

A black and white photograph of a forest landscape. A path or road winds through the trees, leading towards a large, prominent evergreen tree in the center. The background shows more trees and a hazy sky. The overall tone is somber and naturalistic.

Land Tenure Adjustment

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Resource Objectives and Planned Actions

The resource objective of this action is to adjust the resource area land and/or mineral base using various Bureau authorities (exchanges, sales, Recreation and Public Purpose patents, etc.) to improve management of both public and private land.

Public response to the draft EIS proposal for Land Tenure Adjustment was unanimous in support of the resource area's use of land exchanges to acquire tracts or block up public land with greater public access, recreation, wildlife habitat, or other resource values. The public responses were generally opposed to disposal of public lands by direct sale. Some concern was expressed regarding the effects of land disposal on surrounding landowners and grazing permittees.

The draft RMP/EIS identified 5,237 acres of public land as suitable for disposal within the Land Tenure Adjustment Area. Within the same area, 3,622 acres were identified as suitable for exchange. Following public comments, the resource area staff reevaluated 19 tracts of public land previously identified for disposal. This evaluation reduced the total acreage in the disposal category from 5,237 to 3,837 acres (see Appendix 2.8).

In light of public responses and further clarification of land tenure policy at the national and state levels, land exchange will be the predominant method of land adjustment and/or disposal. This adjustment in this action makes the 3,837 acres of public land categorized for disposal within the Land Tenure Adjustment Area available for disposal by exchange, as well as by sale or other authorized methods of disposal. Public land in the Land Tenure Adjustment Area available for exchange now totals 7,459 acres.

Twenty-six thousand three hundred and fifteen (26,315) acres within the Land Tenure Adjustment Area have been categorized for retention.

Two thousand three hundred and eighty-two (2,382) acres of public land have been categorized for further study. Lands placed in this category will be evaluated later using the criteria defined in the State Director Guidance for Resource Management Planning in Montana and the Dakotas (Appendix 2.9).

It should be noted that land base adjustment is a tiered process involving two entirely separate and distinct actions—categorization and disposal. Categorization involves the application of certain criteria to a given tract or zone of public land for initial identification of the potential for disposal or retention. This streamlines the land tenure adjustment process by helping the resource area to focus on those lands which initially meet the disposal criteria outlined in Appendix 2.10 and in the State Director Guidance (Appendix 2.9).

Actual land actions by sale, exchange or acquisition require a site-specific analysis prior to the recommendation. The analysis is handled in subsequent activity planning through the Environmental Assessment/Land Report (EA/LR). The EA/LR is an interdisciplinary document which examines and evaluates the effect of the proposed action on all affected resource values, which could include vegetation, watershed, wildlife, recreation, aesthetics, air quality, cultural resources, public access, and the social and economic impact to adjacent landowners, grazing permittees, and the local community.

Section 206(a) of FLPMA requires that land exchanges serve the public interest. This section of FLPMA states that an exchange may occur if “the values and objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-federal lands or interests and the public objectives they could serve if acquired”.

Likewise, public lands to be disposed of by sale must meet certain FLPMA requirements. Section 203(a) of FLPMA states that public lands may be sold if:

1. such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or
2. such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

3. disposal of such tract would serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

In summary, before a proposed exchange or sale of public land can proceed, the EA/LR must show that the proposed action accrues significant benefit to the public. The same showing is required in a minerals exchange.

When EA/LR findings are such that a public land parcel can be disposed of either by exchange or sale, and management concurs, a Notice of Realty Action (NORA) is published once in the Federal Register and at least once a week for three weeks in a newspaper with distribution in the area of the proposed action. The NORA describes the proposed action and specifies a 45 day period for public review and comment. The location of the office where individuals can review the case file is also included. Following the 45 day period, any adverse comments are responded to by the District Manager and/or State Director, who may vacate or modify the proposed action based on the comments received.

In addition to the official publication of the NORA in local papers and the Federal Register, adjacent landowners, Governor, Congressional delegation, county commissioners, and other interested parties are sent a letter of notification with a copy of the NORA attached. If the county commissioners feel it is necessary, a public hearing on the proposed action will also be held.

Several individuals expressed a concern about how the retention and disposal criteria will be applied to the uncategorized lands outside of the Land Tenure Adjustment Area. In order to address this concern, the resource area staff has delineated the remaining portion of the resource area into retention and disposal zones (see Map Overlay, FEIS, Map Pocket). Approximately 364,350 acres are delineated in retention zones, while approximately 52,500 acres are delineated in disposal zones outside of the initial Land Tenure Adjustment Area described in the draft EIS. The lands in the disposal zones include approximately 10,150 acres of public land adjacent to U. S. Forest Service land along the Beartooth Face and in the Twin Coulee Wilderness Study Area (WSA) that will be proposed for exchange to the U. S. Forest Service. These tracts of public land will thus remain in public ownership. The remaining 42,350 acres of public land in the disposal zones are suitable for disposal by any method, but predominantly through exchange.

Exchanges will also be the predominant method of land disposal for public lands outside of the Land Tenure Adjustment Area. Lands to be acquired by exchange will generally be located within retention areas, while lands to be disposed of by exchange or sale will primarily be located in disposal areas. Based on site-specific application of the land tenure adjustment criteria in the State Director Guidance, some lands within a disposal zone, such as critical wildlife habitat, may be retained, while some lands in a retention zone may be disposed of.

If and when a lands sale is contemplated outside the Land Tenure Adjustment Area as defined in the Billings RMP, the determination(s) and evaluation required by Section 102 and 203 of FLPMA will be made through the planning process using the pertinent provisions of 43 CFR 1600 and the regulations implementing NEPA.

Lands to be acquired should:

1. facilitate access to public land,
2. maintain or enhance important public values and uses,
3. maintain or enhance local social and economic values,
4. facilitate implementation of other aspects of the Billings RMP, including:
 - a. acquisition of non-BLM lands within the PMWHR
 - b. facilitation of future mineral development, and/or
5. facilitate other criteria addressed in the State Director Guidance.

Existing data and an interdisciplinary analysis were utilized in delineating the boundaries of the zones (retention, disposal and further study). Specific tracts within these zones may be readjusted or recategorized as a result of site-specific analysis and input during the activity planning stage.

Rationale

Adjustment in the pattern of public land and minerals ownership within the resource area will: (1) allow for more efficient and economic management; (2) facilitate acquisition of lands with higher public values and uses; and (3) facilitate implementation of other recommendations within this and other planning documents.

Monitoring

Land tenure adjustment actions are monitored through the use of environmental assessments, which are written on every proposed action. In addition, a 45-day public comment period is required between the notification of a land disposal action and the actual disposal.

Implementation Priorities

Public land actions will be accomplished according to the following priority:

1. Evaluate those lands categorized as further study in the Land Tenure Adjustment Area.
2. Take immediate action (by exchange, sale or other methods) on those exchange and sale proposals currently on file that meet disposal and/or acquisition criteria.
3. Dispose of (by exchange, sale or other methods) those lands identified as suitable for transfer within the Land Tenure Adjustment Area.
4. Continue site-specific assessments of those lands now contained within the disposal zone but outside of the Land Tenure Adjustment Area, in terms of whether they should remain categorized for disposal, retention, or further study.

Support

Support will be needed for conducting cadastral surveys, appraisal reports, mineral reports, water rights reports, and cultural reports to locate and estimate the value of public land identified for disposal, and for those lands the Bureau is seeking to acquire.

