveyed.

Agencies can only consider federal land for an exchange if the exchange conforms to the agency's land use plan. In processing a proposed exchange, the agencies must comply with various land-management requirements—for example, the agency and the proponent must execute an agreement to initiate an exchange, which must include, for example, a description of the lands to be exchanged. After the parties to an exchange sign an initiation agreement, the agency must conduct an environmental analysis, which in turn analyzes the combined effects of actions in sufficient detail to be useful to the decisionmaker (the agency official who decides whether the exchange should go forward). The agency must publish the results of its environmental analysis and solicit public comment; it must also publish public notices about the proposed exchange and meet various requirements related to transferring land titles.

The agencies' land-exchange regulations also provide for "assembled" land exchanges, in which multiple parcels of federal or nonfederal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time. The agencies may or may not use third-party facilitators in assembled exchanges to help identify and hold nonfederal parcels.

Agencies Used Land Exchanges to Acquire Land

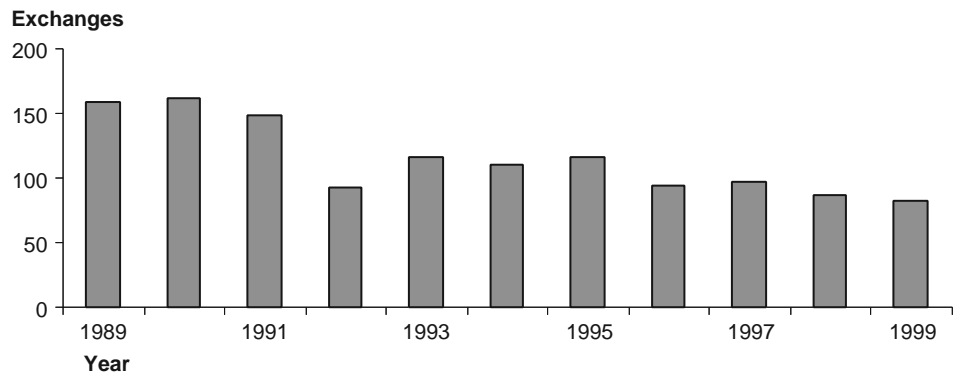
Both the Service and the Bureau conducted many land exchanges during fiscal years 1989 through 1999. The Service completed about 1,265 exchanges (valued at about \$1.066 billion) during this period, acquired a net total of about 611,000 acres (over 950 square miles of land), and generally acquired land that was of lower value than the land it conveyed. The Bureau completed about 2,600 transactions—there are two or more transactions in each exchange—during this period to acquire a net total of about 352,000 acres (about 550 square miles of land). Currently, the Bureau does not centrally track the number of exchanges it completes or their dollar value.

Land Exchanges Completed by the Service

The Service completed about 1,265 exchanges during this period, an average of about 115 each year. The number of exchanges completed each year has fluctuated—ranging from a high of 162 exchanges in 1990 to a low

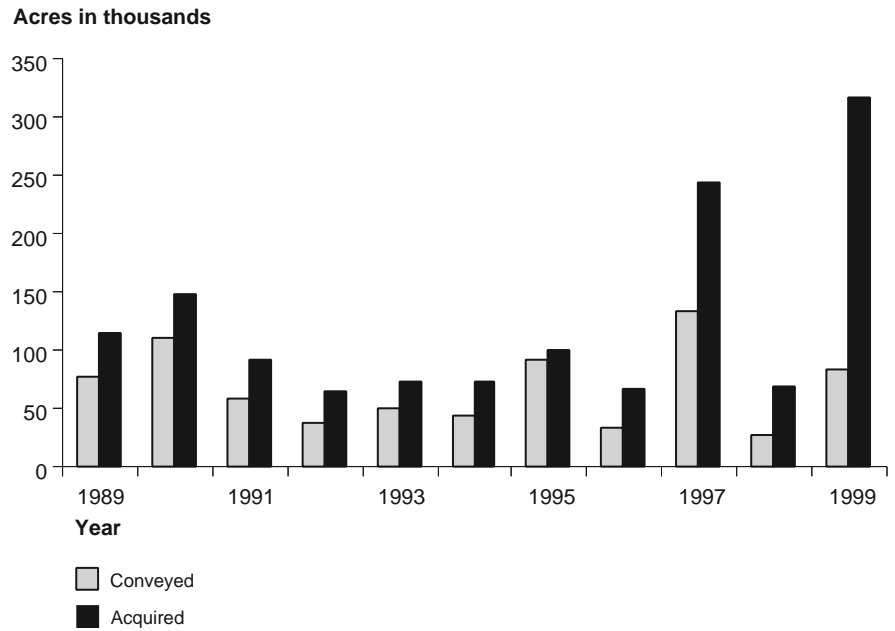
of 83 exchanges in 1999—and dropped somewhat in the last 4 years, as shown in figure 1.

Figure 1: Number of Land Exchanges by the Service, Fiscal Years 1989 Through 1999



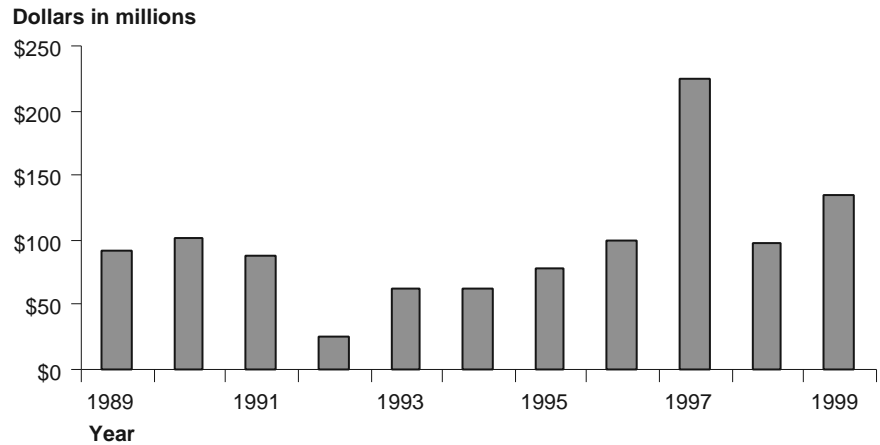
The Service acquired a net total of 611,000 acres in exchanges during this period, obtaining a total of 1,359,000 acres and conveying a total of about 748,000 acres. On average in an exchange, the Service acquired about 1,075 acres of nonfederal land and conveyed about 590 acres of federal land. The acreage acquired each year has fluctuated (ranging from a high of 316,000 acres in 1999 to a low of 64,000 acres in 1992), and the acreage conveyed each year has also fluctuated (ranging from a high of 134,000 acres in 1997 to a low of 28,000 acres in 1998)—as shown in figure 2.

Figure 2: Acreage Exchanged by the Service, Fiscal Years 1989 Through 1999



In total, the Service exchanged land that was valued at about \$1.066 billion during this period. On average in an exchange, the Service acquired nonfederal land that was valued at about \$780 per acre and conveyed federal land that was valued at about \$1,415 per acre. The total value of lands exchanged each year has fluctuated—ranging from a high of \$224 million in 1997 to a low of \$26 million in 1992—as shown in figure 3.

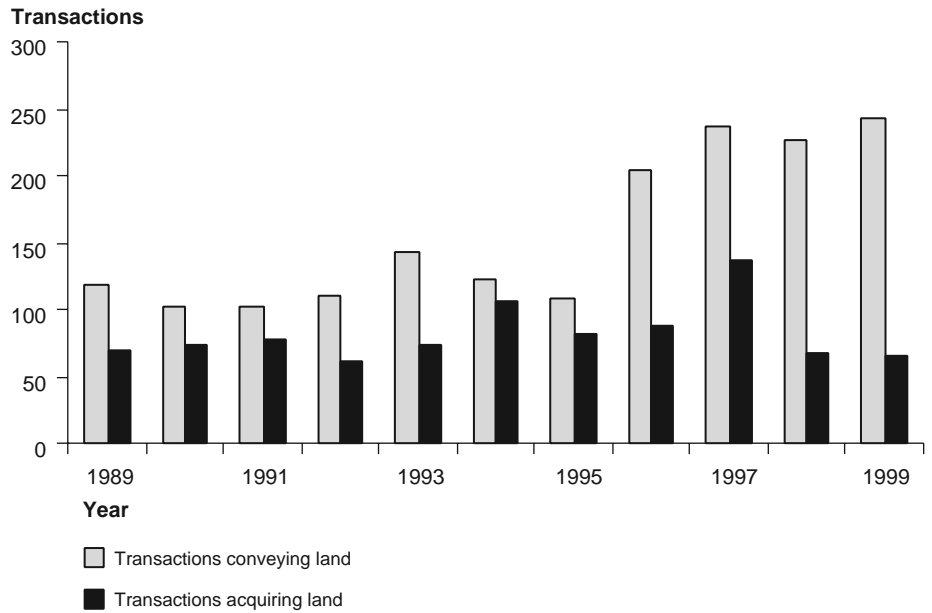
Figure 3: Value of Land in the Service's Exchanges, Fiscal Years 1989 Through 1999



Land Exchange Transactions Completed by the Bureau

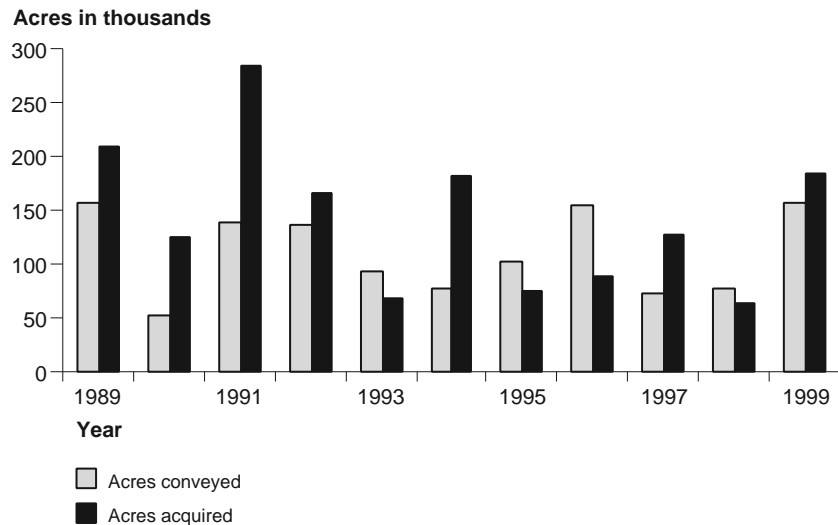
The Bureau does not track the number of exchanges it completes annually; instead it tracks the number of exchange transactions completed annually. The Bureau considers each land exchange to have at least two transactions—for example, the acquisition of land and the conveyance of land. An exchange can have more transactions if the exchange involves more than two parties or more than two parcels of land. For example, if the Bureau exchanged three small parcels of federal land for one nonfederal parcel of equal value, there would be four transactions—three federal and one nonfederal—in the exchange. The Bureau completed about 2,600 transactions during fiscal years 1989 through 1999: about 1,700 transactions conveying federal land and about 900 transactions acquiring nonfederal land. The agency completed an average of about 238 transactions annually, ranging from a high of 372 transactions in 1997 to a low of 172 transactions in 1992, as shown in figure 4.

Figure 4: Number of Land Exchange Transactions by the Bureau, Fiscal Years 1989 Through 1999



The Bureau acquired a net total of about 352,000 acres in exchanges during this period; specifically, it acquired a total of 1,571,000 acres and conveyed a total of 1,219,000 acres. On average in a transaction, the Bureau acquired about 1,750 acres of nonfederal land and conveyed about 710 acres of federal land (during fiscal years 1989 through 1999). The acreage acquired each year has fluctuated (ranging from a high of 285,000 acres in 1991 to a low of 63,000 acres in 1998), and the acreage conveyed each year has also fluctuated (ranging from a high of 157,000 acres in 1999 to a low of 52,000 acres in 1990)—as shown in figure 5.

Figure 5: Acreage Exchanged by the Bureau, Fiscal Years 1989 Through 1999



The Bureau does not centrally track the value of its exchanges. Therefore, neither the Bureau nor we could readily quantify the value of its exchanges.

Agencies Have Not Met Key Statutory Requirements

In transacting exchanges, the agencies have not always ensured that the land being exchanged is appropriately valued or that the exchange is serving the public interest. Additionally, in some instances we found that the Bureau, under the umbrella of its land exchange authority, was selling federal land for cash and using the sales proceeds to buy nonfederal land. Under this practice, the Bureau avoided depositing sale proceeds into the Treasury, circumvented congressional approval and appropriations for buying land, augmented its appropriations, and may have exceeded its budget authority.

Agencies Have Not Appropriately Valued Land

The agencies have not always appropriately valued land in exchanges. The agencies have sometimes given more than the estimated fair market value for nonfederal land they acquired and have (or would have) accepted less than the estimated fair market value for federal land they conveyed, as the following examples show:

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- The DeMar exchange in Utah, completed in 1999 by the Bureau, was to exchange federal land outside an area included in a habitat conservation plan—established to protect the desert tortoise, a threatened species—for private land held within this area.¹⁵ The private landowners hired an appraiser to conduct a preliminary value assessment of the nonfederal property, which estimated its value to be \$7,000 per acre. However, the Bureau contracted with another appraiser to conduct a full appraisal, which estimated the property's value to be only \$1,000 per acre. The two estimates differed primarily because the landowner's appraiser assumed that the presence of the tortoise would not hinder development, whereas the Bureau's appraiser assumed that development would be markedly restricted. The Bureau offered an exchange based on \$1,000 per acre for the nonfederal property. The landowners refused the offer because they believed that their land was worth more, owing to its proximity to the growing community of St. George, Utah. The Bureau then entered into a bargaining process with the landowner, as allowed by FLEFA, to negotiate a final exchange value for the nonfederal land. Through this process, 239 nonfederal acres were valued at \$7,440 per acre—an amount that exceeded both the landowners' preliminary value assessment and the Bureau's appraisal. A Bureau official explained that agency officials decided to bargain with the landowners because the officials believed that (1) the nonfederal acreage was worth more than the \$1,000 per acre appraised value because it could be developed and (2) the landowner would not otherwise reach agreement about the land's value. The Bureau's chief appraiser believed that the bargained amount exceeded a value that could be reasonably supported. We also question the basis for the final value.
 - Three exchanges in Nevada—Cashman, Deer Creek, and Red Rock II—were reported on in 1998 by Agriculture's Office of the Inspector General.¹⁶ The Inspector General found that the Service acquired nonfederal lands in these exchanges that were overvalued by a total of \$8.8 million (\$2.5 million, \$5.9 million, and \$0.4 million, respectively). The Inspector General attributed these overvaluations to the Service's reliance on appraised values that were not supported by credible evidence and appraisals that did not meet federal appraisal standards. The Service generally concurred with the Inspector General and is

¹⁵ The habitat conservation plan recommends that the Bureau acquire nonfederal lands within the area through exchanges or purchases.

¹⁶ *Humboldt-Toiyabe National Forest Land Adjustment Program*, U.S. Department of Agriculture, Office of the Inspector General (08003-02-SF, August 1998).

currently drafting new policies and procedures to address this valuation issue.

- The Zephyr Cove exchange, located at Lake Tahoe, Nevada, was completed by the Bureau in 1997. In the exchange, the Bureau acquired 47 acres of nonfederal land valued at almost \$38 million. Because the acquired land is located in the Service's Lake Tahoe Basin Management Unit, the Service is managing the land that the Bureau acquired. Agriculture's Office of the Inspector General reported that the appraisal of the nonfederal land did not consider a reservation of interest in the property's improvements, which rendered the appraisal void, according to the Service's chief appraiser. As a result, the appraisal apparently did not meet federal appraisal standards and overvalued the land by as much as \$10 million.¹⁷
- The Red Rock exchange in Nevada was completed by the Bureau in 1995. Interior's Office of the Inspector General reported that the Bureau did not use the approved nonfederal land value established by a Bureau chief appraiser from his review of the appraisal because the exchange proponent was "unhappy" with the appraised value.¹⁸ Instead, the Bureau assigned a staff appraiser to review the same appraisal, and this appraiser approved a land value that was about \$1.2 million higher than the value approved by the chief appraiser. Because the value established by the chief appraiser was overridden by a staff appraiser, the Inspector General questioned the use of the higher value for the nonfederal land. In its response to the Inspector General, the Bureau stated that there were differences in approaches by the two reviewers. However, according to the Inspector General, the Bureau did not reconcile the differences but instead decided to use the higher value.

¹⁷ *Title to Physical Improvements on the Zephyr Cove Land Exchange*, U.S. Department of Agriculture, Office of the Inspector General (08003-4-SF, August 1998).

¹⁸ *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

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- The initial phase of the Del Webb exchange in Nevada was completed by the Bureau in 1997.¹⁹ Interior's Office of the Inspector General reported that the Bureau allowed an exchange proponent to use its own appraiser to value the estimated 4,776 acres of federal land at \$43 million (about \$9,000 per acre).²⁰ The chief appraiser in the Bureau's Nevada State Office reviewed the proponent's appraisal and found it did not comply with federal appraisal standards because it used an inappropriate methodology. The Bureau's headquarters' staff removed this appraiser from the appraisal review process and then violated the Bureau's policy by hiring a nonfederal appraiser—one who was recommended by the proponent—to review the appraisal. The nonfederal review appraiser approved the appraisal, and the Bureau's chief appraiser subsequently accepted it without addressing the concerns raised in the earlier review. After the Inspector General announced that it was going to review the Del Webb exchange, the Bureau contracted for a second appraisal of the federal land. Bureau officials said that they had already contemplated preparing a second appraisal. The second appraisal used an appropriate methodology, met federal appraisal standards, and valued the actual 4,756 acres of federal land at \$52.1 million (about \$10,950 per acre). Had the Inspector General not intervened and the first appraisal been used in the exchange, the federal land would have been undervalued by more than \$9 million.
 - As part of a review of the Bureau's land exchanges in Nevada, Interior's Office of the Inspector General reviewed land documents at the offices of the Assessor and the Recorder for Clark County. The Inspector General reported that the nonfederal party in one unidentified exchange acquired 70 acres of federal land at a value of \$763,000 and sold the parcel the same day for \$4.6 million.²¹ The same proponent acquired another 40 acres from the Bureau at a value of \$504,000 and also sold this land on the same day for \$1 million. Such large and quick profits raise questions about the adequacy of the exchange valuation.

¹⁹ The exchange began in 1995 and is to be completed in multiple phases over a period of 3 to 7 years.

²⁰ *The Del Webb Land Exchange in Nevada*, U.S. Department of the Interior, Office of the Inspector General (98-I-363, March 1998).

²¹ *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

Exchanges May Not Always Serve the Public Interest

The agencies have not always shown that the benefits of acquiring the nonfederal land matched or exceeded the benefits of retaining the federal land, as shown in the following examples:

- The Cache Creek Management Area land exchange in California was started about 10 years ago and is still ongoing. The purpose of the exchange is to acquire nonfederal lands that lie within an area of roughly 100 square miles that the Bureau has identified as having high-value resources, such as habitat for bald eagles. Through December 1999, the Bureau had completed about 40 exchange transactions in which it conveyed about 20,300 acres of federal land and acquired about 4,800 acres of private land. When the Bureau initiated the exchange, it did not specifically describe the parcels of land that would be exchanged. Furthermore, the Bureau's environmental analysis for this exchange did not present the reasons for acquiring the specific parcels of nonfederal land or the public benefits of the exchange. Consequently, the Bureau has not demonstrated that the public benefits of acquiring the nonfederal land matched or exceeded the public benefits of retaining the federal land.
- In the Red Rock exchange in Nevada, the Bureau exchanged 769 acres of federal land for 3,562 acres of nonfederal land. Interior's Office of the Inspector General reported that the Bureau did not demonstrate why 2,461 acres of the nonfederal land (over two-thirds of the nonfederal parcel)—valued at \$2.7 million—were needed.²² Although the Bureau then demonstrated to the Inspector General that the nonfederal land was needed to provide habitat for endangered fish, the Inspector General estimated that this need supported the acquisition of fewer than 25 percent of the 2,461 acres in question. In addition, federal land is located near the nonfederal land that was acquired in this exchange, and the Bureau had already identified this federal land as being available for disposal.

²² *Nevada Land Exchange Activities*, U.S. Department of the Interior, Office of the Inspector General (96-I-1025, July 1996).

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- The Ricks College exchange in Idaho was completed by the Service in 1999. The Service acquired nonfederal land that it considered to be environmentally sensitive because it is surrounded by habitat for grizzly bears and contains significant wetlands. In exchange, the Service conveyed to Ricks College federal land on which several private recreational residences had been built.²³ The Service wanted to dispose of the federal land because it was difficult to manage and the Service had no funds to administer it. However, at the residence owners' request, the Service retained the development rights for the common area between the residences to ensure that the area would not be further developed. This restriction reduced the appraised value of the federal land by about \$29,000. Furthermore, in order to avoid such a reduction in appraised value, the agency's handbook for land acquisitions states it is usually undesirable to retain restrictions on lands for conveyance out of federal ownership because this connotes a responsibility to enforce the restrictions in perpetuity. During the processing of this exchange, an official raised concerns about the Service's retention of development rights but was told by other officials that the exchange was too far along to change the terms.
 - The Huckleberry exchange in Washington State was completed by the Service in 1998. The purpose of the exchange was to consolidate ownership and enhance future resource conservation and management by exchanging 4,362 acres of land in the Mt. Baker-Snoqualmie National Forest for 30,253 acres of nonfederal land owned by a large timber corporation.²⁴ Soon thereafter, the timber company began cutting timber from the lands the Service conveyed. However, in 1999, the Ninth Circuit Court of Appeals ruled that the Service failed to meet the requirements of two federal laws in processing the exchange and therefore the exchange of lands should not have taken place.²⁵ The court found that for this exchange, the Service did not adequately prepare its environmental analysis, which identifies and analyzes the public interest to be served. Specifically, the court found that the Service did not consider the cumulative impacts of the exchange, in conjunction with

²³ These residences are in accordance with a Forest Service special use permit that expires in 2008.

²⁴ In the exchange, the Service also conveyed federal mineral rights to 7,110 acres that were owned by the company, and the company donated to the United States about 2,000 acres of land it owned that was adjacent to a wilderness management area.

²⁵ *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800 (9th Cir. 1999).

past or reasonably likely future land transactions, and did not consider an adequate range of alternatives to the exchange, such as buying the nonfederal land. The court enjoined any further activities on the land conveyed by the Service (i.e., cutting timber) until the Service satisfied its legal obligations under the two federal laws.

- In the city of Elko exchange in Nevada, which is still under consideration, the Bureau plans to convey up to 140 acres of federal land that includes prime winter habitat for antelope to support community expansion for Elko. In exchange, the Bureau will acquire 10 acres of city-owned land adjacent to its Elko Field Office that will be used for additional parking and equipment storage. While one of the purposes for land exchanges is to support local needs, the Bureau's policy states, ". . . land exchanges using unimproved resource lands must not be undertaken for the acquisition of office administrative facilities." On the basis of information provided in the Bureau's environmental analysis of the exchange, we question whether the Bureau will be able to demonstrate that the public interest will be well served in acquiring this land, when such an acquisition is contrary to the Bureau's policy and may not produce benefits matching or exceeding the benefits of retaining the land. In 1996, Interior's Inspector General also raised questions about an exchange in which the Bureau acquired administrative facilities, stating ". . . management's use of the exchange process to acquire administrative property rather than lands containing significant public resources, such as critical fish and wildlife habitat or recreational opportunities, may not represent the most effective use of federal land."
- The Service has started negotiations for a possible exchange with a nonfederal party to resolve ownership of a 10,000-square-foot residence situated on federal land on the shore of Lake Tahoe that was acquired by the Bureau for the Service in the Zephyr Cove exchange. In that exchange, a nonfederal party conveyed the land and the residence to the Service. However, the nonfederal party also sold the residence to another nonfederal party, who locked the gate on the fence that surrounds 43 acres and the residence, thereby restricting the Service's and the public's access to the property. The Service had to remove part of the fence to allow public access to the property. The gate remains locked, and the second nonfederal party continues to assert that it owns the residence and its access. Although the Service was immediately aware of the subsequent "sale" of the residence and the restricted property access, it did not request legal assistance from Agriculture's Office of the General Counsel until almost a year after the exchange was completed. In April 1998, the General Counsel's Office stated that the

federal government owns the residence and all of the property. However, in its comments on a draft of this report, the Service said that the Office of the General Counsel and the Department of Justice have advised the Service that they will not support the position that the government acquired or owns the residence. To resolve the ownership conflict, the Service is considering various options, including conducting a land exchange with the second nonfederal party under which the Service would convey a small parcel of federal land associated with the residence and would acquire other shoreline property. According to the Service, the final decision on this matter will be evaluated in an environmental analysis process that will involve the public. According to Agriculture's Office of the Inspector General, the exchange option would convey environmentally sensitive property to a private interest, who may develop it, and would create an inholding (that is, a privately owned land parcel that lies within the boundaries of land managed by the federal government) that may cause management difficulties for the Service. We do not believe that such an exchange would well serve the public interest.

Some Bureau Exchanges Are Not Authorized Under Federal Law

Under the umbrella of its statutory land exchange authority and its regulations providing for assembled land exchanges, the Bureau sold federal land, retained the cash and interest in escrow accounts, and subsequently used the sales proceeds to buy nonfederal lands. In some cases, the Bureau used a third-party facilitator to, in effect, handle the transactions. The Bureau believes these actions are authorized by FLPMA, but we disagree. FLPMA authorizes exchanges of land. Nothing in FLPMA's language or legislative history indicates that the Congress contemplated sales of federal land to be a part of exchanges—regardless of whether the Bureau itself sells federal land or has a facilitator sell federal land. Because the Bureau believes these actions are allowed under its exchange authority, rather than its sales authority, it has not followed the law and regulations governing sales of federal land. None of the escrow funds are tracked by the Bureau's financial management system. Under the law, the Bureau must use its appropriations to purchase land and must deposit any proceeds from sales into the Treasury. Examples of these sale transactions and subsequent purchases follow:

- The Montrose Assembled Land Exchange in Colorado began in 1994, occurred in seven phases, and was completed in February 2000. The exchange began when the Bureau decided to purchase a conservation easement and two ranches, which in total would have cost about \$5

million. However, the Bureau only received about \$2 million in appropriations and \$315,000 from Interior's Bureau of Reclamation for the purchase. The Bureau decided to raise the difference of almost \$2.7 million through an assembled land exchange, in which it used a third-party facilitator to acquire the ranches and the easement. Under the umbrella of this exchange, in 1996 and 1997 the Bureau sold about 6,800 acres of federal land for about \$6 million. The Bureau deposited the sales proceeds into an interest-bearing escrow account and used them, over the next 4 years, to buy the original properties as well as another four properties. When the Bureau initiated the exchange, it did not prepare an initiation agreement, and it did not specifically describe the land that would be exchanged because the Bureau did not initially contemplate the full range of the exchange. The Bureau also deposited into the escrow account \$211,000 it received as a cash equalization payment in 1998 and retained earned interest of about \$216,000. In total, the Bureau bought about 16,000 nonfederal acres and the conservation easement for about \$8.7 million (\$2 million appropriated, \$315,000 transferred from the Bureau of Reclamation, \$6 million from sales proceeds, \$211,000 from a cash equalization payment, and \$216,000 in earned interest). Bureau officials in Colorado told us that they had not initially planned to buy all of the nonfederal acres they purchased; however, the sales proceeds were much higher than anticipated and they decided to keep the "excess" and use it to buy additional land, instead of depositing the proceeds into the Treasury.

- In California, the Bureau has an agreement with a third-party facilitator (a for-profit corporation) to facilitate the assembled exchange of federal lands for nonfederal lands located within the state. One exchange previously mentioned—Cache Creek—is part of this statewide agreement. The present agreement was signed in 1996 and has no termination date. Under the agreement, the Bureau appraises the value of federal land and conveys it, with no financial consideration, to the facilitator, who then sells it at a price equal to or greater than the appraised value. Under the agreement, if the facilitator obtains a price greater than the appraised value, the facilitator can use the difference (between the price and the appraised value) to cover its costs and must deposit any remaining proceeds into an interest-bearing escrow account that is jointly controlled by the facilitator and the Bureau. The proceeds and interest remain in the escrow account and are used by the facilitator to buy additional parcels of nonfederal land that are within an area designated by the Bureau as desirable. When the facilitator acquires nonfederal land, it or the landowner transfers title to the Bureau. According to the Bureau's records, on behalf of the Bureau, through

December 1999 the facilitator had sold 71,858 federal acres for about \$10.9 million and acquired 31,425 nonfederal acres for about \$9.9 million. According to a Bureau official, the difference of about \$1 million represents “land value” that the facilitator will use to acquire a portion of a ranch on behalf of the Bureau.

- The Bureau’s Two Crow assembled exchange in Montana was started in 1996 to purchase a specific ranch property and is still ongoing. The Bureau is raising the funds to purchase the ranch by using a third-party facilitator (a for-profit corporation) to sell parcels of federal land at prices that are equal to or greater than their appraised values. A cognizant Bureau official in the Montana State Office said that the Bureau does not know how much the facilitator sells the federal land for, although she said that the facilitator generally makes some kind of profit by receiving more than the appraised value. For each sale, the facilitator then deposits an amount that is equal to the appraised value in an interest-bearing escrow account and retains any sales proceeds that exceed the appraised value. The Bureau then periodically uses funds from the escrow account to purchase portions of the ranch from the current owner. In this exchange, unlike the California assembled exchange, the Bureau has identified a specific property with finite acreage to acquire and uses a facilitator only to sell federal land (not to buy nonfederal land). According to an official in the Bureau’s Montana State Office, acquiring this property is a good deal for the public whether the Bureau acquires it through exchange or purchase.

The Bureau disagrees that these transactions involve selling or buying land and is supported in this position by Interior’s Solicitor’s Office. The agency asserts that these transactions are exchanges because, ultimately, the agency has conveyed federal land in order to obtain desired nonfederal land; that is, the interim transactions involving cash serve only to support the ultimate goal of exchanging land. Bureau officials who are or have been involved in these transactions state that the practices described above provide the agency important flexibility to acquire needed nonfederal lands. Specifically, the agency has funds that are readily available to buy nonfederal land when it comes on the market, rather than having to undergo the lengthy and uncertain process of requesting and receiving appropriations.

However, current law does not authorize the Bureau’s practice of selling federal land and buying land with the proceeds. The Bureau did not comply with the sales provisions of FLPMA. The law requires sale proceeds to be deposited into the Treasury, and under appropriations acts, the Bureau is

generally required to purchase lands with appropriated funds. Our specific concerns are noted below:

- First, while the Bureau has specific authority to sell land, this authority is separate and distinct from its authority to exchange land. The transactions described above fall under the Bureau's sale authority, not its land exchange authority, as the Bureau maintains. Thus, the Bureau was required to comply with the statutory requirements for selling land, but it did not. For example, instead of offering the land under competitive procedures as is required for selling land, the Bureau or its facilitator sold several of the parcels directly to parties who had been previously identified as potentially interested in buying the properties. By not using a competitive process in these sales, the Bureau may have lost opportunities to receive more proceeds for the land than was received through the direct sales. Moreover, the Bureau has no authority to acquire land with the proceeds of its sales but is generally required to use its appropriations to acquire land.
- Second, as a consequence of not treating these transactions as sales, the Bureau failed to deposit the proceeds from the sales into the Treasury, which is required when the Bureau receives nonappropriated funds (for example, from the sale of land).²⁶ Generally, funds must be deposited into the Treasury as soon as practicable. In the examples above, the Bureau has retained sales proceeds in interest-bearing escrow accounts—and also retained the earned interest in those accounts—for years. Another consequence of not depositing the proceeds of the sales as required by law is that the states involved did not receive their 5-percent set-aside for educational and other purposes.
- Third, the Bureau was not authorized to use sale funds to purchase the lands. By using these proceeds, it augmented its land acquisition appropriations. When the Congress makes an appropriation, it establishes an authorized program level and limits the agency from operating beyond that level. The Bureau, by using proceeds from land it sold to purchase land, augmented its appropriations for land exchanges. Federal agencies cannot expend funds in excess of or in advance of appropriated funds.²⁷ If they do so, they must report to the President and to the Congress all relevant facts and actions taken.²⁸ The Bureau

²⁶ 43 U.S.C. 391 and 31 U.S.C. 3302, the miscellaneous receipts statute.

²⁷ 31 U.S.C. 1341(a)(1), the Antideficiency Act.

²⁸ 31 U.S.C. 1351 and 1517(b).

supplemented its appropriations by \$6.4 million in the Montrose exchange alone.

We also found that none of the funds in the escrow accounts are tracked in the Bureau's financial management system or reflected in the Bureau's general financial ledger—that is, these funds are completely “off the books.” In fact, the Bureau's deputy chief financial officer said he and the agency's chief financial officer were unaware of these accounts or their importance until Interior's Office of the Inspector General determined that these funds needed to be identified and included on the 1999 financial statements for the Bureau and for Interior. As a result, in February 2000, the Bureau requested that field offices provide information on the year-end cash balances in escrow accounts used in connection with land exchanges and certify that the reported balances are correct. In response to this request, Bureau offices in six states—the three we identified, as well as Idaho, Nevada, and Oregon—reported having about \$6.3 million at the end of fiscal year 1998 and about \$4.3 million the end of fiscal year 1999 in a total of 20 escrow accounts. However, we found inconsistencies in the reported information that raise questions about whether additional escrow accounts exist. For example, Nevada reported that it had an escrow account with a zero balance, whereas other respondents reported that they had no cash balances but did not indicate whether they had escrow accounts (i.e., that had year-end zero balances). Furthermore, cash balances that may have existed in any escrow accounts that were closed before the end of either year would not have been reported.

Also in February 2000—after we briefed the Bureau and Interior on our concerns regarding the cash transactions in assembled exchanges—the Bureau's headquarters office drafted guidance to clarify the Bureau's policy, which is that interest earned on funds held in escrow accounts associated with land exchanges should be deposited into the Treasury. The Bureau distributed this draft guidance to state and field offices and initiated an effort to identify the amount of interest earned in these accounts for 6 years, from 1994 through 1999. However, the Bureau continues to believe that it has the authority under its land exchange program to sell federal land, deposit and retain the sale proceeds in escrow accounts, and use these funds to buy nonfederal land—or to use third-party facilitators for these transactions.

Agencies Have Improved Oversight but Need to Make Additional Efforts

In 1997 and 1998, the Bureau identified its land exchange program as a material weakness in its annual assurance statements on management controls and initiated several corrective actions.²⁹ In 1998, both agencies announced they would increase management oversight of their land exchange programs. Specifically, both of the agencies established teams to review proposed exchanges that are high-value or considered to be controversial, are revising their policies and guidance, and have provided additional training to field offices that process exchanges. These efforts are worthwhile but do not fully address the concerns we raise in this report. The agencies' efforts do not ensure that lands to be exchanged are valued appropriately or that exchanges well serve the public interest; furthermore, the Bureau's efforts do not address or prohibit the unauthorized selling and buying of land in land exchanges.

The Bureau's Land Exchange Review Team summarized the result of its efforts in a draft report in November 1999. The team reported that it found "... those components of the exchange process which are most susceptible to risk lack adequate guidance, and are undertaken inconsistently and without the benefit of a quality assurance system." The review team's specific findings included (1) a lack of documentation to support certain public interest determinations, (2) misuse of escrow accounts with regard to exchange authority, and (3) inconsistent use and inadequate documentation of mechanisms such as bargaining and assembled exchanges. The team has made over 40 recommendations, including increasing management oversight over both the land exchange and appraisal programs. The Bureau plans to continue to have its review team exercise oversight reviews on land exchanges valued at \$500,000 or more.

The Service's National Landownership Adjustment Team reported that most of its review efforts focused on uncovering inadequate documentation of legal and policy compliance matters. This review team has made several recommendations to improve the land exchange program. For example, the team recommended that field offices should reject proposals for land exchanges that are not consistent with land and resource management objectives or do not clearly serve the public interest and that they should analyze the feasibility of proposed exchanges early in the exchange process. The team has also made specific recommendations

²⁹ These annual reports are required by the Federal Managers' Financial Integrity Act, specifically 31 U.S.C. 3512(d).

to improve field offices' compliance with national policies on appraisals and environmental analyses. However, the review team has expressed concern that some regional offices are still not fully performing their responsibility of providing initial guidance and oversight on proposals. The Service is incorporating these findings into its revision of its policies and guidance.

Both agencies are revising their internal guidance—that is, manuals and handbooks—on land exchanges and on appraisals and plan to issue the revisions this year. In the interim, both agencies have issued internal memorandums to field offices that clarify or summarize existing regulations and policy. Both agencies have also created additional training. For example, in conjunction with the National Appraisal Institute, the Bureau and the Service piloted a newly developed appraisal training course in the fall of 1999. The Service's review team is also planning to conduct training sessions on the Service's new draft handbook in each region during fiscal year 2000. According to the Bureau, recent changes in its appraisal manual will help reduce instances of nonfederal parties acquiring federal land through exchange and immediately reselling the land for a price that greatly exceeds its appraised value.

These efforts are likely to improve aspects of the agencies' land exchange programs, and we support them. However, they do not fully address the concerns we have expressed in this report. For example, the agencies' review teams examine only those exchanges that are identified as controversial or are valued at \$500,000 or more. However, it is unclear how or when an exchange becomes recognized as being controversial; in some of the examples highlighted in this report, the exchange did not become controversial until after it was completed and the Inspector General and public became fully aware of its terms—at which time the usefulness of a review by the review team would be limited. The rationale for the \$500,000 threshold is also unclear; although separate phases of an assembled exchange, for example, may not rise above this level, the value of the full exchange is likely to be in the millions of dollars. Because most exchanges are processed by the agencies' field offices, we also question whether the review teams would be informed enough to know about all the potentially controversial or high-valued exchanges that are being contemplated in the field offices. Furthermore, although the Bureau's team reviewed two of the three assembled exchanges in which we found that the Bureau was selling and buying land, it did not intervene or recommend that this practice be stopped. Finally, handbook revisions and enhanced training can clarify the

agencies' land exchange policies and procedures, but they do not ensure that those policies or procedures are appropriate or followed.

Land Exchanges Are an Inherently Difficult Way to Convey and Acquire Land

The continuing problems faced by the Bureau and the Service in their land exchange programs may, in part, reflect the underlying difficulties associated with exchanges when compared to a more common market-based system of buying and selling land for cash. To exchange land, a landowner must first find another landowner who owns a desirable piece of property, is interested in trading it, and is interested in acquiring the property currently owned by the first party (who may also use a third-party facilitator to locate other such landowners). Both properties must be valued at about the same amount, and both parties must be satisfied with the assigned values. In contrast, and more commonly, both landowners would more easily sell the property they no longer want—obtaining the best prices they could in a competitive market—and use their sales proceeds to buy other parcels of land that they prefer to own. In this system, both parties have flexibility to buy the property they want and there is no requirement to equalize the properties' values.

Land exchanges are further complicated by the inherent difficulties of estimating the fair market value of land. Although the values of most properties exchanged by the Bureau and the Service are established by appraisals, appraisals are only estimates of fair market value. Appraisals are generally based on data from sales of properties that are considered comparable to the property being appraised, and it is increasingly difficult to make such comparisons when the property being exchanged is unique and when the market is rapidly developing and/or is speculative. These factors were present in some of the exchanges highlighted in this report, many of which had problems associated with their appraised values. For example, Interior's Inspector General identified some exchanges in Nevada in which the nonfederal party who acquired federal land sold it the same day for amounts that were two to six times the amount that it had been valued in the exchange. These exchanges were very costly to the federal government, in terms of lost income, because they did not take advantage of a very competitive market for this federal land.

Both agencies said that they want to retain the option of exchanging land as a supplemental means of acquiring land in addition to purchasing land with appropriated funds. They said that exchanges are an important tool for them to acquire land because appropriated funds for land acquisition are limited. Even if appropriated funds were unlimited, however, they said that they would still need to conduct land exchanges, to acquire desirable nonfederal land, because some landowners will only consider exchanging their land and are not willing to sell their land. The agencies said that landowners may prefer exchanges for several reasons: For example, landowners may not want to give up their land base (e.g., a rancher may be willing to relocate but wants to continue to ranch); they may need specific land-based resources (e.g., a timber company may need land that contains enough timber to cut); or they may desire specific parcels of federal land (e.g., a real estate company may want to develop or market a specific parcel). Furthermore, Bureau officials said that the federal tax code provides a tax incentive for land exchanges by allowing private landowners to defer any capital gains taxes if they exchange their land (for land of similar or greater value) rather than selling it.³⁰ Finally, both agencies said that land exchanges are important tools in dealing with state and local governments, some of which may resist additional federal purchases of nonfederal land but will support federal-nonfederal land exchanges, and others of which want to acquire federal land but avoid lengthy appropriations processes.

Continuing the land exchange program should not hinge on these reasons because they do not generally preclude more common and less complicated buying and selling transactions. While some landowners or government entities may currently prefer to exchange their land, that preference does not necessarily mean that they would be unwilling to sell their properties if the option of a land exchange were not available to them. Furthermore, the federal tax code allows landowners to defer capital gains taxes whether they exchange their land or sell it and reinvest the proceeds by buying other land. However, because the Service—unlike the Bureau—does not have authority under FLPMA to sell its land, private parties (such as timber companies) or governments who want to acquire national forest land would only be able to do so through exchanges.

³⁰ Internal Revenue Service Code, section 1031.

We also note that the Bureau's practice of using cash in assembled exchanges—that is, selling federal land, retaining the sales proceeds, and buying nonfederal land—explicitly recognizes the difficulties and inefficiencies of exchanging land. This practice is not authorized under the law. However, it does provide the Bureau more flexibility than land-for-land exchanges because the Bureau, in effect, follows more common market-based land transactions. The Congress has also recognized the difficulties associated with land exchanges. For example, the Congress gave the Bureau limited authority to sell certain land in the Las Vegas Valley, deposit the proceeds into an interest-bearing special account in the Treasury, and use the proceeds and interest to acquire certain other environmentally sensitive land in southern Nevada. In a similar vein, the Congress is considering proposed legislation that would authorize the Bureau to sell land identified for disposal, deposit the proceeds into a special account in the Treasury, and use these proceeds to buy inholdings.³¹ In both instances, the lands to be sold are identified by the Bureau, funds resulting from selling those lands are deposited into special accounts in the Treasury, and those funds can be drawn down only for specific land acquisitions.

Conclusions

Both the Service and the Bureau have used land exchanges over the years to consolidate land ownership and acquire land. However, the agencies have sometimes acquired this land without due regard for key statutory requirements governing land exchanges and, in doing so, have disregarded congressional direction and interests. Specifically, the agencies have given more than fair market value for nonfederal land they acquired, accepted less than fair market value for federal land they conveyed, and have not demonstrated that the public benefits of acquiring the nonfederal land matched or exceeded the public benefits of retaining the federal land—thereby raising doubts about whether these exchanges served the public interest. In addition, we found that the Bureau has not prepared exchange initiation agreements in compliance with regulations. For example, it did not always specifically describe the land to be exchanged. Finally, the Bureau or its facilitators sold federal land and used the proceeds to purchase nonfederal land, a practice that is not within its land exchange authority. In doing so, the Bureau did not comply with requirements for selling federal land, failed to deposit sales proceeds into the Treasury, retained interest that was earned on those proceeds, and augmented its

³¹ Senate Bill 1892 and House Bill 3288, Title II: The Federal Land Transaction Facilitation Act.

congressional appropriations for land acquisitions. None of these funds—sales proceeds, earned interest, and other cash deposited into escrow accounts (such as cash equalization payments)—have been tracked in the Bureau’s financial management system, although they total millions of dollars. In keeping these funds “off the books,” the Bureau has not adopted appropriate financial safeguards for them and does not know whether public funds were handled improperly or used erroneously.

Measures recently taken by the agencies to strengthen their land exchange programs—most significantly, establishing review teams to examine certain exchanges—are steps in the right direction. However, we remain concerned that these improvement efforts do not go far enough to ensure that the agencies will give and receive fair market value for exchanged land and that exchanges will clearly serve the public interest. Both agencies’ efforts would be strengthened by expanding the roles and responsibilities of their review teams and by making these teams accountable for reviewing and approving all proposed exchanges (or designating other agency representatives to do so, if they believe the teams should not be assigned this accountability). We are concerned that the Bureau believes that its practice of selling and buying land under some assembled land exchanges is authorized under FLPMA. None of the Bureau’s recent land exchange reform efforts address this unauthorized practice, and in fact the Bureau recently issued draft guidance that affirms its use (but states that interest earned on sales proceeds should be deposited into the Treasury). While we identified instances in three states in which such practices occurred, information subsequently obtained by the Bureau indicates that the practice is more widespread. The Bureau has not yet determined the extent to which its field offices have established or used escrow accounts for cash transactions under the umbrella of its land exchange program or the full amount of funds that have flowed through those accounts over the years.

Procedural improvements, while useful, do not address the inherent difficulties and inefficiency associated with land exchanges. In this context, we believe there is reason to question whether land exchanges remain a viable tool for acquiring nonfederal land, especially in rapidly developing real estate markets.

Matters for Congressional Consideration

Since the Congress passed legislation to facilitate land exchanges more than a decade ago, the Bureau and the Service have increasingly relied on exchanges to acquire land. In recent years, many controversies and problems have been reported in both agencies' land exchange programs. While both agencies have taken steps to improve their programs, we believe that these problems reflect, in part, the difficulties and inefficiencies that are inherent in land exchanges. And we remain concerned that the Bureau wants to continue to sell and buy land under the umbrella of its assembled land exchanges. On the basis of these fundamental issues, the Congress may wish to consider directing both agencies to discontinue their land exchange programs.

Recommendations to the Secretaries of Agriculture and the Interior

We recommend that the Secretary of the Interior instruct the Director of the Bureau of Land Management and that the Secretary of Agriculture instruct the Chief of the Forest Service to take the following action:

- Require that all exchanges be reviewed and approved by the agencies' review teams (or other designated officials) before those exchanges are completed. In this review, the agencies must ensure that the federal and nonfederal lands proposed to be exchanged are appropriately valued, that the officials give full consideration to improving federal land management and/or addressing state or local needs, that the benefits from acquiring the nonfederal land will match or exceed the benefits from retaining the federal land, and that all statutory and regulatory requirements for land exchanges are met.

In addition, we recommend that Interior and the Bureau take the following actions:

- Identify and immediately discontinue assembled exchanges under which the Bureau is—either directly or through third-party facilitators—following the unauthorized practice of selling federal land, retaining the sales proceeds (and interest) in escrow accounts rather than depositing them into the Treasury, and using these proceeds to buy nonfederal land.

- Conduct a full audit of financial records associated with assembled exchanges under which land has been sold and purchased—including escrow accounts and expenses deducted by third-party facilitators—to (1) determine whether sale proceeds were handled properly; (2) resolve any augmentation, erroneous use of public funds, or deficiency in accordance with appropriate laws; and (3) take appropriate actions, including reporting to the President and to the Congress, as required by law, all relevant facts and a statement of the actions taken.³²
- Review all exchange initiation agreements for ongoing exchanges to ensure that they comply with regulations—for example, specifically and clearly describing the land that will be exchanged—and amend them if warranted.

Agency Comments and Our Evaluation

We provided the Bureau and the Service with a draft of this report for their review and comment. Both agencies concurred with the recommendations that were addressed to them and have taken steps to respond to them. The Service now requires that its national review team or regional directors review all land exchanges twice during the exchange process—once at the feasibility phase and again prior to making a formal decision. Similarly, the Bureau now requires that its national review team or state directors review and concur with all land exchanges, first in conjunction with the feasibility report and second prior to final approval, and has clarified the elements that constitute each review. Additionally, the Bureau has begun clarifying its policy on assembled exchanges, by (1) identifying all escrow accounts and earned interest and by depositing interest balances into the Treasury and (2) issuing guidance that defines the terms and elements of these exchanges and establishes more stringent financial controls. For example, the Bureau will no longer retain or use interest earned on the sales proceeds and instead now requires that such interest be deposited into the Treasury. The Bureau has also begun the process of hiring an independent firm to audit the financial records associated with assembled exchanges and has required that all exchange initiation agreements be reviewed and, if needed, amended.

The Bureau plans to continue to allow the practice of selling federal land and retaining and using the proceeds to buy nonfederal land, under the umbrella of assembled exchanges. Although the Bureau no longer allows

³² Further instructions on preparing this report are contained in the Office of Management and Budget's Circular No. A-34.

cash to be held in escrow accounts to purchase nonfederal land under assembled exchanges, it instead now allows other financial instruments—i.e., cash bonds, Treasury bonds, or corporate security bonds—to be held for this purpose. Furthermore, the Bureau has directed its staff not to refer to these transactions as “sales” or “purchases” if they are conducted as part of an assembled exchange, and has implemented stronger managerial and financial controls over the associated funds. However, we continue to believe that the Bureau lacks legal authority to sell land and retain the proceeds—whether the Bureau accepts cash or other financial instruments—and should instead deposit the proceeds into the Treasury. The Bureau’s practice generates nonappropriated funds that, by definition, augment its appropriated funds. FLPMA authorizes exchanges of land for land—not exchanges of land for cash or other financial instruments—and we remain concerned that neither the Department nor the Bureau has adequately explained why these transactions are not sales or purchases.

As previously stated, both agencies agreed with our recommendations. It should be noted that both agencies raised concerns about other aspects of our report. The Service questioned whether our conclusions were logically supported by the relatively small number of exchanges that we reviewed and asserted that our report did not consider steps that it had already taken to strengthen its land exchange program (in response to problems identified in Nevada). The Bureau asserted that it had already corrected valuation problems reported by the Inspector General, disagreed that it failed to show the public benefits associated with the land exchanges we reported, and disagreed that the assembled exchanges we reported were conducted outside of the agency’s land exchange authority or that the agency augmented its appropriations by selling land and retaining the sales proceeds. The Bureau agreed that funds associated with assembled exchanges should be tracked in the Bureau’s financial management system and plans to implement full accounting control by June 15, 2000.

We continue to believe that our conclusions, which serve as the basis for the recommendations that the agencies agreed with, were fully supported by the information presented in our report. Because it was not feasible for us to use a statistical sampling approach, the results of our analysis are not projectable; nonetheless, we believe the exchanges presented in our report demonstrate serious, substantive, and continuing problems with the agencies’ land exchange programs. Our report summarizes efforts undertaken by both agencies since 1998 to strengthen their programs; while we support those efforts, we do not believe that they fully address the problems we identify or the concerns we express in our report.

Both agencies disagreed with our matters for congressional consideration, which suggested that the land exchange programs be discontinued and, possibly, replaced with additional authority allowing the agencies to sell federal land and retain use of the proceeds to buy nonfederal land. Both agencies commented that land exchanges are an important and essential tool for adjusting federal land ownership. They noted that exchanges are the only viable tool to deal with neighboring private landowners who desire to maintain a land base and will not sell their land, and that they are a particularly effective tool to deal with state and local governments—which may resist additional federal purchases or which desire to avoid lengthy appropriations processes. Both agencies supported the concept of receiving additional authority to sell federal land and retain use of the proceeds to buy nonfederal land, but only as a complement to their existing authority to exchange land, not as a replacement. They noted that such a program would retain many of the problems reported in land exchanges, such as concerns about appraised values, and could create additional potential difficulties, such as increasing conflicts with state and/or local governments and increasing participation by third parties.

We do not believe that the agencies' best efforts to improve their programs can address the inherent difficulties associated with land-for-land exchanges. These difficulties have been present for as long as land exchanges have been occurring and are exacerbated in today's rapidly developing real estate markets. In our view, the administrative flexibility cited by the agencies as a reason to continue exchanges—that is, allowing the agencies to accommodate certain exchange proponents—is more than offset by their continuing problems and fundamental inefficiencies. For this reason, we still believe that the Congress should consider discontinuing the agencies' land exchange programs. However, we have deleted our suggestion that the Congress also consider expanding the agencies' authority to sell federal land and retain the use of the proceeds to buy nonfederal land, believing that such expanded authority would not resolve the problems identified in the agencies' land exchange programs. Under existing statutes, the Bureau is authorized to sell certain federal land and deposit the proceeds into the Treasury, and both agencies are authorized to request appropriated funds from the Congress to purchase desirable nonfederal land.

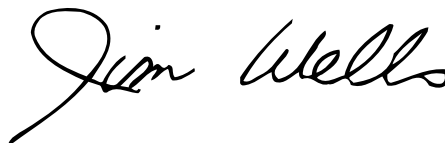
Both agencies also provided technical clarifications on the text of our report, which we incorporated as appropriate. The full text of the Service's comments and our responses are in appendix I. The full text of the Bureau's comments and our responses are in appendix II.

We conducted our review from June 1999 through May 2000 in accordance with generally accepted auditing standards. Details of our scope and methodology are discussed in appendix III.

As requested, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Thomas A. Fry III, Director of the Bureau of Land Management; the Honorable Dan Glickman, Secretary of Agriculture; and the Honorable Mike Dombeck, Chief of the Forest Service. We will also send copies to other appropriate congressional members and make copies available to others upon request.

If you or your staff have any questions, please call me at 202-512-3841. Key contributors to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Jim Wells". The signature is written in a cursive style with a large, looping initial "J".

Jim Wells
Director, Energy, Resources,
and Science Issues