

San Rafael Do-Over Chills BLM

**BY CHRISTOPHER SMITH
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WASHINGTON -- Contending that Utah's San Rafael Swell swap was wrongly cast as a poster child for lopsided federal land exchanges, Rep. Chris Cannon, R-Utah, will resubmit legislation for the trade even as two federal probes of the proposal are under way.

A bill to complete the trade died in the previous Congress amid claims by a federal whistle-blower and activist groups that it was a \$100 million rip-off to U.S. taxpayers.

"We will go back with something like that bill this term, and I hope we do something on this and a dozen or two dozen other land exchanges we need to get done in Utah to make our school trust lands work," Cannon said.

"When people start really looking at the ludicrous false claims these extremists made on the San Rafael trade, they will start understanding the reasonableness and importance of doing it," Cannon said.

Groups that successfully fought the San Rafael bill say a rerun may make it impossible in the future to do similar state-federal land exchanges.

"If they try to ram this baby through again, it will sour the waters in Congress for future land exchanges," said Larry Young, executive director of the Southern Utah Wilderness Alliance.

"I talked with a key House staffer who told me there is a real Utah fatigue on public land issues now. The questions on San Rafael go far beyond any appraisals; this was just not a good exchange."

The resurrection of the San Rafael proposal adds to growing skepticism over the future of the Bureau of Land Management's national land exchange program.

The Department of the Interior is investigating Utah BLM appraiser Kent Wilkinson's claim that the federal lands in the deal were worth up to \$117 million more than the \$35 million BLM exchange negotiators in Washington had valued them.

That internal probe is scheduled for delivery to the U.S. Office of Special Counsel, an independent agency representing federal whistle-blowers, on Feb. 3.

Interior's Office of the Inspector General has also launched a separate inquiry into the San Rafael appraisal, on the heels of its July 2001 report that "Utah BLM may have compromised the integrity" of appraisals done for land exchanges in Washington County.

On top of the federal investigations, an October review by the Appraisal Foundation found "violations of law may have occurred" in the San Rafael valuations and called for the Department of Justice to review all recent BLM land exchanges and impose a moratorium on exchanges until a "comprehensive overhaul" of the program is completed.

'Institutional Changes': BLM officials in Washington acknowledge the federal land exchange program, considered one of their most effective management tools by consolidating patchwork land holdings into larger parcels, is at a critical crossroads, and they say they are working on "institutional changes."

With more than half of the Interior Department's appraisers eligible for retirement within five years, there



The San Rafael Swell is a land of towering layers of water-carved sandstone. Efforts to put 102,000 acres of San Rafael under federal management in exchange for deeding 137,000 federal acres to the state fell apart amid arguments of the lands' relative values. (Al Hartmann/Tribune file photo)

are discussions on Capitol Hill of turning the job over to private, third-party contract appraisers to avoid possible intimidation of staff appraisers by managers.

Another proposal is to combine all federal appraisers in a new independent office, isolated from the management structure of agencies seeking valuations of federal property.

Cannon would like to see large state-federal exchanges "moved entirely away" from appraisal-based evaluations because the size and complexity of the deals make it difficult to validate equality.

As the external debate simmers, inside the BLM some appraisers say they are now "treated like the enemy" by higher-ups for calling attention to skewed valuations. And some managers say their decision-making has been hamstrung by a group of disgruntled employees exploiting a historically flawed system.

There is a growing reluctance among some state BLM directors to pursue future land exchanges because of new levels of review that delay the tedious, costly processes that lately all seem to end in controversy.

"Do we have an institutional problem? Yes, we do. Is it fixable? I don't know," said BLM Deputy Director Jim Hughes, who is directing the agency's own internal review of the program and preparing to hold a series of public hearings around the country on the future of land exchanges.

"The easy way out would be to get rid of this program, but it is too important, and this agency is too good to let this program drag it into the ground," he said.

Critics say the BLM's exchange program can be successfully retooled but agency officials lack the commitment.

"Who is dragging this program into the ground?" said Janine Blaeloch, executive director of the Western Land Exchange Project in Seattle. "They keep implying this is a problem with the appraisers, but it is a problem with all the politicians in Washington who try to interfere with the work these professionals are trying to do."

'Are They Crazy?': Cannon said Utah BLM appraisers made "ridiculously unrealistic assumptions" about the value of oil shale reserves in the federal lands offered in the San Rafael trade because extracting the oil from the shale is not currently feasible.

When BLM officials in Washington reviewed those valuations, they too came to the same conclusion, that the Utah BLM staff had radically overestimated the value of mineral reserves.

"There were folks here who looked at those oil shale assumptions and went, 'Are they crazy?' " Hughes said. "Could there be a technological breakthrough? Maybe, but in the bigger picture, managers have to use life experiences to make these judgments."

While critical of the BLM's track record on land exchanges, activists are loath to contemplate one suggested solution: letting Congress legislate all future large land exchanges. The BLM consummates exchanges administratively under provisions of the Federal Land Management Policy Act, which requires trades of "equal value" and provides for environmental impact analysis and public involvement.

A congressionally mandated trade is not required for parcels of equal value, and there is no requirement that the public be consulted beyond the standard legislative process.

And that is the rub for the BLM's Washington bosses over the controversy generated by the San Rafael Swell trade. Agency officials and members of Congress say the San Rafael deal was a legislative exchange, not an administrative exchange, and critics have confused the BLM's limited administrative authority with Congress' broad legislative authority to complete land swaps.

"The report gives the impression to readers that there is something nefarious about a negotiated land exchange process in which appraisers are not the final arbiter of what is in the public interest," wrote Rep. George Radanovich, R-Calif., chairman of the House Resources Subcommittee on National Parks, Recreation and Public Lands in October, blasting the Appraisal Foundation for its "total failure" to recognize San Rafael was never meant to be an administrative exchange.

Cannon introduced the exchange bill in the House on June 19, 2002, with fellow Utah Congressmen Jim Hansen and Jim Matheson. On the same day in Salt Lake City, Utah Gov. Mike Leavitt announced the proposed land swap to the news media and his support of the bill because it would facilitate a now abandoned proposal for a new national monument. Radanovich's subcommittee held a hearing on the bill a week later.

'Bizarre Behavior': Cannon said the Appraisal Foundation, which is authorized by Congress as the source of appraisal standards and professional qualifications, has been "humiliated by their totally bizarre behavior in creating this bad-boy example for public land trades that doesn't relate at all." Foundation Director David Bunton did not return a call seeking comment.

BLM Director Kathleen Clarke has recused herself from any Utah land exchange negotiations because of her former positions on Hansen's staff and as director of the Utah Division of Natural Resources. Deputy Director Hughes said the BLM reviewed and supported the original San Rafael exchange when the legislation was submitted, and unless it changes drastically, the agency will probably support the new bill.

Former BLM employees say the line between an administrative land exchange and a legislative land exchange blurred when former Interior Secretary Bruce Babbitt and Leavitt engineered two of the biggest-ever swaps of federal lands for state school trust lands: the Grand Staircase and the west desert land exchanges, each of which poured millions of dollars into the coffers of the state Institutional Trust Lands Administration, which in turn doles out the funds to Utah public schools.

"Those two exchanges were bigger rip-offs than this San Rafael deal, but the political pressure is always on to make these cases go no matter how bad they are," said Jack MacDonald, the retired chief appraiser for the Utah BLM whose protests triggered inspector general investigations of the exchanges. "We had people come out from Washington and tell us the secretary wants to make this go and we needed to come up with funny numbers. We would say, 'That's unethical and illegal,' and they would say we were hard to work with, we were disgruntled employees."

Salt Lake City attorney Pat Shea, who served as BLM director from August 1997 to November 1998 before being named deputy assistant secretary for lands and minerals in the Interior Department under Babbitt, discounts MacDonald's allegations.

"MacDonald, in my judgment, was simply incompetent," Shea said. "There is such a thing as a political appraisal, and that is if the congressional delegation, the governor and the secretary all agree, everyone goes along unless it shocks the public conscience."

Ed Hastey, who retired from the BLM after 42 years, the last 20 as California state director, said land managers must have the freedom to challenge or discount staff assessments in making multiple-use decisions.

"I've seen some pretty lousy appraisals done by our people, and there is nothing wrong with managers raising objections to their conclusions," Hastey said. "In any organization, you have these pockets of employees who feel you are not paying enough heed to them and they want a vertical organization. You just can't operate public lands that way."

Cannon contends there is little harm if a state-federal land exchange does come out in the state's favor because the beneficiaries are Utah's public schools.

"The people who suffer when these exchanges are blocked are the school kids in Utah, and the people who benefit are the groups that want to lock up public lands," he said.

Blaeloch says it is unfair for Utah schools to reap windfalls from biased exchanges of lands owned by all Americans.

"Can my state have that \$100 million, too?" she asked. "If the Utah delegation wants to do this kind of exchange, then take the lies out of the bill that this is an equal exchange and doesn't include endangered

species habitats and tell us the truth so the American public can decide if it's really worth it."



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