

# **Feasibility Analysis**

## **Upper Lochsa Land Exchange**

**United States Department of Agriculture  
Forest Service**

**Western Pacific Timber, LLC.**

### **Introduction**

In April 2006, Forest Service (FS) representatives from both Regions 1 and 4 attended a meeting with Tim Blixseth of Western Pacific Timber, LLC. (WPT) during which a major exchange of land was proposed. Mr. Blixseth proposed to exchange approximately 100,000 acres of land in four major blocks within or contiguous to the Clearwater, Boise, and Payette National Forests. In return Mr. Blixseth wished to acquire large blocks of Payette National Forest lands near McCall, Idaho. His stated objective for the suggested exchange was to consolidate his holdings for better timberland management in the near future.

In August 2006 the FS responded to the proposal explaining that disposal of large blocks of National Forest System (NFS) lands in the McCall area were not in the public interest. In the same response the FS did indicate an interest in acquiring one of the four blocks identified by Mr. Blixseth for disposal and identified approximately 24,000 acres in scattered parcels on the Clearwater, Nez Perce and Payette National Forests potentially available for exchange.

The Blixseth land of interest to Region 1 is approximately 40,000 acres of checkerboard land intermingled with the Clearwater National Forest near Powell, Idaho. These checkerboard lands encompass the headwaters of the Lochsa River and hold outstanding values for aquatic and terrestrial species along with significant cultural resources including the Lewis and Clark National Historic Trail and Nez Perce Tribe treaty area. Mr. Blixseth indicated he purchased the checkerboard lands from Plum Creek Timber Co. for the primary purpose of exchange and/or sale to the FS.

Today the current proposal includes exchanging these Lochsa checkerboard lands for a number of scattered NFS parcels located on the Idaho Panhandle, Clearwater and Nez Perce National Forests. To simplify the exchange the Payette National Forest acres in Region 4 were dropped from the proposed federal side leaving the remaining NFS land within Region 1.

A restoration plan for the WPT lands is a significant component of the exchange proposal. The goal of the restoration plan will be to bring the acquired lands up to Forest

Plan management standards. Upon consummation of the land exchange, WPT will contribute some funding to implement the restoration plan.

In February 2008 the FS, WPT, Bureau of Land Management (BLM) and the Rocky Mountain Elk Foundation (RMEF) signed a Memorandum of Understanding. The MOU documents the commitment the four groups have made to work cooperatively on the Upper Lochsa Land Exchange. RMEF was asked to become an active 3<sup>rd</sup> party in the exchange because of their ability to facilitate complex transactions and raise funds for habitat protection.

Idaho County Commissioners voiced concerns about the economic impact of converting 40,000 acres of private land to federal in their county which is about 85% federal land. WPT and the FS worked closely with the Commissioners to identify federal lands within Idaho County for exchange which also have the opportunity for economic development.

The Nez Perce Tribe has indicated an interest in the FS acquiring the checkerboard lands which fall within their treaty area and may be interested in playing a role in the restoration of the acquired lands. However, the Tribe has asked for clarification on how treaty rights will be applied on both the lands leaving and entering federal ownership, which will be addressed in consultation with respective legal counsels.

### **Exchange Proposal**

This land exchange has the following components:

- **WPT would transfer 39,371 acres, more or less, of private land to the FS;**  
These are checkerboard lands intermingled with Clearwater National Forest lands in the Upper Lochsa River drainage.
- **The FS would transfer up to 28,212 acres, more or less, of NFS lands on the Idaho Panhandle, Clearwater and Nez Perce National Forests to WPT;**  
These are 47 scattered tracts of land ranging in size from the 6.35 acres FS district compound in Elk City, Idaho to a contiguous tract approximately 7,680 acre Northeast of Elk City.

Forty- four of the NFS tracts are relatively small (from 6.35 to about 1,300 acres), completely isolated or bordered on one side by NFS lands. For the most part these tracts are timbered. One federal tract is the Elk City Ranger District Administrative Site. The three remaining NFS tracts are relatively large. One large block of land on the Clearwater NF (made up of the Cloverleaf Creek, Twin Springs and Long Meadow parcels) is 6,000 acres. This is timbered land intermingled with private timber lands and has one common border with other NFS lands. Two large blocks on the Nez Perce NF are approximately 3,200 and 7,680 acres. These lands are near Elk City and are contiguous to other NFS lands except on one side which borders private timberlands or BLM.

It is proposed to exchange the mineral estate along with the surface estate.

The legal descriptions involved in this proposed land exchange are contained in **Appendix A**. Vicinity maps of each parcel are attached in **Appendix B**.

### **Exchange Authorities**

This land exchange will be considered under the following authorities for the FS:

- General Exchange Act of March 20, 1922 (Stat. 465 as amended; 16 U.S.C. 485, 486)
- Weeks Act of March 1, 1911 (36 Stat. 961 as amended; 16 U.S.C. 516)
- Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2755 as amended; 43 U.S.C. 1701, 1715, 1716, 1717)]
- Federal Land Exchange Facilitation Act of 1988 (Stat. 1086 as amended 43 U.S.C. 1716 (note), 751 (note).

### **Forest Plan Compliance Review**

Since the federal lands identified for exchange are located on three National Forests it is necessary to look at resource plan compliance separately for each unit.

#### **Nez Perce Forest Plan**

The 1987 Nez Perce Forest Plan identifies land exchanges as projected outputs and activities however Nez Perce NF lands identified for exchange may not be in compliance with the forest plan. The bulk of the lands identified for exchange on the Nez Perce NF are near Elk City and are not completely isolated parcels. These lands are contiguous to other NFS lands except on one boundary which borders either private timberlands or BLM lands. Transferring these lands into private ownership would not create a new “inholding” in the forest but will rather make an existing inholding larger. Boundary management costs associated with these parcels will increase; however, boundary maintenance needs for the entire exchange will decrease.

#### **Clearwater Forest Plan**

The 1987 Clearwater Forest Plan identifies management goals for each resource area. The goals identified for the Lands program include:

- Achieve a land ownership pattern in the Forest that will provide for soil and watershed protection, and effective and efficient management of National Forest System lands.
- Acquire lands that will maximize short-range and long-range management opportunities. Dispose of lands which do not contribute to Forest Plan management direction.

The Clearwater Forest Plan also identifies objectives for the Lands program including:

- Complete major land exchanges with large private land holders in the Forest to provide more efficient and effective resource management.

The Clearwater Forest Plan standards developed for the Lands program include:

- Coordinate land adjustment planning with other Federal and State agencies and local governments.
- Use land exchange to acquire interspersed private ownership in watersheds where water quality/fisheries is of high importance to meet Forest Plan objectives when possible.
- Give emphasis to acquiring remote, isolated, privately owned tracts when intensive subdivision and development of these lands could reduce management options on surrounding National Forest System lands.
- Pursue opportunities to reduce administrative costs through land adjustment for the following items;
  - Reduce property corners and boundary lines needing to be established and/or maintained.
  - Reduce or eliminate the number of special use permits, grazing uses, and easements to be granted to the public. There would be subsequent savings in not administering these grants.
  - Reduce or eliminate the number of uses and easements to be acquired from the public to manage National Forest System lands. There would be savings realized in not having to acquire and administer these uses.

#### Federal Lands Identified for Exchange

At this time the Clearwater NF lands identified for exchange appear to be in compliance with the forest plan. The 31 federal tracts identified for exchange on the Clearwater NF meet these criteria. Twelve federal tracts on the Clearwater NF are completely isolated and the rest have one boundary in common with other NFS land. There will be a large cost savings over time associated with the reduction in miles of land line boundaries to maintain.

#### Private Lands Identified for Acquisition

Acquisition of the checkerboard lands in the Upper Lochsa River drainage is in compliance with the Clearwater National Forest plan. The lands identified to be acquired by exchange are located within areas having an administrative designation established through the land management planning process and shall automatically become part of the area within which they are located, without further action by the FS, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

On the Clearwater NF the administrative designations are called Management Areas. The private checkerboard land is surrounded by Clearwater National Forest lands that have Management Area Direction classified as the following:

- A7 – Wild and Scenic River
- B2 – Recommended Wilderness
- C4 – Key Big-Game Winter Range/ Timber Management
- C8S – Big –Game Summer Range/Timber Management
- E1 – Timber Management
- E3 – Aerial Harvest Systems/Timber Management
- US – Unsuitable for timber harvest

### **Idaho Panhandle Forest Plan**

The land exchange is in compliance with the 1987 Idaho Panhandle Forest Plan that identifies land exchanges as projected outputs and activities. The plan also provides landownership planning criteria to help determine which lands are desirable for National Forest ownership and which lands are better suited for other ownership. These criteria identify for disposal NFS land that is isolated or mixed ownership. Disposal can be considered where there is no option for expansion of federal ownership, where land use patterns are changing from wildland to subdivision or agricultural and where isolated by surrounding single ownership. All 12 tracts identified for exchange on the Idaho Panhandle NF are completely isolated from other NFS lands and meet these criteria.

### **Public Interest Determination**

Based on initial screening, it appears the resource values and public objectives associated with acquiring the non-federal lands equal or exceed the resource values and public objectives of the federal land to be conveyed. It is anticipated that the intended use of the conveyed federal lands will not substantially conflict with the established management objectives on adjacent federal lands.

In general the land exchange provides the opportunity for the United States to place in federal ownership checkerboard lands which encompass the headwaters of the Lochsa River, and hold outstanding values for aquatic and terrestrial species along with significant cultural resources including the Lewis and Clark National Historic Trail and Nez Perce treaty area. Consolidating these checkerboard lands meets two of the seven goals identified in the July 2007 USDA Forest Service Strategic Plan FY 2007-2012. The two goals are:

- **Goal 1.** Restore, Sustain, and Enhance the Nation’s Forests and Grasslands
  - Reduce adverse impacts from invasive and native species, pests, and diseases.
  - Restore and maintain healthy watersheds and diverse habitats.
    - Maintain resilient land and water conditions at the watershed level and restore deteriorated lands and waters.

The current intermingled ownership pattern in the upper Lochsa River drainage has made it difficult for the forest to manage the adjacent NFS lands with an ecosystem management approach. For example the Clearwater NF and the Nez Perce Tribe Watershed Division have a 10-year partnership history in the upper Lochsa River drainage in which substantial watershed improvement projects have taken place including:

- ✓ 120 acres of weed abatement prescription grazing
- ✓ 13 culvert replacements resulting in the return of 24 miles of spawning and rearing habitat and
- ✓ 300 miles of decommissioned road resulting in 40 miles of rearing habitat by removing failing culverts

To date these projects have been limited to the federal acreage however once the checkerboard lands are acquired this work can continue on an ecosystem scale to include the entire upper Lochsa River drainage.

- **Goal 3. Conserve Open Spaces**
  - Identify those lands that are most at risk for conversion and those that are most important for providing public benefits and take the following action:
    - Acquire land adjacent to or near NFS lands through purchase, conveyance, boundary adjustments, and donations to protect priority forest areas.

Similar checkerboard lands in western states are being purchased by private real estate developers for subdivisions. Subdivision of lands historically managed for timber production come with their own unique challenges. Subdivisions in remote settings can cause wildlife habitat fragmentation as homes, fences and roads are built. The wildland-urban interface increases driving federal wildfire protection costs higher. As remote locations are developed local counties are often impacted as demands for such things as road maintenance, police protection and garbage services increase. Acquiring these checkerboard lands into federal management reduces the risks associated to the surrounding public lands that come with subdivisions.

Federal administrative costs will be reduced by consolidating these lands by reducing survey requirements to maintain landline boundaries and reducing the number of easements and agreements necessary to access inholdings.

Twenty-five of the 47 tracts identified for exchange are completely isolated and most of the rest have only one common border with NFS lands. This isolation makes these tracts harder if not impossible to manage effectively and efficiently. Some of these tracts surrounded by private lands have lost their national forest character as unauthorized trespasses have occurred over time. Federal administrative costs will decline by reducing landline boundary maintenance and reducing the number of permits and easements necessary for maintaining access.

## **National Environmental Policy Act**

The FS intends to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) and other relevant federal laws and regulations. Upon execution of the Agreement to Initiate (ATI), required field inspections, resource reports and appraisals will be prepared, analyzed and disclosed within the EIS. Through initial screening, it appears that there are no significant resource concerns that cannot be addressed and/or mitigated. Since the proposed exchange involves lands on three national forests it is anticipated that the complexity of the exchange will require an EIS. The EIS will:

- inform the public of the Proposed Action
- provide response to comments received on the Draft EIS
- disclose the direct, indirect, and cumulative environmental effects of the Proposed Action and
- indicate any irreversible commitment of resources that would result from each alternative proposed

The proposed action would authorize the transfer of land ownership and management between the federal and non-federal parties. The proposed action would not authorize any site-specific management activities by either party. Based on the analysis in the EIS, the Responsible Official will decide whether to proceed with the proposed exchange and if so, under what conditions. It is possible that this decision could include Forest Plan amendments to the Clearwater and/or Nez Perce National Forests forest plans.

## **Restoration**

For the past 50 years, WPT lands were managed primarily for timber production. For the most part these lands currently meet State Best Management Practices for timber production lands; however they do not necessarily meet forest plan management standards. A restoration plan for the WPT lands is a significant component of the exchange proposal. The goal of the restoration plan will be to identify needed projects to bring the acquired lands up to forest plan management standards. Projects will likely focus on roads, culvert replacement and weed abatement. Upon consummation of the land exchange, WPT will contribute some funding to implement the restoration plan.

## **Title Commitment**

Refer to **Appendix C** for WPT's Title Insurance commitment which includes a list of outstanding rights and reservations. The FS has reviewed all outstanding rights and reservations on the lands being acquired from WPT and found them to be acceptable. The current title commitment does not meet Department of Justice Title Standards 2001 and final title policy will be secured on the ALTA U.S. Policy – 9/28/91 form.

Refer to **Appendix D** for the federal land status report for general assumptions and limiting conditions pertaining to access, withdrawals, and disposition of outstanding special use authorizations and/or leases on the federal lands. There are withdrawals on some federal lands and revocation of all withdrawals will be processed concurrently with other exchange activities.

The legal descriptions for the federal lands are being reviewed by a contract Surveying and Engineering firm. It is anticipated that several federal parcels will need to be surveyed to better describe tracts prior to conveyance. Also, the federal tracts adjacent to the Elk City Township are currently described based on a “protracted survey”; consequently, they would need to be surveyed in accordance with BLM cadastral specifications prior to conveyance.

There are buildings and other real property located on two of the FS properties included in the exchange. The Elk City district compound includes offices, warehouse, employee housing units and other out-buildings. Relocation of currently occupied federal buildings will be addressed in the NEPA analysis. The Silvers administrative site includes a FS barn which is not occupied.

The FS will be requesting segregation from appropriation under the 1872 Mining Law for federal tracts with reserved public domain status concurrently with the signing of the Agreement to Initiate.

Refer to **Appendix E** for a summary of the existing water rights. All water rights will be exchanged on both the federal and non-federal sides.

### **Preliminary Estimate of Value and Balancing**

A contract appraiser, Integrity Realty Resources, conducted a preliminary review of the proposed land exchange in January 2008 at which time the FS had identified approximately 15,000 acres for exchange. They determined that it appeared the lands set aside by the FS might fall short of making an equal exchange between the parties. Based on their research they recommended that the government needed approximately 20,000 acres which was expected to be within 10% of the land area necessary to enable a fair exchange between the parties.

In May, Integrity Realty Resources updated their report with the understanding that the government had identified nearly 30,000 acres for potential exchange. Their conclusion was it appeared the significant lands set aside by the government should more than adequately fulfill the intended goal of accomplishing an equal exchange between the parties.

At this time it is believed that the 28,212 acres of federal land identified for exchange is likely in excess of what is needed for an equal value exchange. The parties to the



exchange will develop a collaborative process to prioritize the federal lands to be included in the exchange based on valuation and resource values.

### **Processing Costs**

At the beginning of negotiations in 2006, the Northern Region Regional Forester determined that the region did not have adequate funding to process this land exchange. Consequently, WPT agreed in principle to cover the majority of processing costs. It was agreed that WPT will be primarily responsible for the cost of processing the exchange including the cost of contracting for items, to include but not limited to, timber cruise, appraisal, preparation of the NEPA document with associated field surveys/specialist reports (biological/T&E, mineral potential, cultural, hazardous materials, wetland/floodplain), title preparation, publications and miscellaneous costs associated with the exchange. To ensure timely processing of the exchange, WPT is willing to consider, through a collection agreement, to cover salary and per diem expenses for the agency's Project Leader; federal employees who provide coordination, oversight and review of contractor's work; federal employees who provide specific resource support; and the preparation of the restoration plan.

The Agreement to Initiate (ATI) will include an Implementation Schedule and Financial Plan for the proposed exchange that will identify FS and WPT responsibilities and estimate costs for each party. It is currently estimated the total costs for the exchange would be approximately \$3,000,000 of which \$700,000 would be attributed to the agency's costs.

In light of the above, WPT has requested that the Forest Service consider invoking assumption of costs in accordance with specified provisions under 36 CFR 254.7 and be addressed in the Agreement to Initiate. Under separate letter, dated September 5, 2008, the Northern Region Regional Forester made this request to the Chief for her consideration.

### **Timelines**

All parties to the exchange are committed to completing this exchange in three years. However, the parties also understand that unexpected delays outside of their control may be encountered. The target date for completion of this exchange is September 2010. The table below shows the general timeline, a more detailed proposed timeline will be included in the Agreement to Initiate.

<b>Action</b>	<b>Date</b>
Feasibility Analysis (FA) – Execute Agreement to Initiate (ATI)	September 2008
Finalize specialist/baseline Plan of Work specifications	September 2008

Complete required field work	November 2008
Draft NEPA document	July 2009
Issue Decision	June 2010
Close – Exchange deeds	September 2010

**Identify Potential Issues and Support**

Idaho County Commissioners voiced concerns about the economic impact of converting 40,000 acres of private land to federal in their county which is about 85% federal land. WPT and the FS have worked closely with the Commissioners to identify federal lands within Idaho County for exchange not only to maintain a private land tax base but also to provide economic opportunities.

The federal lands identified for exchange near Elk City in Idaho County would likely be harvested by WPT once the exchange is complete. Considering the recessed economic status in Idaho County the process of timber harvesting and processing the acquired timber would result in a beneficial impact to the local economy. Timber harvesting and other watershed management activities are compatible with the established management objectives on the adjacent NFS lands which are a component of the timber base of the Nez Perce NF.

The Nez Perce Tribe has indicated an interest in the FS acquiring the checkerboard lands which fall within their treaty area and may be interested in playing a role in the restoration of the acquired lands. However, the Tribe has asked for clarification on how treaty rights will be applied on both the lands leaving and entering federal ownership, which will be addressed in consultation with respective legal counsels.

The Nez Perce NF has recently determined the need to consolidate employees into fewer administrative sites. One option that has been identified is to sell the Elk City district compound under current or future applicable conveyance authorities, if any and use the proceeds to make the necessary improvements to their Red River compound to accommodate all their employees in one location. If the Elk City compound is transferred out of federal ownership, as proposed in this exchange, the Nez Perce NF will be looking for alternate ways to fund the needed improvements at their Red River compound.

**Legal Descriptions and Acres**

See Appendix A

**Vicinity Maps**

See Appendix B

**Title Insurance Commitment**

See Appendix C

**Federal Land Status Report**

See Appendix D

**Water Rights**

See Appendix E

**Recommendation**

Based on the information contained in this Feasibility Analysis, it is recommended that the Forest Service enter into an Agreement to Initiate with WPT and proceed with the land exchange process.

**Recommended by:**

**USFS**

<u>/s/ Tom Reilly</u>	<u>9/15/08</u>
Tom Reilly	Date
Forest Supervisor	
Clearwater National Forest	

**Approved by:**

**USFS**

<u>/s/ Thomas Puchlerz</u>	<u>9/22/08</u>
Thomas Puchlerz	Date
Director or Recreation, Minerals	
Lands, Heritage & Wilderness	
Northern Region (R1)	