

Below are summaries of some of the most important decisions in land exchange case law. If you wish to learn more, feel free to contact [Christopher Krupp](#), WLXP staff attorney.

National Audubon Society v. Hodel, 606 F.Supp. 825 (D.Alaska 1984)

This may be the only case in which a federal court has held that an agency violated the public interest provision of a statute authorizing land exchanges. National Audubon Society, several other conservation organizations, and a fishermen's association had challenged Interior Secretary James Watt's decision to exchange a portion of a wilderness area within the Alaska Maritime National Wildlife Refuge for interests in other National Wildlife Refuges in the state owned by Native corporations. The Court held that the Secretary's determination that the proposed land exchange was in the public interest, as required by the Alaska National Interest Lands Conservation Act (ANILCA), was not committed to agency discretion by the Administrative Procedure Act. The decision was therefore not unreviewable.

The Court noted that ANILCA gave the Secretary and his authorized agents broad discretion in deciding which interests or elements to use in determining the public interest. Nonetheless, the court held that the Secretary's public interest determination was a clear error of judgment, and invalidated the land exchange. The public interest determination was clear error because, among other things, it characterized adverse affects to nearly a half million nesting seabirds for a 80-100 year period as "temporary" and found that the use of a wildlife refuge as an oil base was compatible with the statutory purposes of the refuge.

The determination also erroneously concluded that the acquisition of the Native interests would provide greater protection in the other wildlife refuges. The court reviewed the environmental protections already in place on the refuges and found that the exchange would have provided only minimal additional protection. The Secretary had avoided considering many of the relevant facts concerning environmental impacts on wildlife and wilderness that were in his own "Final Ascertainment Report." In sum, although the Secretary had great discretion in deciding the factors upon which he would rely in demonstrating that a project served the public interest, he could not rely them if the facts clearly showed otherwise.

RESTORE: The North Woods v. U.S. Dep't of Agric., 968 F.Supp. 168 (D.Vermont 1997)

This case concerned a legislated land exchange between the Forest Service and a ski resort operator in Vermont. The Sugarbush Land Exchange Act (SLEA) directed the Secretary of Agriculture to exchange Green Mountain National Forest land for ski resort land, provided that the offered resort land was acceptable to the Secretary. Although the Forest Serviced had initially prepared an Environmental Assessment (EA), it ultimately issued a Categorical Exclusion (CE) after concluding that SLEA had stripped the agency of any discretion in culminating the Sugarbush exchange, thereby exempting the exchange from the NEPA analysis that was normally required.

RESTORE challenged the exchange in court, arguing that SLEA did not strip the agency of its discretion and that the CE was therefore improper. The District Court for Vermont sided with RESTORE. The Court noted that when Congress enacted NEPA, it had directed the agencies to implement the Act to the fullest extent possible. Applying Supreme Court precedent, the Court found that NEPA would be inapplicable to the exchange only if SLEA had expressly prohibited NEPA analysis or made agency compliance with both NEPA and SLEA impossible by imposing short and strict time limits on completing the exchange. The Court held that the Act required NEPA analysis because it gave the agency sufficient discretion by way of the condition that the Secretary find the lands

to be acquired "acceptable." Carrying out NEPA analysis prior to completing the proposed exchange was not in conflict with the purposes of either SLEA or NEPA, and NEPA analysis was therefore necessary.

Kettle Range Conservation Group v. U.S. Bureau of Land Management, 150 F.3d 1083 (9th Cir. 1998)

This case illustrates the lengths to which agencies and land exchange proponents will sometimes go to stymie meaningful judicial review of administrative land trades.

Plaintiffs had sought a preliminary injunction of the BLM's decision to trade 4,500 acres of forest for 25,000 acres of shrub-steppe in eastern Washington. The district court denied the motion for preliminary injunction. A few hours after the district court's decision, the BLM transferred about half of the forest acres to private parties allied with Clearwater Land Exchange, a private land exchange facilitator that had proposed the trade.

Kettle Range then presented an emergency motion before the Ninth Circuit for an injunction pending appeal. The Ninth Circuit denied the emergency motion. Several months later a separate panel of the Ninth Circuit affirmed the district court's denial of the preliminary injunction.

BLM later transferred an additional 1,800 acres to private parties several weeks before the district court was to consider the plaintiffs' request for a permanent injunction. The district court eventually granted the permanent injunction, but by that time more than 90 percent of the exchange had been completed. The district court declined to rescind the completed portion of the exchange.

Here, the Ninth Circuit affirmed the lower court's decision not to rescind the completed portion of the trade. The Court held that the private parties currently holding title to the formerly public lands were necessary parties to the litigation. The plaintiffs had not sought to join those parties to the litigation. The parties holding title to the land were necessary parties because the district court could not grant the plaintiffs' requested relief (rescinding the exchange) without impeding or impairing the title-holders' interests. The Court also held that the public rights exception to the usual joinder rules was not available to the plaintiffs because the exception was only applicable where third parties' interests at issue were not destroyed. Here, the Court said, the third parties' interests in the land – their title to the land – would have been invalidated if the district court had rescinded that portion of the exchange that had already been completed.

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir. 1999)

Possibly the most important land trade case for exchange opponents, Muckleshoot enjoined the Huckleberry Exchange between the Forest Service and Weyerhaeuser. The Ninth Circuit Court of Appeals held that the Forest Service's Environmental Impact Statement (EIS) prepared for the exchange violated the National Environmental Policy Act (NEPA) by not considering an adequate range of alternatives to the trade or properly analyzing its cumulative impacts. The Court also held that the Forest Service violated the National Historic Preservation Act (NHPA) by failing to sufficiently mitigate the negative impacts of trading away a portion of the Muckleshoot's historical Huckleberry Divide Trail.

The Court held that the agency's consideration of only a no action alternative and two nearly identical alternatives was inadequate because it neglected two feasible alternatives: purchasing the Weyerhaeuser property outright with Land & Water Conservation Fund (LWCF) money, or placing deed restrictions on the property traded to the timber company. The Court ruled that in terms of cumulative impacts, the

agency needed to consider other land exchanges in the vicinity of the Huckleberry Exchange, and consider the negative impacts likely to occur on the land traded to Weyerhaeuser, not simply the positive impacts of acquiring Weyerhaeuser property.

NHPA regulations required the Forest Service to mitigate the adverse effects of transferring an intact portion of the Huckleberry Divide Trail. The Forest Service proposed mapping and photographing the Huckleberry Divide Trail prior to trading it to the timber company in order to mitigate the effects of the Exchange. Such mitigation was proper when the historic property was valuable only for its potential contribution to archeological, historical or architectural research. The Court found that such mitigation was inappropriate in this case because the Tribe valued the Trail for more than its potential contribution to research. The agency should have either removed the relevant Trail segment from the exchange or included sufficient deed restrictions as part of the Exchange to preserve the Trail's significant historic features.

Finally, the Court held that Weyerhaeuser and the Forest Service's consummation of the trade by conveying deeds did not take the exchange out of the purview of judicial review, because courts had the authority to void property transactions where necessary.

Desert Citizens Against Pollution v. Bisson, 231 F.3d 1172 (9th Cir. 2000), rev'g 954 F.Supp. 1430 (S.D.Cal. 1997).

This case is noteworthy for the Ninth Circuit's holding that conservation groups had standing to challenge a land exchange with a claim that BLM violated the Federal Land Policy and Management Act's (FLPMA) equal-value provision. The provision requires that the land each party has offered to exchange be of equal value.

The Ninth Circuit also held that the BLM acted arbitrarily in appraising the value of the selected public land by not, at the very least, considering a landfill as the highest and best use for the land. The exchange proponent, a mining corporation, had previously announced that it planned to use the public land acquired from the exchange as part of a large regional landfill for southern California.

The district court had previously held that the plaintiffs lacked standing to bring the equal value claim because the court lacked the ability to redress the plaintiffs' alleged injury. The lower court had reasoned that even if the plaintiffs were able to show that the BLM had violated FLPMA by improperly valuing the public land, the court was powerless to stop the exchange with revised land values. This had been the typical result for plaintiffs challenging land exchanges with claims that an agency that violated FLPMA's equal-value provision.

Greater Yellowstone Coalition v. Reese, No. 01-0176-E-BLW (D.Idaho, Aug. 8, 2001)

Greater Yellowstone Coalition (GYC) and several other conservation organizations successfully challenged a Forest Service decision to exchange 120 acres of federal land at the base of Grand Targhee Resort for 400 acres of private land at Squirrel Meadows, a Targhee National Forest inholding between Grand Teton and Yellowstone national parks. Grand Targhee Resort currently operates under conditions imposed by a Forest Service Master Development Plan (MDP) and wished to acquire outright the 120 acres for expansion.

Plaintiffs won on a claim brought under the National Environmental Policy Act (NEPA). GYC claimed that the Environmental Impact Statement (EIS) prepared by the Forest Service violated NEPA because it improperly analyzed the "no action" alternative to the land exchange.

GYC argued that the agency had overstated the development that would occur if the exchange did not take place. When analyzing the environmental impacts of maintaining the status quo, the Forest Service implied that 686 units of on-site lodging had already been approved under the MDP. The impacts of 686 on-site lodging units were then compared with the impacts from 970 lodging units planned under the proposed exchange. The court found that when the agency analyzed the no action alternative, it had not reasonably considered constraints the existing plan had put on lodging development.

At the time the final EIS was released, those constraints limited the maximum allowable lodging units to 412. The court agreed with the plaintiffs that using maximum build-out numbers rather than the actual constraints was misleading. That is, the more development attributed to the no action alternative, the less harmful the action alternatives appeared.

The court has enjoined the exchange until the Forest Service corrects the inadequacies of its no action alternative. The Forest Service has indicated it will prepare a supplemental EIS.

City of Williams v. Dombeck, 151 F.Supp.2d 9 (Dist.D.C. 2001); Sierra Club v. Dombeck, 2001 WL 1049431 (D.Ariz)

Both of these cases were challenges to the Forest Service's decision to exchange land with Canyon Forest Village, Inc. (CFV) near the Grand Canyon. CFV offered to exchange inholdings it held within Kaibab National Forest in Arizona for Kaibab land adjacent to Tusayan, Arizona. CFV planned to develop a tourist gateway to Grand Canyon National Park with the land it acquired.

The Sierra Club and the city of Williams filed separate challenges to the Forest Service's Record of Decision (ROD) and Final EIS. Among the plaintiffs' claims were that the ROD and FEIS failed to adequately analyze the environmental impacts on groundwater, the impacts of the water delivery system, and the direct, indirect and cumulative impacts of the development.

In evaluating the exchange, the EIS acknowledged that water would have to be imported from the Colorado River, 60 miles away, to supply the new gateway community. The EIS identified two possible methods of transporting the water via pipeline to the new community, but provided no analysis, noting that no formal proposal had been developed. The Forest Service claimed that

NEPA permitted it to phase its environmental analysis and defer evaluation of the water delivery system until more detailed information was available. The plaintiffs also claimed that the administrative record did not support the decision that the exchange satisfied the FLPMA requirement that the exchange serve the public interest.

Both the D.C. and Arizona District Courts determined that it would be premature to rule on the plaintiffs' FLPMA public interest claim because a November 2000 local referendum had precluded CFV from obtaining the zoning necessary for its development. Because the exchange might never take place (the referendum effectively prevented CFV and the agency from transferring titles to the land for at least one year), the courts believed it would be a waste of judicial resources to decide the FLPMA claim. Conversely, both courts held that the EIS was inadequate and sided with the plaintiffs.

Unlike the FLPMA claims, the NEPA claims were ripe for review because NEPA is essentially a procedural statute. NEPA neither requires nor prohibits any federal action, it only requires that agencies follow the regulatory procedures when discussing the probable significant environmental impacts of a proposed federal action. Here, the NEPA claims were derived not from the land exchange itself, but from the agency's failure to adequately analyze it.

Therefore, once the Forest Service issued its FEIS and ROD, the NEPA claims were ripe for judicial review. NEPA requires that an EIS discuss all actions connected to the federal action for which it is prepared. Both courts found that the water delivery system was a connected action because the gateway community could not be developed without it and it would not be needed but for the gateway community development.

The Arizona District Court also held that the Forest Service improperly tiered the FEIS and ROD to the National Park Service's General Management Plan for Grand Canyon National Park. With "tiering," an agency analyzing the environmental impacts of a specific action can incorporate previously developed environmental analysis from broad programmatic EISs. The court found that the Plan essentially failed to analyze or justify the environmental and economic impacts created by the gateway development and therefore the Forest Service violated NEPA in tiering to the Plan.

Finally, the Arizona court held that the agency failed to consider a reasonable range of alternatives to the proposed exchange, in further violation of NEPA. The court identified several reasonable alternatives which the Forest Service had failed to examine: purchase of the private inholdings; a modified, smaller scale land exchange; and alternatives that relied on special use permits to achieve the objectives of the GMP.

Although the Forest Service could choose to prepare a supplemental EIS that considers the shortcomings addressed in the two cases, it's unlikely that the agency will do so absent a substantial change in the minds of Coconino County voters. Even if the courts ultimately approve the exchange, CFV could not develop the property it would acquire without rezoning, and the November 2000 referendum rejected the rezoning ordinance by almost a 2-1 margin.