Course 2000-10

# National Training Center

**EXCHANGES**

**Value Imbalances and Equalization Session Summary**

- **BLM** - **43 CFR 2201.6; BLM Handbook 2200-1, Chapters 1, 7, and 11**

- **FS 36 CFR 254.12; FSH 5409.33.6**

In most cases, the appraised values of the Federal and non-Federal lands in an exchange will not be exactly equal. The FLPMA and the regulations allow for the use of a cash payment to equalize the values in an exchange.

Sec. 206(b) of the FLPMA requires the Secretaries to "try to reduce the amount of the payment of money to as small an amount as possible". The statutory and regulatory maximum for cash equalization is 25 percent of the value of the Federal lands **conveyed.** Therefore, the actual limit for cash equalization for an exchange is not determined until after the appraisals are completed and the final configuration of the exchange is known. If compensation for assumption of costs (CAC) is being utilized in an exchange, the total amount of adjustment for land value equalization and CAC cannot exceed the regulatory limit.

The BLM and FS regulations on cash equalization are virtually identical: "To use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands". Generally, equalization is achieved by excluding lands from the exchange, as adding lands would require amending the ATI, publishing a new NOEP, and incorporating the additional lands in all exchange processing steps. See also BL\1 WO IM 2010-122.

"Reasonable efforts" will vary by exchange; some examples are:

Land is described by government lots and the cost to subdivide lots and re-describe (cadastral survey) is prohibitive.

Subdivision of a small isolated parcel would create a smaller isolated parcel. Subdivision of a parcel would create "illegal" lots that conflict with local zoning. Boundary identification and management issues.

Minimizing cash equalization shonld be portrayed in the initial negotiations with the non-Federal party, in the feasibility analysis and the ATI, aud carried forward to the decision and closing.

Cash equalization dollars (e.g., LWCF) are limited and it may be easier for the U.S. to accept cash equalization than to pay. TI1e ability to deposit cash equalization into certain accounts (e.g., FLTFA, Sisk Act (when authorized by special legislation)) may make cash equalization more acceptable, but it should not be an excuse to maximize the payment amount.

The potential consequences of changing the lands in the exchange to equalize the values need to ***c·***

be considered throughout the processing of the exchange. It is recommended that potential

Equalization be considered in the initial negotiations, feasibility, and the ATI. Determine the flexibility for all parties at the feasibility stage.

Consider reasonable "overbuilding". Lands or interests in land can be excluded, but cannot be added, without an additional NOEP. Any additional costs and time to process the additional lands (resource inventories, appraisals, etc.) should be considered.

Consider identifying certain parcels or areas (Federal and/or non-Federal) as priorities to be included and/or excluded in the exchange.

Consider conflicts with local zoning, survey needs, boundary management, etc. for any proposed parcel subdivision.

In multi-agency exchanges, determine which agency will be responsible for paying any equalization owed by the U.S. and which agency would receive funds owed to the U.S. and the account in which the funds would be deposited.

Any changes because of equalization should be coordinated with the appraisers throughout exchange processing.

Consider consulting with the appraisers at the feasibility stage concerning potential

problems and strategies.

The appraisal request .could include equalization alternatives to be addressed (consider the increased complexity and increased costs of appraisal).

Consult with appraisers concerning any changes in configuration and obtain written documentation of approval of any change in value. A new appraisal may be required.

Cannot assume equal allocation of value when subdividing a parcel. .

The lands and interests being conveyed **must** match the lands and interests appraised.

Any changes because of equalization **must** be coordinated with the NEPA process and the Public Interest Determination.

Determine if changes in configuration cause any substantial changes in the

Environmental analysis (benefits or adverse effects) and would require revision to the NEPA document.

Consider the need for other authorizations (e.g., access) to ensure manageability if

Certain lands are excluded. Appraised values may be affected if the authorizations cross. Lands included in the exchange.

Consider the effect on existing encumbrances.

Determine if the exchange is still in the public interest if a certain parcel(s) or portion of a parcel are excluded from the exchange.

* Resource values not acquired.
* Interference with management on adjacent Federal or Indian trust lands.

The market value of the Federal and non-Federal lands (appraised values) and amount of, and rationale for, any cash equalization must be described in the decision document for the exchange. The market value of the Federal and non-Federal lands (appraised values) and amount of any cash equalization must be described in any binding exchange agreement.

**SAMPLE EQUALIZATION LANGUAGE**

**Example 1**

The properties actually conveyed through the exchange proposal shall be determined by appraisals of their fair market values, and the Federal or non-Federal lands shall be adjusted, if necessary, so that the values of the lands to be conveyed are equal, or as close to equal as possible. If not equal, the values may be equalized with payment of money to either the United States or the non-Federal Party as circumstances require, but any payment of money shall be as small an amount as possible. In any case, any required payment from the United States to the non-Federal Party or from the non-Federal Party to the United States shall not exceed 25 percent of the value of the Federal lands conveyed.

**Example 2**

The preliminary estimates of value indicate the values of the Federal lands are somewhat higher than the values of the non-Federal-lands. It is anticipated all of the non-Federal lands would be conveyed through the exchange, and any adjustments (deletions) for equalization purposes would occur on the Federal lands. Any such adjustments would be expected to occur on the extreme eastern portion of Parcel 1. Based on the preliminary value estimates (which are subject to change), up to 200 acres of the Federal lands may have to be excluded from the proposal. Although values would be equalized as closely as possible through adjustments to the lands involved, an equalization payment, either to or from the United States, may be necessary to completely equalize the values. Any equalization payment will be as small an amount as possible, and under 43 CFR 2201.6(a)(2)(b), is limited to a maximum of25 percent of the value of the Federal lands being conveyed.

**Example 3**

The Federal lands being considered for exchange are described as follows: T. 33 S., R. 30 E., sec. 15, S½;

sec. 22, N½, N½S½;

sec. 28, N½S½, S½SE¼.

encompassing 1,040.00 acres, more or less.

The additional Federal lands that may be considered for exchange, if necessary for equalization purposes, are described as follows:

T. 32 S., R. 31 E., sec. 25, lots 1 and 2, SW¼NE¼

T. 32 S., R. 32 E., sec. 30, lots 1 and 2, W½NE¼, E½NW¼. encompassing 317.17 acres, more or less.

The parties will minimize the use of cash equalization and consider only after making all reasonable efforts to equalize by excluding lands from the proposal. Cash equalization cannot exceed 25 percent of the total value of the lands and interests in land transferred out of Federal ownership.

**Example 4** *(*

The following describes the land proposed for exchange (see maps in Appendix A).

FEDERAL LAND - 724.34 Acres T. 5 S., R. 90 W.

Sec. 10: Lots 9 and 10

Sec. 11: Lot 8

Sec. 15: W½NE¼, NW¼, E½SW¼, SE¼ Sec. 22: N½NE¼, SE¼NE¼, NE¼NW¼

NON-FEDERAL LAND - 603.05 Acres· T. 5 S., R. 90W.

Sec. 2: Lot 3

Sec. 3: Lots 1 and 2 Sec. 9: S½NE¼, SE¼

Sec. 10: SW¼NE¼, SW¼NW¼, NW¼SW¼

Sec. 16: NW¼NE¼, E½NW¼

Following is the preliminary priority order for making any necessary adjustments (i.e., exclusion from the exchange) to the Federal lands to equalize values: Sec. 10: Lot 9, Sec. 15: NW¼NW¼, and Sec. 22: SE¼NE¼.

The exact acreages of lands that would be exchanged will be determined by fair market value appraisals.

Final acreage determinations would be adjusted to exchange approximately equal values and to keep any

necessary equalization payment to a minimum while identifying manageable property boundaries and ( eliminating additional surveying requirements. Any cash equalization cannot exceed 25 percent of the ··· value of the Federal lands being exchanged.

**CASH EQUALIZATION WAIVER**

The regulations allow for the waiver of cash equalization under certain circumstances. The decision for the exchange **must** document how the waiver will expedite the exchange and why the public interest will be best served by the waiver.

For the BLM, the parties may agree to waive cash equalization owed to either party if the amount does not exceed 3 percent of the Federal land value or $15,000, whichever is less. The waiver is not applicable when the value differential is greater than $15,000, and no partial waiver is allowed.

For the FS, amounts owed to the U.S. **cannot** be waived. The parties may agree to waive cash equalization owed to the non-Federal party if the amount does not exceed 3 percent of the Federal land value or $15,000, whichever is less.

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