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Federal-State Land Exchanges and Purchases A Proposed Path Forward

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Background

Congress granted lands to states as they were admitted into union to be held in trust for support of public schools. Over time many of these trust lands have been entirely surrounded by newly created federal areas managed by federal agencies, mainly the Bureau of Land Management and the U.S. Forest Service.

Federal and state land managers, land users, the environmental community and the public all agree that the “checkerboard” land ownership pattern prevailing in much of the West is a major hindrance to effective and ecologically sound management of both federal and state lands.

Currently, there are three methods of resolving the checkerboard land tenure issue in the West: (1) land exchanges under existing legislation, such as FLPMA; (2) the direct federal purchase of non-federal lands within federal management areas under FLTFA; (3) acts of Congress. However, all three are lengthy, expensive, and inefficient.

Solutions

Land Exchanges

Federal land exchanges -- whether with states or private interest -- are conducted under FLPMA. 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.” These requirements create unintentional barriers to federal-state land exchanges.

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 federal land value is estimated to be not worth more 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.

Land Sales

The Federal Land Transaction Facilitation Act (FLTFA) allows the Department of the Interior agencies and the 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 passed in 2000 with a 10-year sunset. The act was reauthorized for one year in 2010, but was not extended at the July, 2011 expiration. Several attempts have been made to extend the act, including most recently in Senator Jon Tester's (D-MT) Sportsman's Act.

"In Lieu" Selections

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 preexisting conveyances or federal special purpose designations. Under the WSCLA proposal, states would have the right to relinquish state trust lands within federal conservation designations to the United States, and select replacements lands from unappropriated federal public lands within the states.

Western Governors' Position

- Amend FLPMA to add language to:
 - expedite the exchange process when federal lands are valued under \$150,000 to be indexed for inflation (the \$150,000 is from 1986);
 - remove lengthy appraisal process by using a statement of value (may be more difficult than other amendments);
 - deem any agreed State-Federal land exchange as in public interest (Federal-Private interests are not included).
- Reauthorize of FLTFA
- Introduce and pass WSCLA proposed legislation this year.

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