

Bureau of Land Management, Interior

§ 2201.8

- (i) The date of decision;
- (ii) A concise description of the decision;
- (iii) The name and title of the deciding official;
- (iv) Directions for obtaining a copy of the decision; and
- (v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to §2200.0-6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7-2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to §2201.7-1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification (“hold harmless” agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is

liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to §2201.7-1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any legal obligation or right enforceable against or enjoyed by any party.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for the non-Federal lands being conveyed to the United States shall be in conformance with the Department of Justice regulations and “Standards for the Preparation of Title Evidence in Land Acquisitions by the United States” in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in recordable form and in accordance with the Department of Justice regulations and “Standards for the Preparation of Title Evidence in Land Acquisition by the United

§ 2201.9

States” in effect at the time of conveyance.

(2) Conveyances of lands from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 2200.0-6(j)(1) of this title.

(c) *Title encumbrances*—(1) *Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the Office of the Solicitor of the Department of the Interior or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to agreed upon covenants or conditions included in the conveyance documents.

(iii) Any personal property owned by the non-Federal party that is not a part of the exchange proposal should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing

43 CFR Ch. II (10-1-11 Edition)

that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States v. Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands simultaneously shall pass and be deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk’s or other local recorder’s office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner shall be met. The requirements and conditions necessary for recordation at a minimum will include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands; and

(2) The issuance of title evidence as of the date and time of recordation, which conforms to the instructions and requirements of the Office of the Solicitor’s preliminary title opinion.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-