



# Legislative Audit Division

## Performance Audit Summary

### State Agency Land Exchanges

October 2001

#### Introduction

During the last decade, the State of Montana was involved in a number of land exchanges. State land has been exchanged for private and/or other government-owned land. Based on public comments relating to exchanges of state land, the Legislative Audit Committee requested a performance audit of the exchange process.

We compiled and reviewed land exchange information at four entities: the Department of Natural Resources and Conservation (DNRC), the Montana Department of Transportation (MDT), the Department of Fish, Wildlife and Parks (FWP), and the Montana University System (MUS).

Land Exchanges (March 1994 – March 2001)		
Agency	Number of Land Exchanges	
	Approved	In Process
DNRC	7	17
MDT	19	12
FWP	17	6
MUS	2	1

#### Background

State land is classified as either school trust lands or fee (non-trust) lands. Montana’s Constitution gives direct management authority for trust lands (over 5.8 million acres) to the Board of Land Commissioners (Land Board). The Land Board consists of the Governor, Superintendent of Public Instruction, State Auditor, Secretary of State, and Attorney General. Under the direction of the Land Board, DNRC is responsible for daily management of trust lands.

The state also holds fee title to lands (i.e., owns land). These lands are usually managed by the state agency holding title to the land.

#### State Land May be Exchanged

The Enabling Act and the Montana Constitution specify that “any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.” The Constitution also specifies that “No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such

manner as may be provided by law, has been paid or safely secured to the state.”

#### How Does a Land Exchange Work?

A land exchange is generally an agreement between two landowners to swap ownership of two separate pieces of property. There are, however, generally many steps and/or possibilities involved in state agency land exchanges. There may be more than two landowners involved in an exchange, or there may be more than two pieces of property to exchange. In addition, the specific land involved in an exchange may not be identified up front. A pool of land may be proposed for exchange, but the actual acreage may not be identified until later in the process. These factors increase the complexity and amount of time involved in an exchange.

#### How Do Land Exchange Processes Compare?

State agency land exchange processes are comparable to one another and to other states and the federal government. There are differences in specific procedures, but in general, the processes are comparable. The public is usually involved in land exchange proposals, land no longer useful to the agency is exchanged, and appraisals are used to determine land value. Variations in processes exist due to the types of land exchanged (grazing versus timber), the purposes for exchanging land, and specific mandates and procedures used to complete an exchange.

#### State Land Exchange Processes Provide Benefits

*State agency land exchange processes appear to provide benefits to the state and the public by meeting the missions of the agencies involved.* DNRC generates income for trusts and consolidates holdings. FWP obtains and/or protects land for wildlife management areas, parks, and fishing access sites. MDT obtains needed right-of-way and disposes of excess land. MUS adjusts boundaries and consolidates holdings to improve overall land management.

In general, agencies complied with land exchange requirements for those projects reviewed. Agencies use the broad authority of the Constitution and statutes to complete land exchanges. The land exchanges completed under agency procedures were reviewed by the public, in most instances approved by a governing board, and appear to have benefited the state and the public.

## **Cash Equalization Payments May Assist DNRC Exchanges**

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Both FWP and MDT use cash payments to equalize the land values in an exchange. These are referred to as cash equalization payments. The Bureau of Land Management and United States Forest Service also use cash equalization payments to balance out land exchanges, as do all five other states we contacted.

DNRC does not use cash equalization payments for land exchanges. According to DNRC personnel, cash equalization payments cannot be accepted in a land exchange because it would then be considered a direct sale.

By statute (section 30-11-112, MCA), an exchange is an agreement to exchange “one thing for another, neither thing nor both things being money only.” Based on this definition, cash equalization payments appear to be allowable for trust land exchanges, and could provide the department with more flexibility for completing exchanges. ***We recommend DNRC use cash equalization payments as an option in trust land exchanges.***

## **Exchange is One Aspect of Land Management**

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Exchanging land for other land is only one aspect of land management. There are a number of methods available which could make land management easier and potentially more profitable to the trust. These include land banking, consolidating land, developing land for commercial use, and selling land.

Land banking is a sale and replacement land management concept. Land is sold, but revenues generated from the sale are placed in an account with the intent of purchasing other land to replace the land sold. There is usually a limit placed on the amount of time available to acquire replacement property. If replacement property is not acquired within the time frame, the transaction is considered a sale and the revenue is managed according to statute and other regulations.

At DNRC the perception of land banking being a sales process has prevented pursuit of a program. Use of land banking for trust lands has been considered and the previous Land Board approved a deferred exchange pilot program. In addition, entities external to Montana state government are using land banking as a land management tool. Land banking has potential for improving trust land administration. ***We believe DNRC should determine what actions are necessary to implement a land banking program for trust lands.***

## **Roadblocks to Effective Land Management**

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A number of conditions prevent DNRC from managing trust lands as effectively as possible. Some land has limited or no access, resources are limited, and the process takes time

to complete. DNRC personnel indicated that identification of land for consolidation, sales or exchanges is not a mandated activity. As a result, the department does not have a program for identifying and disposing of land that is isolated and only generating minimal income to the trusts, and personnel do not actively pursue land exchanges. Funding can also impact land management. Land purchases, cash equalization payments, development, etc. all require funding. If funding is not available, these management actions cannot be completed.

## **Other Land Exchange Requirements**

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An objective of our review was to determine compliance with regulations within the Constitution, statutes, administrative rules, and other established criteria. Of specific interest was determining how the value of land is established, whether the state retained equal value, the environmental assessment process, and public involvement.

For 24 of 26 projects reviewed, market value was determined through appraisal by a certified appraiser. We did not note any negative effects on the appraisal process or determination of fair market value of land due to use of non-certified appraisers. ***All appraisals were reviewed and updated when appropriate.***

For all exchanges we reviewed, the state retained at least equal value on land it exchanged. MDT did not clearly document values retained for all its projects. ***We recommend MDT clarify procedures used for state land exchanges, specifically those related to documenting land values.***

We reviewed agency compliance with the Montana Environmental Policy Act (MEPA). We noted MEPA documentation in most files reviewed. MDT does not complete a formal environmental analysis when exchanging excess property. Discussions with MDT legal and environmental services personnel further affirmed that some sort of documentation should be completed. ***We recommend MDT document its environmental decision-making process.***

We checked files for public notification and public hearing information as required by Land Board policy and MEPA. ***It appears the public is properly notified of proposed land exchanges, and hearings are conducted as needed.*** While there may be disagreements with actions taken, nothing came to our attention indicating the public was not notified or provided an opportunity to comment as required.

<p>For a complete copy of the report (01P-05) or for further information contact the Legislative Audit Division at 406-444-3122; e-mail to <a href="mailto:lad@mt.gov">lad@mt.gov</a>; or check the web site at <a href="http://leg.mt.gov/audit">http://leg.mt.gov/audit</a>.</p>
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