

Bureau of Land Management, Interior

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agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7-1 of this part, is not protestable or appealable under 43 CFR part 4.

§ 2201.1-1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed in the assembled land exchange up to and including the current transaction;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 3 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(4) Assembled land exchanges are subject to the value equalization and cash equalization waiver provisions of § 2201.6 of this part. Cash equalization waiver shall only be used in conjunction with the final transaction of the assembled land exchange and the termination of any ledger account used.

(f) The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1-2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation by noting the public land status records.

(c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the FEDERAL REGISTER, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

(d) The provisions of this section apply equally to proposals to exchange National Forest System lands under the authority and provisions of the Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, except that if

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a proposal is made to exchange National Forest System lands, which proposal shall be filed in compliance with 36 CFR part 254, the authorized officer may request that the appropriate BLM State Office segregate such lands by a notation on the public land records.

[46 FR 1638, Jan. 6, 1981, as amended at 63 FR 23681, Apr. 30, 1998; 65 FR 70112, Nov. 21, 2000]

§ 2201.1-3 Assumption of costs.

(a) Generally, parties to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, cure of deficiencies preventing highest and best use of the land, conduct of public hearings, assemblage of non-Federal parcels from multiple ownerships, expenses of complying with laws, regulations, and policies applicable to exchange transactions, and expenses that are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume without compensation costs ordinarily borne under local custom or practice by the non-Federal party or to compensate the non-Federal party for costs ordinarily borne under local custom or practice by the United States

but incurred by the non-Federal party, but only when it is clearly in the public interest and the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of the cost assumed or compensation is reasonable and accurately reflects the value of the goods and services received;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs incurred pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, jurisdictional State and local governments, and the congressional delegation, and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the authorized officer as to any liens, encumbrances, or