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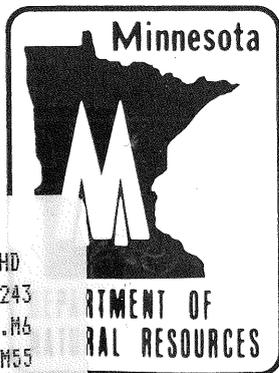
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MINNESOTA LAND EXCHANGE CONFERENCE – PROCEEDINGS –

September 24 – 26, 1986
Brainerd, Minnesota

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**DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PLANNING
DECEMBER, 1987**

PROCEEDINGS OF THE MINNESOTA LAND EXCHANGE CONFERENCE

ACKNOWLEDGEMENTS

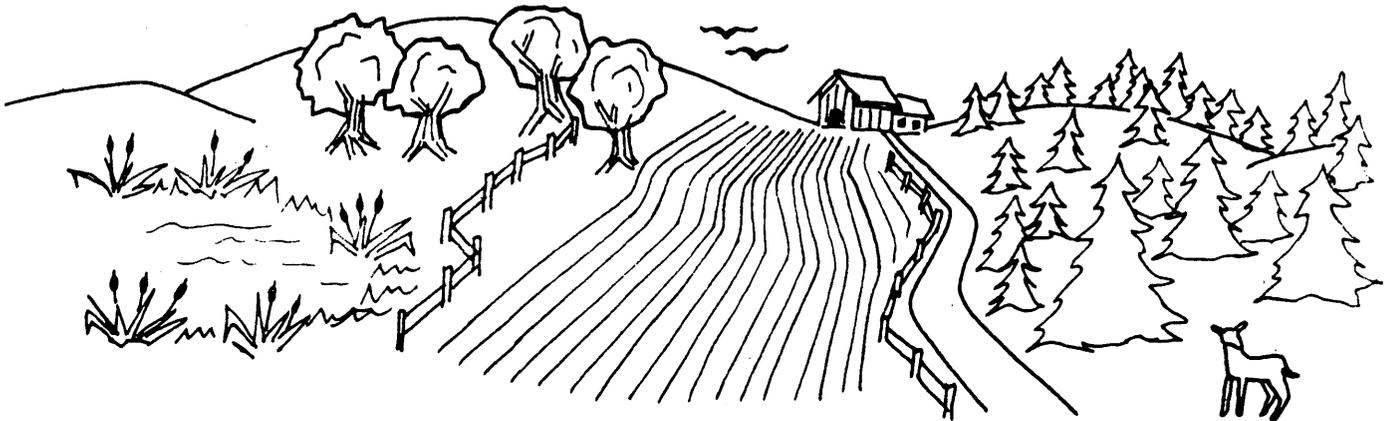
We wish to gratefully acknowledge the Legislative Commission on Minnesota resources for providing the financial support that made this conference possible. We also wish to thank the contributors to this conference for their time, effort and cooperation.

**Editor: John Pauley
Office of Planning
Minnesota Department of Natural Resources**

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**CHUCK ANDRESON
ATTORNEY-AT-LAW
BYE, BOYD, ANDRESON & SULLIVAN
DULUTH, MINNESOTA.**

Chuck Andreson discusses land exchanges from a private attorney -- client perspective. A chronological progression of steps in the land exchange process is outlined and advice is offered on how to avoid some of the common pitfalls.

After listening to the last three speakers, you're probably wondering why any private individual would want to get involved in a land exchange; probably for one very good reason. As a general rule, property owned by the state and federal government cannot be acquired by purchase. The one basic exception is tax-forfeited lands.

Before talking about the exchange process from the viewpoint of private attorneys and owners, let me just touch on forfeited land sales. In many instances, your client may be able to obtain lands at a county forfeited land sale. However, counties cannot sell forfeited lands if they are on a water-course or shoreline - those lands must be acquired through exchange. For lands eligible to be acquired at a tax forfeited sale: 1) you must make a request to acquire them, 2) the request is subject to approval, and 3) the land must be appraised. The request is reviewed by both the county and state. If they feel the land is suitable for sale it will go up at public auction. Usually the time from request to sale is 6 to 9 months.

There are disadvantages to acquiring land by forfeited sale. This is due to the fact that lands are put up for public bid where competitive bidding may take place - a possible result being you might not get the lands you want. You can try to minimize this possibility by seeking several parcels that are grouped together and auctioned as one block. This results in an initial higher price and may scare off some competition. This tactic doesn't always work, and again there is the risk of losing desired property.

Another alternative to land exchange is the possibility of obtaining a long term lease with involved governmental agencies. Over the past few years we have used this a couple of times with state and county agencies. However, most of the time when you look at the lease payment, the time length of the lease, and consider the fact that you don't own the land at the end of the lease, most clients chose to own the land in fee.

Assuming you can't or don't want to purchase the lands or take a lease, how does the land exchange process work from the private side? The first step is to determine with your client who owns these lands. Is it state land, is it federal land, is it tax- forfeited land and how do you find out? We go to the county auditor first and check the tax records to see what the taxes might be. You

can also get in contact with your local abstractor or maybe the county recorder's office to find out who in fact owns the lands.

After you have determined ownership, the first step is to contact and actually talk to the involved agency. With the federal government (most of our work has been done with the U.S. Forest Service) we talk to the local officials in Duluth. Sometimes we bring the client so the governmental agency can ask questions and get an idea of how necessary the lands are to the client's project. With the state, contact the Land Exchange Section of the DNR. They will usually refer you to the local contact who is the regional forester. With the county, we go right to the county attorney. Dick Swanson is the county attorney in Cook County, and we do a lot of work with Mike Dean in St. Louis County. They will help put you in contact with the land and timber officer in the county if one exists.

On B exchanges we have a problem. Not many county attorneys have a lot of experience with land exchanges. In fact, a lot of them don't even want to see a land exchange and they try to steer away from one. They don't know what they are and they don't want to know what they are. Fortunately, in our area the county attorneys do have some experience, but when you get to counties that don't have a lot of exchanges, you're in a lot of trouble.

At the initial meeting, you've got to make sure the lands you want are available. Just because they are owned by a public body doesn't mean that public body wants to give them up. You have to make sure these are lands which the governmental agency is willing to part with. If the agency is willing to part with the land, you have to make sure the lands you offer in exchange are wanted by the governmental agency. It doesn't do any good to walk in there with lands the government doesn't want, be they county, state or federal lands.

At this point, you've got to sit down with people in the governmental agency and take a look at the situation. If you do have lands, are they good? If the agency doesn't want them, where do they want lands? You're going to have to acquire some and you need substantial input from the local governmental agency as to what to acquire. Generally, the lands you are offering must be of the same type, quality, character, and value as the

requested lands. If you are trying to acquire lands with watercourses on them, you had better have land with watercourses on it to give back or they won't take it. If you are in a mineral area and you need to get some mining lands for a buffer, the lands you return are probably going to have to have some buffer mineral lands contained within them. Geographically, if you are in a county exchange, lands are going to have to be in that county. As Jim Pfeil mentioned on the federal exchanges, and state exchanges too, if you want land in Minnesota, you are going to have to offer land in Minnesota.

How are you going to get these lands? Assume that you sit down with your local forester and go over a list of lands. Maybe they want lands in a park area, or in a forest area. Maybe some in a nature area, or in a game refuge. We advise clients not to just go out and buy these lands, but to pick them up on an option basis. Certainly you don't want to buy a whole bunch of lands and pay good money for them, only to find out there is a title objection or some other reason that causes the governmental body to reject them. Your client will go broke in a big hurry. And remember, it isn't acre for acre, size isn't what necessarily counts - it's value for value. Our experience has been that exchanges do seem to move more smoothly when the lands you offer exceed the value of the lands you are getting in return.

After you secure an option on your offered lands, then you have to make a formal application. The state has a prescribed form for class A and C lands. On the form, you must indicate the lands you want and the lands you are offering along with a general description of the character and value of all involved lands. With B exchanges, counties have their own forms. Again, if you are dealing with a county that is not familiar with exchanges, Mike Dean from St. Louis County has prepared forms which work very well. We strongly suggest county attorneys unfamiliar with land exchange procedures talk to Mike (Dean) to get some help.

In the case of the federal government, initiate your exchange with a letter. The actual exchange agreement comes later, but again, you have to furnish them with the same basic information.

I am going to talk just a little bit about one of the problems that comes up. Everybody has men-

tioned it - the title to the lands you are offering. Jim (Pfeil) mentioned the federal government requires you to have title insurance. With both the county and state evidence of title must be furnished and that title must be good. We advise our clients (though it is technically not necessary) to have the title examined before it is submitted to the involved governmental agency. This allows us an opportunity to find out what potential problems we are going to face, and get them taken care of so the process doesn't slow down anymore than is absolutely necessary.

Some of the problems we see as private attorneys involve mineral reservations. Mineral reservations in northern Minnesota are a way of life. If the land was forfeited once before, the state owns the minerals outright. Mineral rights may also have been reserved by a third party sometime way back when. Now a mineral exception in and of itself does not make the land bad; however, if there are a number of owners of mineral reservations, it makes it bad. Jim (Pfeil) mentioned repurchase rights. We were just involved in a auction sale last week where a number of years ago we had to clear up all kinds of mineral repurchase rights. They are still there. There are mineral reservations which do not allow a repurchase right, but have very onerous provisions related to damaging the land's surface. These provisions give rights to damage or destroy the surface for either no compensation, or in one example that we had modified, at a compensation rate of \$25.00 an acre. No governmental agency is going to accept those kinds of reservations. Hopefully, if you can find the mineral owner early enough, you can attempt to have a correction or modification made in the mineral reservation.

One real problem. Most of those reservations were made back in the early teens or twenties and some of those people are almost impossible to locate. We have been fortunate in the past and have been able to get them exercised, but sometimes we just can't.

Are these repurchase rights still good even though they are over 40 years old? Does the forty year statute of limitations have any effect on them? Probably not. We don't have any Minnesota case law from the Supreme Court. We do have a couple of district cases which have upheld

re-purchase rights and they have been upheld in other jurisdictions. That is a very real problem.

There are other problems you are going to see in the title. There may be flowage easements reserved by private parties. You have to demonstrate that these flowage easements do not have an adverse effect upon the use of the property. There are also the regular normal title objections that you get in examining any title liens, judgements, breaks in the chain of title. These must be taken care of or the title is going to fail and the land won't be accepted. If you take care of these things early in the ballgame, you have a good chance of getting them resolved and the process can proceed.

A helpful hint we give to our clients and which we practice - we submit our title evidence to the state or to the county when we send copies of our title opinions along with the abstracts. This doesn't mean that we don't make mistakes. As Dick (Swanson) pointed out, he has made a couple, I have made a couple, even Jim (Pfeil) in the federal government may make one once in awhile. They do happen, but at least you have got some evidence when the opinions are going through. You call something to their attention, they call something to your attention - this back and forth makes the process move more smoothly.

While this process goes on the lands are being appraised. The private party has nothing to do with the appraisal process. This is done in-house. I shouldn't say "nothing"; we had one instance in which we had an exchange going with the state and we had a new attorney in our office who was from Chicago. He wanted to see how the appraisal process really worked and wanted to make sure our client was getting a good deal, so he made contact with the appraiser. I think the appraiser was Ross Cass. This fellow, unfortunately, picked a day to accompany Ross (Cass) in January when the temperature was about 25° below zero. He was wearing his suit clothes. Ross (Cass) took him out in the woods in 4 feet of snow, put snowshoes on him, and tracked him around for an afternoon measuring the circumference of trees. That was the last time that we have had any input into the appraisal process. Charlie said to make sure that if Ross (Cass) is here that I mention that.

While this is going on, what's the private attorney supposed to be doing? Well, I guess all we

can do at this point is keep in contact with the involved agency, take care of any problems that might come up, and maybe prod the agency a little bit to keep the process going.

After the title work is done and the appraisal made, what do we do then? Reference is made, and with state and county land exchanges you have to schedule a public hearing. The governmental agency takes care of posting the notice.

A public hearing on state exchanges can be held in one of two places, in St. Paul or in the area where the lands are located. Generally, politically speaking, the hearings are almost always held in the area where the lands are located. With the county, it is before the county board. Should you and your client show up? We sure think so. Especially, if there is an anticipated controversial issue. If you're there you can answer questions. Don't forget this is a place where the local populous has input and if the exchange is in an environmentally sensitive area, you and your client will want to be there to explain why the exchange is a good thing.

Assuming the exchange is approved and you get a favorable response at the hearing the process moves on. The next stop is the Land Exchange Commission, made up of the Governor, Attorney General, and the State Auditor. The exchange has to pass unanimously - one no vote and the exchange is done. I don't care how good the lands are or how much both sides may want it, if there is a no vote, that's it. Should you attend that meeting? Should you drag your client along and get your meter running again? We've done both, it depends on the nature of the exchange. If it's an exchange with very little controversy, especially a small exchange, we don't go. If the exchange is: 1) very controversial, 2) one where both we and the state feel that there may be some problems, or 3) if much discussion is anticipated, you may want to be there.

Some of the special problems that come along depend on the size of the exchange. The larger the exchange, the more likely it is you will have to have an environmental assessment work sheet. For federal exchanges, I think you have to have one anyway. If you get into a large exchange with the state you are going to get into an EIS - a full-blown environmental impact statement. That is

going to bring the process almost to a halt. It really slows it down and makes it more expensive.

If your exchange is approved, then what do you as a private attorney do for your client? Well, if you haven't exercised your options at this point, you had better do so.

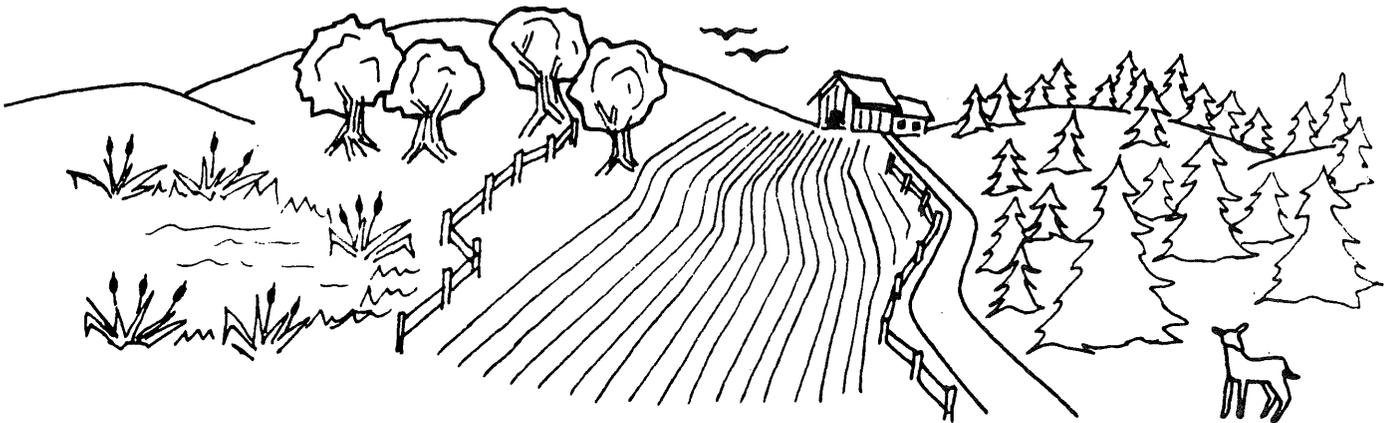
The deeds are then prepared. Generally, they are prepared by the involved governmental agency. However in some cases, especially when dealing with counties, and in some cases with the state, we have actually prepared the deeds to be used. The agencies however, are responsible for getting signatures on their end.

As was mentioned before, even after the deeds are recorded, you have a little bit of work to do. If you are representing a private party who has acquired lands from a governmental agency, you may not have any evidence of title. Basically, with a governmental agency, what they have - you get. If they have abstracts or certificates of title, they are going to give them to you. If they don't have it, they are not going to furnish it. If you've got a client who is going to put in a building or a business, put up a home or cabin, or get financing, you are going to have to acquire some title evidence. So your work may not quite be done. If it's registered property, you may have to go to your local abstractor and pick up an abstract. If

you're dealing with forfeited lands, you may have to go through a subsequent proceeding with the examiner of title to get the proper documents.

Timing can sometimes be important from the private attorney's standpoint. Remember, all your taxes on the land have to be paid. Other details on the exchange will be given later on. But if you exchange after October 16th, not only are you going to be responsible for the taxes due in the year of sale, but also the next year. Even though the lands involved in exchange are not yet on the books, they are assessed. This can be a problem, so we try to look at it from a timing standpoint to see when that exchange is going to be finished.

We have two real watchwords for our clients when they come in. They are, "Be patient" and "Be cooperative". Don't tell your client that you're going to get the exchange done in six months, that would be doing the client a great disservice. Generally speaking, they run from 12 months to 2 years. We had one that took 12 years - nothing like what Dick Swanson had. You have to be patient, the real long ones are the rarities. Generally, the government, state, and county move as quickly as possible and if you are patient, the process works.



**WILLIAM BROWN
LAND COMMISSIONER
CASS COUNTY LAND DEPARTMENT**

William Brown addressed the land exchange process from a county land commissioner's perspective. He offers insight concerning the working relationship between county boards and their land departments. He concluded with some thoughts on the land exchange process and its impact on county programs.

Welcome to Cass County. On behalf of the board of commissioners of Cass County, I want to extend you their greetings and wish the conference well. We look forward to some good results coming out of this conference. So far I would say there have been several potential good results that have developed. When Becky (Wooden) asked me to speak and I told my staff that I was going to be on this exchange panel, they laughed in hilarity and said, "My gosh Brown, you've never completed an exchange, how can you speak on land exchange?" I guess I hadn't thought about that, but then I've only been there a year and a half and most land exchanges take a lot more time to complete. But that really isn't true because I did spend 10 years of my career consummating a land exchange that had lasted for 30 years, so if there is one out there that took 24 years, I had one that lasted 30. The quiet title action of that one lasted for three years; there were two attorneys that almost made a career out of it.

There are many different things that we can talk about on land exchange and you've already heard a little bit about the county perspective. What I would like to do, is share a different perspective on county lands, county land departments and county boards. I think sometimes I have a tendency to forget this and need to remind myself of who I am working for.

I was involved with some work on a multiple land exchange process with the state, the federal government and the county. As a professional, I can sit down and agree to some very fine conceptual points as to how to put together an exchange, including all the technicalities involved and the values and benefits derived therefrom. I can contribute on a professional level to that. At the next stage of the exchange however, I was asked to submit the objectives of the county, at which point I took a 180 degree turn.

Let's define the county situation. We have a county board and a county land department made up of professional resource managers. The professional resource managers do not always identify with people running the government. In a county situation there happens to be a very shallow political process - there is no insulation. The county board in essence, virtually represents people. The board oftentimes lacks understanding of the

aspects and technicalities the professionals may be dealing with. Therein lies a bit of a challenge. Again, I accept the challenge as a professional and part of my job is an educational process, but you must keep in mind that the process is ongoing. In addition, we spend a great deal of time working with townships because they are a part of the classification process. For example; if lands are in a memorial forest, townships must also sign off to bring the lands out of the memorial forest, so township people are directly involved. They are also directly involved with any changes or shifts in payment structures of in lieu taxes or tax-forfeited income. Monies derived from the sale of land or natural resources contained on tax-forfeited lands are distributed to the local units of government. Townships are very jealous of those monies no matter how small an amount it might be. A \$300 check to a township may not be much as far as funding a road project, but if you eliminate or reduce that \$300 check you'll hear about it. So as land departments we have to take these things into consideration and be very cognizant of these people's concerns because we are involved in a very intensive, shallow, political process. If we step on somebody's toes our bosses hear about it and we are reminded about it the next morning, if not sooner.

As a professional I get very involved in technicalities. Yet as a representative of the county board and of that process, I don't have to tell you we've got some problems. If the general public were to listen to everything we've said so far about this process, the problems, the hurdles, the complications, they would throw their arms up in the air. It's not easy to explain. Our credibility is at stake. How do you explain land exchange to people that have trouble understanding it, when we don't even understand it ourselves. That is something to keep in mind.

It would be great if every county had an attorney that practiced civil law. Many county attorneys that I've had a chance to deal with prefer to prosecute or they are involved with welfare. Civil aspects of the law are a very minor part of their duties. When you complicate that with complicated processes such as land exchange, they're not too interested in getting involved - that's a reality that we've got to deal with.

What do county boards deal with? Obviously, land departments are not among their primary concerns. Roads, welfare, police protection, and then if we're lucky we get a little time with the county board. But their primary driving concerns do not revolve around land resources. They like to think that we as professionals will keep all the problems from their doorstep. But they are involved in the process. They must pass resolutions and give their approval. We must explain and justify. They are a part of the process.

Within land departments, staff members have different viewpoints. As professionals we can sit down and put together a package that makes a lot of sense in managing a resource; however, that view is not always shared with people you work with or who work for you. Within the Department of Natural Resources, there are different processes that are not always shared with equal concern. That's difficult to explain. For example, when you get a rejection from the Division of Minerals, it is not easy to justify that rejection to the people involved in the process.

We've got statutes and we've got regulations which also complicate matters. We've got abstract problems. If we listen to the attorneys long enough we'd throw our hands up and walk away. These are some of the stumbling blocks out there. There are a lot of things that we can do. In dealing with land exchange, the first thing we have to do is sit down and define our goals, our objectives, and what it is we are trying to accomplish as a group. Then we need to define those things that we can agree upon and decide how we are going to work with them. This is before you even get into the nitty gritty of land exchange. We've got to define the processes of how we are going to communicate and work together. Once we define that process and begin to follow it, then we can begin to work out some of the problems.

One of the biggest difficulties from the county standpoint is the difficulty in communicating. Either the counties and their people are not communicating properly to the other people involved in the process, or the other people in the process, whoever they may be, have communication problems as well. But in the land exchange process, if we do a better job of communicating and defining our goals and strategies, we can begin to develop that communication.

Incidentally, I should have made a disclaimer. I'm speaking on behalf of counties, and I only speak for the counties involved in managing tax-forfeited lands. So you've narrowed it down to about 14 or 15 counties. Furthermore, within that group I have to disclaim that I cannot speak for any county but Cass. There are 15 separate entities out there. They all have different approaches. They all have separate governments. No one individual can speak on behalf of all the counties. Whatever I say may not even apply to Cass County. Each individual county has its own perspective; again in the general scenario that complicates the situation a little bit.

The other thing about land departments is that they generate the funds they operate on. They are self-sustaining - they are not living off of levied taxes. There is a necessity to capture and maximize income generation ability from land resources, whether it be from land sales or from the management of those land resources. Today, income generation comes primarily from the management and sale of natural resources, which in turn generates economic activity. So land departments are quickly evolving into a status of not only being involved with management of natural resources, but they are also vitally concerned about the development of economic activity within a county structure - particularly in the private sector.

Our objectives might appear a bit paradoxical to what you might think would be desirable from a land exchange standpoint. One example - county land and forest operations in the county shall maintain a presence throughout the county in order to facilitate the needs of local loggers, diverse markets and area residents. In other words, the consolidation into one large grouping of county ownership and another consolidation into a large group of state ownership, or a consolidation into a large federal unit of ownership is not the goal the county wants to achieve. The county board wishes us to maintain a presence throughout the county land base to service the needs of the people in the county. So from the land exchange standpoint, that might be a little bit counterproductive.

Secondly, first priority land exchanges will be those that involve private lands, at either their request or the county's, so as to improve access or

ownership blocking. They receive priority treatment because private people in the county vote and pay taxes. That's the tail that wags the dog.

Thirdly, land exchange that produces blocks of land in ownership or improves access without significantly altering ownership patterns should be actively pursued. Land adjustments should be pursued by making concerted efforts to produce block ownership patterns. County boards are resistant to this change. General publics basically are too.

Fourth, the dispersed and scattered nature of tax-forfeited lands is of priority importance for wildlife habitat management, as well as for fuel wood permits. County programs are not necessarily single use oriented. We look at multiple management aspects. Many of our efforts are aimed at dealing with wildlife habitat concerns as well as other public concerns - not just timber management.

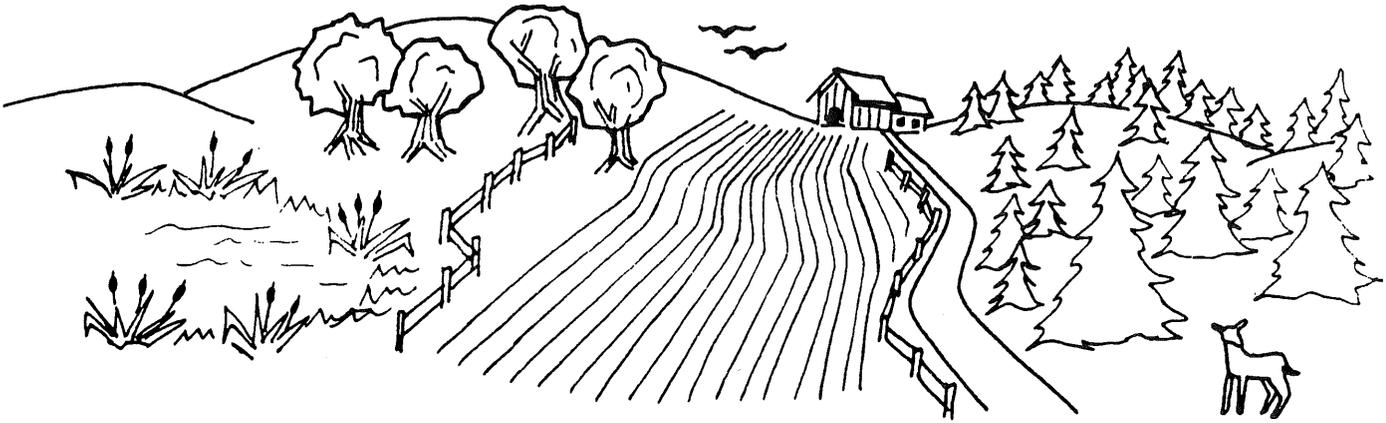
Fifth, the county may place high retention value on lands where past timber revenues have been reinvested. One of the first things you want to do in designing your goals is to say that if we've invested in the plantation or state, federal or private interests have invested in the plantation, we're not going to hold a high value of retention for purposes of exchange, because overall it will balance out. The county boards have been involved with the process of directly approving all the bills that have been incurred on any one piece of land and sometimes they identify with those bills. Now I'm

not saying that it necessarily restricts it, but it is there and they have a tendency to own that land. It's harder for them to give it up.

Sixth, if the DNR should decide to offer for exchange or disposal any lands acquired by county board resolution, the so-called 50-50 lands, the county requests right of first refusal. Back in the forties, fifties and sixties many acres of county land were turned over to the DNR primarily to flesh out their state forest program. At that time many of the counties were not up and running with active large land management programs. What the county is saying today, is that given the opportunity we may want some of that land back if it is made available to us. We now have the capability to manage it. There is a new twist.

Seventh and last, because the county board and the land department have placed priority importance on participating in intergovernmental land exchange or private land exchange studies, they are not going to be bound by any one land exchange to set precedent for any other land exchange. In other words, each one will stand on its merit. What that means is that we've got a lot of homework to do. We've got to sell, convince and educate people we work for and with so they understand what we are doing is professional, and is in fact, in their best interest.

Thank you.



**CARL CONNEY
SPECIAL ASSISTANT ATTORNEY
GENERAL
ST. PAUL, MINNESOTA**

Carl Conney described the amendment to the Minnesota Constitution that created and gave responsibility to the Land Exchange Board, and the statutory requirements that impact the land exchange process.

Our goal here is to give you a legal background for land exchange from each of our vantage points. We are each going to talk for 15 or 20 minutes and then, with time left, we will have a question and answer period.

My goal today is to give you a better understanding of land exchanges in Minnesota from a legal aspect. Each state is a little different. In particular, I want to focus on the state statutes and the state constitution because these are what set up the requirements and the procedures that we must go through to complete a land exchange.

When we focus on the constitution, we realize that land exchanges in Minnesota are constitutional land exchanges. Prior to 1938, there were no such things as land exchanges. But in 1938 a constitutional amendment was passed that enabled land exchanges between the state and private parties and the federal government.

Constitutional Requirement

As part of that constitutional amendment, several requirements were established. I'd like to briefly tell you about them. First, the constitutional amendment established a Land Exchange Board which is composed of the Governor, the State Auditor and the State Attorney General. Secondly, the constitution required that this board must unanimously approve of all exchange lands. That means all three members must agree. If there is any dissent, there can be no land exchange. Third, the constitution requires that the state reserve all mineral and water power rights on state land being exchanged. Fourthly, the constitution provided that the legislature would be enabled to pass laws to implement the constitution, to set up requirements and procedures.

Legislative Requirement

That's the second area to focus on. The statutory requirements set forth by the legislature are found in Chapter 94 of the Minnesota Statutes. They divide land exchanges into Class A, Class B and C exchanges. Class A exchanges involve the exchange of state land controlled or administered by the Commissioner of Natural Resources. Class B exchanges involve the exchanges of tax forfeited land administered by counties. Class C land exchanges cover state land located in parks or bordering on or adjacent to public waters. Class C ex-

changes include both Class A type and Class B type lands.

Public Waters Limitation

When the legislature created Class C they prohibited or limited some types of exchanges. As a general rule, the state is prohibited from exchanging state land that is on public waters; but there are exceptions. The exceptions can be viewed from the standpoint of whether the trading partner is the federal government or a private party.

Private Trading Partner

If the trading partner is a private party, the legislature has expressly provided that:

1) The legislation can expressly authorize that lands adjacent to public water can be exchanged without regard to the water access on the land the state will receive. 2) If the private land has an equal amount of public access and public rights to the water, as determined by the state, there can be an exchange. This is an equal for equal exchange of water access. The Department of Natural Resources evaluates these on a case-by-case basis. 3) If tax forfeited (Class B) land has fifty feet or less of shoreline, which would allow it to be sold by the county, it's exchangeable without equal water access. This takes care of some of the small tax forfeited parcels. The policy of the state is to hold lakeshore in trust for the people as a valuable natural resource.

United States of America As Trading Partner

If the trading partner is the United States of America, state shoreland need not be exchanged for equal public access. This is provided that the state reserves a strip two rods wide along the shoreline for public travel. The two rod strip will not be reserved by the state if the water access on the levels being conveyed by the United States has equal public access.

Peat Deposit Limitation

The second area in statutory limitations deals with peat deposits. The general rule is, if the value of the state land is chiefly for its peat deposits and these are of a commercial quantity, then the land can't be exchanged. In each exchange the Com-

missioner of Natural Resources makes a determination whether there is sufficient peat so as to be considered of a commercial quantity. If the peat is not of commercial quantity, then the exchange can proceed. The determination must be made in all class A, B, and C exchanges.

Appraisals of Lands

The final area of statutory requirements deals with appraisals. Whether the appraiser is a county appraiser or a state appraiser, the appraisal must be approved by the Commissioner of Natural Resources and by the Land Exchange Board. In addition, for the county exchange, it has to be approved by the county board. Standard appraisal techniques are normally used. There are some general points you should be aware of when it comes to appraising for land exchanges:

- 1) The appraisal that is originally done in the field is not conclusive on any of the boards or on the commissioner. The statute enables them to make some variations based on other material facts. As a practical matter there is rarely any variation from the appraisal.
- 2) The statutes require a separation of the timber values from the land values. I understand on the federal land exchange they don't require this separation. This separation of timber and land values is also required if the state land is sold.
- 3) In preparing an appraisal you must remember that reservations, whether they be mineral or whether they be water power, should be taken into account. The statute specifically requires them to be taken into account. That applies to both state land and land being acquired by the state. Reservations on the

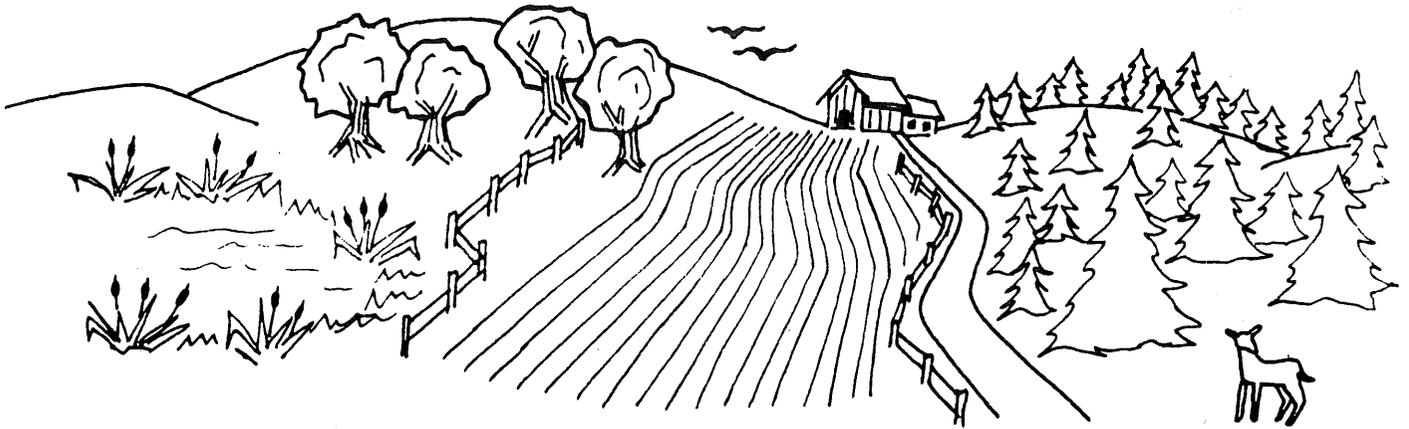
exchange partner's land usually pose no problems so long as they are no more severe than the state's reservations. But if the land being acquired by the state allows the destruction of the surface or allows the repurchase of the surface at a set price, there is a problem. The normal mineral reservation doesn't create a problem for the state. The appraisers just have to be aware of the reservations and provide for it in the appraisal.

I want to mention the several functions that the Attorney General's Office performs in the land exchange process:

- 1) By the constitution, the Attorney General is a member of the land exchange board;
- 2) The Attorney General is the chief legal officer for the state. He provides legal services to the board, and to the department;
- 3) By statute, we also approve all forms used in land exchange to transfer interest in the property; and
- 4) By statute, gives a title opinion on the land the state receives in a Class A exchange. In a Class B exchange, he must approve of the county attorney's title opinion.

My main point to remember is that the Minnesota Constitution and state statutes set forth the procedures that we follow in the land exchange process. Take the time to examine them and understand them.

Thank you.



**DAVID FRICKE
EXECUTIVE DIRECTOR
MINNESOTA ASSOCIATION OF
TOWNSHIPS**

David Fricke approached land exchange from a rural township official's perspective. He discussed the role of the rural township in the land exchange process, outlining potential problems, as well as benefits to the township level of government.

It is good to be here and have an opportunity to participate in this event. The townships and the township association don't get too directly involved in what you have been talking about all day. A lot of what has been said has taken some of my thunder. You've asked a lot of good questions and your questions are a lot better than the answers we have been giving. We are going to try to take a look at the land exchange topic as it relates to our rural town form of government because we are usually involved to some extent in what occurs because of the land exchange.

What is the role of the township and what are some of the political constraints we face? The township officers are close to the people, so they have to answer directly to those who are either directly or indirectly involved with the consequences of exchanging particular parcels of land.

The township officer's role is two-fold. One role is to provide an information exchange between the individuals involved and residents of the community. The second role consists of protecting the interests of the community itself. The information exchange serves as a conduit between the federal, state, and county levels. We act as a buffer between elected county officials and the people in the community. This helps with the exchange of information. The local official is a representative of the public and plays a major role in protecting that interest. There are several things that occur during the land exchange process that impact township residents, and they definitely have a response to those matters. There is a definite need to continue with and improve the linkages we use to communicate with.

Some of the problems that we face at the township level. One, of course, is the loss of property tax, especially if it's a federal transfer. If we lose dollars that have been coming in, whether it's payment in lieu of taxes, or some other form, it's a very important loss to us at this time. This is an especially critical issue in some of the northern parts of our state.

We need to provide a response to the private concerns. One of which is weed control, and how we handle weed control on scattered parcels of land around the state. There are two philosophies of course. There is a need for scattered parcels to provide wildlife habitat, etc. But at the same time we want to have consolidation of parcels to

provide for better management of those parcels. In some areas, weed control is well taken care of, but in others we get a lot of flak on the control of weeds. Seems like a simple issue but it is one of concern.

We need to determine the effect of land exchange on local expenditures. What will ultimately occur? For instance, if the exchange involves a private exchange and the use of that private exchange is for timber production, a lot of other things have to occur. One, it may be a small rural town, with only 50 to 100 people residing in it. All of a sudden we have a tremendous change and we get additional loads on the gravel roads. The hauling associated with the production of that land will put a lot of wear and tear on that road. In Minnesota, the townships take care of 3500 bridges, which is another concern when they're being used differently. They are for the most part, paid for by private money within the township where the activity is occurring or in adjacent townships. Adjacent townships are also impacted and concerned with what is happening in their neighboring communities. This is a problem we have to deal with.

We only have the local property tax to pay for these issues. As of today, we are losing the only tie rural governments have to the federal government; that's the revenue sharing program that has been available to us and has provided us with a small stream of federal dollars flowing back to rural townships. That is on its way out, and we'll have to rely entirely on the local property tax to pay for the increased costs that may occur in these areas of exchange.

How do we handle the increased costs of services when the property has actually changed character? For example, the way a state property is being used changes (it's developed into a campground or some other type of access is provided). The different costs to the county and township in terms of emergency services, roads, fire and police protection weren't there before, but all of a sudden they are a part of the overall program.

We also have potential land use planning conflicts when lands are being exchanged. The new land use may not be consistent with the desired potential use of that property. It may require changes in local ordinances, involving the costs of

hiring attorneys and others to make modifications so that the property can be used. So there is definitely a need to have good communications with the local units to insure that those kinds of things can be worked out during the process. As I said before, we really don't get a lot of heat over it, so the exchanges and the exchange process must be somewhat sound or we would be getting a lot more instruction to go after our legislators to do something about it.

There are positive aspects to this whole thing:

- 1) We do have a need to be more responsive to people in the townships.
- 2) We have the potential for shared management agreements between the county, the townships, the state, and even the city around us, to help take care of some of these properties.
- 3) There is the potential that we will see better planning in the future, I'm seeing some of that already today. There is work being done now to plan for future exchanges - what is available for exchange and who should take what responsibilities in the exchange process.

4) We also need to provide some kind of a revolving fund for cash disbursements. Maybe the legislature can take a hand in providing us with a positive return on some of the lost payments in lieu of taxes over a period of years or into the future. That could help us to absorb some of the loss in tax revenues and take the whole aspect of losing property out of the process, making it easier for those exchanges to be accomplished.

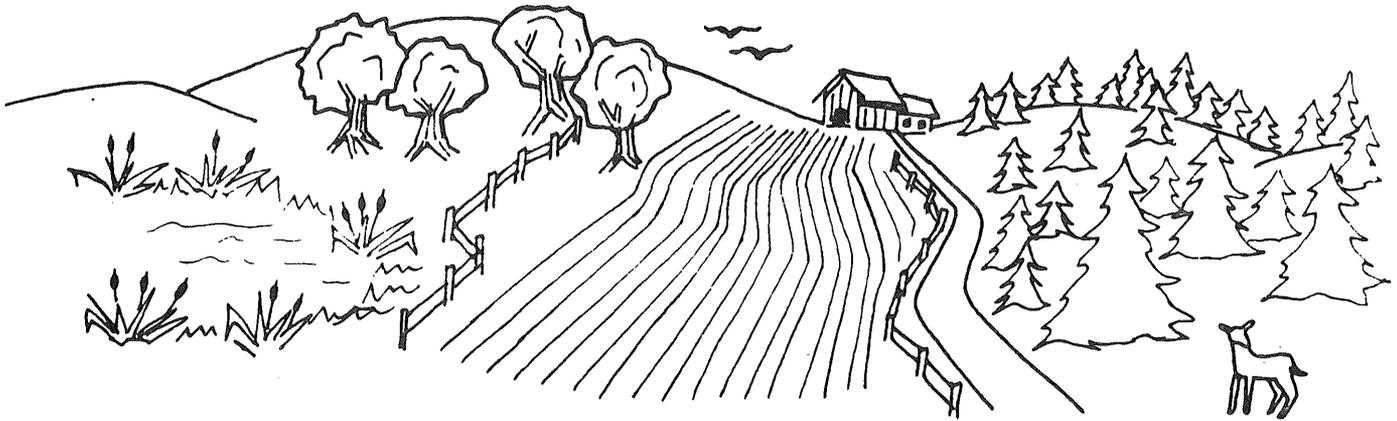
5) We do have to consider the public reaction to all of this and we need to provide for people's needs.

In brief, that's a statement looking at it from the township's viewpoint. There are a lot of dollar commitments here that we talk about all the time.

I'm sure with the exchanges we are going to be hearing about, we'll add some things to this and I know our legislator who is on the panel can add more to this.

Thank you.





**ROLLIE HARMES
CHIEF OF THE LAND DIVISION
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES**

Rollie Harmes spoke from his extensive experience working with the federal government on land exchanges. He offered information on public land ownership in Michigan, a history of land exchange between the U.S. and Michigan, Michigan's land exchange goals and some insights on matters he considers crucial.

My name is Rollie Harnes, it's a pleasure to be here. It's nice to be back in my home state of Minnesota. I was born in Virginia, Minnesota quite a few years ago but spent most of my life in Michigan. But it's nice to be home, I still have relatives here.

EASTERN LANDS AND RESOURCES COUNCIL

As Rod (Sando) indicated, he and I have been working closely with the Eastern Lands and Resources Council (ELRC) and it's an honor for the council to co-host this meeting with the Minnesota DNR. Just a little plug for the ELRC, it's an organization of public land and resource managers. It provides a forum for sharing ideas. We have set up a communications network in the last two years which has seemed to improve the overall chemistry between the eastern states and many of the federal agencies, including the U.S. Forest Service and the Bureau of Land Management. There are several people here from the U.S. Fish and Wildlife Service that we're working with, and we would like to get them tuned in with the council as well as county and local units of government.

We have two meetings each year. One is in Washington, and the idea of that meeting is to communicate with our congressional delegates about resource management issues. We also have a meeting each fall in a host state. Last year we had a meeting in Duluth, where we went on a field trip to look at open pit iron ore mining, wood utilization operations and peat mining. Rod (Sando) had vendors showing us the state of the art in computers at the meeting. The vendors gave us the latest rendition of computers, which was a great learning experience for many people including myself. In some cases, many of us are still using the original records and writing with a quill pen, but most of us are trying to enter the 20th century and computerize all of our land and mineral records. The fall ELRC meeting to be held in Nashville in a few weeks is going to focus on the latest in land surveying equipment and modern techniques in aerial photography. I invite each of you to that meeting in Nashville on October 14th (1986), and look forward to your attendance and any support that you would like to give this council.

THE TOPIC - LAND AND MINERAL EXCHANGES WITH UNCLE SAM

The topic that I'm going to speak about is land swaps with Uncle Sam. I'm going to try to break it down into four categories and just speak briefly about each category: (1) public land ownership in Michigan (just to give you a little idea about the public ownership pattern); (2) a little history about land exchanges with Uncle Sam; (3) some of our exchange goals, and; (4) a few Michigan experiences you may want to consider as you continue to pursue exchanges between state, county, township and federal agencies.

STATE LANDS AND MINERALS

As indicated in this visual aid, this is a satellite view of Michigan. The land mass of Michigan is 36 million acres. The Michigan DNR has jurisdiction over 4.3 million acres: 2 million acres in the Upper Peninsula, 2 million acres in the northern part of the Lower Peninsula, and 300,000 acres in the southern part of the state. If you drew a line between Bay City and Muskegon, you'll find that 7 million people live below that line in the southern 1/3 of the state, and 2 million people are scattered over the remainder of the state. As you can see, there is not much public land near where most of our citizens live.

Since 1976, we have had funding from the Michigan Natural Resources Trust Fund, (\$50 million a year is generated from oil, gas and metallic mineral leasing activities on state-owned minerals) about \$10 million is made available to reinvest in buying private land for public use. We are concentrating on the southern part of the state to consolidate public lands in state game and recreation areas, provide public water access sites, and harbors of refuge on the Great Lakes.

FEDERAL LANDS

The federal government also owns 2.7 million acres in Michigan (about 9 percent of the total land area). Between the state's 12 percent and the federal government's 9 percent (U.S. Fish and Wildlife Service has an additional 100,000 acres scattered across the state) about a quarter of the land mass in Michigan is in public ownership. Federal lands include the Ottawa, the Hiawatha, and the Huron-Manistee National Forests, and the Seney and Shiawassee National Wildlife Refuges.

We also have a current exchange pending with the Fish and Wildlife Service regarding Kirtland Warbler habitat they own within the state forest system. The Kirtland Warbler is an endangered species and we're acquiring nesting areas for these birds. I'll get into a little detail on that later, but those are some examples of the federal and state owned lands, which are dedicated either as state parks, wildlife or forestry areas or for other natural resources purposes.

HISTORY OF DNR - USA LAND EXCHANGES

Now I would like to share with you a little of the history of land exchanges with the USA in Michigan. Since 1922, the state and U.S. Forest Service have completed 121 land exchanges. The net result being, the state has acquired over 500,000 acres and the Forest Service has acquired 800,000 acres. Now it looks like we weren't very good negotiators, but there is a reason for the 300,000 acre difference. The lands that the state traded to Uncle Sam were cut-over, tax-reverted lands. There have been articles written in Michigan over the years about "the lands no one wanted". Except the Forest Service wanted the lands to reforest them and include them as part of the national forest system; and they've done a great job. The lands that the state got from the federal government were generally more productive lands and in many cases had timber value, so actually the exchanges were equal value for equal value, even though the acreage wasn't the same.

We've also had several exchanges between the state and U.S. Fish and Wildlife Service but on a smaller scale. The state has acquired 20,000 acres and disposed of 30,000 acres. The land that the state disposed of went into two major national wildlife refuge areas. As I mentioned earlier, we currently have a pending exchange with the U.S. Fish and Wildlife Service regarding the Kirtland Warbler habitat. The Fish and Wildlife Service has purchased 4,000 acres in a shot gun pattern throughout the state forest. It's the state's goal to acquire those scattered federal holdings to consolidate state ownership. We proposed to trade to the federal government a solid block of state land in exchange for the scattered federal inholdings in

the state forest. By doing this we gain a little more flexibility and management control of Kirtland Warbler habitat.

UNWRITTEN AGREEMENTS

Back in 1928 the (Michigan) DNR and the Forest Service made an agreement. I've been looking for 20 years for that agreement; I still haven't found it in writing any place. Charlie Rademacher, who has worked in our office for almost 38 years, tells me there was an agreement because whoever it was that trained him, told him about it. For years the state has held thousands of state-owned tax reverted parcels in the national forest for future trade to the Forest Service. In this so-called agreement, the state agreed to withhold from sale all tax reverted parcels in the national forest for later exchange with the Forest Service. The Forest Service agreed to make purchases in the state forest boundaries and to make available all other lands surplus to their needs outside of national forest boundaries for trade with the state. So over the years, 121 exchanges have taken place between the USA and the Michigan DNR.

In 1984, we started winding down and made what we call the last big land exchange, where the state traded 5,000 acres, and received 7,000 acres from Uncle Sam. We call it the last big land exchange because state and federal ownership is pretty well consolidated now in Michigan. The state is no longer getting tax reverted lands in the national forest like it did in the past. We get a few scattered lots now and then, but not large acreage tracts as in the past. The Forest Service is no longer acquiring land outside of their project boundaries. From what I understand they are not budgeted to do much buying of private lands in their boundaries at the current time.

LAWS AND POLICY

Briefly, the exchange authority in Michigan calls for the state to acquire an equal amount of acres for acres released or equal value for equal value. If the state releases the mineral rights it must get equal value mineral rights in exchange. I will have additional comments regarding mineral rights in a few moments.

DNR EXCHANGE GOALS

Now I would like to make a few comments about our state exchange goals. We have been trying to consolidate state and federal surface ownership over the years to provide what we feel is more flexible and more complete management on both sides. As indicated on the color coded maps before you, we have displayed a before and after situation with the red area being a national forest boundary segment in the Upper Peninsula. And shown in the "before" situation, scattered throughout the national forest lands are state-owned tax reverted lands that were there in 1967. During the last ten years we have gone through various exchanges and you can see the federal ownership is now more consolidated in the after situation. Our goal of having more uniform boundaries for management ease has been accomplished.

We are also making exchanges to acquire key parcels for special projects. As an example we have some blue ribbon trout streams located in the national forest, but because of the Michigan DNR fish plantings and the management resources available to us, it was felt that the state could manage the river better. We worked out an agreement with the Forest Service to swap land adjacent to the national forest in order for the state to establish this blue ribbon trout stream area along the South Branch of the Au Sable River. It has worked pretty well. We've also had some exchanges which improve resource management by both Uncle Sam and the DNR on a smaller scale which take precedence over the original main goals of agency land consolidation and more uniform boundaries.

MINERAL EXCHANGES

Currently we're working on combining surface with severed mineral ownerships. Earlier, I indicated that the state acquired 500,000 acres via 121 land exchanges. Of that 500,000 acres we got, 400,000 acres were in fee simple interest, so we have the surface and the minerals on 400,000 acres. We traded 800,000 acres to the federal government, but reserved the mineral rights on 600,000 acres. In 1983 we set up a trial mineral exchange. A pilot of 600 acres of state minerals for 600 acres of federal minerals (like for like) just to run it through the two systems (state and

federal) to see if we could ever enter into a future mineral exchange program. It took about a year but we were able to complete the trial mineral exchange. As a result, the federal government was able to consolidate their surface and the minerals and the state did likewise. The Forest Service wanted complete ownership and management because the state has a very aggressive oil, gas and metallic mineral leasing program (we're leasing thousands of acres each year), and there are some areas that the federal government felt they wanted to control so that we wouldn't be leasing mineral rights and causing them problems with surface management. We ran MX-1 (Mineral Exchange 1). As I stated, it took a year to get the exchange through the system, but we developed a workable procedure by doing the trial. In 1984, we entered in to our second mineral exchange where we traded 5,000 acres for 5,000 acres of state mineral rights for 5,000 acres of federal mineral rights. We have a few other proposals like that in the hopper.

MICHIGAN EXPERIENCES

Finally, I'd like to share with you some of the Michigan experiences you may want to consider:

(1) Trust relationship between agencies. I can remember 20 years ago going into the Forest Service office and having trouble obtaining comparable sales information and the Forest Service people coming to Lansing to also obtain comparable sales or get copies of appraisal reports and not getting the best cooperation. Neither agency was very cooperative - it seemed like the agencies both did their individual thing and didn't really want to cooperate with each other by sharing information. Over the years we've had periodic meetings and briefing sessions and we've opened up lines of communication; we now openly trade information and review each other's management plans and some very positive things have happened. I think this land conference is an excellent example of getting people in public land management together for the purpose of "communicating". Very positive things can happen. I think that public land and record management people need to talk to each other. I think Rod (Sando) and I have certainly found that out in the 2 years that we've spent with the Eastern Lands and Resources Council.

(2) We've also attempted to merge goals and philosophies on certain management perspectives, such as economic development where the state has agreed not to lease oil and gas and mineral rights, when the Forest Service has unique surface management priorities that should have precedence, such as preservation or recreation projects. Let me give you a good example of merging DNR/USA recreation goals. The Pere Marquette River is a national wild and scenic river, under the jurisdiction of the Forest Service, but it is also a tremendous fishing stream with heavy runs of steelhead, brown trout, and salmon. Because of the increasing trout population, the public likes to fish there; however, it's an area that's being preserved because it's a unique ecosystem. The Forest Service and the Fish and Wildlife Service, and the Michigan DNR have all worked together to develop a plan where the public is the winner. The river system is being protected; however, there are points of access all along the river where the public can enter to fish and be provided excellent recreation and fantastic trout fishing.

(3) Team approach to appraisals. As was indicated earlier, each side (USFS and DNR) did their individual thing. We met, sat at the table and negotiated but didn't share information as part of the negotiations. In the last large exchange in 1984 we were both short of resources - people, dollars, time. So we "pooled our resources" and put together an interagency appraisal team. The team members didn't answer to the DNR, they didn't answer to the Forest Service, they were only responsible to themselves and their mission. Their job was to estimate the fair market value of 12,000 acres on each side of the exchange and to get the report done by the deadline. That was their responsibility. So there was a lot of pushing and shoving and negotiating among them to get the appraisal techniques and strategies worked out. But they did it and through this joint effort streamlined the whole process with the exchange being completed in 13 months.

(4) Get the reviewers tuned in to the appraisal plan. The joint USA/DNR appraisal team was smart enough to bring in the review appraisers. They got them on the ground to talk about potential highest and best uses of 24,000 acres scattered across many counties. They talked appraisal con-

cepts, what the discount factors ought to be if you had large acreages you were going to sell off, what the present worth factors ought to be. They got all the players to buy into the appraisal concept so that they didn't go through the whole process and then find out that there was some basic thing where everyone had disagreement. The bottom line is they just worked together to streamline and smooth out the whole process. By getting the reviewers on the ground and tuned in on what was going on, the job was finished and a very professional and acceptable product presented.

(5) Consider trading fee simple for fee simple. In future exchanges with the Forest Service, if we can determine that the mineral potentials are equal, or are like for like, per our geologists, then we're going to consider trading more on a fee title for fee title basis. Earlier I discussed the two mineral exchanges we've already completed. Now that we were successful in getting those through the state and federal systems, we are working on a third and fourth mineral exchange. By having complete ownership (surface and minerals), public agencies can do a better job of land and mineral management.

(6) Memorandum of Understanding with periodic updates. The verbal agreements of the 30's, the 40's, the 50's, the 60's - it seems like every ten years there was a verbal agreement on land exchanges. I have never been able to find any of them in writing. I've said a lot of positive things, about all the team work and cooperation we've had with Uncle Sam. But now I would like to relate one of the negative things that's happened because players and philosophies have changed.

By viewing this color coded map, I can provide an example of why the Michigan DNR should have a written agreement since the 1940's with the USFS regarding future exchanges involving state-owned tax reverted lands. This map shows a segment of the national forest situated on the west side of Michigan. The red line delineates the U.S. Forest Service boundary. The two large arrows reference the locations of state-owned lands within the national forest boundary. The federal lands are shown in blue.

For over 40 years in this particular location shown on the map and in two other counties nearby, the state of Michigan has been holding 25 foot

by 100 foot tax reverted subdivision lots, that have reverted to the state each year, "for exchange to the Forest Service."

Once these lands were cut over and burned over they were subdivided in paper plats. As promotional schemes, the lots were handed out as door prizes at Detroit theatres or for new subscribers to Chicago newspapers. Because of these poor practices, the state has title to over 140,000 lots scattered in a three county area. The DNR, in good faith, held these lots for many years thinking they would be exchanged with the U.S. Forest Service. Well, the players changed, philosophies changed, and because we didn't own 100% of these lots in the so-called paper plats (we only owned 85% to 90% with scattered private inholdings), the current Forest Service management didn't want to get involved unless they could get complete ownership. We now have a situation where the state owns 140,000 undedicated lots and small parcels, where there are timber thefts because of the mature timber, and where there are many other unauthorized uses including: dumping of trash, removal of sand and gravel, unauthorized motorized vehicle use, and on and on - it's a nightmare.

We have started working with local units of government. The first township we worked with has agreed to accept 4,000 lots and manage the area as their first community forest while taking a second 3,000 lots for controlled economic development.

The bottom line in all of this is: When you have long term agreements, put them in writing - you ought to have Memorandums of Understanding - and have periodic updates so that everyone is tuned in to long range goals.

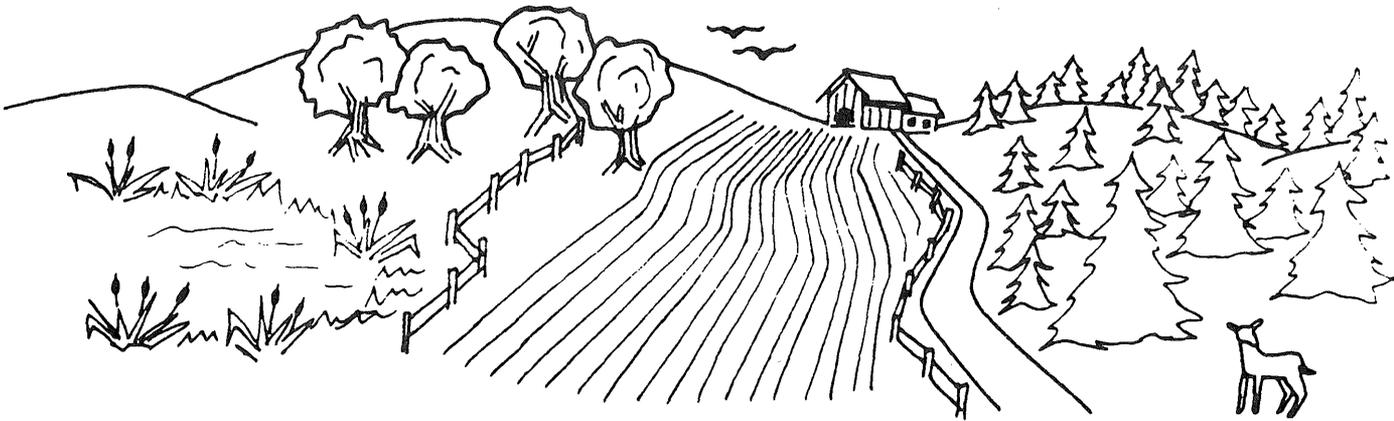
(7) Proposed legislation - revolving fund. I have some handouts that I'll pass out later, which will give you a little bit of detail about the land exchanges I have described. We have developed proposed legislation that we hope to get introduced in 1987. The idea being that there are few scattered state- owned lands (15,000 acres) that the federal government or other people may wish to acquire. It would be a lot simpler just to sell this property, put the money back in a revolving fund and reinvest it to buy replacement land for public purposes at a later date. We purposely put a \$500,000 ceiling on the fund so that at no time can you have more than \$500,000 worth of transactions being processed, and no individual transaction can be over \$150,000.

I'm not sure what's going to happen when the proposal reaches the legislature. I'd be interested if you have a chance to look at those handouts and give me your views or any experiences you may have had with similar legislation.

CONCLUSION

So, in conclusion, I'd like to say it's an honor to be back in Minnesota and I really appreciate being able to visit with people that are interested in management of public land and minerals.

Thank you.



**JOHN HELMBERGER
LAND ECONOMIST
MINNESOTA DEPARTMENT OF
NATURAL RESOURCES**

This report develops a framework for examining the benefits and costs of consolidating public land ownership through large-scale land exchanges between the state and other public land owners. It provides a general rather than comprehensive perspective on the economic feasibility of consolidation.

CONSOLIDATION OF PUBLIC LAND OWNERSHIP THROUGH LAND EXCHANGE: ANALYSIS OF BENEFITS AND COSTS

INTRODUCTION

Whether or not it pays to consolidate dispersed public land holdings is an issue that has been vigorously debated for some time. Discussion of this issue has usually involved intuitive rather than quantitative arguments on both sides. As a result, neither side has been able to build a case convincing enough to resolve the issue.

This report outlines a framework for quantitative analysis of benefits and costs associated with consolidation of dispersed public land holdings through the land exchange process. It also gives an indication of net benefits and equity considerations that may result from public land ownership consolidation in certain situations.

However, this report is not a comprehensive analysis of all possible exchange situations and potential consolidation impacts. Therefore, it should not be taken as a conclusive determination of consolidation's economic feasibility.

SCOPE

The issue posed by public land ownership consolidation is complex. It involves trade-offs between immediate surface management impacts and potential future subsurface (mineral rights) impacts. Some of the potential benefits, such as administrative management cost savings, are fairly well known and easily estimated. Other impacts, such as effects on future mineral development, are uncertain and therefore speculative.

In addition, the land exchange process itself is complicated and its costs have not been well documented. Thus, a comprehensive analysis of public land ownership consolidation in various types of exchange situations, though certainly worthwhile, is beyond the scope of this report.

In order to narrow the scope of the issue to something more manageable, this report assumes the following: Consolidation of public land ownership is accomplished by land exchange between the state and another public land owner (i.e., a county or the federal government).

- Tracts of land being exchanged are similar in their resource characteristics to one another and to surrounding land.
- Owners of land being exchanged, and of surrounding land, manage for similar resource purposes.
- Because land resource characteristics and management are similar, wildlife habitat, recreation and other hard-to-value impacts of consolidation are negligible.

METHODOLOGY

The economic feasibility of consolidating public land ownership through land exchange was analyzed using the following model:

- **NET BENEFIT = GAINS - LOSSES - COST**

Where,

- **GAINS** = The present value of all annual or periodic savings in surface management costs, due to more efficiently managed blocks of land, discounted at a four percent real (inflation adjusted) annual rate of return.
- **LOSSES** = The present value of impacts on potential future mineral development, discounted for time at four percent per year and for probability of development occurring on an individual tract of land.
- **COST** = Staff, legal and other costs incurred in the land exchange process.

The result of this model is an approximation of the net present value, or "cash" value, of the exchange.

1. Estimated Surface Management Gains

Several assumptions are made regarding effects of consolidation on surface management efficiency. These assumptions, detailed in Figure 1, are based largely on information provided by personnel from the DNR, Division of Forestry and the U.S. Forest Service, Chippewa National Forest.

Based on these assumptions, estimated administrative management benefits amount to \$490,042, discounted (Figure 2). Estimated timber management benefits add another \$40,660, discounted for total estimated surface management benefits of \$530,702, discounted. In an exchange involving 1,000 acres from each partner, or 2,000 acres altogether, this amounts to \$265 per acre.

FIGURE 1

ESTIMATED SURFACE MANAGEMENT BENEFITS

Assumptions:

Size of exchange (acres, each tract)	1,000
Miles of property line eliminated (0.02 mi/ac, each tract)	40
Survey cost/yr, 20 yrs (5% of line/yr @ \$8,000/mi)	\$16,000
Line maintenance/yr (@ \$200/mi)	\$8,000
ROW eliminated (1 ROW/66 ac)	30
ROW savings (@ \$1,200 ea)	36,000
Special Use Permits eliminated (1 SUP/175 ac)	11
Cost to issue (@ \$600 ea)	\$6,600
Cost/yr to administer (@ \$50 ea)	\$550
Trespasses avoided over 30 yrs (1 trespass/100 miles of line/yr)	10
Savings/trespass	\$2500
Avg. base stumpage value (\$/ac)	102
% increase in value	20%
Avg. reforestation cost (\$/ac)	\$143
% reduction in cost	20%
Discount rate (real)	4%

FIGURE 2

ESTIMATED SURFACE MANAGEMENT BENEFITS

Administrative Benefits:

Survey cost savings, discounted	\$217,445
Line maint. savings, discounted	\$200,000
ROW savings	\$36,000
Special Use savings, discounted	\$14,075
Trespass savings, discounted	\$22,522
Total Administrative Benefits	\$490,042
Timber Management Benefits:	
Increase in stumpage value, disc.	\$16,912
Decrease in cost, disc.	\$23,747
Total Timber Management Benefits	\$40,660
TOTAL ESTIMATED SURFACE MANAGEMENT BENEFITS	\$530,702

These figures suggest that timber management benefits are a relatively minor consideration in public land ownership consolidation. They account for less than eight percent of total estimated surface management benefits. Consequently, they could vary significantly from the estimates with little effect on total benefits (Figure 3). Thus, the primary benefit of consolidation comes from improved administrative management efficiency, whether or not the land is intensively managed for timber production.

FIGURE 3
SENSITIVITY OF SURFACE MANAGEMENT BENEFITS
TO TIMBER MANAGEMENT EFFECTS

		% Reduction in Reforestation Cost			
		30%	20%	10%	0%
% Increase in Stumpage Value	30%	551,031	539,158	527,284	515,401
	20%	542,575	530,702	518,828	506,954
	10%	534,119	522,245	510,372	498,498
	0%	525,663	513,789	501,915	490,042

2. Estimated Impact on Mineral Values

The rationale for anticipating that consolidation of public land ownership will reduce potential mineral values revolves around the issue of severed mineral rights. In land exchanges, the state retains ownership of mineral rights when surface ownership is conveyed to the exchange partner. Similarly, the partner may retain ownership of mineral rights on land it exchanges to the state. As a result, access to subsurface mineral deposits for exploration and subsequent development involves a larger number of interested parties and possibly higher costs.

The argument presented by some is that mineral exploration and development is hindered by severed mineral rights because of the higher costs and other obstacles for mineral companies to overcome. Thus, potential mineral values are reduced, although not eliminated.

This argument, however, is not uniformly accepted. In conversations with personnel from the Minnesota Department of Revenue, Minerals Division, and private mining concerns, the impact of severed mineral rights on mineral development was downplayed. They argued that mining companies regularly deal with situations involving severed rights, and would not modify their behavior appreciably as a result of further severing of rights due to public land ownership consolidation.

Assuming that consolidation will impact potential mineral values, a three-step methodology is used to estimate the impact: (1) estimate the discounted value of a hypothetical mineral development; (2) adjust that discounted value for the probability of development in the affected area; and (3) further adjust the discounted value for the reduction in probability due to consolidation.

In the first step, the present value of a mine is estimated based on assumptions for a mid-sized gold mine such as may occur in the state's greenstone formations. Mine parameters were provided by the DNR, Division of Minerals.

As Figure 4 indicates, a mid-sized gold mine has considerable value--nearly \$256 million, discounted--given expected prices and costs. However, this amount assumes that development is certain to occur--i.e., that the probability of development in the area affected by consolidation is 100 percent. The present value of the mine must be adjusted to reflect the uncertainty of development.

In step two, adjustment of the hypothetical mine's discounted value assumes a likelihood of .1 percent per 1,000 acres that development will occur on a given tract of land. (See Figure 5.) This probability assumes promising geology. With this assumption as a starting point, discounting for probability reduces the present value of the mine to \$511,666 (Figure 4).

In the third step, a range of twenty to fifty percent was assumed for the estimated reduction in mineral probability due to consolidation. No data was available to precisely determine the likely size of reduction.

.In contrast, if consolidation does not effect the likelihood of mineral development--i.e., if the percent reduction in mineral probability due to consolidation is zero--there is no impact on potential mineral value no matter how great the initial probability of development.

**FIGURE 6 ESTIMATED REDUCTION IN POTENTIAL MINERAL VALUE
(1,000 ACRE EXCHANGE)**

		% Reduction in Probability			
		50%	40%	30%	20%
Probability of Development	0.0200	2,558,331	2,046,665	1,534,999	1,023,333
	0.0100	1,279,166	1,023,333	767,499	511,666
	0.0020	255,833	204,667	53,500	102,333
	0.0004	51,167	40,933	30,700	20,467
	0.0002	25,583	20,467	15,350	10,233

3. Estimated Land Exchange Cost

As indicated earlier, a comprehensive analysis of land exchange costs is beyond the scope of this report. The approach used here is to estimate average costs for staff time, legal expenses and appraisals. Survey costs are not included, assuming that a large exchange between public agencies would typically not require one.

With this approach, estimated total cost for an exchange involving 2,000 acres (1,000 acres from each party) is \$33,170 (Figure 7). If included, survey costs would add significantly to this cost, possibly several times the estimated amount.

Staff Cost:

Based on Land Bureau records, average DNR central office staff time expended per land exchange completed from FY1981 to FY1985 was 114 hours. Assuming that a comparable amount of time is expended by field staff and that similar staff time is required of the state's exchange partner, total estimated staff time per exchange is 456 hours. Assuming an average staff cost of \$20 per hour, including fringe benefits and overhead costs, total estimated staff cost per exchange is \$9,120 (Figure 7).

Appraisal Cost:

Appraisal costs, as shown in Figure 7, are estimated at \$8,000 for an exchange involving 2,000 acres total, assuming an average cost of \$400 per 100 acres appraised.

Legal Costs:

Land Bureau records show that average attorney general costs for title opinions and costs to obtain abstracts from counties total \$321 per forty-acre parcel. Thus, estimated total legal cost for the exchange is \$16,050 (Figure 7).

FIGURE 7 ESTIMATED LAND EXCHANGE COST

Avg. central office staff hrs/exchange	228
Est. field staff hrs/exchange	228
	456
Total estimated staff hrs/exchange	456
Est. cost/hr (inc. fringes & o.h.)	\$20
	\$9,120
Est. staff cost/exchange	\$9,120
Est. appraisal cost (@ \$400/100 ac)	\$8,000
Avg. AGO cost (@ \$200/40 ac)	\$10,000
Avg. abstract cost (@ \$121/40 ac)	\$6,050
	\$16,050
Avg. total legal cost	\$16,050
ESTIMATED TOTAL EXCHANGE COST	\$33,170

RESULTS

1. Over All Net Benefits

With the assumptions outlined in Figures 1 through 7, consolidation of public land ownership in an exchange of 1,000 acres from each party results in an over all net gain of \$344,032 (Figure 8). Estimated net benefit per acre is \$172.

FIGURE 8

ESTIMATED NET BENEFIT OF CONSOLIDATION: 1,000 ACRE EXCHANGE

Net Gain, Surface Management	\$530,702
Less Net Loss, Mineral Value	(153,500)
Less Exchange Cost	(33,170)
	\$344,032
Over All Net Benefit	\$344,032
Net Benefit Per Acre	\$ 172.02

Figure 9 indicates the effect on net consolidation benefits of varying the mineral probability assumption. If the probability is as much as five or ten times the initial assumption, and consolidation reduces the probability by an assumed thirty percent, then losses in potential mineral value exceed surface management benefits. The result is an over all net loss for the exchange.

With any probability of about .6 percent (three times the initial assumption) or less, consolidation produces a net gain--again, assuming an impact on mineral potential of thirty percent. If consolidation actually has no impact on mineral development, the net benefit is comparable to the result obtained with a mineral probability of zero (Figure 9).

FIGURE 9

SENSITIVITY OF NET CONSOLIDATION BENEFITS TO MINERAL POTENTIAL

Probability	Net Benefit	Net/Acre
0.0200	(1,037,467)	(519)
0.0100	(269,968)	(135)
0.0020	344,032	172
0.0004	466,832	233
0.0002	482,182	241
0.0000	497,532	249

2. Sensitivity to Exchange Size

Because some benefits and costs of consolidation are directly related to exchange size while others are not, some efficiencies of size are to be expected. Figure 10 shows how benefits and costs vary as exchange size is increased or decreased from the initial assumption of 1,000 acres per owner, or 2,000 acres total. (These results assume mineral probability of .2 percent with a thirty percent reduction due to consolidation.)

The results shown in Figure 10 suggest that exchange efficiency increases with exchange size up to about 2,000 acres per owner, where estimated net benefit per acre peaks at \$179. Beyond that point, net benefit per acre decreases with increasing exchange size, as exchange costs rise faster than consolidation benefits.

FIGURE 10

SENSITIVITY OF NET CONSOLIDATION BENEFITS TO EXCHANGE SIZE

Acres Each Party	Gains	Losses	Cost	Net	Net/Acre
3,000	1,590,819	(460,500)	(81,270)	1,049,049	175
2,500	1,336,089	(383,750)	(69,245)	883,094	177
2,000	1,081,359	(307,000)	(57,220)	717,140	179
1,500	796,047	(230,250)	(45,195)	520,602	174
1,000	530,702	(153,500)	(33,170)	344,032	172
500	267,489	(76,750)	(21,145)	169,594	170

3. Impacts of Consolidation on Various Parties

Benefits and costs of public land ownership consolidation are not equally shared among the various affected parties. As a result, a situation arises where one party may benefit at another party's expense. In fact, it is possible for one or more parties to gain from consolidation even though the overall result, considering impacts on other parties, is a net loss.

The reason for this uneven distribution of consolidation impacts is that reductions in potential mineral values, if any, primarily affect parties that may not be directly involved in the exchange. These parties include: the mining industry, which stands to gain the most from mineral development, should it occur; the federal government, which benefits from taxes on mining profits; and counties, which receive the bulk of revenue from state taxes on mining, as well as most of the benefit of mining employment.

Assumptions used to estimate the distribution of mineral value impacts are shown in Figure 11. When mineral development occurs, the state benefits primarily from royalties paid for state-owned minerals and from state mining taxes (the occupation tax--a type of income tax--and sales tax). After discounting, exploration income and income tax receipts for new mining jobs are estimated to be a relatively small proportion of the state's share of mining benefits.

**FIGURE 11
MINERAL VALUE IMPACTS OF CONSOLIDATION: ASSUMPTIONS**

State:

Exploration income per year prior to dev't. (One mine, undiscounted)	\$1,000,000
Royalty rate (% of gross receipts)	2%
Income tax per year on mining jobs (150 new jobs @ \$20,000/yr.)	\$150,000
Occupation tax rate (% of net profit)	5.75%
Sales tax (\$/ton removed)	\$0.20

County:

Exploration income per year prior to dev't. (One mine, undiscounted)	\$1,000,000
Net annual mine payroll (150 new jobs @ \$20,000/yr.)	\$2,850,000
Avg. ad valorem tax on production and reserves (\$/ton removed)	\$1.50

Federal:

Royalty rate (% of gross receipts)	2%
Income tax rate (% of net mine profit)	35%

Counties receive revenue from ad valorem taxes (a form of property tax) on mine buildings and equipment and on reserves. In addition, the impact of new mining jobs is greatest in the local economy, where employees live and spend their wages. Consequently, the county's interest in mining development is estimated to be nearly sixty percent greater than the state's.

The federal government's interest in mining development includes royalties for federally-owned minerals and taxes on mine profits, with the latter providing the greater benefit. The estimated federal share of benefits from mineral development is about twice the county's share and more than three times the state's share.

After federal, county and state benefits are deducted, the mining industry is left with the largest share--nearly forty percent--of mineral development benefits. In contrast, the federal share amounts to about 33 percent, the county share to about seventeen percent, and the state share to about eleven percent. These estimated shares represent the relative distribution of any losses in potential mineral value resulting from consolidation of public land holdings.

Net Impact, State-County Exchange:

Estimated net impacts of consolidation on the affected parties in a state-county exchange of 1,000 acres, each, are shown in Figure 12. Assuming a thirty percent impact on potential mineral value, such an exchange results in an over all net gain with mineral probabilities up to .6 percent. With probabilities significantly above that, losses in potential mineral value exceed surface management benefits.

FIGURE 12
NET IMPACT OF LAND OWNERSHIP CONSOLIDATION ON PARTIES INVOLVED
(STATE - COUNTY EXCHANGE)

Initial Probability of Development	Net Benefit Per Acre				
	Combined*	State**	County**	Federal*	Industry*
0.0200	(519)	89	(48)	(238)	(302)
0.0180	(442)	105	(18)	(214)	(271)
0.0160	(365)	121	12	(190)	(241)
0.0140	(288)	137	41	(167)	(211)
0.0120	(212)	153	71	(143)	(181)
0.0100	(135)	169	101	(119)	(151)
0.0080	(58)	185	130	(95)	(121)
0.0060	19	201	160	(71)	(90)
0.0040	95	217	189	(48)	(60)
0.0020	172	233	219	(24)	(30)
0.0010	210	241	234	(12)	(15)
0.0000	249	249	249	0	0

* Net benefit per acre, total exchange acreage.

** Net benefit per acre owned.

However, even though consolidation produces combined net gains with probabilities up to .6 percent, the federal government and the mining industry experience net losses. This is because they suffer assumed reductions in mineral value due to consolidation, but receive none of the surface management benefits, which are shared by the state and county.

If consolidation does not actually reduce the likelihood of mineral development, the federal government and the mining industry would be indifferent (comparable to the case of zero mineral probability). In this case, only the two exchange partners are affected by consolidation.

It is noteworthy that even with the highest mineral probability considered, the state experiences an estimated net gain even though the combined result is a net loss.

Net Impact, State-Federal Exchange:

Estimated net impacts of consolidation in a state-federal exchange are shown in Figure 13. Combined net impacts, net benefit to the state and net impact on the mining industry remain the same as in Figure 12. However, because surface management gains are shifted from the county to the federal government, net impacts on those two parties are markedly different from those shown in Figure 12.

FIGURE 13
NET IMPACT OF LAND OWNERSHIP CONSOLIDATION ON PARTIES INVOLVED
(STATE - FEDERAL EXCHANGE)

Initial Probability of Development	Net Benefit Per Acre				
	Combined*	State**	Federal**	County*	Industry*
0.0200	(519)	89	(273)	(125)	(302)
0.0180	(442)	105	(221)	(113)	(271)
0.0160	(365)	121	(169)	(100)	(241)
0.0140	(288)	137	(117)	(88)	(211)
0.0120	(212)	153	(64)	(75)	(181)
0.0100	(135)	169	(12)	(63)	(151)
0.0080	(58)	185	40	(50)	(121)
0.0060	19	201	92	(38)	(90)
0.0040	95	217	144	(25)	(60)
0.0020	172	233	197	(13)	(30)
0.0010	210	241	233	(6)	(15)
0.0000	249	249	249	0	0

* Net benefit per acre, total exchange acreage.

** Net benefit per acre owned.

From the federal government's perspective, consolidation through an exchange with the state is favorable provided either of the following: (1) mineral development probability is less than one percent (assuming a thirty percent reduction due to consolidation); or (2) consolidation will have no impact on mineral development, no matter what the initial probability.

In contrast, the county would suffer losses in potential mineral value if there is any probability of mineral development, subject to impacts resulting from consolidation. If consolidation would have no impact on mineral development, the county, like the mining industry, would be unaffected by the exchange.

As in a state-county exchange, the state could gain from consolidation even with assumed mineral development impacts great enough to produce a combined net loss.

CONCLUSIONS

Within the context of this report's limited scope, it appears that consolidation of public land ownership can pay, although the benefits are not equally shared.

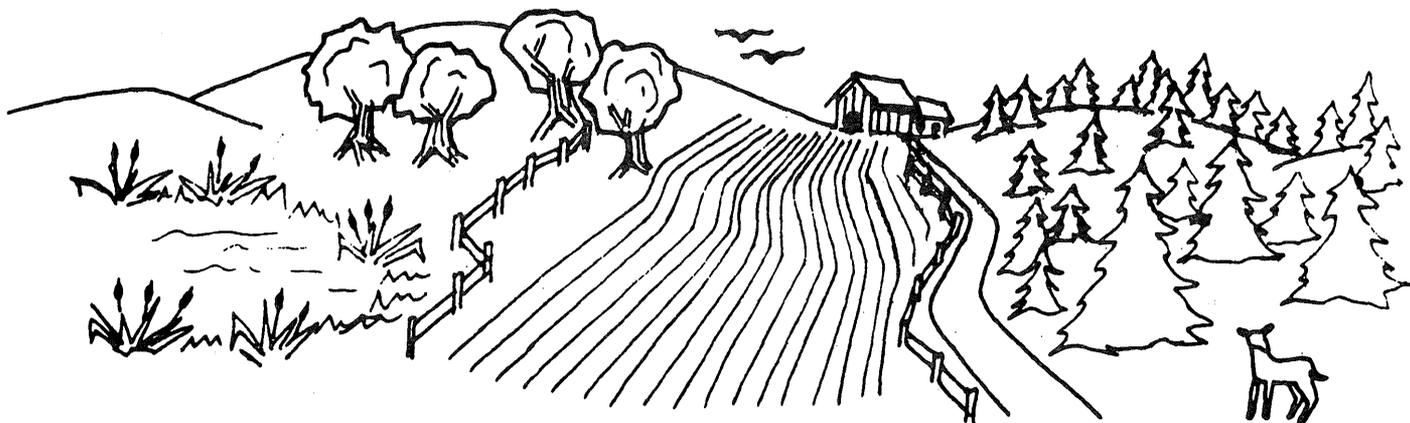
- Estimated gains from improved surface management efficiency outweigh estimated losses, based on the report's assumptions, except where mineral development probability is extraordinarily high. Even with high mineral potential, however, consolidation can pay if it will have little or no impact on future mineral development.
- With an estimate of \$172 per acre, net benefits of consolidation can compare favorably to market values for land typical of large exchanges between the state and other public land owners. The Land Bureau has appraised the value of such land in the range of \$150-\$200 per acre, including timber values. In the absence of potential mineral value losses, consolidation benefits may amount to as much as \$250 per acre.
- Due to potential cost efficiencies, larger exchanges (i.e., exchanges of about 2,000 acres from each partner, or 4,000 acres total) may result in the greatest net consolidation benefit per acre. (This conclusion is subject to variability in land exchange costs, which have not been examined in depth. Therefore, it should be regarded as only a preliminary indication of optimal exchange size.)
- Parties that stand to gain the most from future mineral development have an interest in preserving dispersed public land ownership patterns where mineral potential is high (assuming that consolidation would reduce the likelihood of future mineral development). In such cases, the state bears

most of the cost of holding land for mineral speculation (in the form of foregone opportunities for surface management cost savings), while other parties (i.e., the mining industry, the federal government and the county) receive most of the benefit when development occurs.

- Thus, retaining dispersed public land holdings despite economics favoring consolidation from the state's perspective, amounts to a state subsidy of the mining industry and other parties that benefit most from mineral development.

Whether or not public land ownership consolidation actually reduces the likelihood of future mineral development on affected land is an issue that has remained unresolved in this analysis. Potentially affected parties differ in their views on this issue, some arguing that impacts are significant and others that they are negligible.

If consolidation does in fact reduce the likelihood of future mineral development, a case can be made for parties with an interest in retaining existing ownership patterns to compensate the state for a portion of its land holding cost--the foregone opportunities for surface management cost savings. The greater the impact on potential mineral values, the more the affected parties should be willing to compensate the state for not consolidating land ownership. The state could obtain such compensation through higher royalty rates and/or taxes on mining profits.



**WILLIAM HINK
LAND STAFF ASSISTANT
CHIPPEWA NATIONAL FOREST
CASS LAKE, MINNESOTA**

William Hink spoke about land exchange in the Chippewa National Forest. Specifically, he addressed the land acquisition history of the Chippewa and some of the goals and land exchange requirements that are in place today.

I'm pleased to be at this conference. It should have been held a long time ago. I was interested in Rollie's(Harmes) discussion on land exchange in Michigan because I cut my eye teeth on land exchange in Michigan 15 years ago. I worked on the Hiawatha National Forest and we were processing 6,000 to 7,000 acres a year on land exchanges with the state of Michigan. Each federal agency has its own policies and laws. Some of these have already been discussed today. Generally, I can only speak for the Forest Service as far as their goals for the Chippewa National Forest are concerned. I will give a brief discussion on the background of the Chippewa National Forest and how we got to where we are today. This will lead into our goals and land exchange requirements.

The Chippewa National Forest is an entity in itself. It's not like dealing with the DNR which has land scattered all over the state. Our land is all specifically within the national forest. The Chippewa National Forest is about 1.6 million acres gross area. Of that, only 661,400 acres are national forest, which is about 41% ownership. In the recent Asset Management Program the federal administration proposed, they were looking for areas like the Chippewa where ownership was low, with the intent to dispose of these lands. But when you analyze all public ownership, the Chippewa National Forest is 82% public land because it includes 272,000 acres of state land, 285,000 acres of meandered waters, and about 92,000 acres of county tax-forfeit lands. Fortunately, the Asset Management Program never went too far.

Long before the Chippewa National Forest was established, the land was all originally public domain lands. Some of this was patented out in the early years. The State Enabling Act of 1857 granted the state of Minnesota section 16 and 36 lands for the support of schools. The Act of 1860 extended provisions of the Federal Swamp Land Act to the state of Minnesota. This granted the state swamp and overflow land unfit for cultivation and subject to disposal by the Legislature. Almost all state lands in the Chippewa National Forest came from these U.S. grants. Over the years, the state has disposed of many of these lands. There are now 272,000 acres of state land remaining within the national forest boundary. The Minnesota National Forest was proclaimed

by Congress in 1908. It was the first national forest to be so proclaimed by Congress.

There was no acquisition or exchange authority when the national forest was established. Congress passed the Weeks Act in 1911, which provided for acquisition and exchange in the headwaters of navigable streams for flood control. It was later extended to also provide for timber land acquisition. There was never much money provided under this law. Other minor land acquisition occurred in these early years.

During the depression years a lot of private land went tax forfeit. This provided an opportunity for the federal government to help local areas. The national forest started acquiring considerable burned and cut-over lands. In 1933, the Chippewa National Forest was extended north to include an additional 642,000 acres. Another expansion in 1935 provided 356,000 acres to the south. During this time, there was a considerable amount of land acquired from timber companies, land companies and private individuals. More than 300,000 acres were acquired in the 1930's alone.

When World War II came along, funding was cut. There was never much land acquisition after that. Between 1947 and 1986, only about 72,000 acres were acquired. That averages 1,800 acres a year. Since 1980 acquisition has further declined. Coincidentally, that's about the same time that land exchange assumed a higher priority.

The Land and Water Conservation Fund(LWCF) program of 1965 directed some of our efforts toward acquiring recreation lands. In the past, when funding was tight, we acquired cheaper lands. We didn't buy lakeshore because of its higher price. Since 1965 when the LWCF was passed we have acquired about 10,700 acres in the Chippewa, including 72 miles of lake frontage with LWCF monies. There has been very little land exchanged in the past because acquisition was always a priority. I was surprised to hear that there have been so many land exchanges between the state and the Forest Service because there had never been any approved on the Chippewa. We have a file drawer full of land exchange cases that were never consummated.

In 1979 we increased the emphasis on land exchange, specifically with the state of Minnesota. The 272,000 acres of state land in the national forest provide considerable potential for land ex-

change. The first attempt was what we called the "Bowstring exchange" in the Bowstring State Forest. We were very specific on what we wanted in this land exchange. We used strict criteria to avoid problems. We did encounter some minor problems, but we wanted to keep the exchange as equal in value, and in all other aspects as possible. We wanted to minimize the need to balance water frontage and upland, versus lowland and the like. Working with Jim Tarbell, we came up with about 1100 acres on each side of this exchange. We began in 1979, and we're now just in the process of getting the deeds exchanged. It's taken a long time but we're quite happy with the success. In that exchange, we dealt mainly with scattered 40's and 80's that were completely surrounded by the other agency land.

Savings for the Forest Service included 42 miles of property lines, 130 property corners, and 8 road rights-of-way. These savings will be very beneficial.

We are currently working with the state setting up other exchanges. We have been working with Jim Tarbell at Deer River, Minnesota on an exchange of about 3,000 acres of land on each side, and with John Rodewald at Bemidji on another exchange. Under the Land Exchange Pilot Study, we've put together an exchange proposal with Mike Chapman in the south end of the forest in Cass County. We have also developed an exchange with Itasca County utilizing Bureau of Land Management (BLM) lands in eastern Itasca County outside the national forest boundaries. These are all unpatented public domain lands that have always been in federal ownership and administered by the BLM. The BLM decided these lands should be disposed of, so we are utilizing them for land exchange purposes with Itasca County for county tax forfeit lands in the national forest. Again, these are scattered 40's and 80's that are inaccessible and surrounded by other agency lands. The exchange includes 630 acres of public domain lands and 890 acres of tax-forfeit lands. We will soon be exchanging deeds and patents on these lands. We also have a small land exchange with Cass County which we have just consummated in the last few weeks.

One thing that we feel we're making progress on is a Memorandum of Understanding implementing joint appraisals with the state instead of each

agency doing separate appraisals. We're going to try contracting appraisals to a qualified appraiser that both agencies agree on and then share the cost of that contract. We hope to do this on an exchange we are currently working on - the Oteneagen exchange at Deer River, Minnesota.

We've just gone through a forest planning process where we have developed a long-range land management plan for the Chippewa National Forest. All the national forests are going through this process. This plan includes a land adjustment plan for the national forest. We are developing long-range land adjustment goals and actions needed to meet the goals. We had several choices; one was to identify every parcel of land in the forest that we wanted to acquire, as well as identifying lands that should be disposed of. Instead, we zoned the forest into Land Adjustment Zones One, Two and Three. Zone One lands were areas where U.S. Forest Service ownership was low. National Forest lands within these zones should be disposed of. Zone Three lands were areas where we had high U.S. Forest Service ownership which we hope to further consolidate. Zone 2 lands were adjustment zones where we could go either way depending on ownership. Many of these zones have about equal amounts of state and federal lands. When we started this effort the state was not far along in its unit planning. Now that they are, we're finding out that in many cases, our zones and their areas are very compatible. We're quite happy with that. There are going to be adjustments of course. Working on the pilot study with the state is helping further to coordinate land adjustment planning.

Our major goal in land acquisition or land exchange is to consolidate ownership and so make better use of management dollars. We hope to reduce property lines. For example, there are over 3000 miles of property lines on the Chippewa National Forest alone and it's currently averaging \$8,000 a mile to run property lines. We also hope to eliminate special uses. We have over 700 special uses on the forest. We hope to reduce right-of-way needs. We have the largest national forest right-of-way program in the eastern United States. We acquire 35 to 40 rights-of-way a year on the forest and much of it is across state and county land. Scattered, intermingled ownership creates potential trespasses. We've found that when we're

examining lands for exchanges, we trespass on state and county lands occasionally, and they have done the same on our lands. We've decided that land exchange is the best solution.

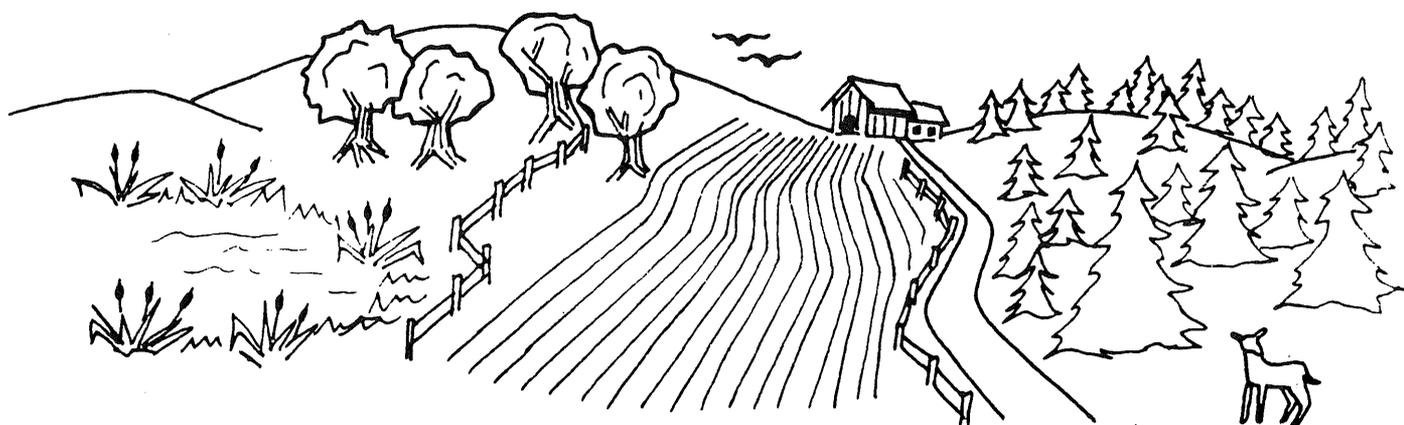
We realize that situations exist, where, because of resource or legal considerations we can't exchange land, even though we may be dealing with an isolated parcel. We have resolved some of these problems through interagency agreements; for example, we have made agreements to protect eagle nests.

We must consolidate our ownership; we can't be acquiring lands that will create more boundary line problems. All land transactions must pass the test of the environmental analysis process, e.g., the laws regarding rare and endangered species, cultural resources, wetlands, floodplains, minerals, etc. Every time you turn around, somebody is trying to restrict what we can do in land disposal and land exchange. The intent may be good, but it creates more processing for us to endure. Also, there is the appraisal process. We must exchange equal value or provide compensation with cash equalization. We can legally pay or receive 25 percent of the federal land value in the land exchange. That's legal, but unfeasible, since there are few federal funds available for this purpose and state law restricts the state and counties

in regards to this practice. You can get into some really creative appraisal processes when you're dealing with equal values. Ross Cass and I found out that our appraisal system works very well, because when we appraised the Bowstring exchange, we each did it independently of the other without any consultation. We then exchanged appraisal information and we were within \$200 to \$300 dollars of each other in an exchange that totaled \$100,000 on each side.

In summary, we on the Chippewa National Forest believe that land exchange and land consolidation can resolve many of our land management problems and considerably reduce costs to the taxpayers. We find that the goals of all land managers, public and private, are basically the same. In the end, we must realize that as public land managers, we are all working for the same people, the same people who are paying our way. It behooves us to do the best we can for the taxpayers. Land exchange is one way to do that. People have been studying Minnesota land exchanges for years and years and we're still studying land exchange. Hopefully, we're now ready to start doing something about it.

Thanks.



**MARK JORDAN
PRIVATE EXCHANGE SECTION
MANAGER
ARIZONA STATE LAND DEPARTMENT**

Mark Jordan described Arizona's land exchange program. He focused on advantages and disadvantages of using land exchange to acquire commercial or industrial property suitable for leasing to produce revenue for the state.

First, I'd like to extend my thanks to the state of Minnesota for inviting us here to present our perspective on land exchange. I'll go through a brief history of how Arizona obtained its lands and what we've subsequently used them for. In 1910, the Enabling Act passed by Congress granted Arizona approximately 10.8 million acres of property. In 1912, Arizona obtained statehood status and in 1915, its Legislature adopted the current land code referred to as Arizona Revised Statute, Title 37.

Arizona still administers approximately 9.5 million acres of the original 10.8 million acre grant, thanks to wisdom and foresight on the part of its early administrators. Adjacent western states, such as Nevada, sold almost all of their trust land at a time when it was valued at \$1 or \$2 an acre.

The primary beneficiary of Arizona's state land is the common schools system, although there are 14 other beneficiaries who receive a much smaller share of the total revenues. From the time of statehood in 1912 thru 1978, the total revenue generated by our state trust land was 100 million dollars. Between 1978 and 1986, we have generated an additional 300 million dollars. Much of that was due to an aggressive leasing program, an aggressive sales program, and just recently, a program of land exchanges whereby the state would acquire commercial property suitable for lease back.

From the time of statehood until about 1978, our primary sources of revenue were copper and other mineral leases. There were several open pit copper mines on state land. Oil and gas leasing was entirely for exploration since there is no oil and gas production in Arizona, with one exception - Navajo Reservation land in the northeastern part of the state. There are also agricultural and grazing leases. Lease of grazing land is our lowest land use category, next to no use at all, and it generates very little revenue.

Under the current administration, some modifications have been made. Arizona is growing very rapidly and there is much pressure being put on the state to participate in that growth, primarily because state lands bound most of the major urban areas. We've entered into a legislated procedure that we refer to as the Urban Lands Act of 1982. Under that act, the land department can plan ultimate uses for state lands that form boundaries of our major cities.

We have developed several projects through which the use of lands has been planned. Residential areas have been identified, and the state has entered into sales situations on that residential property. We've also identified lands suitable for long term commercial and industrial leasing. We've issued long term leases on that property, and those leases have now replaced natural resource product sales as our primary source of revenue.

We also sell many easements and rights-of-way. We own almost 10 million acres, and we have a lot of people who want to get across our land and that generates substantial money as well. We currently sell natural products such as sand, gravel, timber and water, although timber is a scarce resource on our properties.

Our objective under this current administration has been to maximize revenue to the trust. Several recent Arizona Supreme Court decisions have upheld that objective as the primary reason for the land department's existence. One of the ways we plan to achieve that objective is through the acquisition of commercial properties, through exchange, for leasing, in order to augment other sources of revenue. Property types we want to acquire are either urban lands ready for immediate development, or lands already developed with existing businesses or structures on them. We can then turn around and lease those properties back to their former owners. An advantage of this kind of exchange is that it allows us to dispose of low or non-revenue producing lands and generate immediate revenue which can be distributed to beneficiaries. It also allows the state to benefit by allowing a private developer to pay the cost of providing roads, sewers, water, power - any infrastructure necessary - in an area of predominantly state-owned land. This allows the remaining state land in the area to appreciate to its highest value.

It benefits us to engage in this type of exchange over a straight out sale, in that when we sell property, monies generated from the sale go into a permanent fund. That permanent fund accrues interest which is distributed to our beneficiaries. There is no compounding of the actual principal. With an exchange, we acquire an equal amount of cash value for the property and the property continues to appreciate. The lease-back substitutes for

the interest function and the leasing revenues go directly to the beneficiary. Our original investment continues to compound whereas with an outright sale it does not.

There are several advantages available to a developer or an exchange applicant in this type of land exchange: 1) If they have an existing development for business or a commercial corner or something similar, and they trade it to the state, it produces considerable capital for them. 2) It reduces or eliminates their property tax since state trust land is not subject to taxation, although personal property on that land is still subject to taxation. 3) Land exchange allows for a long-term leaseback situation with the former owners. As far as lending institutions are concerned, these long-term leases are considered to be as sound as actual land ownership.

In some cases, land exchange allows the state to take a piece of property (that although valuable, is too small to contain a major project) and put it into ownership of a developer who owns the surrounding lands. The developer can then assemble enough acreage to complete a major project. We realize benefits from that.

There are a number of disadvantages associated with this type of exchange, or any exchange that we engage in for that matter. The amount of time required to process an exchange normally is between 18 and 24 months. If you're dealing with somebody who has made a substantial investment and is paying interest on that investment, they may not be able to wait that long. Frequently, when we trade non-revenue producing lands for revenue producing lands, we trade a great number of acres for a very small number of acres. The public tends to strongly oppose that type of activity, regardless of the fact that the equivalency of value has been determined through independent appraisals. We normally have at least two appraisals on each exchange and several times we've had more. This type of exchange leads to public resentment of successful land developers. Anyone who has taken an area and successfully developed it, is frequently subject to mistrust by the public, although I think there is probably some

jealousness on the part of the public due to the developer's success.

We also have a considerable amount of internal disagreement among our staff as to how to handle this type of exchange. Normally, disagreement occurs between our natural resource management staff and our commercial leasing and planning staff. We also have objections from other state agencies, most notably, the Arizona Game and Fish Department, especially if the exchange entails potential loss of habitat, recreation area, or access. We are now developing a Memorandum of Understanding with them in order to smooth things out in the future.

Several of our exchanges have been subject to legislative inquiry due to complaints by constituents about inequity in value or acreages. These inquiries are normally very time consuming and we waste a lot of time on them.

Some of the main problems we face are the associated political and philosophical considerations that have to be taken into account. Private land exchanges must be approved by a board very similar to yours (Governor, treasurer, and attorney general), and because they are all elected officials, they do have a responsibility to answer to their constituents.

How can we solve some of these problems? The primary thing we need to do is initiate an aggressive education program to inform the public and local governments as to what our mandated responsibility is in terms of land management. That's an ongoing process and one that's accelerating. I think people in Arizona are starting to realize that the state land department administers property for purposes of revenue generation, although we also manage land for a number of other reasons. We need to solicit earlier involvement and participation from other interested governmental entities, including state, local, and county agencies.

We need to be sure that our planning and proposal analyses determine that we are actually going to receive the benefits that applicants claim we are going to receive in the exchange. We need to intensify our appraisal and appraisal review processes. I think that's something every state

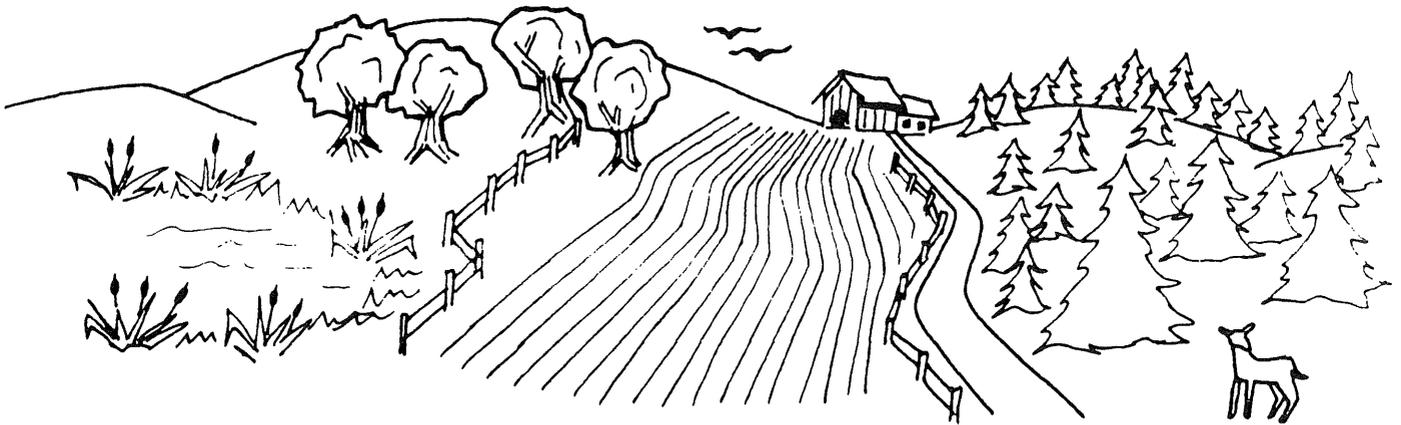
must do. There is always the issue of compromise. In any exchange we undertake there is compromise. We end up making a concession to opponents of the exchange in order to get a portion of what we ultimately want.

We've only recently accomplished an exchange of this type. We traded approximately 3,400 acres at the foothills of a mountain range 15 miles north of Tucson for approximately 35 acres within a resort development near Tucson. The property has been zoned either commercial or transitional, which means you can put financial institutions, banks, office buildings, upper end restaurants and that sort of thing on it. As a condition of the exchange, the applicant agreed to lease the property back from us once we acquired it in trade, at a rate of approximately 10 percent of the land's value per year. This was a \$15 million trade, so he's committed himself to a \$1.5 million per year rental rate, whereas the land we traded to the applicant was yielding \$278 a year in grazing fees.

This exchange will significantly augment our commercial leasing program, which overall this year brought in \$5.5 million. Through one land exchange, we will generate a significant portion of next year's revenue. We've also allowed a private owner to come into an area of about 40,000 acres

of state land, develop a smaller acreage and bring in the infrastructure necessary to allow our remaining land to appreciate to its full potential.

We have several similar proposals on line. We have a hotel company in Arizona called Inn Suites International. They have offered us approximately 20 acres of land on which three or four of their hotels, their national headquarters, a bank, and some mini-storage areas are located. What they propose to do, is immediately lease that property back from us at 10 percent of land value, in return for some state land that even our game and fish department has agreed we should get rid of. It's desert land north of Phoenix that has no vegetation or access and is criss-crossed by flood control structures, overhead 230 KV lines, and irrigation canals - a real problem area. It's something we are going to look into in the coming years and something that I think will allow us to give another shot in the arm to our long-term leasing program. I feel that in Arizona we should be in a position of leasing more land than we sell, although undoubtedly there will be some orderly disposition of land through the urban sales process in order to keep the state from becoming a landlord to residential development.



**LANCE KILEY
CHIEF, LAND MANAGEMENT AND
CONSERVATION DIVISION
CALIFORNIA STATE LAND
COMMISSION**

Lance Kiley explained the California land bank system. Specifically, he addressed the procedural requirements involved in using the land bank system and the utility of the system in facilitating land exchanges.

First, a little background about how we got into the land bank business; it occurred over a long period of time and some background will help you understand it. We manage two kinds of lands. There are sovereign lands, which are the beds of all the navigable rivers, streams and lakes. These lands are subject to a particular kind of trust condition, which in California is called "public trust". It's a highly evolved doctrine. It's a court-made doctrine rather than a statutory doctrine and it basically holds that the tide and submerged lands are held for the benefit of all people for purposes of commerce, navigation, fishing, recreation, and open space with the state acting as a trustee. The cases that have evolved over the years and the uses that can be made are expanding all the time. I point this out because these lands require a specific kind of a land bank and we have one for that purpose.

We also have school lands. School lands are lands that were granted to the state in 1853 (the 16th and 36th sections in every township in California). The school lands are held subject to an entirely different kind of trust. It's a statutory trust and the statutory trust in California is of fairly recent vintage. It occurred in the land bank bill. The original granting language in California for the school lands is the weakest I've seen in any state. It consisted of about ten words in the middle of a federal statute that provided for the surveying of lands in California. It basically says there is hereby granted to the state of California, for the support of common schools the 16th and 36th sections in every township. Period. That's the end of the trust conditions in that particular statute.

Over the years, we've had an Attorney General's opinion that indicated we had an honorary trust for those lands but it was honored more "in a breach". Most of the land has been sold off. The remaining lands are primarily in the Mojave Desert area, which gives you a little perspective on the kinds of lands that we're still managing.

We now have a constituency for the school lands. About 5 years ago, the revenues from the school lands were dedicated to the teachers' retirement system. The revenues provide raises for retired teachers; it's a small incremental bonus in addition to their regular meager stipend every year. That gives them a little bit and gives us the first literate constituency for school lands that we have ever had in California.

We have a requirement for equal value exchanges. We can't take less than equal value in any kind of an exchange. That's true of all kinds of exchanges.

We have a constitutional prohibition against gifts of public funds which has a big impact. We have a constitutional provision against sale of tidelands within two miles of a city or town. That affects our sovereign lands transactions.

We have a number of court cases that severely limit how we can deal with tidal and submerged lands, and very few court cases on school lands. We have a statute that requires our commission to make findings: 1) that the tide and submerged lands have been filled and reclaimed, 2) that they're excluded from the navigable channels, and 3) that they are not useful for trust purposes (that's a very difficult one, and we deal with it as a relative matter).

If the lands that we're going to get can be said to be relatively more useful (and it usually has to be by a very substantial margin), then we may be able to deal with those in an exchange transaction. It has to be part of an overall program for improvement of navigation and public use, harbor improvement - that sort of thing. And also, as a result of one of the court cases, it has to be a relatively small piece of property compared to the overall size of the lands that we're dealing with. That court case resulted from a situation where somebody tried to give away a very large bay in southern California in its entirety.

We've had a few interim solutions. We worked with exactly equal values for years. It is very difficult, as we all realize, to find parcels of land here and there that happen to be of exactly equal value. We have a variety of different kinds of land holdings in California including ranchos, public domain, and various other kinds of land holdings. We don't have any metes and bounds like they have in some of the eastern states. We're basically a public land state with ranchos thrown in. Arizona may have some ranchos; Texas has lots of them.

We dealt with the Trust for Public Land in the San Francisco Bay area for a number of years, which worked fairly well. They bought large tracts of land for fish and game purposes and we bought undivided interest in those parcels over a period of time. Every time we had some kind of a

title settlement, or wanted to get a small exchange transacted, they would acquire undivided interest in this big block of land that the state wanted held for wildlife preservation purposes. Eventually we would take up the entire tract and the Trust would move on to buy something else. That worked reasonably well while it was in effect. We had the ability to deal with different property characteristics with that particular kind of a land bank system. But the Trust for Public Land is a private land bank and we often ran into problems when their goals turned out to be different than ours. Often, we were into commercial or wildlife activities when they didn't want them and we had to negotiate with the Trust as well as with the parties we were trying to exchange with.

We also had the Sonoma Land Trust, the California Coastal Conservancy which is an agency that deals primarily along the coast, and the Tahoe Conservancy around Lake Tahoe which is very similar in orientation. A problem with this type of trust, from a state agency standpoint, is that their goals are almost always contradictory to the state agency's. In addition, the processes are often very slow. For example, the Trust for Public Lands had a lot of capital tied up in one large parcel until we were able to take it over. This was frustrating for the Trust because our exchanges move very slowly. We had a number of false starts over the years on legislation; we had to go at it about four or five times before we were finally successful. We spent an extensive amount of time educating legislators. In 1982, we finally got the first land bank statute, which dealt only with sovereign lands. In 1984, we were able to get one through for the school lands, basically patterned on the sovereign land bank. I have about four copies with me. I'd be happy to get copies for anybody that would like them, and I would be happy to answer questions about them when we're done. Rod (Sando) can also provide copies for anyone who would like them.

The sovereign land bank provisions are such that it can only be used for title settlements. In other words, it can't be used for the kinds of exchanges we're talking about here. There were reasons for that: the Legislature didn't want this process used heavily. It also has to do with the prohibition of tideland sales within two miles of a city or town. Most of the tidelands in California these days are

within two miles of a city or town, so it would be very difficult for us to deal with tidelands on a sale basis, so the title settlement was the key thing there. We could also hold money that was received for mitigation of environmental damage to wetlands in that land bank. In other words, we could take money for mitigation and acquire a specific parcel to be used at some future date for a private transaction. The program was designed to be in compromise of litigation. There were extensive legislative findings, which we wrote, that litigation resulting in a title settlement could be very confusing, time consuming and expensive for both parties and that it was very difficult to deal with.

There is a naming of the fund and the trustee. When it's going to conduct one of these transactions, the State Lands Commission announces that it is sitting as trustee for that particular purpose at that particular moment in time. That's a requirement of the statute. There is a continuous appropriation to the agency so that we don't have to go back to the Legislature for money, that's a key factor. You have to be able to keep the money in your control to make the program work. There is a strong statement of purpose for the land bank saying that transactions are in the public interest, title settlements are in the interest of the public and that the state as a whole will benefit.

The land bank is for the purchase of wet or filled wetlands or filled tidelands and adjoining or nearby lands. There are a lot of filled tidelands in California. A lot of tidelands were sold in the early days of statehood, filled and reclaimed for various purposes. These are the lands that we're usually divesting ourselves of. It's very difficult to find a tideland area, even though filled, that is not useful for trust purposes. There is almost invariably a trust purpose that it could be put to that would be pretty valuable, so I don't know of any cases where we've made the findings that were required on a parcel that was immediately adjacent to a waterway.

We have to find specifically that the transaction is necessary or extremely beneficial for the public. Then we have to conduct an open hearing on the whole transaction. We maintain a very extensive list of public agencies, private parties, various trusts, conservancies, and all those kinds of interested parties. We contact these groups on every

single transaction that goes through the land bank. Public meetings have been relatively sparsely attended with some exceptions. Sometimes we do have some very interested parties.

The land bank provisions are not exclusive, we're still authorized to use any other means available to us to conduct business. We have a provision that allows us to accept gifts into the land bank. We have had a few substantial gifts from corporations that want to write-off large sums for income tax purposes. We are required to submit an annual report to the Legislature detailing all the transactions, including cash in and cash out and where it's going. We specifically do not have any eminent domain authority conferred by the land bank statutes for either school or sovereign lands. I trust that the reason for this was that people were fearful we would condemn large blocks of private property for public use without compensation or with minimum compensation.

Fair market value is specifically required by both statutes, for obvious reasons. We do some things with fair market value that other states may not have done or tried. For example, we deduct for the state's interest; we make an appraisal of whatever interest we think the state may have in the area of the parcel we're dealing with. In addition, we do a case evaluation, which I think may be somewhat unique. We have a fairly good size staff of staff counsel. We also have a fairly large group of Attorneys General who support us. I say "support" with some hesitation. There are about 50 of them in the Attorney General's land law section, about 25 of whom will be working with our transactions at any time. Sometimes they can be a hindrance and sometimes they can be a help, it depends a lot on the individual personality. In any event, we do a case evaluation which results in a probable deduction of monetary interest in a parcel of property based on what we think our shot at perfecting title in that particular parcel is. It's a very useful tool.

It's especially difficult to get the junior attorneys to do a case evaluation because there is a high degree of judgment as to what your real chances would be if you went to court. It's basically a guess. But it's an effective tool for making a transaction work, when it might not otherwise work when somebody has a partial interest in a piece of property.

On express findings we can have a split estate. We can split the minerals off, but the express findings are required in every instance. We have to make a good faith effort to make the transaction a whole fee transaction rather than a split estate transaction. We have to find that it is unlikely that we would acquire minerals no matter how hard we tried. We have to say there is no likely damage to the public interest by having these separated estates in the parcel when the transaction is finished, and we have to find that the overall transaction will be of substantial benefit and in the best interest of the state. We have exclusive jurisdiction over the monies in the land bank and over all lands on both sides of the transaction.

We have provisions for whole or part money considerations so that we can take a partial piece of land in an exchange, and in addition we'll take a substantial sum of money into the land bank for use in the school lands trust.

We may solicit and consider comments from other agencies. We do that frequently, especially with our Fish and Game Department. We are very active in and very close to the Fish and Game Department, and to a lesser degree with our Department of Forestry because they may have a high degree of interest in the lands that we acquire.

The lands that are accepted are of the legal character of sovereign lands, or of school lands if they happen to be within the school land bank. In the statute, we have the okay for recordation which may seem like an afterthought, but the State of California requires a specific okay - a statutory okay - to allow recordation of documents in the transaction.

***** Gap in tape *****

That's a pretty good deal because the state pooled money investment fund has a relatively high rate of return on an ongoing basis, and it seems to make us a lot more money than we can make in other investments.

We are allowed to deduct our costs and expenses from each of these land bank transactions before money goes into either the final purchase, or in the case of the school land bank, the teacher's retirement system. These expenses cannot exceed 5 percent of the total transaction, and we've never really done a final computation to find out where our real expenses fit in with that 5 percent. That's

a ballpark figure and it's probably a reasonably decent one.

We have specific exemptions in the Land Bank Act and I think these would be important to anybody that's contemplating drafting one of these documents. We have an exemption from the California Environmental Quality Act for these particular transactions. That saves us an awful lot of time and an awful lot of grief dealing with that particular act. We have an exemption from the Subdivision Map Act. The exemption is that when we consummate one of these actions, we're not creating new parcels, for purposes of the Subdivision Map Act. So we don't have to file a specific map with the local counties showing what we've done.

We also have exemption from the state property acquisition law, so that we can spend money without going through some of the public works acts that are associated with property acquisition laws. We don't get any relief from any other requirements. Neither the trustee, which is the State Land Commission, nor our successors in interest gets any other relief of any kind. That's specific in the statute for any other laws and regulations so that both we and our successors in interest must conform with all local health and safety laws. Ultimately, when we do a land bank transaction we issue what we call a patent, same as a federal patent, to the purchaser, and that person basically has a quitclaim deed from the state. That's the effect of a patent from the state of California, it's the same as a quitclaim deed.

The School Land Bank is similar to what I've described in almost every respect, except for a few different provisions. It's more flexible because we don't have all the trust implications that are associated with sovereign lands. The School Land Trust implications are really fairly broad. They're geared more toward revenue generation and a lot less toward preserving public use, access and those kinds of things.

The goals of the two operations are slightly different. The main goal of the School Land Bank is to maintain a revenue resource base on a long term basis and also to consolidate scattered parcels. We're trying to high grade the feds as much as we can. We go in and sacrifice maybe 50 or 60 thousand acres of what we believe to be marginal Mohave Desert land and pick up maybe 5 or 6

thousand acres of forested land. One of the unfortunate things for us is that our trading partner in California, which is usually the Bureau of Land Management, has "doggie" land that's almost as bad as ours and sometimes worse. So it narrows your options considerably.

We have to make express mineral findings very similar to what we have to do in the Sovereign Land Bank. The land is of the same legal character, the money goes in the pooled money fund, the administrative cost is the same (5 percent), the exemptions are the same and the notices are pretty much all the same.

I see advantages and disadvantages associated with these land banks. The land banks provide you with much greater flexibility than you would have if you're stuck with equal value exchanges. Let me ask Rod this, - is Minnesota now stuck with an equal value exchange in every case? Substantially equal. We were dealing with substantially equal value too, although in practice it worked out to being exactly equal in almost every case. The state could never be in a position of receiving even a dollar less in value and that really caused us a lot of grief over the years before we came up with this idea.

The limited purposes of the land bank protects from abuse in general, but they're also a drawback in terms of their flexibility. We can't do anything for example, with this sovereign land bank fund that we might want to do because of the trust restrictions on the fund. For the public benefit, in the long term, I think those restrictions are probably good. There have been abuses in the distant past and there probably would be further abuses in the future if we didn't do that.

There's a danger of having too much money in your land bank and I think that is something Rolie Harnes talked a little bit about yesterday in his discussion. I think that's a very real danger, it's something you can't overlook. Right now we have about 5 or 6 million dollars in our School Land Bank Fund and we don't really know where we're going to spend the money. We don't have any hot prospects at this very moment and we should have. There's a fairly reasonable degree of probability that we will get into a situation where we have an embarrassment of riches in that land bank and literally have no place to spend it where we

won't offend a private party. We don't want that to happen.

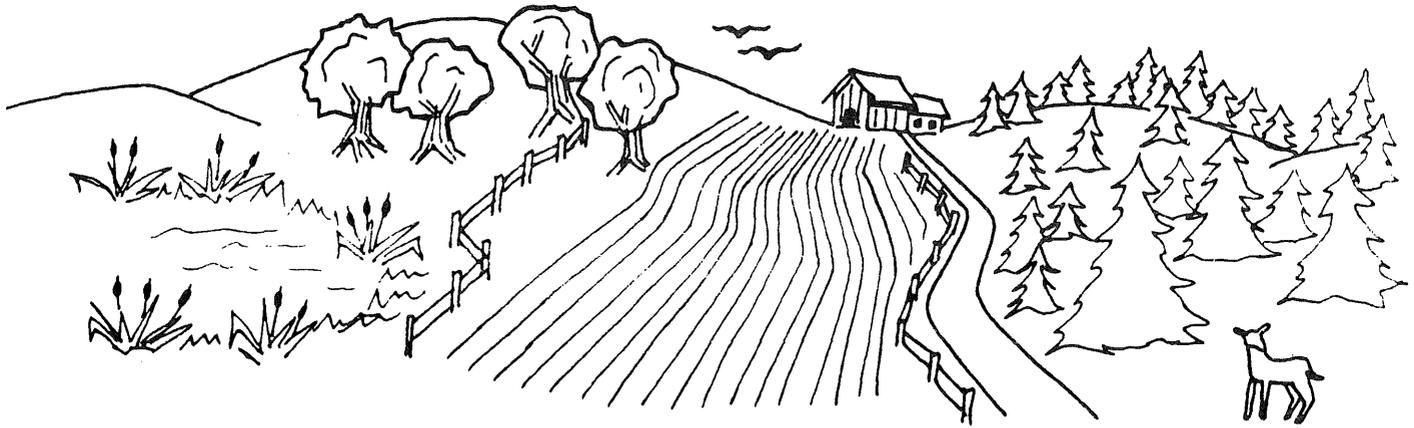
In addition to that, there's an even more real danger. That's a very tempting pot of money when someone is trying to balance the budget at the end of the fiscal year, and you stand to possibly lose it. The people who passed these statutes for us could easily take that money and run at any time. So I would advise anybody contemplating this kind of legislation to be sure to put a provision in there either limiting the funds or requiring that the funds be spent in a fixed period of time, so that no money can sit in there and mold or appeal to a legislator when he wants to balance the budget.

There is also, I think this is more of a policy matter than a legal matter, a need to try to spend money that you get from these land bank transactions, in the area you got it from, except for the school lands. School land monies are concerned with revenue generation, so you just do what you can with them. But if you're dealing with sovereign lands, or you're talking submerged lands or lake lands in this state, you would want to keep the money in the same general vicinity where you got it. It would not be a particularly good idea for us, for example, to take a lot of

money out of San Francisco Bay, which has a very dense population, and a very heavily used and diminishing beach resource, and put it down in Los Angeles. It wouldn't fly for very long before somebody got upset. So it would be advisable to keep that money in that particular geographic area.

In conclusion, I think that these statutes are very useful tools, I think they're something that can be very, very useful in making these transactions work. I don't think a statute should be exclusive, I think you should reserve all the options you can in the drafting of statutes so that you can make them go whichever way you want, whichever is the most beneficial for you at that particular time. I think you should be very, very careful, actually considerably more careful than we were when drafting our statutes. We have found out a few things since these statutes were drafted and we'll be putting some amendments in to broaden them in some areas and narrow them in others.

It's not necessarily a particularly useful tool in dealing with the federal government, it sometimes could be but generally isn't. This is largely because neither party has a lot of money floating around to use for these kinds of transactions, so it may or may not help in that particular instance.



**DARRELL LAUBER
LAND COMMISSIONER
ITASCA COUNTY, MINNESOTA**

Darrell Lauber spoke of the improvement he sees in the ability of the Forest Service and Cass County to cooperate in the exchange of lands. He offered examples of land suited for exchange.

In 27 years of dealing with the U.S. Forest Service, the experience has ranged from bad to good. Lately our dealings regarding land exchanges have been harmonious. In the early 1960's we had several three-way exchanges with the Forest Service, Itasca County, and private parties. In one instance, the private individual died just as the land exchange was being completed. It took over seven years to consummate. Other agencies had similar problems. In some of the early land exchanges, the frustrations were such that we were about ready to throw in the towel and forget about land exchanges as any kind of an option.

What turned things around? We had genuine commitment from top management on down. Both sides were 100 percent supportive of land exchange as a management vehicle and were therefore committed to make it work. The first thing we did was review the snags and pitfalls of previous exchanges. We then got together and did some planning and laid out the ground rules for the exchange. We set goals to be accomplished and set areas to be exchanged. We compiled lists and sent them out for preliminary review. These lists showed the lands we wanted and the areas we wanted to exchange. The Forest Service did the same. A final list was developed after an on-the-ground appraisal. We agreed on methods of appraising. We determined values to be assessed, and we set time tables for accomplishment.

I use the illustration of a pirate to emphasize a point. Neither party should be out to flimflam the other. In other words, we need to get over the "rabbit for a horse" syndrome, or "turn on the green light - the man wants a green suit." The ideal negotiator or appraiser on an exchange is not a pirate. By law, the county is required to appraise both its holdings and those of the other party. We try to be objective in both cases. In other words, give a fair appraisal.

When all this was accomplished between the county and the Forest Service, we had a mutual agreement instead of a fight, which was often the case in the past.

Last, but not least, the legal system. Attorneys are humble but lovable! How often have we had exchanges all wrapped up, only to be waylaid by some legal snafu? I suppose I am prejudiced when I think of all the effort in doing the field work and the computations just to have an exchange sit in

limbo due to some legal intricacy. I feel the legal system needs to work as hard to make it work as they do in ferreting out some missed legal procedure. We need the solution - not the problem.

This is a BLM forty totally surrounded by tax-forfeited lands (reference to visual aid). It is just logical to exchange this forty; it's like a lost little island probably never looked at until the exchange.

This is an example of another BLM forty that was involved in an exchange nestled in amongst a number of county parcels. I find it very hard to understand not having these lands exchanged for more manageable ones.

Here is an illustration of a case where we exchanged county land for federal land.

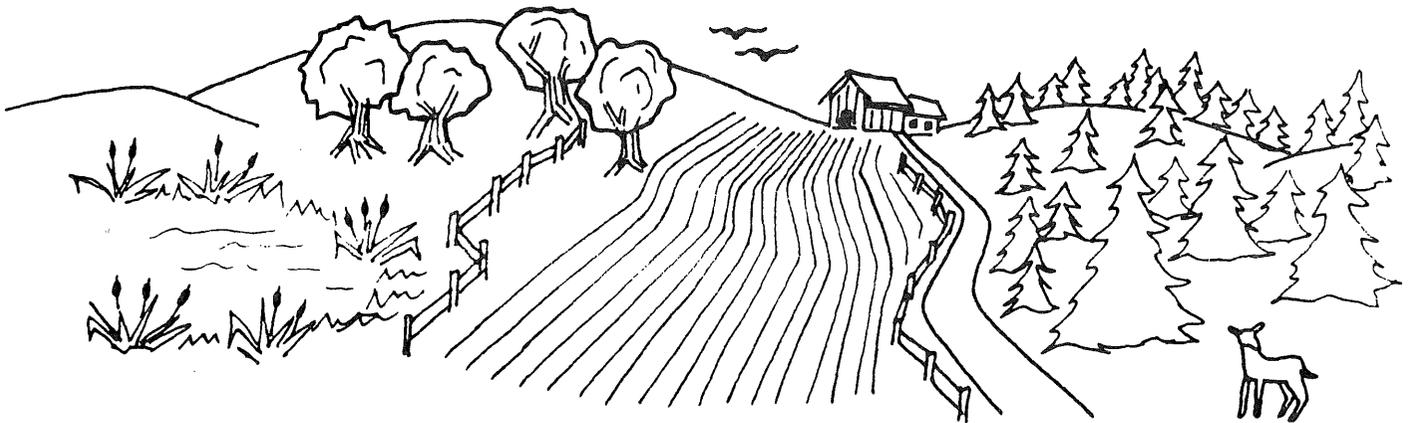
In this illustration we have some county parcels to be exchanged for federal land in another township. From a management standpoint, both agencies benefit.

One of the restrictions to exchanges is certain public sentiment. Some people feel (and say) that the federal government or the Forest Service already has too much land, and they are a little reluctant about giving up any county ownership.

Another issue can develop, as in the case of this last exchange. The land we are acquiring (the federal land) was on the east side of the county, and the land that they were acquiring was on the west side of the county. This fact caused the townships and school districts to be a little concerned. An example was Moose Park Township, where in 1986 the apportionment they received for our management of about 4,200 acres was \$370.83. The exchange would have reduced the apportionment to that school district by \$171.41. When you look at the sum of the benefits you have to take that into consideration. This township had 4,200 acres of county land. Many of the townships have only five or six forties that are involved. As a compromise, in order to alleviate township concerns, we look at exchanging and blocking ownerships within townships so that we can get all our ownerships in one unit, and the Forest Service can get their ownership in one unit. It will just make it a little more practical to manage.

In conclusion, I know you believe you understand what you think I said, but I am not sure you realize that what you heard is not what I meant.

Thank you.



**JAMES A. PFEIL, ATTORNEY
OFFICE OF GENERAL COUNSEL
UNITED STATES DEPARTMENT OF
AGRICULTURE
MILWAUKEE, WISCONSIN**

James Pfeil addressed federal land exchange from a legal standpoint. He offered information on the various statutory authorities, and provisions within them, that allow federal agencies to exchange lands.

The Legal Aspects of Land Exchange from the Federal Perspective

I am an attorney with the U.S. Department of Agriculture, Office of General Counsel out of Milwaukee, Wisconsin. I want to thank the Department of Natural Resources for inviting me and giving me the opportunity to speak to you. A great deal of my work involves national forests in Minnesota. The Chippewa and Superior National Forests seem to draw state-wide and nation-wide interest.

Our office in Milwaukee is a regional office of the Office of General Counsel of the Department of Agriculture. Most of the USDA lawyers are located in Washington, D.C., and the majority handle legal matters relating to farm and rural area programs. We, in Milwaukee, are assigned to advise fourteen national forests in the eastern region of the United States, including the eastern region office in Milwaukee. The Chippewa and Superior National Forests are in the eastern region. We also provide legal services to the Soil Conservation Service in six states, including Minnesota. If you are ever involved in a problem with the Soil Conservation Service, our office will probably provide the legal advice.

When you are considering a land exchange with a federal agency, you must remember that each agency follows different statutes and regulations. Of course, each agency also has its own lawyers to interpret and advise agency personnel on the application of the laws and regulations.

I know the three gentlemen with me on this panel. I think we have developed a very good relationship in resolving problems and processing exchanges with the state and counties. Of course, if you are dealing with two government agencies, each attorney is concerned that the land exchanges or purchases meet the requirements of the particular statutes and regulations applicable to the agency.

From the federal perspective, land exchanges are really an important management tool for all federal land management agencies. I am more familiar with the Forest Service because it is the agency we advise on a daily basis. Generally, many of the federal laws apply to all the federal agencies. In Minnesota, a large number of federal

agencies administer federal lands. These include the Bureau of Indian Affairs, Bureau of Land Management, Fish and Wildlife Service, Park Service, all in the Department of Interior, the Forest Service, Corps of Engineers, and the Department of Defense installations. I believe all federal agencies view land exchanges and land acquisitions from basically the same legal standpoints.

The basic authority for a federal agency to exchange land under its jurisdiction is the Property Clause of the U.S. Constitution. It says that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or property belonging to the United States. The key words are "dispose of". From that broad power to manage and control these lands, the federal government has the authority to exchange land. Acting under the Property Clause authority, Congress has, over the years, enacted numerous statutes applicable to each agency, setting forth the conditions under which federal agencies can acquire or exchange land. To further carry out this authority, each agency issues regulations and policies that further set forth procedures for acquiring and exchanging land. These regulations are found in the Code of Federal Regulations (CFR). The Forest Service and Park Service regulations are found in Title 36 of the CFR.

When we talk about federal land exchanges, there are really two classes of federal land to keep in mind. They are public domain land and acquired land. Public domain land should not be confused with just the term "public lands", e.g., lands in public or federal ownership. We consider public domain lands to be lands that were acquired by the United States by treaties with the Indians and treaties with foreign countries. Public domain lands have never been patented out of federal ownership. They have never been transferred to private parties or the states by law or patent. Acquired lands are federal lands that have been acquired by deed or condemnation. Most of the lands the Bureau of Land Management administers are public domain lands. On the other hand, Forest Service, Park Service, and Fish & Wildlife Service lands are generally mixed, especially in the Midwest. There are no public domain lands in the eastern states.

When national forests were established, the public domain lands within the proclamation

boundaries were reserved and withdrawn from entry. These lands could not be sold to private parties and were classified as national forest land. Over the years the Forest Service acquired additional lands by purchase, exchange or condemnation. Although you cannot really tell the difference between public domain and acquired land with the naked eye, the distinction is important for exchange purposes.

There are two primary statutory authorities pertaining to Forest Service land exchanges. The General Exchange Act (16 U.S.C. 485, 486) was enacted by Congress in 1922 and authorized the Secretary of Agriculture, when in the public interest and at his discretion, to exchange national forest public domain land for other land that is chiefly valuable for national forest purposes. It also authorized the Secretary of the Interior, after the Secretary of Agriculture decided to proceed with an exchange, to issue a federal patent for the national forest land. The statute also required that the lands be of equal value. This is the authority for exchanging national forest land with public domain status.

In 1911, Congress enacted the Weeks Forestry Act (16 U.S.C. 515, 516). Forestry students should be familiar with this law. It was the basis for establishing national forests in the eastern part of the United States. Western national forests were reserved from the public domain lands. Although national forests in the Midwest were initially composed of primarily public domain land, the Weeks Act enabled the Forest Service to expand federal ownership by acquiring additional land. There was no exchange authority in the 1911 act. Congress amended the act in 1925 to authorize the Secretary to enter into these exchanges when the public interest was benefited and at his discretion. Lands must be chiefly valuable for the purposes set forth in the Weeks Act, which authorized the acquisition of lands that would be necessary for the regulation of the flow of navigable streams and for the production of timber.

The transfer of acquired lands is by quitclaim deed, executed by a Forest Service official. That authority has been delegated down to regional foresters, and eventually limited authority will be delegated down to forest supervisors. One question that is asked frequently is why the United

States will only give a quitclaim deed when we require warranty deeds from private parties. Since no official of the United States has authority to warrant title to federal lands, the federal land deed will always be a quitclaim deed.

If you are exchanging land with federal agency for public domain land, you will receive a patent issued by the Bureau of Land Management. If you are exchanging for acquired lands, you will receive a quitclaim deed from the Forest Service.

For administrative and legal reasons, federal agencies cannot combine public domain and federally-acquired land into one exchange case. I have discussed the Forest Service exchange authorities. Other agencies have their own exchange authorities. One law that affects both the Forest Service and agencies in the Department of the Interior is the 1976 Act referred to as the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701, et seq. This is referred to as the BLM Organic Act. It is a lengthy statute that sets forth direction to the Bureau of Land Management for managing the land under its jurisdiction. Other sections of the law, such as the right-of-way and land exchange sections, also apply to other agencies, including the Forest Service. Section 206 is the land exchange provision (43 U.S.C. 1716) that supplements the authorities, conditions, and restrictions in the Weeks and General Exchange Acts. It provides additional conditions applicable to the Forest Service for land exchanges. In both the Weeks and General Exchange Acts, the value of the land has to be equal. FLPMA expanded the definition of the public interest that the agencies must consider before entering into an exchange. The act states that when considering public interest the Secretary shall give full consideration to better federal land management and the needs of state and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. The Secretary concerned must find that the exchange will not result in any decrease in public values or the ability to meet the agency's management objectives. The act requires agencies to look at the consequences of the transfer of public land out of federal ownership.

Another provision of the exchange process in FLPMA that is important to appraisers, land

managers and exchange proponents is the equalized value provision. Sometimes it is difficult to find lands of equal value. FLPMA changes that requirement by stating that the lands shall be equal, but if they are not equal, the value shall be equalized by the payment of money to the grantor or to the Secretary concerned, as long as the payment does not exceed 25 percent of the total value of the land transferred out of federal ownership. So we now have this 25 percent rule that applies to Forest Service land exchanges. Money can pass either way in order to equalize the exchange. The law, however, cautions that federal agencies should try to reduce the amount of equalization to as small an amount as possible. FLPMA also authorized federal agencies to exchange interests in land, an authority that did not exist in the Weeks and General Exchange Act.

I would like to mention one other item about the Weeks and General Exchange Acts. In addition to the land for land exchange authority, the acts also provided authority to acquire land for national forest timber. Thus, the Forest Service has the authority to exchange national forest timber for land. There has not been an active program of land for timber exchanges in Minnesota. In some states, land for timber exchanges are completed frequently. It is called a tripartite exchange because the timber is not always transferred to the land owner. The timber is sold under a timber sale contract and the receipts are paid to the land owner in exchange for the land.

The Small Tracts Act, enacted in 1983, 16 U.S.C. 521c-521i, is another authority that gives limited exchange authority to the Forest Service. The act only applies to national forest land. Its purpose is to provide a solution for the many innocent trespass cases that exist in the national forest. It authorizes the Forest Service to sell, exchange, or interchange by quitclaim deed, certain lands in the national forest when the requirements of the act have been met. To qualify, the parcels of federal land must be 10 acres or less on which improvements are encroaching. The occupancy or use must be under claim or color of title by persons to whom no advance notice of the encroachment was given and who in good faith relied on an erroneous survey, title search, or other land description. If all these requirements are met, the Forest Service is authorized to sell or exchange it

for other land. An interchange is the same thing as an exchange except it refers to a smaller parcel of land.

The Small Tracts Act is available to resolve innocent boundary trespasses and contains exchange authority. The law requires the applicants for small tract sales or exchanges to pay the expenses of a survey and whatever other work is necessary to complete the exchange. The Secretary has authority to waive this requirement when in the public interest. Regulations governing Small Tract Act cases are in 36 CFR 254.30.

Bill Hink from the Chippewa National Forest is going to discuss what the Forest Service considers in land exchanges. I will discuss some of the legal requirements we consider when reviewing exchange proposals and the title evidence. The lands in an exchange have to be in the same state. The lands to be acquired must be suitable for national forest purposes and be located within a national forest.

There are certain outstanding rights and conditions that are acceptable as in any private transaction. The Weeks and General Exchange Acts were amended after it was discussed that privately-owned lands in the Midwest and eastern part of the United States are subject to outstanding rights and reservations. So Congress amended the acts to state that lands could be acquired subject to certain outstanding rights. Road rights-of-way, mineral rights, and other types of easements are acceptable outstanding rights. The only problem we have is if there are repurchase rights connected with outstanding mineral rights. Repurchase rights are not usually waivable. When they appear in the chain of title we have to do some curative work.

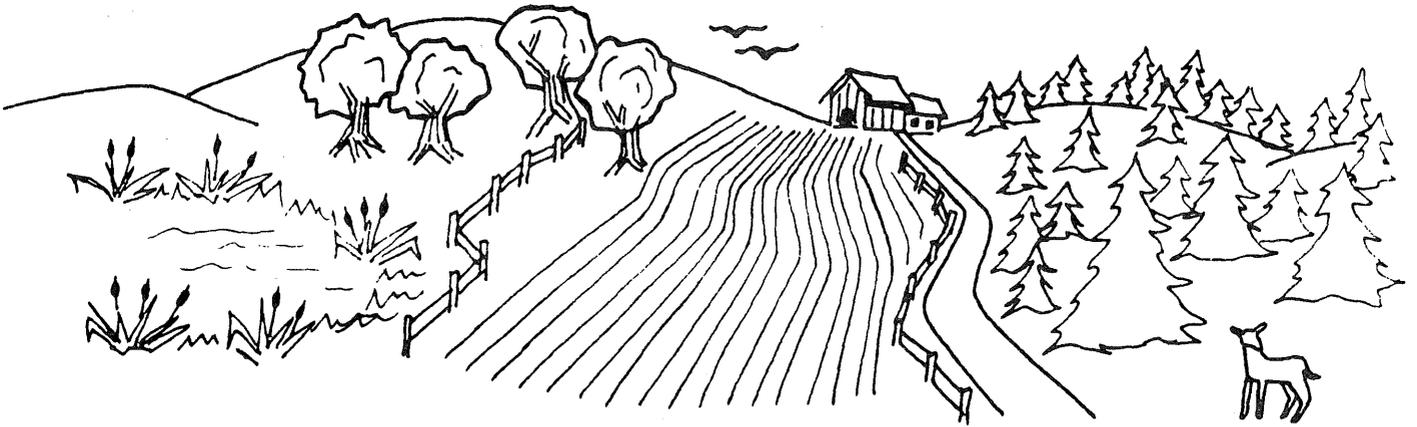
Grantors or parties who convey land can reserve certain rights in the deeds to the United States. These rights, however, must be subject to the secretary's rules and regulations applicable to the type of reservation. A road right-of-way easement, mineral rights, and timber rights are examples of rights that can be reserved. A right of occupancy and use of a dwelling situated on the property can also be reserved. Generally, all reserved rights must be subject to the appropriate regulations. The only exception, and this is probably important to the state people here, is mineral rights in exchanges with the state or state agencies or counties. In that situation, Forest Ser-

vice regulations provide that the Chief, Forest Service can waive the application of the secretary's regulations to such mineral reservations if he determines state laws and regulations are adequate to protect the interests of the United States if the mineral rights are ever exercised. This has been done for several state and county exchanges in Minnesota.

Federal law requires that before any agency acquires land, the title must be approved by the Attorney General. The Attorney General has delegated this authority to General Counsels for Solicitors for the agencies. They, in turn, have

delegated title approval authority to regional offices. We are involved in every Forest Service exchange case at some point. Generally, we examine the title evidence, draft deeds, and issue title opinions. For the last 20 years, we have relied primarily on title insurance. Although abstracts of title are acceptable, we find we can process cases faster if title insurance is obtained. In Minnesota, we must rely on abstracts in certain areas where title insurance companies refuse to insure title because of possible Indian claims.

Thank you very much.



**JANE PROHASKA
REGIONAL ATTORNEY
THE NATURE CONSERVANCY**

Jane Prohaska offered background information on The Nature Conservancy - its structure, philosophy and mission. She also explained the flexible means and methods the Conservancy uses to preserve ecologically important lands.

I'd like to talk a little bit about what The Nature Conservancy is for those of you who might not be familiar with it. I'll discuss why the Conservancy or other private organizations might be able to help state, local and federal governments with some of their land acquisition programs or with getting rid of surplus lands. I'll run through a series of kinds of exchanges that I have been involved with in my five years with The Nature Conservancy and then summarize a few things to keep in mind when working with a private organization like the Conservancy.

There are many private organizations in the country that do conservation work. The Nature Conservancy is just one of them. Lance (Kiley) mentioned several that operate in California. I don't believe there are too many that are operating in Minnesota other than The Nature Conservancy. I know the Trust for Public Lands does a little work here, as does the American Farm Land Trust. Smaller conservancies are much more popular on the East and West Coasts where population pressures are much greater than in the Midwest.

The Conservancy itself is what I want to talk about and I think some of the things I'll say will be applicable to other private organizations. I hope your experiences with us will always be good, and I won't say anything bad about our competitors either. The Conservancy is a national non-profit organization. We do have members. We're run by a national board of directors, out of Washington, D.C. We organize ourselves by state. There are state programs of some sort or another in almost every state in the country. We actually have state offices in 26 of the states. In the states that don't have offices, there is some sort of program operating. For example, North and South Dakota, Nebraska, and Kansas have one program or one staff person, that works out of our Minneapolis regional office, supervising or looking after the activities in all those states. These states are organized into four regions for administrative purposes. The regional office is located in Minneapolis and oversees 12 states including: North and South Dakota, Nebraska, Kansas, Minnesota, Wisconsin, Michigan, Ohio, Illinois, Indiana, Missouri, and Iowa.

I've done several land exchanges in the 12 state region, but none in Minnesota. I'm sure it's not intentional. I've been speaking with some folks

from DNR and the Fish and Wildlife Service during the break - we have a couple of proposed exchanges pending. Maybe we'll be able to bring those off in the next year or so, but we have successfully done exchanges elsewhere. I mentioned the way we were organized. I also want to mention what our philosophy and mission are; what we do. The Nature Conservancy is interested in the preservation of biological diversity. That's a nice haughty term, and as a lawyer rather than a scientist, I'll leave it to the folks in our office to figure out what it means. We work with a lot of endangered species, natural areas, threatened communities and lands that are of ecological importance. They are not necessarily recreational, and not necessarily wildlife lands. But if they are ecologically important lands because they have species or community types that we are interested in protecting they may be recreational or wildlife lands.

The reason we've focused very narrowly on what we do is that we've found it's the best way to keep our organization on track. There are other organizations that work in other areas, and state and local governments sometimes work in those areas more extensively than in natural areas. So we've found it useful to focus our activities in the natural area, preservation arena. As a result, our program may differ from those of the DNR, Fish and Wildlife Service, Forest Service, or local governments. Our mission is a little bit different, but we have found that there is overlap in some areas and it's in that area of overlap where we've been able to work effectively with government agencies.

Over the Conservancy's 35 year history, we've been able to protect some 2.6 million acres of land. In doing that, we've accomplished over 4,100 separate projects ("project" in our terminology means one land acquisition or one conservation easement, one unit that we've protected through one legal acquisition). We are managing under Nature Conservancy ownership about 900 preserves nationally, which amounts to some 200,000 acres. The rest of the land we've helped protect has gone on to some other management agency's ownership, in most cases a government agency of some sort. In Minnesota, we have 70 preserves and manage about 50,000 acres. Last year, the Minnesota program completed 26 ac-

quisitions, out of about 360 projects nationally, which made it the state with the highest number of acquisitions in the Conservancy's program. These figures show you the scope of what we do. It's certainly not on the level of what state governments often manage, but we are a substantial organization. And because we have some substantial resources we are able to do some things creatively that some of the smaller conservation organizations or local conservancies are not able to do.

We have a broad funding base. We are primarily funded by private contributions from individuals, foundations and some corporate contributions, but not from direct government grants or subsidies. But we are pretty well funded. Because of that we can be creative about the way we go about some of our work. We started working with government agencies when there was a large federal Land and Water Conservation Fund, which some of you may be familiar with from several years ago. The federal government was funding a lot of projects - natural area, recreational, and wildlife projects - both directly itself by appropriating money to federal agencies and indirectly by giving grants to state and local governments to fund these projects.

The Conservancy got actively involved in that program because we had the ability to preacquire a property that a government agency was interested in. We could move a little more quickly; we had a little more flexibility in being able to negotiate with landowners than government agencies did. We could move in, acquire land, hold it and then sell it when the state, federal or local government was ready to acquire it. Over the years, however, most of that federal money has dried up. As I'm sure you know, there's very little Land and Water Conservation Fund money left. There's a little bit but nothing like there used to be. Instead, what we found in the Midwest is a growing replacement of those funds by state governments.

Minnesota enacted the RIM (Reinvest in Minnesota) program last year, which I wish I could say I was personally involved in. I know some people at the Conservancy did a lot of work on it with a lot of other people, environmental groups, conservation groups and state folks. It sets up a program to channel state money into the kinds of natural area and wildlife acquisition that's missing

with the federal funds gone. Indiana and Wisconsin have similar programs. Lots of states are moving in to fill that void and get some funding where the federal government is no longer providing money.

We are still actively involved with these preacquisitions in one form or another attempting to get natural resource areas into government ownership.

We've also found, as we've worked with the Heritage programs in Minnesota and other states, that those groups will identify for us where the important things are. We've found that a lot of natural areas, a lot of endangered species, a lot of smaller areas within publicly owned lands are very important ecologically, but are not necessarily managed for their ecological value. For example, recently in Michigan we discovered a very important fen that has some state endangered plants located on it as well as some other important characteristics. A city had acquired the fen in buying a farm for an industrial park. The farmer would sell all or nothing. The city wanted to use most of the land for an industrial park, but had no desire to build on the fen. The city would like to protect the fen but doesn't have the necessary resources. The Conservancy is very interested in protecting that fen which is now in city ownership. What we're now trying to do is acquire some additional land that the city has its eye on as an addition to this industrial park and then exchange that land for the fen. The fen would end up in our ownership and the city would get an addition it needs without any additional cost.

Similarly, we've found some land owned by a local school district that has valuable prairie land on it. While one biology teacher in the district knew about the prairie and took his class there every year, no one else was really aware of it. We've been able to work with that school district to help manage that land. In that case, the land is still in the school district's ownership but we have entered into a management agreement where we provide some of the expertise and a little bit of the money to get out there and burn the prairie when its needed and do some posting and some other work like that.

So we've found the same sort of natural area we've discovered in private ownership on government land and we're looking at ways we can work

with government agencies to protect those natural areas.

We have one other type of real estate program which is not at all related to the natural area kind of work we do. That program is what we call our trade lands program. It's really a fundraising mechanism. We have found that there are some individuals and a lot of corporations that have development property that is no longer of value to them. Playing around with the tax rules they can get a pretty good tax write-off if they donate that trade land to a nonprofit corporation. We hope to be that nonprofit and we've made a big push in acquiring some of those trade lands. We then turn around and sell the trade land on the open market and use the money to go and buy more natural areas.

We have also been able to use some of those trade land parcels in interesting exchanges for natural areas. It's been an interesting part of our program that we've been able to expand because we've gained some real estate skills while engaging in natural area acquisition. Skills that some other nonprofits don't have. We've had a little bit of an advantage in that area by getting ourselves involved in some interesting corporate trade lands. They've ranged everywhere from old gas station sites to undeveloped lots on a failed subdivisions - some of which have little market value, some which have been extremely valuable. Peabody Coal Company has given the Conservancy extensive land holdings in Illinois after they had rehabilitated those lands subsequent to mining them for coal. They have turned the land back into good agricultural lands but were not interested in having to do the marketing that it would take to sell that land. Instead, Peabody Coal turned the land over as a corporate gift to the Conservancy.

That's the way we operate. One of the reasons we've been so successful working with government agencies is that we have a little more flexibility in the way we can work. Our procedures are not quite as stringent as some government processes. Even though we do have set procedures we do have to follow, they don't tend to be as cumbersome (as I'm sure you realize working through your own procedures of trying to acquire or exchange a piece of land).

For example, we have a little more flexibility in marketing. If we pick up a piece of surplus proper-

ty, we have the ability to sell the property over time on a land contract or contract for deed or with a mortgage, and take our payments over time rather than insisting on cash up front. We have the ability to be creative in putting marketing packages together. We also have the ability to be flexible with the value of land. How we look at what the value of property is may be a bit broader than the perspective government has.

I should say though, that as a nonprofit, we are also constrained by the "value for value" approach to things. All nonprofits have a special status in that we are exempt from taxation. The proceeds or the money we receive through fundraising, we don't have to pay tax on. But as a result, we have to be very careful that all of our activities are geared at a charitable or public purpose level - which is the protection of natural areas. We cannot give away a Conservancy asset to a private individual. If we have land worth \$10,000 we can't simply give that away for \$5,000 because it sounds like a nice thing to do. We need to be careful that we give "value for value". But we are not under the same kinds of statutory or regulatory constraints most public agencies are when it comes to defining what value is. We can be a little more creative in trying to come up with that figure. We all know that fair market value is a figment of someone's imagination anyway, and until you actually have someone who wants to buy something and someone who is willing to sell at an agreed upon price you don't have anything but an approximation of what fair market value would be. Appraisals are just one way to get there and we've been able to be a little more flexible sometimes in getting there and working out deals that haven't been worked out otherwise.

One of the other reasons that we can work a little more quickly is that we are not dependent upon appropriations. We are dependent upon fundraising, but what we've done over our 35 year history is to have engaged in some major capital campaigns to build up what the Conservancy calls its land preservation fund. It is a 43 million dollar revolving fund, managed by investment managers and accountants at our national office. The national office then makes loans to state groups. If Minnesota wants to initiate a project and hasn't raised the money for it yet, Minnesota can take a loan from the national office at an inter-

est rate a little bit below prime rate (but we pay interest back to the national office). When Minnesota has raised money from local sources or sold the property to a state and local government, they would pay back the loan. But that pool of money is there and its large enough to allow us to act quickly. It gives us an opportunity to move when the situation or opportunity arises.

There is a lot of call on that \$43 million; as I've said, we've got programs in 50 states. The projects we're doing range from 3 and 4 million dollar projects to 2 and 3 thousand dollar projects and everything in between. The national office keeps a pretty good watch on all of that. If too much of the revolving fund is loaned out and tied up in land that is being held for resale to somebody else, there's not capital there to invest in new projects. We try to keep a handle on the fund so that doesn't happen too often. It hasn't happened in recent years, but its something we're always aware of.

It's those kinds of flexibilities that allow us to exchange a little more easily than you all can. There are three kinds of exchanges we do that I want to mention. They kind of fall into three categories. The most prevalent is an exchange with private individuals and those are almost always "tax-motivated," as lawyers are prone to say. The private individual owns a natural area that we're interested in but doesn't want to sell. He wants instead to get property of some other kind, such as farm or forest land. We acquire that other farm or forest land and then exchange with the owner and end up with the natural area.

That's the most common thing we do although it is not as prevalent now as it used to be. We usually do it in one of two situations in the Midwest. One involves farming situations where the natural area is part of an operating farm. We have to have "like-kind" property to do such an exchange for tax purposes, so we have to come up with similar farm land. Acquiring forest land is another instance in which exchanges have been useful in the Midwest. Because some forest land is important to the Conservancy for conservation purposes and some forest land is not as important to us, we've been able to distinguish between the two and get what we're interested in having by giving up the other.

However, with falling land prices and a weak agricultural economy these days, land exchanges just aren't what people want. They need to get what cash they can out of their property and be on with it. So land exchanges have not been as popular as they used to be.

The other kinds of exchanges we engage in are directly with government agencies. Land exchange between The Nature Conservancy and a government agency fall into two categories. One is where the government agency already owns the natural area and the Conservancy wants it. The other is where the government agency wants the natural area but doesn't have the cash to pay for it, so they pursue an exchange to acquire that natural area. In the first category, is the situation I just mentioned, the Michigan example, where the city owns the fen and we'd like to get that fen. I think that will work out quite successfully. We can help the city out of that situation and end up with what we'd like, which is that natural area.

We've done a similar sort of exchange in Michigan where we were assembling a large preserve along the shores of Lake Huron - marshes, uplands and swamplands. The DNR had an inholding in that preserve. We were interested in being the owner and manager of that entire preserve and were interested in acquiring DNR's piece. At the same time, we had been given as a gift some tracts that were inholdings in DNR managed state forests. They were nice natural areas but more suitable for wildlife management than for the kind of management the Conservancy does. So we switched. The exchange was "value for value." By playing around with acreage here and there on the lands we got as a gift, we could swap with Michigan for the wetland acquisition to our preserve. It worked very nicely. It was not quick; it took over a year to complete. But as I understand it, with most exchanges a year is on the short, not the long side of things. We were able to make that exchange work because someone had been generous enough to give us a gift of land. While I know states and cities can accept gifts and donors can still get tax deductions, for some reason donors don't seem to want to do that. They'd rather give to a private agency and let them make those kinds of switches.

The other kind of exchange, where the government agency has identified a tract of land it's inter-

ested in, but doesn't have the dollars to acquire it, has been accomplished a couple of times since I've been with the Conservancy. In those cases, we've usually had to go out and acquire land the agency is interested in and then, do an exchange where we give the land to the government agency and the agency gives us land they have declared as surplus property. Sometimes that "surplus property" has natural area characteristics, sometimes it's just a building in Chicago.

For example, probably the most complicated of these exchanges I have seen was a situation involving the Shawnee Forest in southern Illinois. This particular transaction took one staff person from The Nature Conservancy an entire year to complete and involved numerous state and federal agencies. But it is an interesting case because it shows that when people really want something to work, we can step in and help make it work.

This situation started with the U.S. Forest Service owning an inholding in the Shawnee Forest called the Dixon Springs Agricultural Station. This was basically an experimental farm leased and run by the University of Illinois. The University of Illinois was interested in actually acquiring title to this piece. Of course, the federal government couldn't just give it up. But they were afraid if they didn't cooperate (and in this case there was some senatorial pressure from Congress) they might legislatively be required to give it up to the state and they didn't want that. That was an impetus that helped this project along. The state of Illinois was interested in acquiring this piece for the university. The university had no money to buy it and in fact had nothing in their appropriations for this acquisition. The state itself, which is a slightly separate entity from the university had no cash but had some surplus property valued about the same as Dixon Springs (about million dollars). The surplus property included an office building in downtown Chicago and some farmland. What really made all this work is that the office building had been appraised at a price which we felt was a little low, so we could do this whole deal and cover our own costs through the sale of the building.

Here's how it worked. We ended up entering into an agreement with the state that stipulated we would take that office building, sell it for cash, and with that cash buy lands that the Forest Ser-

vice was interested in acquiring as additions to the Shawnee Forest. In turn, that land would be exchanged for Dixon Springs which we would convey back to the state. In the meantime we set up escrow arrangements. We had legal documents that filled lots of brief cases, balanced lots of appraisals and values and all of that. It was interesting because it was a way to make this all work when it would have never worked otherwise. And on top of that, there were some good additions to the Shawnee National Forest that included some very important natural areas. The Conservancy was pleased about getting those lands, which had been in private ownership, into public ownership and in getting them protected. Dixon Springs went to the University of Illinois who wanted it, and an office building that wasn't very effectively managed was sold in Chicago and taken off the state's hands. It worked well for everyone. That's an extreme example of how complicated things can get.

We've done some similar kinds of exchanges with the Bureau of Land Management (BLM) out in the West. There, landowner A has a natural area. He doesn't want to sell it but would like some lands owned by BLM. We'd like that natural area so we go to BLM. BLM says they can't sell the area, but if we can acquire an addition that BLM does want, they'll exchange. So we go out and acquire that addition for BLM, do the exchange, get the piece the landowner wants, then do the exchange again with the landowner. Everybody ends up happy. Again, that's a simplified way of looking at the whole process and it takes a lot of time to actually work it out.

One other thing I'd like to mention about one of the ways we've helped with government acquisitions is not through an exchange with a government agency, but, as I've mentioned before, an exchange with a private landowner for land we've then sold to the government. There have been a couple of interesting cases because we can work an exchange a little more quickly. Its worked nicely in a situation in Indiana; for example, where the landowner wants to sell all of his land but only about half of it is natural area. The state is not interested in buying the excess land; they only want the natural area. In addition, there is some adjacent land which is natural area, and is in another ownership, and that person isn't interested in sell-

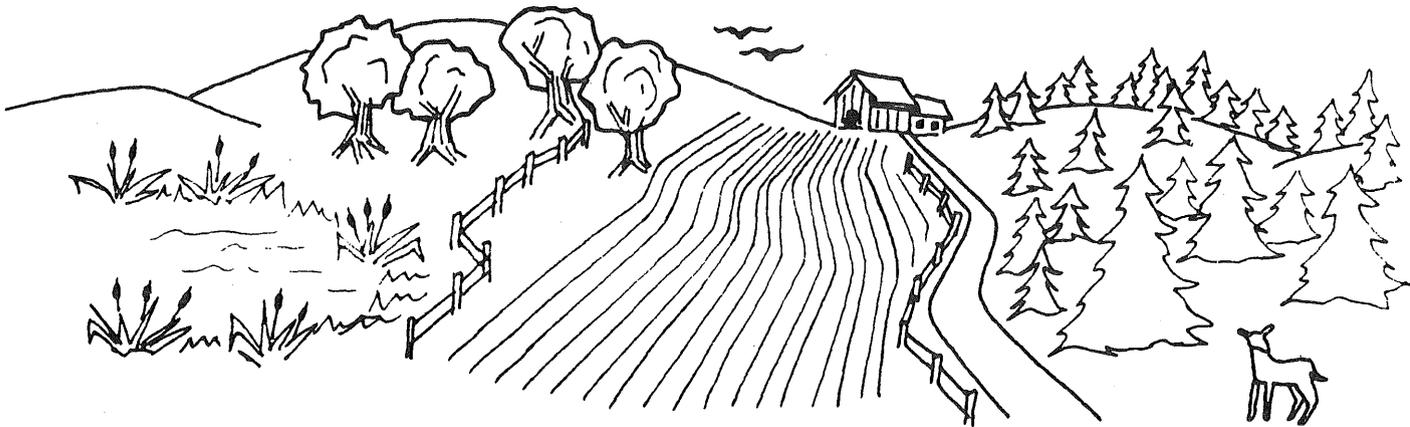
ing but would do an exchange. So we went in and bought the first tract. We saved that natural area and then exchanged the excess land with the neighbor for his natural area. We essentially assembled the preserve, created nice preserve boundaries that protected the natural area, and then were able to sell the whole piece to the state.

In a less complicated way, we've simply been able to buy land that includes "excess" land, sell off those excess pieces on our own, and if we've made enough money from those sales, we've been able to give the natural area to the state as a gift.

The Conservancy doesn't want to take land that we end up not being able to market, so we do look into whether or not we are going to be able to sell that property. We do a market analysis of sorts. We're also interested in projects which will

protect natural areas in one way or another. We wouldn't have done the Shawnee Forest/Dixon Springs exchange except that we ended up protecting some natural areas in the long run and developed some good working relationships with the folks in the Shawnee National Forest. So that's what our agenda is, and sometimes state agendas are a little different.

I think we can provide a way to help make these kinds of transactions work. It's clearly not the only way and you've spent the rest of your conference talking about other ways. I only hope if you have an idea that you might think the Conservancy could work on with you, that you give us a call and see if there is something we can do to make things move.



**JAMES W. SANDERS
ASSISTANT SECRETARY AND COUNSEL
OGLEBAY NORTON COMPANY
CLEVELAND, OHIO**

James Sanders spoke from a corporate lawyer's perspective. Discussion centered on his experiences with federal, state and county agencies during the land exchange process.

INTRODUCTION

I am James W. Sanders, Assistant Secretary and Counsel of Oglebay Norton Company, Cleveland, Ohio. Oglebay Norton Company owns part of and manages Eveleth Mines. Eveleth Mines is a taconite mine and processing facility in St. Louis County, Eveleth, Minnesota. The plant and mine consist of about 11,000 acres. I am responsible for the land acquisition and management process.

I had hoped to sit in the back row and learn something. However, as most of you have suspected a lawyer can speak forever on any given topic. When asked to substitute for Mr. Chelseth my only question was, "How long do you expect me to speak?" I believe it is important to hear from the other side of the street. I would like to share with you our experiences. We have been involved with all types of land exchanges.

This morning Chuck Andreson mentioned a land exchange that took 12 years. That was mine.

STATE EXCHANGE:

Corporate Problems:

1. Change of plans.
2. Need to develop long term plans.
3. No experience in exchanges.
4. Frustrations in not realizing the likelihood of time delays.
5. No lands in a "trade" inventory, need to acquire.

State Problems:

1. Change of rules, i.e., E.I.S. needed.
2. Change of personnel - both sides, actually.
3. Accommodation within the DNR necessary to satisfy fish and wildlife and mineral divisions i.e., moose pasture versus mineral lands.
4. Local concern best to trade for lands as close as possible, satisfying local concern tax base.

Other Problems:

Serious problem of one person objecting to exchange for personal gain, in our case this was handled well by the DNR.

Positive Aspect:

Good cooperation with state, committed people wanting to get it done. Also, the appraisals on both sides were fair - both for the lands we wanted and the lands we traded.

Tax Sale

It was mentioned this morning that needed lands may sometimes be acquired by purchase at tax sale. We had the experience of needing some 120 acres of buffer land. Logistics indicated that this would be most easily acquired by means of tax sale. Corporately this was unsatisfactory. It added an unnecessary element of risk to the land acquisition. There is always the fear that someone else would bid on needed lands. And in fact, one fellow did bid against us on one of the smaller parcels.

COUNTY EXCHANGE:

We have also been involved in a Class B land exchange with St. Louis County. This exchange moved fast but did present the problem of finding lands the county wanted. It did offer the county, in times of tight budget, the chance to acquire desired lands.

FEDERAL EXCHANGE:

I do not believe the option of third party land exchanges has been mentioned here. We are currently involved with the feds in a third party exchange involving some 2,200 acres in the Gunflint area. Third party exchanges offer a good technique for stretching tight budgets.

CONCLUSION

In order to insure that I covered the topic I will answer the questions continued on the outline (read agenda outline).

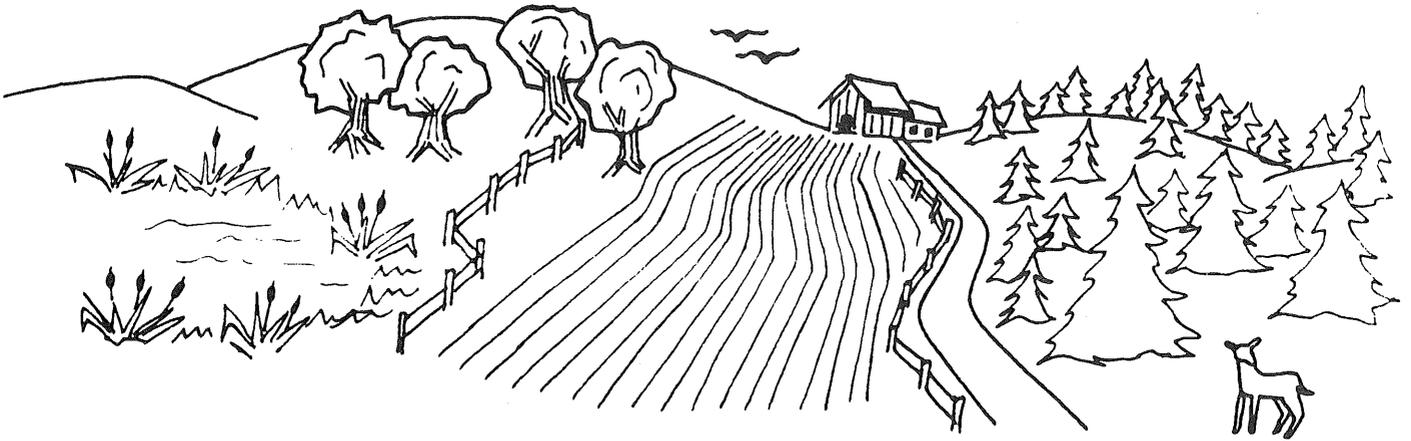
1. Corporate objectives are usually specific, i.e. we needed that specific parcel.
2. Further, as we all know, mining in Minnesota is in a changing climate. We have seen the disposal of lands by USX and I believe that the future will offer opportunities to place quality lands in public ownership.
3. You have heard my experiences.
4. Advice: The private sector experiences a sense of frustration due to the time delays involved in accomplishing a land exchange. There

is a need to better educate the private industry. Get good help - lawyers always advise hiring lawyers. Do the paper work right. It is imperative in order not to have delays to buy lands which have good title, preferably registered lands. This

will save considerable delay. Frustrating - yes, but it is understandable.

We appreciate all the help the DNR and Forest Service has given us.

Thank you.



**RICHARD W. SWANSON
COOK COUNTY ATTORNEY
COOK COUNTY, MINNESOTA**

The land exchange process from the county's perspective is addressed by Richard Swanson. He explains the various ways counties deal with classed lands and the limitations they work under. A step by step explanation of the exchange process is included.

INTRODUCTION

Cook County is in the far northeastern corner of Minnesota. We have a small number of people and a lot of land. The population of Cook County is only about 4,300 people, but we have lots of public land in the county. It has been reported that we have 94 percent of our county in public ownership. The federal government is a large holder of land in the Superior National Forest, Boundary Waters Canoe Area and so on. The state has a couple of state forests and a lot of timber land. The county also has a fair amount of tax-forfeited land.

There may be other county attorneys who specialize in land exchange. However, I'm a one man show in Cook County, and I perform many functions. I'm sure we could go to St. Louis County, for example, and talk to Mike Dean, who has dealt more intimately with land exchanges than I have. However, because of the large public land holdings, we do have quite a bit of exchange in Cook County. We work with both the Forest Service and the DNR and also of course, private parties.

I suspect the real reason I was invited here is that someone remembered that Cook County probably holds the record for the longest exchange in the history of the state of Minnesota. At breakfast this morning, Chuck Andreson was telling me that he was involved in a terribly long exchange that took 12 years. I just snickered at that projection because ours was double that and more. When I became county attorney in 1974, there was an exchange in process. It was a large exchange in the Boundary Waters Canoe Area with the Forest Service, where we had a lot of tax-forfeited land and they were anxious to consolidate their ownership. This exchange was turned over to me by the previous county attorney. After I reviewed everything that had to be done, I saw this exchange sitting there. I said, "Hey, how about this?" He said, "Oh, that's all right, I'll take care of it. I'll get the thing all set for you so you can pick it up." Unfortunately, we had a lot of title problems on a fair amount of parcels we were offering to the Forest Service. They didn't want the parcels because the serious title problems required quiet title action.

When I looked into the file, I found that the exchange was initiated in 1955 and the titles finally cleared in 1975, that's 20 years. We exchanged the deeds in 1983, so we had a total of 28 years on this particular exchange.

It's really amusing to go through the old file and see names of people from the DNR or the Forest Service, and also county commissioners, who are long since deceased, and people who have retired years ago and probably moved to South America. They were making out appraisals that had to be redone several times because the land values changed so much. You can find many optimistic statements indicating that the exchange was almost done, but about 20 years later we were still completing it.

I think this is an unusual situation. You don't run into delays quite that long very often. But I assume that's why they picked me to come up here. They figured that if I got out of that one, I must have something to say about exchanges.

PERSPECTIVE OF THE COUNTY

Actually, I think it is good to get the perspective of the county. I don't know how many of you are representing counties, I know a lot of you are DNR personnel. I think it is good for you to have an idea of who we are out there, what our perspective in these exchanges is, and what goes on at our end.

PARTIES TO COUNTY EXCHANGES

I want to quickly go through the involvement of a county. Our role occurs as Carl pointed out, in Class B land exchanges, and also to an extent in Class C exchanges. Under the type of exchanges we're talking about, our exchange partners are either the federal government or private parties. Those are the only parties we can do land exchanges with under the statutes and the constitution.

LAND AVAILABLE FOR EXCHANGE

It's important to realize what is not being covered here. There are many ways a county can deal with Class B land, which, again, is tax-forfeited land. For example, we can sell it at auction. We can also exchange it. There are also other types of land we could "exchange". We own land in fee title. When we exchange land in fee title, we don't go through the Land Exchange Board.

I'm not going to talk about that, but just be aware that there are other ways we deal with land and "exchange" it, besides using technical exchanges. For example, there are transfers of tax-forfeited land between the county and government agencies besides the United States. That's technically not a land exchange.

Class B land is tax-forfeited land on which past taxes have not been paid. After the proper procedures were followed through the county auditor's office and the Department of Revenue, the land was forfeited for nonpayment of taxes. The property then becomes held by the state of Minnesota in trust for all the taxing districts who are waiting with their hands out to get the back taxes.

So the land is being held in trust, by the state, for those taxing districts, but it is administered by the county. It is not administered by the state of Minnesota. The state has delegated to us the power to control what we do with the land and it's available to us, the county, for trade. All the other taxing districts have their finger in the pie: the schools, the cities, the towns, and so on, but they don't have the county's control. We are the shepherds of this tax-forfeited land. We're supposed to classify it; we're supposed to appraise it; we're supposed to decide whether to sell or exchange it; or decide what to do with it under the section of the statute dealing with tax-forfeited land.

LIMITATIONS

We get involved in exchanging Class C (lakeshore) land only with the United States. I've never been involved in an exchange with a private party involving lakeshore land. We can trade land with the federal government, even though it's lakeshore, but we have to reserve the right to public access to that lake. So that's an appraisal issue that may or may not affect the value of the land depending on the circumstances involved. For example, in the BWCA we would not be likely to reserve or place much value on public access rights, since public access use is the reason the Forest Service is acquiring the land.

There is a further limitation in the statute as to what land we can exchange with a private party. The land we exchange; Class B land, has to be classified for sale. Classification for sale is, again, accomplished under the tax-forfeited land proce-

dures. The point is: being tax-forfeited doesn't necessarily mean it's available for exchange. You have to look to the tax-forfeited land proceedings for statutes to decide whether the land can be classified for sale.

Also, the statute says that land can't be in any zone or district that's restricted against use for which the land may be suitable. That's a catchall phrase and I haven't run across a situation where we've been rejected for exchange because the land is restricted against use for which the land is suited. I really don't know what the phrase means, but it is a limitation in the statute that may prohibit us from using that type of land for an exchange with a private party.

THE EXCHANGE PROCESS

Assuming we have the right lands and the right parties, we can become involved in the exchange. The role of the county attorney is to supervise the entire process. The officials you are going to be working with depend on the structure in your county. Most of the time, the county is large enough to have a land commissioner. Most of the counties with large amounts of tax-forfeited land or county-managed lands have land commissioners. The land commissioners probably know a lot more about the exchange process than most county attorneys do.

POLICY DECISIONS

Initially, the county attorney ought to be involved in overseeing the process and making sure that the statute is followed and that there are no snags along the way. The county attorney becomes involved in the preliminary part of the exchange. In the beginning you start out with a proposal to make an exchange. You have to consider whether the land is something that you want. These are policy decisions the county attorney doesn't really get involved in. The land commissioner and the county board decide policy as to whether we're going to obtain this land and how we will go about doing it.

EQUALIZING

Though the values should be nearly equal, there are ways to make up differences in value. The private party who is proposing the exchange can pay us the difference if their land is worth less

than ours. But the question is, how big a difference can that be? Generally, the statute says values have to be substantially equal so there can't be a lot of cash involved. The statute also prevents us from paying when private land is worth more than county land. Thus, the individual must waive any difference. That's a matter you can take care of in writing early on in the process.

RESERVATIONS AND TITLE EVIDENCE

We reserve minerals. That ought to be known. You ought to discuss this with the private party in the beginning. We generally don't provide abstracts for the property that we own. Usually we don't have them because the land was acquired through tax-forfeiture. However, when we do have an abstract (for example, if the land was received in an exchange), we will make it available. We won't bring it up to date, and it will be up to the individual to check the title and get an abstract if needed. We only accept marketable title and we expect them to furnish us an abstract. With private parties, we expect to receive warranty deed. The federal government gives us a quitclaim deed, and we usually give a quitclaim. This means we don't warrant the title to the property.

BINDING AGREEMENT

You must put as much in writing as possible and make it as binding as possible if you are really interested in the exchange. This is a problem area. Exchanging is different from buying a piece of real estate. When you buy a piece of real estate, you sign a binding purchase agreement in the beginning. You don't necessarily do that with an exchange, and that can be a problem. I would like to see ways to resolve this problem. We've tried a variety of approaches to get each other bound to an agreement. I'm not sure, for example, whether the written proposal for an exchange submitted by a private party is binding. We rely on being able to complete exchanges, and start planning land use. But sometimes, a few years into the exchange process the other party backs out. You may go on for years and realize finally that you don't have a binding agreement. This is a frustration for private parties, especially in dealing with the federal government, which doesn't want to be bound to an exchange. Jim Pfeil and I have talked about

several circumstances where the county really needs the land we are exchanging for and we want to make sure the federal government wants to go through with the exchange. We have discussed a variety of ways to accomplish this in the future.

APPRAISAL

After the exchange is formally proposed, it is the county's responsibility to appraise the land being acquired and the land being offered. It is important to be careful in this process, and also important to work with the other side so you don't hit snags and disagreements later on. The county attorney isn't involved in the appraisal, but he or she has to be familiar with issues that might come up in the future. We happen to be fortunate in Cook County, our land commissioner is also our county assessor and an excellent appraiser. We have had some real luck reaching agreements early on with parties on valuations. However, reaching agreement can be a real problem. You may have conflicts with the state, which reviews the appraisal, and the DNR which reviews it for timber values. If you don't work closely with them, you will hit snags in that process.

TITLE EXAM

Normally, the next step in the process is title examination. In the case of tax-forfeited lands, the county attorney examines the titles first and prepares a formal title opinion and certificate of title, which are reviewed by the attorney general's office. In fact, the Attorney General's Office does a title opinion all over again.

I didn't know much about the process when I first became involved in land exchange. I was trying to save the county the expense of paying for abstracts for land being received from the U.S. Forest Service. I went to the recorder's office, examined the titles myself, made up forms for certificates of title, packaged them all together, and sent them down to the Attorney General's Office. The Attorney General's Office would not accept my certificates of title, and even found mistakes in my examination, so we had to go back and buy abstracts anyway. I think county attorneys can be lulled into not carefully examining titles because they know the Attorney General's Office is going to back them up. But I still think it's important that the county attorney's office do a careful title

examination to identify problems that may turn up in the Attorney General's review.

You might think title exams are not important since you are not going to be selling the property. You might accept some defects in your title, but these can affect how you can use the property later. For example, we once accepted property described as government lots, but when we went to sell the land we found out that it should have been described in forties, quarter-quarters, etc. The sale was greatly delayed when we had to get correction deeds.

PUBLIC HEARING AND WAITING

The next step is a public hearing held by the county board. The board has to approve the appraisal, the process, the descriptions of the land that are being offered, and so on. When the preliminaries are all done they review the county attorney's title opinion at the public hearing. Public hearing announcements must be posted for two weeks. There must also be a record of the resolutions adopted by the county board, a record of the posting of the notice and an affidavit that the hearing was held. Then the exchange is considered by the county board. If okayed, the matter leaves the county.

We've done the background work and then we wait. We may have taken a long time to get to this point and now it goes to the DNR, and the Land Exchange Board. They have to approve our land exchange even though the land is under our control. If it is all approved, it goes to the Department of Revenue and we get a deed. Their process goes through fairly quickly. You may also have to wait for the other party. With private parties, we don't usually have to wait that long. But the United States government, of course, has its own lengthy process to complete before we can get the deeds and close the deal.

CLOSING THE DEAL

The exchange closing is a closing like any other real estate closing. The county attorney should handle the closing, along with the land commissioner. You must update your title; check to make sure that nothing has occurred since your title exam that affects the title. You have to deal with unpaid taxes on the property. You review the documents, and check everything over, make sure

that the legal descriptions are correct, make sure that the parties are properly named. You must also be sure the proper reservations are documented, e.g., mineral reservations, water power reservations, lakeshore reservations or easements for some other purpose. You must make sure the deed is made out to the right party. Even if the county is the exchange partner, the state of Minnesota is the grantee holding the property in trust for the taxing districts. You must remember that you are closing a real estate transaction, often a very substantial one, and you have to be careful in how you do it.

There may be cash at the closing from the private party. The Department of Revenue will not issue the deed until you have the money.

THE AFTERMATH

There are a few additional items that may come up when a county exchanges land. When you receive land in an exchange, there may be limitations on what you can do with it. Thus you must go through the same process of classifying it, appraising it, and deciding whether it is land that is available for sale. In one case, we acquired land that took on the tax-forfeited status of the land we exchanged. We passed the resolutions necessary for selling tax-forfeited lands and sold it. The person who bought it tried to sell it to someone else but the attorney objected to the title because he thought it was tax-forfeited land. We had to point out that it was not tax-forfeited land, but only treated as such.

If you get lakeshore in an exchange with the federal government, you probably will not be able to sell it. You will be under the same limitations as you normally are with lakeshore land, even though you received it in an exchange and you have different title than you would normally get with tax-forfeited land.

There are some problems that counties deal with on compensating the other taxing districts that I won't go into, but it is something again that you deal with after the closing of your transaction.

CONCLUSION

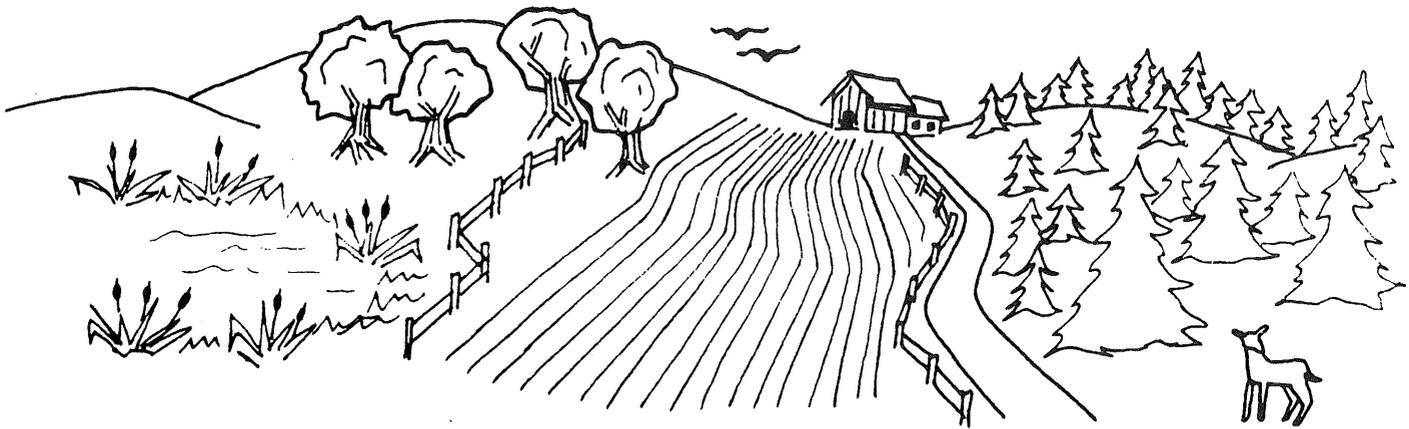
There are a lot of other problems and pitfalls that can arise from the county's point of view but this is a general overview of how we view land exchanges and how we are partners of the state in

making these exchanges. We all need to cooperate with one another. We get help and expertise from the state because the DNR and attorney general's office have more experience with exchanges than we do. I think the counties, county attorneys and land commissioners ought to feel free to call upon the expertise of the state in helping us through these exchanges.

One thing though, when dealing with the U.S. Forest Service, you need to be patient. Just wait it out and don't ask too many questions. I made the

mistake of asking (when I got into the early part of this 28 year land exchange), "What do you have to do on your end of it?" The response I received was a flow chart of the Forest Service's exchange process, which I want to show you in closing. I don't think you can see all the little boxes in here, lines and so on, but this is what I got back, and I haven't even begun to figure it out.

Thank you.



**REPRESENTATIVE PAUL THIEDE
MINNESOTA STATE LEGISLATURE
PEQUOT LAKES, MINNESOTA**

Representative Thiede offered a view of the land exchange process through the eyes of his constituents. He spoke to the need of making land exchange a less cumbersome and frustrating process for all involved.

I wasn't asked to be a member of this panel until just a few minutes ago. When they asked me, I looked around quickly and saw that both of my constituents were still here, so I thought I'd have an audience in this election year and I'd better take the advantage.

Obviously, this is an election year and very few of you, in fact, I think there are only two of you, are constituents of mine. I'm here simply as a member of the audience. But I appreciate the invitation to say a few words.

Let me just say that I am very impressed at the width and breadth of this conference's participants. I think this panel has covered everything that concerns the situation as I perceive it. I think Bill Brown said it best: What you do as professionals, and how that translates into what we do as legislators - how that whole sequence of events translates into good public policy is sometimes a wonder to behold. If you will recall what Deputy Commissioner Thorne said this morning, he talked about the Legislature and what we do, the agencies and what they do, and then what the Attorney General's Office does with what we do. It's one of the things that in my short years in the Legislature (I'm currently serving my third term) has always been an amazement to me. I can sit on a committee and listen to agency staff member testifying, while a member of the Attorney General's Office staff sits in the audience. We can pass a piece of legislation, and as soon as it gets printed into law, the Attorney General has a different opinion on it. Then we get into the question of what the legislative intent was. Now part of that problem is very obvious to all of us. We have a tendency in the closing moments of the session to, should I say, change our minds, or should I say, do things in the closing moments that sort of change what we debated during the legislative process. Be that as it may, I think the whole regulatory reform question is a big issue in the 1980's.

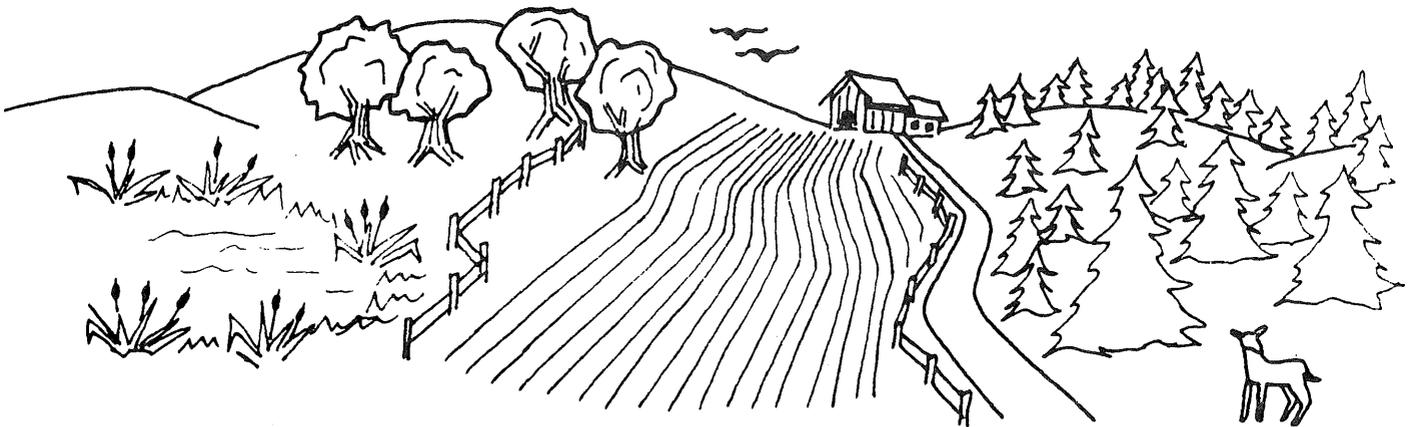
What we as legislators and agency staff members do in the process of working out public policy, and how that relates to the taxpayers who foot the bill is becoming a question of more and more importance. We have to answer the question: "How do we write public policy so that it gets implemented, as it was debated, and as it was put through the legislative process?"

I'm certainly not placing blame on anyone. I'm not here to blame any agency or the Attorney General's Office. The structure of the process gets us into those problems. In the context of your deliberations here, the process is a very important discussion. Any of you that have easy solutions for it, please see me after the meeting. I'd like to have your input.

I think it's important and appropriate that the LCMR (Legislative Commission on Minnesota Resources) has a hand in putting this conference on. It certainly seems to me, that in a time when we all worry about available dollars, land exchange ought to be used to enhance the resources we have. Let's put land to its highest and best use without necessarily expending a lot of dollars on exchanges. I think, ultimately, the taxpayer and how he or she perceives what we're doing is very important. The public frustration with time delays is probably the largest problem I see in exchanging land. The public perception that we're going through so many hoops to get this done and the question "Is it really worth it?" comes to mind.

Again, I want to put this in the context of being a legislator who faces not only this group, but several, indeed dozens of other groups that have issues of importance to them. We really need to deliberate how it all shakes out and how we spend our dollars. This kind of conference allows us to explore possibilities that will enhance programs without large expenditures of dollars. That is the kind of thing we need to do.

I appreciate being a part of this panel.



**STEVE THORNE
DEPUTY COMMISSIONER
MINNESOTA DEPARTMENT OF
NATURAL RESOURCES**

Steve Thorne addressed the tug of war between the conflicting goals of land exchange -- consolidation of public lands versus other resource management goals. A history of the land exchange process with regard to the legal entanglements it has created is presented. Discussion of current goals, problems and opportunities concludes.

Just what does the state really want to accomplish with this land exchange tool, or is it a tool? If it's a tool it's a very difficult one to use. When you want to use it, you usually can't find the right end; and when you try to apply it, it breaks in your hand. There are contradictions in the history, philosophy, and applications of land exchange in Minnesota that we should get onto the table and discuss. I would like to hear your ideas about how to deal with these contradictions.

As I look back in history, I find that the land exchange program, since its inception, has been characterized by great expectations (which by the way, aren't shared by everyone), and only by modest results. Furthermore, it has been characterized by very specific, detailed, and minute statutory controls that because of their detailed nature, are often found to be ineffective or not what legislators thought, according to the opinions of the Attorney General's office. You can look back over the years and see where the Legislature thought it passed one thing and later found out it really did something different. These differences have resulted in study after study to try and clarify what land exchange is for, and to try and deal with the problems of land exchange. This in turn, leads to more problems and more confusion, which leads to more studies, more changes in the law, and more Attorney General's opinions. Those opinions find that the Legislature didn't accomplish what it intended to. That leads to more studies, and so on, up to the present day, even including the most recent constitutional amendment.

There is a disagreement about land exchange goals. Is it a management tool to be used to rationalize the state's land ownership or to improve the distribution, nature and character of the lands that the state manages for the people? If that is the case, are we then to engage in a broad scale exchange program to achieve those ends? I'm not quite sure what "rationalizing" the state's land ownership means. In some areas the foresters will say it simply is consolidation of land ownership.

But if you talk to other resource managers, and as we get more data on resource management needs, that simplistic idea of blocking in land ownership starts to get confused because there are other needs. Wildlife managers may or may not want to block in land ownership. In a large unit they may. In the other cases, they may want

strategically placed scattered parcels of land. Hydrologists and watershed managers may want to control key parcels in various places for flood control, erosion protection, development of impoundments and so on. But they may or may not want consolidation.

Historically, minerals people have been the curmudgeons of land exchange. They've always said, "We don't want any consolidation at all because we don't know very much about where mineral resources are located." That's the old crap shoot philosophy. It's a reasonable land management position for them to take. The less you know about minerals, the more beneficial it is to simply throw all the lands the state owns and manages across the whole map of Minnesota in a random pattern, thereby maximizing the chances of finding something. You certainly wouldn't want to try to put everything in one area because you really have no idea which areas may have a high mineral potential. That's changing somewhat, but certainly our knowledge of mineral resources in Minnesota is in its infancy, even with the amount of surveying and exploration going on in the state in recent years. We can't say with any great degree of certainty whether one part of northeastern Minnesota has a great deal more mineral potential than another. We can make some broad generalizations, but they're more likely than not to be wrong in a specific case, even though we know the greenstones or the Duluth Gabbro are good places to look. Now, companies are looking in other areas that are suddenly becoming interesting. The geologic maps of this state change almost daily; the map ten years ago doesn't look very much like the map today, and the map 10 years ago looked nothing like the map 15 years ago. That's how rapidly the information on mineral potential is developing.

We've got a fundamental difference of philosophy. Are we talking about land consolidation or are we talking about other kinds of resource management goals? We ought to get rid of some of these broad generalizations, such as, all we want to do is consolidate; we ought to be looking at specific resource management goals. There are many resource management goals we need to look at carefully. It doesn't do for the forester to simply say, "I'm going to have everything in the boundaries of this forest - that's our

goal - minerals or other interests be ignored." We need to get more sophisticated in our evaluation of potential uses of these public lands. In any event, the key problem is that we've had a difference of philosophy, and on top of that, a real fear expressed in the statutes and carried out by the Attorney General's office. I'm not criticizing the Attorney General's office, but a real fear exists that land exchange could be used as a tool to rip off state lands; that would not be in the public's interest. The argument goes something like this: Land exchange is used as a way to acquire lands that aren't otherwise for sale. For example, lakeshore lands are not subject to sale, but land exchange might be a way to get them. You can acquire lakeshore by exchange, if it is a lakeshore for lakeshore exchange. There may be some property that, from our standpoint, looks like a pretty good piece of lakeshore - a high sandy bank with pine trees on a beautiful lake. What we get in return is a swamp with three feet of water in it on the Scum River. But that's waterfront for waterfront, it satisfies the requirements. That's the fear - that the land exchange process, if it were not carefully controlled, could be used to substantially erode the quality of the public land base. That, without detailed, specific controls and the tremendous bureaucratic structure that exists to guide and review every stage of every land exchange, land exchange could be used in a way that would adversely affect the quality of the public land base.

So we've got these very detailed, specific controls that are extremely hard to work with and that conflict with any goal - goals such as those in the grand designs of the just stated example. The grand design is to start making all these changes to improve our resource management.

I should also mention another goal, which is to respond to private needs - certainly that's a very important goal. The other side of that coin is that we want to try to respond to private needs as best we can. But again, those are subject to the overall goal of trying to improve the distribution and characteristics of lands for resource management purposes.

I would like to briefly go over the history of land exchange in Minnesota to demonstrate the thesis that I just laid out. I will begin in 1929. There wasn't a constitutional amendment dealing with

land exchange until 1938, but there were early attempts to statutorily provide for land exchanges. There was a 1929 act that looked toward exchanges with the federal government. This has been an ongoing theme in Minnesota. There have been large scale exchanges between the state of Minnesota or counties in Minnesota, and the federal government (primarily the U.S. Forest Service). Basically, state land or state owned, tax-forfeited land has been exchanged. The objective has been to consolidate lands within the national forests and to adjust national forest boundaries. Or in some cases, national forest boundaries have been changed and purchased units are now slated for disposal. That's what the 1929 act was intended to do.

Unfortunately, the Attorney General ruled that it was unworkable because the statute required the Commissioner of Conservation to do this, and there wasn't a Commissioner of Conservation at the time. The Legislature neglected to create a Commissioner. Some say that was a good idea, and it probably should have been retained as a policy of the state.

In 1931 another attempt was made. It authorized exchanges within the Red Lake Game Preserve. This was in anticipation of the acquisition of large acreages of tax-forfeited land. The Red Lake Game Preserve, now the Red Lake Management Area, is a vast area that was once drained by optimistic farmers who subsequently failed and were relocated during the New Deal. That act never was implemented.

Further amendments were made in 1932 and 1933 that extended the exchange system to all lands acquired in tax delinquency and provided - and this is where the grand scheme comes in - that there were going to be conservation areas and agricultural areas in each county. We were supposed to be consolidating public land ownership in the conservation areas and getting out of the agricultural areas.

At the same time there was a land classification report. This is the first time this appears in state history, and this theme of tying land classification to land exchange subsequently has become common. The 1933 land classification report recommended that the state consolidate ownership in nine named state forests. Again the grand design wasn't ever implemented and nothing at all hap-

pened until the state began to acquire large scale acreages of tax-forfeited land after about 1936.

In 1938, the constitutional amendment authorizing land exchanges was passed. That basically is the foundation for modern land exchange in Minnesota. Article 11, Section 8 of the Constitution established the Land Exchange Commission consisting of the Governor, Attorney General and State Auditor. In 1939, the act was implemented by the Legislature. Unfortunately, in 1940, the Attorney General found that the Legislature didn't do what it thought it had done. Instead of having broad authority to make land exchanges, the statute only allowed some limited exchanges, and lands that were dedicated for any particular purpose could not be exchanged. State lands devoted by law to forests, parks or game preserves could not be exchanged according to the Attorney General. Land bordering public waters and tax-forfeited land also could not be exchanged. State trust fund land not already devoted to a public use was the only major category of land subject to exchange under the provisions of the 1939 act.

So again, we've got legislation followed by careful evaluation by the Attorney General that results in the limited value of that procedure as a land management tool.

Finally, in 1949, the Legislature authorized Class A, B, and C land exchanges with all the review procedures talked about earlier today. That is the basic form of our land exchange laws today.

But there were still problems. We legal types can argue whether it is theoretically or logically possible for the state to exchange land with itself. In other words, could state trust fund land be exchanged for tax-forfeited land administered by counties. The Attorney General advised in 1968, that it was not possible, unless it was specifically authorized and it could not be considered a land exchange. It really was a "transfer of title", but the effect and process would essentially be the same as that of a land exchange.

Legislation was subsequently authored by Gerald Willet in the Senate. In any event, as it turns out again, that act was not particularly effective. After legislation passed, it was determined that it would only work in the case of state trust fund land if the state condemned the trust fund land instead of just transferring trust status to formerly tax-forfeited land. State trust fund land

would have to be condemned - but we didn't have money to do that (if we had money, we wouldn't need land exchange). So that was never effective.

Furthermore, you could not exchange various categories of state land, one for the other. This was a real problem. We happen to have a fair amount (about 11,000 acres) of trust-fund land in state parks. Rod (Sando) and I would very much like to get that land out of the state park system because it doesn't produce income. Trust fund lands are supposed to produce income. There are also minor amounts of trust fund land in some other units of the Outdoor Recreation System. We would like to get rid of those. Our land acquisition budgets are not adequate for the task. It would seem practical to be able to say, "Allright I'm going to take the state trust fund land in the state park and I'm going to exchange it for acquired forestry lands elsewhere." The foresters will then manage the trust fund land for income and the land that goes into the park will no longer be trust fund land. Then we wouldn't have to worry about it not producing income for the trust.

That's the point in time when we got into the constitutional amendment that you all voted favorably on two years ago. That amendment does provide for those kinds of exchanges. It remains to be seen whether or not the amendment will be totally effective. At this point, we're consulting with the Attorney General's office on issues and questions surrounding that amendment. I can't report specifically on any results, but I'm not expecting this particular piece of legislation to be any more free of legal defect than the ones before it.

That's about where we are with land exchange today. It's been studied to death. There was a 1933 classification study, another exhaustive one in the sixties - the Cunningham Report, there was the report of the legislative auditor in 1983, and now DNR is again studying it under LCMR (Legislative Commission on Minnesota Resources) appropriation.

Our goal and the policy of the DNR is to try to make land exchange a much more effective resource management tool. I'm sure that has been the goal of past generations of resource managers now long dead. However, I think we are making some progress.

Let me talk a little bit about some of the opportunities and problems. We have never really achieved the goal of using land exchange in any meaningful way for adjusting state land ownership. In the 1950's and 60's we were exchanging somewhere between 10,000 and 20,000 acres a year, every year, in Class A lands. The peak was in 1963-64 when we reached about 18 or 19 thousand acres; those were big federal land exchanges. We were continuing one of those themes I mentioned, trying to exchange with the Forest Service to rationalize state and federal forest boundaries. There was a decline in land exchanges in the late 60's and in the 70's. In the ten years between 1973 and 1983, only 68 exchanges of state owned and managed lands and 46 of tax-forfeited lands (Class B lands), were completed. The total acreage for both Class A and B land exchanges for that 10 year period was only a little over 14,000 acres. So there was a decline in land exchange during that period. Since 1982, however, we have made a major effort to begin using land exchanges again. We are now back up to the levels we were running at in the 1960's. For example, in 1982 we accomplished 22 land exchanges involving (on both sides of the exchange) 8,000 acres. In 1983 there were 22 exchanges involving 4,000 acres, in 1984 there were 29 at 11,000 acres, and in 1985 there were 26 at 4,000 acres. It's up and down depending on individual features of the land exchange, but you can see that we now have gone back to about where we were in earlier days.

Still, if we are going to accomplish the goals that I talked about earlier, we are talking about a larger number of exchanges, with a much larger amount of acreage involved. Certain things in the statutes and the process diminish our chances of accomplishing those goals. Also, the state has not made a concerted effort to use it as a proactive tool. Most land exchanges are proposed by private individuals. We do not have a pool of lands that the state could use proactively to solicit land exchanges and try to use the process. We are trying to generate a pool of lands for exchange through the unit planning process now under way in the Division of Forestry. One of the goals is to iden-

tify lands that would be available for exchange. If that's successful, and I think it is going to be, we will have a pool of lands available for exchange. That will avoid what have been some of the major problems in the past: 1) We were not able to use the process proactively.

2) When someone proposed a land exchange we experienced all kinds of internal disagreements.

The process internally can be very difficult. Before 1982, we didn't have a clear procedure internally for resolving conflicts between various resource management divisions in the department. We would have honest differences of resource management philosophy between, for example, the Division of Minerals and the Division of Forestry. When someone proposed a land exchange, we didn't have good ways of resolving internal differences. Now I think we have taken care of it, but once we have a land pool, differences can be resolved in advance. We won't have to worry about running through our internal process of review, negotiation and compromise. That takes a long time and is one of the reasons why we have been averaging between one and two years to accomplish a state land exchange. We need to develop a more thoughtful, planned approach to the use of land exchange at the state level.

In conclusion, I hope to have an opportunity to talk to you individually later in the conference about opportunities you see for making land exchanges work more smoothly. I am aware of problems in dealing with county land exchanges, for example, getting abstracts. That needs to be taken care of. There are problems with mineral reservations, problems with getting appraisals done in a timely way, and so on. I am also aware of the many layers of approval that are required by the DNR. Perhaps there may be opportunities for eliminating some layers, although a lot of them are statutory. But for example, we require a hearing in every case. I question whether we should have to have hearings in every case. Couldn't some of these decisions be made locally? I'm sure many of you have ideas for solutions to these and other problems.

Thank you for inviting me.

