

Private-Public Land Exchanges in Wyoming

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Encroachments on public access to hunting, fishing, and other recreational activities are highly contested in Wyoming. Many Wyoming residents partake in outdoor activities, and the state heavily incorporates hunting, fishing, and access to the mountains into its tourism campaign.ⁱ Consequently, perceived restrictions on public access gain much attention in Wyoming. Recently, a proposed land exchange east of Casper has brought interest to private-public land swaps. This article will address private-public land exchanges and the authority and procedure by which the state may execute these transactions.

Authority for State Exchanges

The State and Federal government hold all public land in trust for the citizens of the state.ⁱⁱ Generally, the state can only dispose of trust lands if the transfer accords with public policy and is not detrimental to the general public.ⁱⁱⁱ In the Wyoming State Constitution, and by legislative act, the Board of Land Commissioners (Board) is granted the “direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature.”^{iv}

“The Wyoming State Constitution and the Wyoming State Legislature direct the Board of Land Commissioners, consisting of the State's five elected officials, to manage trust assets for two key purposes consistent with traditional trust principles: (1) long-term growth in value, and (2) optimum, sustainable revenue production.”^v In line with those principles, the board may direct the sale of state lands.^{vi} Additionally, “the state of Wyoming is authorized to exchange state-owned

lands for privately owned lands.”^{vii} All sales of State land in Wyoming must be through public auction, but the Wyoming Supreme Court has held that the State can exchange lands without an auction because “exchanges are not sales.”^{viii} Other states have held differently, finding exchanges constitute a sale and consequently, require a public auction.^{ix} Typically, exchanges do not require public auction, and even in states where auctions are necessary, courts have attempted to avoid that constraint.^x

In Wyoming, the State can exchange state lands, without an auction, on a value for value basis and the board “may authorize a cash equalization receipt or payment of up to twenty-five percent (25%) of the value of the lands exchanged.”^{xi} The Board is authorized to dispose of state lands through exchange, but the Board may only exchange public lands for private lands “upon the board's finding the exchange is necessary to”:

- (i) Make state lands more manageable where the lands are not otherwise manageable;
- (ii) Meet a specific need of a school or community for land;
- (iii) Better meet the multiple use objectives for the benefit of the trust; or
- (iv) Realize a clear long term benefit to the trust which substantially exceeds the present and probable future benefit from continued ownership.^{xii}

When a proposed exchange satisfies at least one of these objectives, the Board may complete the transaction.

Procedure

Any person may propose an exchange, which will then go through multiple steps before the exchange can be executed.^{xiii} First, the parcel to be acquired must be placed on the Board’s acquisition list and the parcel to be disposed must be placed on the Board’s disposal list by submitting a proposal and identifying the parcels to be exchanged.^{xiv} These parcels will be placed on the Category I list, where they are reviewed by the Board.^{xv} The application for land exchanges requires the proposal to explain how the proposed exchange would further state interests

according to the goals set forth by the legislature and the Board.^{xvi} If the Board finds both of the parcels suitable, then both parcels move to the Category II list.^{xvii}

The procedure for acquisitions and disposals are slightly different after the parcels reach the Category II listing. At the outset, it is notable that the Category I and II acquisitions lists are confidential throughout the preliminary investigations into market value, manageability, and income-generating potential.^{xviii} It is only after the Board gives its approval and secures an option to purchase the parcel that the proposed acquisition is made available to the public.^{xix} At that time, the Office of State Lands and Investments (Office) releases its detailed analysis of the acquisition.^{xx}

In contrast, the Office makes parcels on both Category I and II disposal lists available to the public.^{xxi} When a parcel gets to the Category II disposal list, the Office of State Lands and Investments notifies “any surface lessee of the parcel, the Wyoming Department of State Parks and Cultural Resources and the Wyoming Game and Fish Department.”^{xxii} The Office also must “prepare a detailed analysis of the parcel,” including:

- (A) An appraisal of the market value of the parcel;
- (B) The income-generating potential of the parcel, individually and in combination with other state trust lands;
- (C) The manageability of the parcel, individually and in combination with other state trust lands;
- (D) The existence and importance of any wildlife habitat and wildlife-oriented recreational opportunities located on the parcel, as determined by the Wyoming Game & Fish Department; and
- (E) The existence and importance of any public recreational opportunities or cultural resources located on the parcel, as determined by the Wyoming Department of State Parks and Cultural Resources.^{xxiii}

Upon the completion of the detailed analysis, the Office publishes it.^{xxiv} The Office is then required to “solicit and receive public comment on the proposed disposal.”^{xxv} The public can submit written comments to the Office, or voice their concerns or recommendation at “a public hearing in the county in which the parcel is located.”^{xxvi} In the Muddy Mountain example from the introduction, the Game and Fish will

determine the impact of the exchange on hunting and fishing access, and the public will have opportunity to submit and voice concerns upon the Office's completion of the detailed analysis. Finally, the Office submits the detailed analysis, along with public comments, to the Board for their final decision.^{xxvii}

Conclusion

Like most states, Wyoming allows public lands to be exchanged for private lands of equal value. The Wyoming Constitution and Wyoming Statutes grant the Board of Land Commissioners the authority to manage state held lands. The State holds public lands in trust for the citizens of the Wyoming. Accordingly, the Board may only exchange state lands if the transaction satisfies the objectives set forth by the legislature.

Any person may propose an exchange to the Board. If the parcels included in the proposal are suitable for disposal and acquisition, respectively, the Office moves the proposal to Category II. At this stage, the Office completes a detailed analysis to determine if the exchange will promote and satisfy the goals and objectives of the legislature and the Office. Finally, the proposal is open to public comment before being sent to the Board for their final decision. If the Board concludes that the exchange will benefit the state, they may complete the deal. If they do not, the proposal dies.

ⁱ Wyoming Travel and Tourism, <http://www.wyomingtourism.org>

ⁱⁱ WYO. CONST. Art VII § 6; *see also, e.g.*, Utah Power & Light v. United States, 243 U.S. 389 (YEAR); Davis v. Morton, 469 F.2d 593, 597 (10th Cir. 1972).

ⁱⁱⁱ 81A C.J.S. States § 263 Sales and Conveyances (YEAR) [why both "States" and "Sales and Conveyances"?].

^{iv} WYO. STAT. ANN. § 36-2-101 (1977); *accord* WYO. CONST. Art XVIII § 3.

v Office of State Land & Investment,
<http://slf-web.state.wy.us/admin/aboutus.aspx>; accord WYO. CONST. Art. XVIII § 3;
WYO. STAT. ANN. § 36-2-101 (1977):

The governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction, being constituted a “board of land commissioners” by the provisions of section 3, article 18, of the constitution of the state of Wyoming, shall as such board, have the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature. The board shall have the power and authority to take such official action as may be necessary in securing title to land grants, or any other lands acquired by the state.

vi *Id.* § 36-9-101.

vii *Id.* § 36-1-107.

viii Director of the Office of State Lands & Investments v. Merbanco, Inc., 70 P.3d 241 (Wyo. 2003).

ix *Fain Land & Cattle Co. v. Hassell*, 790 P.2d 242 (Ariz. 1990) (“A mandatory appraisal in effect sets a monetary value for the trust land to be conveyed. That ‘true value’ must be obtained on disposal. Consequently, any disposition of land of trust land is based on realizing a preset dollar value and therefore results in a sale rather than an exchange.”)

x *Mackey v. Mayor and City Council of Tucson*, 96 P.3d 231 (Ariz. 2004) (distinguishing *Fain*, finding a separate Arizona statute for exchanges of land for roadways does not constitute a sale).

xi WYO. STAT. ANN. § 36-1-111 (a) (1977) (orders, rules and regulations relative to exchange of lands).

xii *Id.* § 36-1-111(a)(i)-(iv).

xiii Wyo. Rules and Regs. Ch. 26 § 5.

xiv *Id.* Ch. 26 §§ 3(a), 4(a).

xv *Id.* Ch. 26 §§ 3(b), 4(b).

xvi Application to Propose an Exchange of State Trust Lands,
<http://slf-web.state.wy.us/estate/adobe/ExchangeApp.pdf>
 (“objectives derived from applicable Wyoming statute . . . § 36-1-111”).

xvii *Id.* [Id. to Rules & Regs? If so, need to cite short form, not id.]

xviii *Id.* Ch. 26 § 3 (c)-(f).

xix *Id.* Ch. 26 § 3 (f).

xx *Id.* Ch. 26 § 3 (g)(iii).

xxi *Id.* Ch. 26 § 4 (c).

xxii *Id.* Ch. 26 § 4 (d).

xxiii *Id.* Ch. 26 § 4 (d)(iii)(A-E).

xxiv *Id.* Ch. 26 § 4 (e) (i).

^{xxv} *Id.* Ch. 26 § 4 (e) (ii).

^{xxvi} *Id.* Ch. 26 § 4 (e) (iii).

^{xxvii} The entirety of the process is set out in Chapter 26 of the Wyoming Rules and Regulations. It is also portrayed in a flowchart on the Office of State Lands and Investments website:

<http://slf-web.state.wy.us/estate/adobe/exchangeprocess.pdf>