

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

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Instruction Memorandum No. 2010-121

Expires: 09/30/2011

**To:** All Field Officials

**From:** Assistant Director, Minerals and Realty Management

**Subject:** Review of Land Exchange Proposals and Records Management DD: 06/30/2010

**Program Area:** Lands – Land Exchanges.

**Purpose:** This Instruction Memorandum (IM) supplements guidance in the Bureau of Land Management's (BLM) Manual 1220 and the H-2200-1 Land Exchange Handbook (Handbook) concerning the review process and records management for land exchanges.

**Policy/Action:** Within their areas of jurisdiction, Field Managers and District Managers are responsible for processing land exchange proposals in compliance with statutes, regulations, and BLM policies contained in the Handbook, IMs, and other guidance. Within their areas of jurisdiction, State Directors have the authority to approve all land exchange actions, except approval of appraisal reports and title opinions, and may have re-delegated authority for certain actions to Field Managers or District Managers. State Directors are responsible for (1) ensuring compliance with statutes, regulations, and BLM policies throughout the land exchange process, (2) providing management oversight, and (3) ensuring the integrity of the land exchange program.

A State Director's authority to approve land exchange actions is subject to review by the Solicitor's Office (Solicitor) and the National Land Exchange Team (NLET)/Washington Office (WO) and concurrence by the Director at the feasibility and decision stages of the land exchange process. WO IM 2007-181 contains guidance on the Solicitor's review of land exchange proposals. The current practice for review by the Solicitor and the NLET/WO will continue for all land exchanges, including land exchanges authorized by legislation, until the Director authorizes individual State Directors to resume selective responsibility for land exchange management oversight and quality control. In addition, the NLET/WO may elect to conduct reviews of individual land exchange cases or program reviews at the field office, district, or state levels.

State Directors are responsible for conducting thorough reviews of feasibility and decision packages prior to submission of the packages to the Solicitor and the NLET/WO for formal review and concurrence. Consultation with the NLET/WO, including informal review of preliminary draft documents, is encouraged to identify issues, develop solutions, and ensure compliance with statutes, regulations, and policies. This early consultation should facilitate the formal review of feasibility and decision packages. State office staffs should work with the NLET/WO to coordinate such consultation and informal reviews.

For any land exchange proposal, a formal review would be initiated through a memorandum signed by the State Director requesting review by the Solicitor or concurrence by the Director after review by the NLET/WO. Formal reviews would include preliminary and final title opinion requests submitted to the Solicitor and review requests for feasibility and decision packages submitted to the Solicitor or the NLET/WO. Generally, formal review of a feasibility or decision package by the Solicitor should occur prior to formal review by the NLET/WO. In rare cases, the Director's concurrence of a feasibility package may be considered before formal review by the Solicitor is completed, but the State Director must explain

in the review request why the Solicitor's review cannot precede the NLET/WO review. In such cases, the Director's concurrence will include a condition of approval that review by the Solicitor and incorporation of any substantive comments must occur before the Agreement to Initiate a Land Exchange could be executed or the Notice of Exchange Proposal could be published. If a decision package is submitted for NLET/WO review before review by the Solicitor is completed, the Director's concurrence will be deferred until the Solicitor's review is completed and documentation of that review is submitted to the NLET/WO.

The documents submitted for formal reviews must be retained in the case file for the land exchange, and it is recommended that all previous versions of the documents be destroyed to avoid confusion. Draft documents should be labeled as such and it is recommended the documents be dated. In addition, all substantive issues identified during the formal reviews and their resolution must be documented and retained in the case file. State Directors are responsible for ensuring that all substantive issues are resolved and documented. Attachment 1 is a sample format for this documentation. Editorial comments (e.g., punctuation, spelling, formatting, rewording for clarity, etc.) would not be substantive issues and changes or corrections would not have to be documented in this manner. Substantive issues that must be documented include, but are not limited to:

- Non-compliance with statutes, regulations, executive orders, and agency policies and requirements, including the Handbook and IMs.
- Title or land description issues that would preclude conveyance of clear title of the Federal or non-Federal lands.
- Legal issues.
- Nonconformance with land use plans.
- Non-compliance with National Environmental Policy Act requirements.
- Valuation and equalization issues.
- Inadequate public interest determination (PID), including the lack of the required elements in 43 Code of Federal Regulations 2200.0-6 (b)(1) and (2), and insufficient rationale to support the PID.
- Conditions of approval or items "flagged" in formal reviews for attention during future processing.

Revision of documents may occur during the formal NLET/WO review of a feasibility or decision package. Any revised documents will be attached to the Director's concurrence and will become the approved documents for future processing of the land exchange.

Management of land exchange records is essential to ensure that the administrative record is maintained appropriately and the actions of the BLM can be explained and defended, both during processing and after completion of a land exchange, and to ensure the integrity of the land exchange program as a whole. State Directors are responsible for ensuring that land exchange case files contain all required documentation and that records retention policies in BLM Manual 1220 are being followed. Attachment 2 is a checklist of documentation that should be contained in a case file for a completed land exchange.

The BLM's Division of IRM Governance (WO-560) is currently revising BLM Manual 1220, Records and Information Management, with the revision scheduled to be completed by September 30, 2010. As part of the revision, this manual section will be recodified as BLM Manual 1270, and the existing BLM Manual 1220 will be terminated. Appendix 2 (GRS/BLM Combined Records Schedules) of BLM Manual 1220 contains specific records management policies, with Schedule 4 (Property Use and Disposal Records) identifying the policies relative to land exchanges. On or before June 30, 2010, each State Director must submit proposed changes to Appendix 2 applicable to land exchanges, including but not limited to Schedule 4, Items 7 and 13, to the NLET. Realty staff in each state must coordinate with state records administrators in this effort. On or before September 30, 2010, the NLET will collate the responses and submit a consolidated request for the proposed changes to the WO-560 for action and coordination with the National Archives and Records Administration.

**Timeframe:** This IM is effective immediately. However, any feasibility or decision packages that have been formally submitted for concurrence by the Director through the NLET/WO will be subject to previously existing review requirements. The requirements for documentation in land exchange case files must be incorporated into all pending and future land exchanges.

**Budget Impact:** None.

**Background:** The Government Accountability Office's (GAO) June 2009 report entitled "*FEDERAL LAND MANAGEMENT: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*" (GAO-09-611) identified two recommendations to strengthen the land exchange review process by ensuring the identification of key issues and clarifying the retention policy for land exchange documentation. This IM will implement the Department of the Interior's Statement of Actions dated September 10, 2009, in response to these recommendations.

**Manual/Handbook Sections Affected:** This IM supplements guidance in BLM Manual 1220 and BLM Manual Handbook H-2200-1. Handbook H-2200-1 will be updated during the next revision of the Handbook.

**Coordination:** This IM was coordinated with the Division of Lands, Realty and Cadastral Survey (WO-350), the WO-560, and realty personnel in each state office.

**Contact:** Please address any questions to me at 202-208-4201 or your staff may contact Kim Berns, Division Chief, Lands, Realty and Cadastral Survey, at 202-912-7350 or Carolyn Spoon, Branch Chief, Lands and Realty (WO-350), at 202-912-7574. Please address questions on BLM records management policies to Michelle F. Thomas, Bureau Records Administrator, at 202-912-7557.

Signed by: Michael Nedd, Assistant Director  
Minerals and Realty Management

Authenticated by: Robert M. Williams  
Division of IRM Governance, WO-560

2 Attachments

[1 – Formal Land Exchange Review - Issue Identification and Resolution \(1 p\)](#)

[2 – Documentation in Land Exchange Case Files \(3 pp\)](#)



## DOCUMENTATION IN LAND EXCHANGE CASE FILES

The official case file for a land exchange should contain the following documentation. Items are not necessarily in chronological order and the list is for a completed land exchange in which lands and/or interests in land are conveyed. The case file for a land exchange which is terminated during processing would not have all of the listed items. Original documentation should be filed to the extent possible, but some items, such as a patent with recording information, may necessarily be copies. Other documentation that is not listed may be necessary for a specific land exchange.

- Letter initiating the land exchange proposal.
- Request memorandum for segregation of the Federal land.
- Feasibility analysis package (version of the package submitted for formal review to the National Land Exchange Team (NLET)/Washington Office (WO) and the Solicitor's Office (Solicitor)).
- Maps and plats.
- Solicitor review/concurrence of feasibility package.
- NLET Feasibility Review Statement and Director concurrence memorandum.
- Substantive issues and resolutions from formal Solicitor and NLET/WO reviews.
- Executed Agreement to Initiate a Land Exchange (ATI) and any amendments.
- Notice of Exchange Proposal (NOEP) and newspaper affidavit of publication (supplemental NOEP and newspaper affidavit of publication if lands or interests in lands added to the land exchange proposal during processing).
- Notice of Intent (*Federal Register* publication and newspaper affidavit of publication) for land use plan amendment, if applicable (may be combined with the NOEP).
- Mailing list for public notices (updated as necessary throughout processing) and proof of mailing (e.g., certified mail return receipts), if applicable.
- Comments received in response to the NOEP.
- Formal notification of authorized users (grazing permittees and any waiver received, if applicable; right-of-way holders and potential conversion to easements; etc.).
- Congressional notification, if applicable.
- Resource Reports.
  - Mineral potential report (required for the Federal land; if done for the non-Federal land, should also be included).
  - Environmental site assessments for Federal and non-Federal lands (compliance with All Appropriate Inquiry (40 CFR 312) required for non-Federal lands and compliance with 40 CFR 373 required for conveyance of Federal lands) and supplements/updates, if applicable.
  - Biological assessments/biological opinions for threatened, endangered, and sensitive species if applicable.
  - Floodplains/wetlands, if applicable.
  - Archeological, historical, and paleontological.
  - Water rights, if applicable.
- Concurrence from State Historic Preservation Office, U.S. Fish and Wildlife Service, National Marine Fisheries Service, if applicable.

- Native American tribal consultation.
- Title Commitment/Binder for non-Federal land with copies of all encumbrances of record.
- Alternative ownership and title evidence for interests in land not insured by a title company (e.g., water rights, mineral interests), if applicable.
- Curative documents for unacceptable title encumbrances, if applicable.
- Documentation for relocation assistance, if applicable.
- Federal land title information (master title plats, LR 2000 reports, etc.).
- Options, contracts, or other arrangements with third parties affecting the Federal and/or non-Federal lands, if requested by the BLM.
- Legal description review request and response for the Federal and non-Federal lands (sample formats in H-2100-1 *Acquisition Handbook*, Chapter V, Illustrations 1 and 2).
- Certificate of citizenship or corporate papers for non-Federal exchange party and certification of standing from Secretary of State, if applicable (may reference to another file where located).
- Certificate of Inspection and Possession (initial and final) and any supplements.
- Request for Preliminary Title Opinion (PTO) and PTO from the Solicitor or the Department of Justice (DOJ).
- Administrative waiver for the non-Federal title encumbrances.
- Approved Asset Acquisition Business Plan for facilities and improvements on the non-Federal lands being acquired by the U.S., if applicable.
- Appraisal Request and Review Tracking System request (Federal and non-Federal title information supporting the request identified above).
- Appraisal reports or statement of value (Federal and non-Federal lands).
- Appraisal Services Directorate review and approval of appraisal reports.
- Acceptance of appraisals for agency use (may be included in the decision document for the land exchange).
- National Environmental Policy Act (NEPA) analysis (environmental assessment (EA) or environmental impact statement (EIS)).
- Decision package (version of decision package submitted for formal review to the NLET/WO and the Solicitor).
- Solicitor review/concurrence of decision package.
- NLET Decision Review Statement and Director concurrence memorandum.
- Public land order (*Federal Register* publication) for termination of segregation or withdrawal affecting the Federal land, if applicable.
- Signed Decision Record (EA)/Record of Decision (EIS).
- Signed Decision for land use plan amendment, if applicable (may be combined with the decision for the land exchange).
- Binding exchange agreement, if applicable.
- Notice of Decision (NOD) and newspaper affidavit of publication.
- Notice of Availability (NOA) for land use plan amendment, if applicable; newspaper affidavit of publication for all NOAs and *Federal Register* publication for EIS-level plan amendment (may be combined with the NOD).
- Protests received on land exchange decision and BLM responses, if applicable.
- Appeals received, and Interior Board of Land Appeals decisions, if applicable.
- Executed escrow instructions.

- Accounting advice for equalization payment received by U.S. or voucher certificate for equalization payment paid by the U.S., if applicable.
- Executed and recorded deed to the U.S. with recording information.
- Patent/quit-claim deed to the non-Federal party (recommend copy has recording information).
- Escrow closing statement.
- Title Policy for the non-Federal land (or Title Certificate/Statement of Encumbrances for State land).
- Request for Final Title Opinion (FTO) and FTO from the Solicitor or the DOJ.
- Opening Order (*Federal Register* publication) for any Federal lands excluded from the land exchange, if applicable.
- Invoices and other necessary documentation for services for compensation for assumption of costs, if applicable.
- Ledger for each transaction in a multiple phase exchange, if applicable (includes State Director's approval and justification for each posting, State Director's determination of need for security, copy of Personal Bond, Cash and Book Entry Deposits, accounting advices and decisions for establishment, modification, and release of the bond).
- Documentation, public notice (*Federal Register* publication), and consultation with the Attorney General required in 43 CFR 2203.2, 2203.3, and 2203.4 for an exchange involving Federal coal.
- Final LR 2000 serial register page with complete data entries consistent with data standards.