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Report to Congressional Requesters

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FEDERAL LANDS

Land Acquisitions Involving Nonprofit Conservation Organizations

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Resources, Community, and Economic Development Division

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The Honorable Bob Packwood
United States Senate

The Honorable Robert F. Smith
House of Representatives

This report responds to your request that we examine land acquisition procedures between nonprofit conservation organizations (nonprofits) and federal agencies other than those within the Department of the Interior. In May 1992, Interior's Office of Inspector General issued a report on problems it found with these types of acquisitions within three of Interior's agencies—the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service.[1] The Inspector General reported, for example, that the prices for some acquisitions exceeded fair market values,[2] the related land appraisals were sometimes out of date or were not well reviewed, and nonprofits benefited unduly by realizing substantial financial gains on land acquisitions by Interior. (Information on Interior's land acquisitions involving nonprofits and the Inspector General's report is provided in app. I.)

Concerned about the possible existence of similar problems with the land acquisitions of other federal land management agencies, you asked us to address

- the extent to which agencies other than Interior purchase land from or with the assistance of nonprofits,[3]
- the adequacy of controls for protecting the government's interest in such acquisitions, and
- the extent to which nonprofits realize substantial financial gains in such transactions.

[1]Department of the Interior Land Acquisitions Conducted With the Assistance of Nonprofit Organizations (Department of the Interior/Office of Inspector General Audit Report No. 92-I-833, May 1992).

[2]The term "fair market value" as used in this report refers to the appraised value of real estate, as determined by an independent real estate appraiser or by qualified personnel of a federal agency.

[3]Purchases of land may entail the purchase of outright ownership, known as "fee simple" ownership, or may result in the purchases of significant interests in land, such as the purchase of mineral rights or a scenic easement, which do not result in outright ownership. The terms "purchase" or "acquisition" throughout this report will refer to either of these.

Results in Brief

Two federal agencies with land management responsibilities outside of the Department of the Interior acquired land from or with the assistance of nonprofits during the 5 fiscal years from 1988 through 1992—the Department of Agriculture's Forest Service and the Department of Energy's Bonneville Power Administration (Bonneville). Eighteen nonprofits were involved in the Forest Service's 246 purchases for $138.8 million and Bonneville's 3 purchases for $10.7 million.

Both the Forest Service and Bonneville had adequate controls to protect the government's interest in such acquisitions. With few exceptions, the two agencies based their offers for individual land parcels on fair market values established through timely appraisals that were made by qualified appraisers and that were adequately reviewed. Furthermore, each of the acquired properties had been designated by either the Congress or the agencies themselves as "priority" acquisitions that would help the agencies achieve their missions and goals.

Both gains and losses were realized on specific transactions by four nonprofits that provided us with acquisition cost information on properties subsequently sold to the Forest Service and Bonneville. Some of these nonprofits made substantial financial gains on certain individual transactions, particularly when land had been donated, in whole or in part, to them. However, on the basis of these four nonprofits' total transactions with the Forest Service or Bonneville, each nonprofit incurred net losses when its acquisition, direct, and indirect costs were compared with the selling prices it received from the two agencies. These four nonprofits accounted for about 49 percent of the acres sold to the Forest Service and Bonneville and about 37 percent of the dollar value of these agencies' acquisitions involving nonprofits. Two other nonprofits, which accounted for about 46 percent of the acres sold—all to the Forest Service—and about 59 percent of the dollar value of the acquisitions involving nonprofits, did not provide us with cost information on their transactions because of the contractual obligations concerning confidentiality that both had with the parties from whom they acquired the land. Thus, we were unable to determine the extent to which they had financial gains or losses on their transactions.

Background

The Forest Service and Bonneville acquire land for a variety of reasons. The Forest Service acquires it for such purposes as protecting sensitive species, improving outdoor recreation, and consolidating boundaries for more efficient land management. Bonneville acquires it to facilitate electric power generation and transmission, protect fish species, and mitigate the damage caused to fish and wildlife by federal hydroelectric power projects.

Role of Nonprofits in Federal Land Acquisitions

Nonprofits help federal agencies acquire land that helps them to fulfill their missions and goals. Without such assistance, opportunities to purchase specific, desirable properties would often be lost because of the unwillingness of certain landowners to deal directly with federal agencies or the inability of agencies to come up with needed funds when a given property is for sale. Nonprofits are often able to quickly acquire land when it becomes available and then hold it until the agency obtains funding, sometimes years later. The role of nonprofits in federal agencies' land acquisitions has been controversial. On the one hand, nonprofits have been commended for their assistance to federal agencies in acquiring land that the federal government might not otherwise have been able to obtain. On the other hand, nonprofits have been criticized for attempting to exercise too much control over federal agencies' land acquisition programs and for generating what some view to be excessive financial gains on their land sales to federal agencies.

Although the nonprofits' practice of purchasing and holding properties for later sales to federal agencies has been followed for several decades, federal statutes and regulations governing federal land acquisitions have not dealt with this relationship. However, at the urging of the General Accounting Office[4] and the Office of Management and Budget, guidelines to better define the relationship with nonprofits were developed in 1983 through a joint effort of the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and the Forest Service.[5] The guidelines outline the basic principles governing the role of nonprofits and other entities in the federal acquisition of land or interests in land. The basic principles provide, among other things, that (1) nonprofits are not agencies of the federal government, (2) nonprofits are independent groups that can freely negotiate real estate transactions and do so at their own risk, (3) the objectives of the federal agencies must be paramount to those of the nonprofits, (4) lands or interests in land proposed for acquisition through a nonprofit should be in accord with priorities outlined by the agency, and (5) agencies should use letters of intent in instances when nonprofits seek prior assurance or when agencies request the assistance of

[4]Federal Land Acquisition and Management Practices (RCED-81-135, Sept. 11, 1981).

[5]Guidelines for Transactions Between Nonprofit Conservation Organizations and Other Entities and Federal Agencies (48 Federal Register 36342-44, Aug. 10, 1983).

nonprofits. The agencies are currently revising and updating the 1983 guidelines.

Policies, Procedures, and Methods for Establishing Prices Paid to Nonprofits

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law No. 91-646), as amended (42 U.S.C. § 4651-4655), establishes policies on federal land acquisitions. The act does not make any distinction between nonprofit organizations and other types of sellers of land to federal agencies.

The act's implementing regulations[6] require federal agencies to offer not less than fair market value when they seek to acquire land. Fair market value is to be determined by an agency-approved appraisal. The Forest Service and Bonneville follow the practice of offering the appraised fair market value for land purchases. Land can be acquired at a price greater than fair market value when reasonable efforts to negotiate an agreement at that amount have failed and a determination is made that the acquisition is in the public interest. Both the Forest Service and Bonneville have policies on the circumstances under which each of them may pay more than the fair market value when they acquire land. The Forest Service's land acquisition procedures also require that congressional appropriations committees be notified 30 days in advance of such acquisitions. Bonneville has no such requirement. In addition to fair market value, the Forest Service's and Bonneville's acquisition costs may include the payment of expenses incidental to the transfer of title to the federal agency, such as recording and title fees.

Although the Forest Service and Bonneville offer the appraised fair market value for land purchases, a nonprofit is free to sell its land at less than this amount, should it choose to do so. For example, a nonprofit that is not completely dependent on the proceeds of land sales for operating revenue may be willing to sell land to federal agencies for less than fair market value, seeking only to recover its costs. A nonprofit also may be willing to sell land for less than what it could have obtained because the transaction helps to further its conservation goals. Forest Service and Bonneville officials told us that the amount a nonprofit may gain or lose on a sale is irrelevant to the amount they offer to pay for the land, because the basis for their offered purchase price is the appraised fair market value.

[6]Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 C.F.R. § 24).

Extent of Acquisitions Involving Nonprofits and Agencies Other Than Interior

Of 11 federal agencies other than Interior with extensive land management responsibilities, only the Forest Service and Bonneville reported that they had acquired land from or with the assistance of nonprofits during the 5 fiscal years from 1988 through 1992. The Forest Service reported 246 such acquisitions, and Bonneville reported 3. Included in these acquisitions were nine transactions (seven by the Forest Service and two by Bonneville) in which properties were not acquired directly from the nonprofits, but which entailed significant involvement by nonprofits. In eight of these nine transactions, the nonprofits held purchase options on the property and transferred these options to the federal agency before the sale. In the remaining transaction, the nonprofit paid the original landowner for the property and arranged for the landowner to sell the property to the Forest Service for $1; the nonprofit never held title to the property.

In all, 18 nonprofits sold and/or partially donated land to the Forest Service and Bonneville during the 5-year period. The 249 acquisitions involved over 288,000 acres, at a cost of about $149.5 million (see table 1). The number and dollar value of the acquisitions varied greatly; six of the nonprofits (the Trust for Public Land, The Nature Conservancy, The Conservation Fund, the Rocky Mountain Elk Foundation, the River Network, and the American Land Conservancy) accounted for over 95 percent of the acres sold and the dollar value of the acquisitions. These six nonprofits accounted for 197 of the acquisitions, involving over 275,000 acres at a cost of $142.9 million. The prices paid for the properties purchased from each of the 18 nonprofits ranged from a high of $8 million to a low of $1. The value of the land donations—in whole or in part—ranged from a high of about $1.4 million to a low of $1.

Table 1: Forest Service's and Bonneville Power Administration's Land Acquisitions Involving Nonprofits, Fiscal Years 1988-92

Nonprofit conservation organization	Number of acquisitions	Number of acres	Acquisition cost
Trust for Public Land[a]	133	132,459	$ 83,989,095
The Nature Conservancy[a, b]	33	68,032	37,315,343
The Conservation Fund[c]	3	61,573	7,586,900
Rocky Mountain Elk Foundation[a]	8	4,986	6,307,000
River Network	14	1,589	4,122,000
American Land Conservancy	6	7,031	3,582,276
Jackson Hole Land Trust[a]	2	760	2,600,000
Western Pennsylvania Conservancy[a]	7	5,336	1,983,300
Appalachian Trail Conference	7	727	621,369
Vermont Land Trust[a]	4	696	394,500
American Resources, Inc.	10	498	324,021
League to Save Lake Tahoe	14	15	253,025
Society for the Protection of New Hampshire Forests	3	353	196,100
Up With People	1	61	77,700
California Trout	1	20	73,000
American Forestry Association	1	40	35,000
Wilderness Land Trust	1	37	27,900
Richard King Mellon Foundation	1	3,843	1
Total	**249**	**288,056**	**$149,488,530**

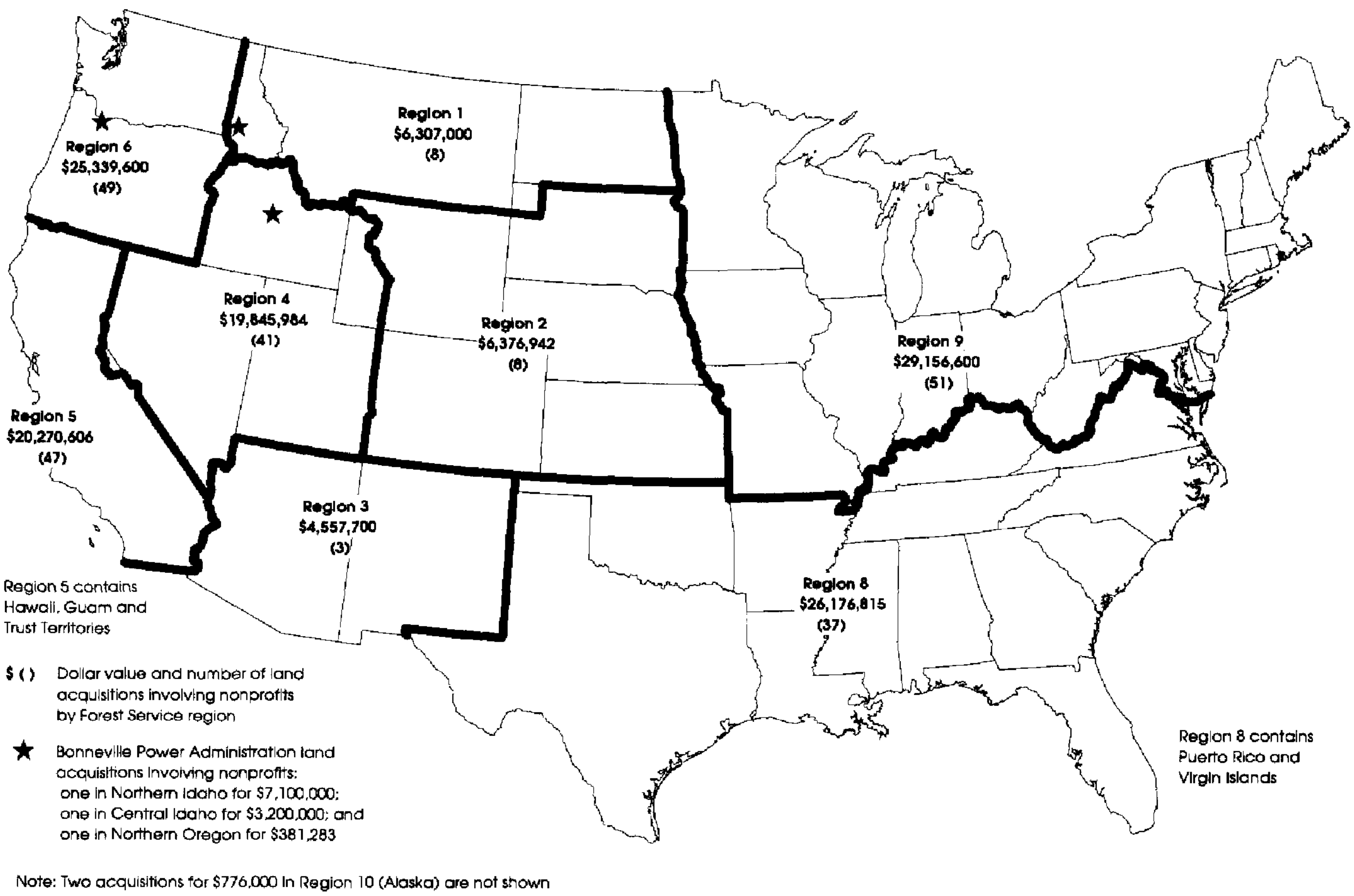
[a]The Forest Service acquired a total of nine easements or mineral rights only, totaling 21,454 acres for $5,304,500, from these six nonprofits.

[b]Includes two sales of land to Bonneville totaling 2,618 acres for $3,581,283.

[c]Includes one sale of land to Bonneville totaling 59,994 acres for $7.1 million.

The Forest Service's land acquisition program relies heavily on nonprofits. For fiscal years 1988 through 1992, the Forest Service's land acquisitions totaled about $337 million. Of this amount, $138.8 million (about 41 percent) was spent on 246 acquisitions involving nonprofits. Figure 1 shows the geographic distribution of these land acquisitions by Forest Service region as well as the location and value of the three acquisitions involving nonprofits that Bonneville made during the period.

Figure 1: Map of Forest Service's and Bonneville Power Administration's Land Acquisitions Involving Nonprofit Conservation Organizations



In terms of dollar value, Bonneville's land acquisitions in fiscal years 1988 through 1992 also showed a high reliance on nonprofits. During this period, Bonneville spent about $12.8 million—including incidental costs such as title fees, surveys, and recording fees—for land acquisitions. Of this amount, about $11.1 million (about 87 percent) was spent on acquisitions involving nonprofits. Of the $11.1 million, about $10.7 million represented the purchase prices paid to the nonprofits. However, a Bonneville official told us that nonprofits play a much smaller role in Bonneville's overall land acquisition program than these figures indicate.

He said that of 1,414 acquisitions made in this same period only 3 involved nonprofits and that these were not representative of Bonneville's typical land acquisitions. According to this official, all of the land acquisitions involving nonprofits were specifically made to protect fish and wildlife. As such, the properties acquired were very large in terms of acreage and cost. The three nonprofit acquisitions made by Bonneville encompassed about 62,612 acres at a total cost of about $11.1 million. The remaining 1,411 acquisitions encompassed about 1,837 acres at a cost of about $1.7 million.

Controls Over Acquisitions Involving Nonprofits

The Forest Service's and Bonneville's controls over land acquisitions involving nonprofits were adequate to protect the government's interests. These controls involved (1) basing a purchase price on the land's fair market value, (2) establishing fair market value through a timely appraisal performed by a qualified appraiser, (3) reviewing the appraisal adequately and timely, and (4) ensuring that the acquisition was a priority acquisition established by the Congress or the agency. Most of the 249 acquisitions we examined in detail were at or below fair market value, although in a few instances the Forest Service acquired properties at prices exceeding fair market value. Nearly all acquisitions were supported by adequate appraisals, and all involved properties that the agencies had earlier identified as priority acquisitions.

Most Acquisitions at Fair Market Value or Less

Of the Forest Service's and Bonneville's 249 land acquisitions involving nonprofits, 244 were made at or below fair market value. When added together, the payments to nonprofits for all of the land acquisitions were less than the fair market value of the properties purchased. These acquisitions included land with a total fair market value of about $155 million. These properties were acquired for a total price of about $149.5 million, or about 3.5 percent less than fair market value (see table 2). Of the Forest Service's 246 acquisitions, 220 (89 percent) were at fair market value, 21 (9 percent) were at prices below fair market value, and 5 (2 percent) were at prices above fair market value. Of Bonneville's three acquisitions, one was at fair market value and two were at prices below fair market value. (See app. II for a breakdown, by nonprofit conservation organization, of acquisitions at, below, and above fair market values.)

Table 2: Total Acquisition Costs Compared to Fair Market Values for the Forest Service's and Bonneville Power Administration's Land Acquisitions Involving Nonprofits, Fiscal Years 1988-92

Nonprofit conservation organization	Acquisition cost	Fair market value	Difference
Trust for Public Land	$ 83,989,095	$ 85,316,475	$ (1,327,380)[a]
The Nature Conservancy	37,315,343	40,057,942	(2,742,599)
The Conservation Fund	7,586,900	7,586,900	0
Rocky Mountain Elk Foundation	6,307,000	6,307,000	0
River Network	4,122,000	4,147,500	(25,500)
American Land Conservancy	3,582,276	3,597,277	(15,001)
Jackson Hole Land Trust	2,600,000	2,600,000	0
Western Pennsylvania Conservancy	1,983,300	1,983,300	0
Appalachian Trail Conference	621,369	621,369	0
Vermont Land Trust	394,500	394,500	0
American Resources, Inc.	324,021	324,021	0
League to Save Lake Tahoe	253,025	253,025	0
Society for the Protection of New Hampshire Forests	196,100	196,100	0
Up With People	77,700	77,700	0
California Trout	73,000	73,000	0
American Forestry Association	35,000	35,000	0
Wilderness Land Trust	27,900	27,900	0
Richard King Mellon Foundation	1	1,381,300	(1,381,299)
Total	**$149,488,530**	**$154,980,309**	**$ (5,491,779)**

[a]Figures in parentheses indicate the amount by which the acquisition cost was below the fair market value.

Five of the 249 acquisitions—all involving the Forest Service—were at prices above fair market value. In three of the five cases, the Forest Service had notified congressional appropriations committees of its intent to pay prices above fair market value. In the remaining two cases, the Forest Service paid more than fair market value for the properties through what appeared to be mistakes rather than the circumvention of the congressional notification requirement. In one transaction, the Forest Service paid $912,500 in 1992 to acquire 3,470 acres, which was $45,000 over the property's fair market value. This occurred because the original purchase price for 3,650 acres was not scaled back to reflect a 180-acre reduction in the size of the acquisition. A Forest Service official told us that the overpayment had gone unnoticed until we brought it to the agency's attention. Forest Service officials told us that this case resulted from a title problem and that it will be rectified by a donation from the nonprofit that will convey the remaining 180 acres to the Forest Service. In the other transaction, the Forest Service paid $195,000 in 1990 for about 162 acres, which was $1,000 over the fair market value. The Forest Service official responsible for this acquisition said he was unaware of the excess payment. Further inquiry disclosed that the excess payment had resulted from an error in rounding figures. At the time of our review, no efforts had been made to recover it.

Appraisals Are Performed by Qualified Appraisers, Adequately Reviewed, and Timely

A key to protecting the government's interests when a federal agency acquires land involves establishing a purchase price that is based upon an appraisal that is performed by a qualified appraiser, is adequately reviewed, and is timely. On the basis of our review of supporting documentation, both agencies have adequate controls to ensure that their appraisals meet these tests. All but 2 of the Forest Service's and Bonneville's 249 land acquisitions were based on prices supported by appraisals. The two exceptions involved properties acquired through donations for which appraisals were not done in order to avoid the expense. Under existing guidelines, an appraisal is not required when land is donated.

The appraisals for the 247 acquisitions were performed either by qualified (1) appraisers under contract with the landowner or the Forest Service or (2) Forest Service staff appraisers. The Forest Service requires each of its staff appraisers to be state licensed, thus helping to ensure that they are qualified. The Bonneville official responsible for land acquisitions told us that Bonneville has no such requirement, but it encourages its appraisers to obtain state licenses. In addition, all of the Forest Service's and Bonneville's appraisals were reviewed and approved within each agency in a timely manner.

According to the Forest Service's Chief Appraiser, the agency's regulations have—since February 1989—required that the appraisal used to support the purchase price of a property be no more than a year old, when measured from the effective date of the appraisal to the date the transaction is closed. The average age of the appraisals for the Forest Service's 246 acquisitions was about 238 days. Only eight appraisals (less than 4 percent) were more than a year old; each of these appraisals was performed after the 1-year requirement was established in February 1989.

Forest Service officials told us that they believe that the average age of their appraisals is too high, that it can be reduced, and that they are currently looking for ways to do this.

A Bonneville official told us that although Bonneville has no formal requirement about the age of an appraisal, Bonneville prefers appraisals to be no more than 6 months old. None of the three Bonneville acquisitions had appraisals more than 6 months old; the average age was about 147 days.

Acquisitions Identified as Priorities

In accordance with the 1983 guidelines for transactions between nonprofits and federal agencies, both the Forest Service and Bonneville had identified each of the 249 land acquisitions as a "priority" before it was acquired. Each of the Forest Service's 246 acquisitions had been identified as a priority in one of three ways:

- by the Congress in annual appropriations acts and related documents;
- by the Forest Service in its land acquisition priorities submitted as part of the President's annual budget requests to the Congress; or
- in Forest Service documents, such as Forest Plans, or as evidenced by previous attempts to acquire the properties.

The three Bonneville land acquisitions were also identified as priority acquisitions before the properties were acquired. Bonneville acquired these properties to mitigate for damage arising from federal hydroelectric projects in the Columbia River basin.

Extent of Financial Gains or Losses by Nonprofits

Opportunities exist for nonprofits to make substantial financial gains from their land transactions with federal agencies. These opportunities are created by the (1) implementing regulations of Public Law 91-646 that require federal agencies to offer not less than fair market value for the land they acquire and (2) tax benefits allowed under the Internal Revenue Code to both those who sell land to nonprofits at less than fair market value and to nonprofits when they, in turn, resell such land to federal agencies at fair market value and thus realize a gain. Sellers are entitled to a tax-deductible charitable contribution when they sell land to nonprofits at less than the fair market value. In addition, the gains realized on nonprofits' land sales are not subject to federal income tax. Public Law 91-646 does not prohibit a seller, whether it be a nonprofit or not, from making a financial gain on the sale of land to a federal agency—regardless of the cost basis of the seller. Whether a nonprofit's gain is "substantial" in light of its other transactions, overhead costs, and tax-exempt status and whether the nonprofit is "benefiting unduly" on a particular transaction depends on one's point of view.

Opportunities also exist for nonprofits to lose financially from their land transactions with federal agencies. These opportunities are created when (1) a nonprofit willingly sells land to a federal agency for a price that is below its acquisition cost or (2) a nonprofit's acquisition cost is greater than the fair market value that the federal agency is willing to pay for the land. A nonprofit may be willing to incur losses on its transactions with federal agencies because the transaction helps to further its conservation goals. According to one nonprofit official, nonprofits sometimes incur costs in (1) attempting to negotiate transactions that are never finalized and (2) helping federal, state, and local governments acquire land without actually being a party to the transaction. In such circumstances, we were told, nonprofits have to recover these costs through other means, including raising funds or realizing gains on the sales of other properties.

Neither the Forest Service nor Bonneville had information on nonprofits' gains or losses on the nonprofits' transactions with them. According to officials of both agencies, whether a nonprofit realizes a gain or incurs a loss on a transaction is irrelevant because the agency's purchase price is based on the property's appraised fair market value, not on the nonprofit's acquisition costs.

To determine the extent of the financial gains or losses realized by the nonprofits involved in the Forest Service's and Bonneville's acquisitions, we asked the six nonprofits that collectively were responsible for over 95 percent of the acres sold and of the total dollar value of these acquisitions to provide us with information on their purchase prices and direct and indirect costs associated with these acquisitions. These six nonprofits' transactions accounted for 275,670 acres that were sold to the Forest Service and Bonneville for about $142.9 million, which was more than $4 million below the total fair market value of the land. Four of the nonprofits—The Nature Conservancy, The Conservation Fund, the Rocky Mountain Elk Foundation, and the American Land Conservancy—provided the requested information, but two of them—the Trust for Public Land and the River Network—declined to do so because of contractual obligations concerning confidentiality that both had with the parties from whom they acquired the land.

Our analysis of the information provided by the four nonprofits is shown in table 3. It shows that three of the four nonprofits realized financial gains on some transactions and suffered losses on others. It shows that one nonprofit, The Conservation Fund, incurred losses on all three of its transactions. Table 3 also shows that—when viewing the nonprofits' sales of land to the Forest Service and Bonneville in total—two of them realized gains and two incurred losses before including indirect costs. However, each of the four nonprofits incurred net losses as a result of these transactions when indirect costs were included. These four nonprofits accounted for about 37 percent of the dollar value of such sales to the two agencies.

Table 3: Comparison of Selected Nonprofits' Land Acquisition Costs to Prices of Sales to the Forest Service and the Bonneville Power Administration, Fiscal Years 1988-92

	The Nature Conservancy	The Conservation Fund	Rocky Mountain Elk Foundation	American Land Conservancy
Purchase price	$35,112,556	$7,270,101	$6,210,015	$3,643,274
Direct costs[a]	1,742,239	174,603	437,020	32,847
Total direct acquisition costs	$36,854,795	$7,444,704	$6,647,035	$3,676,121
Sales price	37,315,343	7,586,900	6,307,000	3,582,276
Gain/(loss) before indirect costs	460,548	142,196	(340,035)	(93,845)
Indirect costs[b]	707,641	379,245	None reported	29,989
Net gain/(loss)	$ (247,093)	$ (237,049)	$ (340,035)	$ (123,834)
Number of transactions with gains	11[c]	0	1	4
Amount of gains	$ 1,359,236	$ 0	$ 12,904	$ 149,401
Number of transactions with losses	22	3	7	2
Amount of losses	$ 1,606,329	$ 237,049	$ 352,939	$ 273,235

[a]Direct costs are costs incurred by the nonprofit that are directly related to individual sales and that would not have been incurred in the absence of the transactions to which they relate. Examples include the costs of property title searches, land surveys, and legal assistance.

[b]Indirect costs are overhead costs of the nonprofit that are not directly related to individual sales, but which are instead allocated to these transactions according to the theory that each sale ought to bear some portion of the administrative and other costs associated with running the nonprofit. Examples of such costs include salaries, utilities, and office supplies.

[c]Includes one donation valued at $900,000 to The Nature Conservancy, which in turn donated the land to the Forest Service.

Although not shown in table 3, some nonprofits made substantial financial gains on certain individual transactions, particularly when land had been donated, in whole or in part, to them. For example, The Nature Conservancy sold a property to the Forest Service for over $1 million that had been donated to it. The donor made this gift to The Nature Conservancy with the intention and understanding that The Nature Conservancy would sell this property and use the proceeds to acquire other high-priority conservation lands. After deducting its costs in this transaction, The Nature Conservancy realized a gain of over $877,000. According to The Nature Conservancy's General Counsel, because of the controversy generated by the gains that nonprofits sometimes make on sales of donated land to federal agencies, The Nature Conservancy will, in the future, donate to federal agencies land it acquires through donation, rather than sell it to them. He acknowledged that such a change would put added pressure on The Nature Conservancy to recover any costs incurred in such transactions through fund raising and other efforts.

On the other hand, some nonprofits were willing to sell or assist in the sale of land at prices that were less than fair market value. For example, the Richard King Mellon Foundation—1 of the 18 nonprofits included in our review, but not 1 of the 6 we requested information from—paid a landowner about $1.6 million for a property that the landowner subsequently conveyed to the Forest Service for $1. Because this property was essentially a donation, the Forest Service did not appraise it. Instead, the Forest Service placed a value of $1.3 million on the property on the basis of the value established by the title insurance policy. This single transaction accounted for about 25 percent of the almost $5.5 million total difference between the acquisition costs and fair market values for all 249 acquisitions of the Forest Service and Bonneville during the period we examined. The Nature Conservancy, while accounting for about 25 percent of the dollar value of land sales that we examined, accounted for about 50 percent of the $5.5 million difference.

The two nonprofits that did not provide us with the requested information on their transactions accounted for about 59 percent of the dollar value of the nonprofits' sales of land to the Forest Service and Bonneville in fiscal years 1988 through 1992. One of these nonprofits—the Trust for Public Land—had the most sales. This nonprofit had 133 of the 249 sales (53 percent), which represented about $84 million of the approximately $149.5 million total sales (56 percent). Of these 133 transactions, 125 (94 percent) were at fair market value, 7 (5 percent) were for a total of about $1.3 million less than fair market value, and 1 was for $1,000 above fair market value. The other nonprofit—the River Network—had 14 of the 249 land sales (6 percent), representing about $4.1 million of the $149.5 million total sales (3 percent). Of the 14 transactions, 13 (93 percent) were at fair market value and 1 was $25,500 below fair market value.

According to the two nonprofits' audited financial statements, which they provided to us, and to statements that officials of the two nonprofits made to us, both organizations depend to a large degree on donations of land and its subsequent resale to provide the funds they need to operate. For example, the Trust for Public Land's financial statements for the 5-year period covered in our review indicate that approximately 61 percent of its operating revenue was gained from the subsequent sale of land that had been donated to it, in whole or in part. The Trust's most recent financial statement shows that land it was holding was valued at about $21.2 million. The statement shows that the Trust paid about $11.4 million for the properties; the balance, about $9.8 million (46 percent), was contributed. A Trust official indicated that these land holdings consist of over 70 parcels in 20 different states. Land valued at $10 million (47 percent of the total value of the land holdings) has been held for over 3 years, and land valued at approximately $6 million (28 percent of the total value of the land holdings) has been held for over 6 years. According to the financial statements, the Trust anticipates that, in the aggregate, a substantial portion of the excess of the fair market value over the cost of the properties will be contributed to public agencies or other nonprofit organizations. A Trust official indicated, however, that lands being held are sometimes restricted by the terms of the donation or by special agreements with state or local public agencies.

The River Network's Executive Director told us that his organization is also heavily dependent upon the sale of wholly or partially donated land to governmental agencies for its operating revenue. He said that about 60 percent of its operating revenue arises from the subsequent sale of land that it receives through donations. The River Network's most recent financial statement shows that it was holding land for which it paid $232,250. According to the statement, the River Network intends to donate this land to the Forest Service once environmental assessments are completed, structures are removed, and any title problems are resolved. We were unable to determine from the River Network's financial statements the value of this land or the portion that was contributed.

Conclusions

On the whole, the Forest Service's and Bonneville's relationships with nonprofits appear to have been positive and have not resulted in the types of problems that Interior's Inspector General was concerned with in the Department of the Interior. The Forest Service and—to a lesser degree—the Bonneville Power Administration have used nonprofit conservation organizations rather extensively during the past several years to acquire properties. Each agency has a system of controls to help ensure that the price it pays for such property is based on an appraised fair market value that has been appropriately set. In addition, the nonprofits did not appear to be exerting undue influence over the agencies' land acquisition programs because each of the Forest Service's and Bonneville's land acquisitions involving nonprofits was a "priority" acquisition. With very minor exceptions, we believe that both the Forest Service and Bonneville have followed established procedures in acquiring properties from nonprofits during the 5 fiscal years from 1988 through 1992.

Opportunities exist for nonprofits to make substantial financial gains from their land transactions with federal agencies. This is particularly true when a nonprofit receives land through a donation, in whole or in part, and subsequently resells it to the federal government at or near the property's appraised fair market value. On the other hand, possibilities exist for nonprofits to incur substantial financial losses from such transactions, particularly when the nonprofit willingly sells property to the government for less than what the nonprofit invested in it. In connection with specific transactions, we noted both gains and losses being realized by the four nonprofits that provided us with acquisition cost information on properties subsequently sold to the Forest Service and Bonneville. However, when we looked at the transactions of these nonprofits in total, each nonprofit incurred financial losses when its acquisition, direct, and indirect costs were compared with the selling prices it received from either the Forest Service or Bonneville. We were unable to determine the extent to which the two nonprofits that did not provide us with acquisition cost information had financial gains or losses on their sales of properties to the Forest Service.

Agency Comments

We discussed the information contained in this report with officials from the Forest Service, including the Associate Deputy Chief; Bonneville, including the Chief of the Land Branch; the Department of the Interior, including officials from each of Interior's land management agencies; Interior's Inspector General; and the six nonprofits we focus on in the report. These officials generally agreed with the information in the report and provided some comments and suggestions, which we incorporated where appropriate. As requested, we did not obtain written comments from the agencies or the nonprofits on a draft of the report.

We conducted our review from January 1993 through April 1994, in accordance with generally accepted government auditing standards. Appendix III contains the details of our objectives, scope, and methodology.

As requested, unless you publicly announce its contents earlier, we plan no distribution of this report until 30 days from the date of this letter. At that time, we will make copies available to the Secretary of Agriculture; the Chief, Forest Service; the Secretary of Energy; the Chief Executive Officer, Bonneville Power Administration; the Secretary of the Interior; Interior's Inspector General; the Director, Office of Management and Budget; the six nonprofits that we focus on in the report; interested congressional committees and Members of Congress; and other interested parties. We will also provide copies to others upon request.

Please call me at (202) 512-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix IV.

James Duffus III

James Duffus III
Director, Natural Resources
Management Issues

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GAO General Accounting Office

Department of the Interior's Land Acquisitions Involving Nonprofit Conservation Organizations and Related Inspector General Report

The Department of the Interior's Fish and Wildlife Service, National Park Service, and Bureau of Land Management have relied heavily on nonprofits in achieving their land acquisition goals. In total, these agencies spent about 22 percent of their land acquisition expenditures on properties involving nonprofits during the 6 fiscal years from 1986 through 1991. (See table I.1.)

Table I.1: Interior Agencies' Use of Nonprofits in Land Acquisitions, Fiscal Years 1986-91

Dollars in millions

Agency	Land acquisition appropriations	Cost of land acquisitions involving nonprofits	Percentage of acquisitions involving nonprofits
Fish and Wildlife Service	$546.2	$135.6	24.8
National Park Service	387.9	$ 47.1	12.1
Bureau of Land Management	58.1	$ 39.8	68.5
Total	**$992.3**	**$222.4**	**22.4**

Note: Figures may not add because of rounding.

Source: Department of the Interior/Office of Inspector General Audit Report No. 92-I-833, May 1992.

The Bureau of Land Management and the National Park Service follow the method of offering the appraised fair market value for the purchase of land. The Fish and Wildlife Service uses a method wherein the payment it makes for a land purchase is based on the land's fair market value or the price the nonprofit paid for the land, plus an amount to cover the overhead and direct costs the nonprofit has incurred. In some instances, this method may result in a nonprofit receiving less than the fair market value for the land, in which case the nonprofit's consent is required.

In May 1992, Interior's Inspector General reported the results of a review of the Interior agencies' land acquisitions involving nonprofits.[1] Among other things, the Inspector General noted that the fair market value method of acquiring land resulted in substantial financial gains when nonprofits resold land to the Interior agencies at the fair market value after the nonprofits had acquired it at a lower price. The report concluded that these financial gains, coupled with the little financial risk taken and the tax benefits received, amounted to an undue benefit to nonprofits.

[1]Department of the Interior Land Acquisitions Conducted With the Assistance of Nonprofit Organizations (Department of the Interior/Office of Inspector General Audit Report No. 92-I-833, May 1992).

According to the report, the nonprofits limited their financial risk by (1) obtaining purchase options on the land and exercising these options just before selling the land to the Interior agencies or (2) negotiating letters of intent with the Interior agencies that would guarantee the nonprofits a financial gain if and when the Interior agencies purchased the properties. In connection with the acquisition method used by the Fish and Wildlife Service, the Inspector General noted examples in which this approach resulted in the Fish and Wildlife Service's paying the nonprofits more than the land's fair market value. The audit disclosed that because of holding costs and other add-on costs charged by the nonprofits, the total costs of many acquisitions exceeded the properties' approved market values, sometimes by hundreds of thousands of dollars. The report recommended that for cases in which the Interior agencies seek the assistance of nonprofits in acquiring properties, Interior should limit the price paid to a nonprofit either to the lesser of the nonprofit's purchase price plus expenses allowable under Public Law 91-646 or to the appraised fair market value.

Interior's Assistant Secretaries for Land and Minerals Management and for Fish and Wildlife and Parks disagreed with both the Inspector General's recommendation and the characterization of a nonprofit's receiving an "undue benefit" through these transactions on the basis that, among other things, it may be contrary to the requirements of Public Law 91-646 and implementing regulations that federal agencies offer not less than the fair market value for the land they seek to acquire. Also, in a July 30, 1992, memorandum to the Secretary of the Interior, Interior's Solicitor concluded that (1) the Interior agencies generally have the authority to pay in excess of appraised values for property acquired and (2) while options are utilized by nonprofits and have resulted in payments in excess of costs from agencies to the nonprofits, the arrangements are legal. The Solicitor pointed out that the profits realized by the nonprofits in these transactions were typically not the result of overpayment by the federal government but more likely resulted from an underpayment by the nonprofit to the third party.

Despite opposition to the recommendation, the Secretary of the Interior proposed regulations in November 1992 that would have implemented the Inspector General's recommendation. Interior, however, retracted the proposed regulations in January 1993 after opposition from the Department of Agriculture's Assistant Secretary for Natural Resources and Environment, Interior's Assistant Secretary for Fish and Wildlife and Parks, nonprofits, some committee chairmen and Members of Congress, and others. The proposed policy was criticized primarily because it violated the provisions of Public Law 91-646 and implementing regulations that (1) establish policies and requirements for federal agencies to offer not less than the fair market value when purchasing land and (2) do not distinguish between sellers that are nonprofits and other entities. The nonprofits also argued that, because land sales to nonprofits at below-market prices represent donations intended to support these organizations, the changes would unfairly deprive the nonprofits of such donations.

Although the proposed regulations have been withdrawn, as of April 1994 the Department of the Interior was still considering the Inspector General's recommendation. Under consideration was whether to make the acquisition policies involving nonprofits consistent among the various Interior agencies. The Fish and Wildlife Service was resisting changing its acquisition method to conform with the method used by the Bureau of Land Management, the National Park Service, and the Forest Service because of its concern that such a change might adversely affect its ability to negotiate land deals with nonprofits. Once any policy decisions are made from such deliberations, the Interior agencies and the Forest Service plan to revise and update the 1983 guidelines on transactions involving nonprofits. According to Interior and Forest Service officials, the major hurdle they face in reaching agreement on the revisions to the 1983 guidelines is the Fish and Wildlife Service's resistance to conforming its acquisition method to that of the other agencies.

The Forest Service's and Bonneville Power Administration's Land Acquisitions Made At, Below, and Above Fair Market Values

Tables II.1, II.2, and II.3 show, by nonprofit conservation organization, the Forest Service's and Bonneville Power Administration's land acquisitions made at, below, and above fair market values in fiscal years 1988 through 1992.

Table II.1: Forest Service's and Bonneville Power Administration's Land Acquisitions Made at Fair Market Values That Involved Nonprofits, Fiscal Years 1988-92

Nonprofit conservation organization	Number	Cost
Trust for Public Land	125	$ 77,570,094
The Nature Conservancy	17	10,197,666
The Conservation Fund	3	7,586,900
Rocky Mountain Elk Foundation	8	6,307,000
River Network	13	2,865,000
American Land Conservancy	4	1,343,413
Jackson Hole Land Trust	2	2,600,000
Western Pennsylvania Conservancy	7	1,983,300
Appalachian Trail Conference	7	621,369
Vermont Land Trust	4	394,500
American Resources, Inc.	10	324,021
League to Save Lake Tahoe	14	253,025
Society for the Protection of New Hampshire Forests	3	196,100
Up With People	1	77,700
California Trout	1	73,000
American Forestry Association	1	35,000
Wilderness Land Trust	1	27,900
Richard King Mellon Foundation	0	0
Total	**221**	**$112,455,988**

Table II.2: Forest Service's and Bonneville Power Administration's Land Acquisitions Made Below Fair Market Values That Involved Nonprofits, Fiscal Years 1988-92

Nonprofit conservation organization	Number	Cost	Amount below fair market value
Trust for Public Land	7	$ 6,224,001	$1,328,380
The Nature Conservancy	12	22,845,177	3,054,499
The Conservation Fund	0	0	0
Rocky Mountain Elk Foundation	0	0	0
River Network	1	1,257,000	25,500
American Land Conservancy	2	2,238,863	15,001
Jackson Hole Land Trust	0	0	0
Western Pennsylvania Conservancy	0	0	0
Appalachian Trail Conference	0	0	0
Vermont Land Trust	0	0	0
American Resources, Inc.	0	0	0
League to Save Lake Tahoe	0	0	0
Society for the Protection of New Hampshire Forests	0	0	0
Up With People	0	0	0
California Trout	0	0	0
American Forestry Association	0	0	0
Wilderness Land Trust	0	0	0
Richard King Mellon Foundation	1	1	1,381,299
Total	**23**	**$32,565,042**	**$5,804,679**

Table II.3: Forest Service's Land Acquisitions Made Above Fair Market Values That Involved Nonprofits, Fiscal Years 1988-92

Nonprofit conservation organization	Number	Cost	Amount above fair market value
Trust for Public Land	1	$ 195,000	$ 1,000
The Nature Conservancy	4	4,272,500	311,900
The Conservation Fund	0	0	0
Rocky Mountain Elk Foundation	0	0	0
River Network	0	0	0
American Land Conservancy	0	0	0
Jackson Hole Land Trust	0	0	0
Western Pennsylvania Conservancy	0	0	0
Appalachian Trail Conference	0	0	0
Vermont Land Trust	0	0	0
American Resources, Inc.	0	0	0
League to Save Lake Tahoe	0	0	0
Society for the Protection of New Hampshire Forests	0	0	0
Up With People	0	0	0
California Trout	0	0	0
American Forestry Association	0	0	0
Wilderness Land Trust	0	0	0
Richard King Mellon Foundation	0	0	0
Total	**5**	**$4,467,500**	**$312,900**

Note: None of the Bonneville Power Administration's three acquisitions were made above the fair market values.

Objectives, Scope, and Methodology

In response to a request received from Senator Bob Packwood and Representative Robert F. Smith, this report presents information on (1) the extent to which agencies other than the Department of the Interior purchased land from nonprofit conservation organizations (nonprofits), (2) the adequacy of controls for protecting the government's interest in such acquisitions, and (3) the extent to which nonprofits realized substantial financial gains from these transactions.

To determine which agencies other than Interior's had acquired land from nonprofits in fiscal years 1988 through 1992, we contacted federal agencies that were known to have large land holdings or were responsible for land management or for conservation of natural resources. Fiscal year 1993 was not yet complete when we contacted the agencies. The agencies we contacted were as follows:

- the Department of Agriculture,
- the Forest Service,
- the Department of Energy,
- the Tennessee Valley Authority,
- the Bonneville Power Administration,
- the Department of Defense,
- the U.S. Army Corps of Engineers,
- the Department of Commerce,
- the Environmental Protection Agency,
- the Council on Environmental Quality, and
- the General Services Administration.

Of these agencies, only two, the Forest Service and the Bonneville Power Administration (Bonneville), identified land acquisitions made from nonprofits.

To determine the extent to which the Forest Service and Bonneville acquired land with the assistance of nonprofits during the 5-year period of our review, we requested information on the number of such transactions, the identities of the nonprofits from which the land was acquired, and the acreage involved. To determine the adequacy of controls, we obtained information on the purchase prices, the appraisals of the properties and evidence that the appraisals were timely and were reviewed and approved by appropriate agency officials, and evidence that the lands acquired were priority acquisitions of the acquiring agency. We discussed land acquisition policies and practices with officials at Forest Service headquarters in Washington, D.C., and at each of the nine Forest Service regional offices, and with officials of the Bonneville Power Administration at its Portland, Oregon, headquarters. We also reviewed laws, regulations, and policy guidance pertaining to land acquisitions by federal agencies and the involvement of nonprofits in these transactions. In addition, we visited a number of Forest Service and Bonneville properties that had been acquired with nonprofit assistance.

We examined documentation relating to each of the 249 acquisitions that were reported to us for the 5-year period. Our examination included the following:

- the stated reason for acquiring the land,
- the price paid,
- the appraised value of the land,
- the timeliness of the appraisal,
- whether the appraisal was reviewed and approved by the appropriate agency officials, and
- whether the land acquired was a priority acquisition.

To obtain information on the extent to which the nonprofits realized financial gains or losses in selling land to federal agencies, we contacted the six nonprofits with the largest dollar volume of sales to the Forest Service and Bonneville. These six nonprofits accounted for over 95 percent of all such sales; they are the Trust for Public Land, The Nature Conservancy, The Conservation Fund, the Rocky Mountain Elk Foundation, the River Network, and the American Land Conservancy. We asked these nonprofits to voluntarily provide us with information about the prices they paid for properties that were later sold to the Forest Service and Bonneville. We also asked for information on the direct and indirect costs incurred by the nonprofits in completing these transactions. We have no authority to compel the nonprofits to provide the requested information nor to audit or otherwise verify any data provided.

We received responses from each of the nonprofits. Four of the nonprofits—The Nature Conservancy, The Conservation Fund, the Rocky Mountain Elk Foundation, and the American Land Conservancy—provided us with the information requested. We did not audit or otherwise verify the information provided by these nonprofits. The other two nonprofits—the Trust for Public Land and the River Network—declined to provide us with the purchase prices they paid for properties later sold to the Forest Service and Bonneville. The two nonprofits told us that to disclose such information would violate contractual obligations concerning confidentiality that both had with the previous landowners. However, as requested, they did provide us with their recent financial statements and other related documentation, which enabled us to determine some general information about the financial nature of their land transactions.

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