NEVADA BLM LAND TRANSACTIONS AUDIT

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

THE INSPECTOR GENERAL'S AUDIT REPORT ON BUREAU OF LAND MANAGEMENT LAND TRANSACTIONS IN NEVADA

JULY 30, 1996—WASHINGTON, DC

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NEVADA BLM LAND TRANSACTIONS AUDIT

TUESDAY, JULY 30, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS, COMMITTEE ON RESOURCES,

Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m. in room 1324, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JAMES V. HANSEN, A U.S. REPRESENTATIVE FROM UTAH; AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

Mr. HANSEN. The Subcommittee will come to order. The Subcommittee on National Parks, Forest, and Lands convenes to conduct oversight on land exchange activities in Nevada by the Bureau of Land Management. Early last year, on behalf of Congressman John Ensign, I requested the Interior Inspector of the BLM in Las Vegas, Nevada, and throughout the State to determine if the agency was processing these exchanges in accordance with all applicable laws and regulations and whether the American public received fair market value in these exchanges.

The Inspector General will appear before the Subcommittee, present the results of the final report proved to Members, and answer questions about the problems and discrepancies identified in the report.

Although Inspector General Lewis will provide much greater detail, their audit found serious problems in the land exchange process and found that in three exchanges the American taxpayer lost up to $12.2 million. Environmental concerns were ignored, documentation is poor and perhaps even forged in some cases. The land exchange process has long been a difficult and cumbersome administrative nightmare, but the growth and financial pressures in Las Vegas heighten these problems.

I commend Congressman Ensign for his leadership and willingness to pursue this sensitive issue in his district. This Subcommittee will pursue these problems in the future to determine the extent of these violations and discrepancies within the land exchange process in Las Vegas. To further our goals, Congressman Ensign's legislation, heard by this Subcommittee earlier this year, provides many of the answers on how to correct the problems contained within this system. Passage of H.R. 3128 will enable us to make this a competitive system, open to the light of public scrutiny, and will provide fair return to the American public.

I look forward to the testimony of the Inspector General and appreciate her being here.

Mr. HANSEN. I now turn to my friend from the Las Vegas area in Nevada. Mr. John Ensign has the floor.

STATEMENT OF HON. JOHN ENSIGN, A U.S. REPRESENTATIVE FROM NEVADA

Mr. ENSIGN. Thank you, Mr. Chairman, and I do want to thank you for holding the hearings this morning. Given the hectic Floor and committee schedules, the people in Nevada and I appreciate your hard work and commitment to resolving this important western issue.

As you know the Las Vegas valley is currently the fastest growing metropolitan area in the country. Given the high quality of life and large percentage of federally owned land, the valley is a prime platform for development. Over the years, the land exchange process has been used to privatize the public land that is interspersed amongst the private land. Many aspects of this process have greatly benefited Nevada as well as the entire country. Nevada's economy and job market have experienced a boost, we have acquired environmentally sensitive lands throughout the State and relieved the Federal agencies of some burdensome management responsibilities.

Despite all the good that seems to stem from the land exchange process, there is a public perception that the system is riddled with corruption and plagued with problems. In an effort to address some of these concerns, Senator Bryan and I introduced the Southern Nevada Public Land Management Act which would authorize the sale of federally owned lands in Clark County. This process would ensure fair market value in the transfer of those lands and perhaps remove many of the discrepancies in this complicated process.

However, the Department of Interior was less than enthusiastic to endorse this legislation's popular and proven successful merits. During the course of this legislation's movement through Congress, a draft Inspector General's report was released to the press. Newspaper articles followed that did not reflect very favorably upon the agency or the process. Additional articles were published relating to current land exchanges that seem to be overrun by similar flaws. For example, an exchange was just recently completed by the BLM that reportedly included sand and gravel rights, yet the value of these rights was not included in the exchange value. If this proves to be the case, the proponent may have realized a windfall worth millions of dollars.

Despite this negative reporting, it did not appear that the Department of Interior was prepared to follow any other course of action other than the status quo. Allegations of a $12.2 million loss to the American taxpayer were simply intolerable, and I, joined by Chairman Young and Chairman Hansen, requested a moratorium on all land exchanges in Nevada. Again, the Department of Interior denied this request.

Now, before us, we have the final report that has been issued by the Inspector General. I have reviewed the document and remain hesitant to support a process that appears to continue to be riddled with problems. In the best interest of Nevada, both financially and

environmentally, I would like to see many of the pending exchanges move forward. However, we should not tolerate the American taxpayer receiving any less than full and fair market value for our land.

Mr. Chairman, the report before us today alleges that the American taxpayer has lost over $12 million due to a faulty land exchange process. I look forward to hearing Ms. Lewis' testimony today, and in the questioning process, I hope we can discover whether this is just a faulty process, incompetence or blatant, outright corruption. This is the first step in clearing up what appears to be a very cloudy process.

Thank you, Mr. Chairman.

Mr. HANSEN. Thank you, Mr. Ensign.

Mr. HANSEN. Mr. Doolittle from California, do you have any opening remarks?

Mr. DOOLITTLE. No opening remarks.

Mr. HANSEN. Inspector General Lewis, thank you for being here and we will turn over the time to you. Pull that mike a little closer, so we can catch every one of your words.

STATEMENT OF WILMA A. LEWIS, INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY KEVIN GRAVES, AUDITOR, SACRAMENTO OFFICE; ROBERT WILLIAMS, AUDIT MANAGER, WESTERN REGION; AND ROGER LAROUCHE, AUDIT DIRECTOR, WASHINGTON

Ms. LEWIS. Mr. Chairman and members of the Subcommittee: I am very pleased to be here this morning to provide testimony on an audit report issued by the Office of the Inspector General on July 15th, 1996, regarding the Bureau of Land Management's land exchange activities in Nevada.

In the letter of invitation to this hearing that I received from the Chairman of this Subcommittee, I was also asked to make available, if at all possible, individuals who actually completed work on the audit to answer questions regarding the audit. In an attempt to be responsive to the Subcommittee's request, I have here with me today Mr. Kevin Graves from our Sacramento office, who served as the auditor-in-charge of this audit, and was therefore responsible for the day-to-day running of the audit.

Also here with me is Mr. Robert Williams, who served for a portion of the relevant time as the regional audit manager for the Western Region, where the audit was performed. Here with me, as well, is Mr. Roger LaRouche, an audit director who was one of the headquarters participants in the audit report review process. In the event that there is a question, the response to which involves details with which I am unfamiliar, I will consult with or refer the question to the appropriate individual.

The objective of the Nevada Land Exchange audit was to determine whether the Bureau of Land Management conducted land exchanges in accordance with applicable laws and regulations, and whether the Bureau received fair market value in the land exchanges. In addressing these objectives, we focused on the process used by the Bureau, measured against the applicable laws, rules and regulations to determine whether the exchanges proceeded properly.

Because we in the Office of Inspector General do not have expertise in the area of land appraising, a specialty upon which the exchange process relies heavily, we did not go behind individual appraisals, except for purposes of identifying obvious errors or omissions that a layperson could discern, of which we found none. Instead, in order to address the portion of our objective regarding fair market value, we looked to other indicators, such as subsequent resale values of the land appraised or the Bureau's means of handling differing appraisals for the same property, to draw inferences as to whether fair market value was received for the particular exchanges.

As you are undoubtedly aware, the Bureau's land exchange activities in Nevada have also been the subject of allegations that go beyond deficiencies in the process to improprieties by individuals or entities. Such allegations are outside the province of our audit activities, and thus beyond the scope of this audit.

The Office of Inspector General has an ongoing investigation designed to address allegations of improprieties deemed to be of investigative merit. Because the investigation is ongoing, I am sure that this Subcommittee will understand that I would have to respectfully decline to answer any questions regarding the substance of the investigation.

We have prepared a written statement and we have the audit report itself, both of which provide details regarding the audit. I request that a copy of both the written statement and the audit report be placed in the record of this proceeding. For purposes of this oral statement, I will simply summarize the main points.

[The material may be found at end of hearing.]

Ms. LEWIS. Our audit covered the four largest exchanges out of a total of six exchanges processed by the Nevada office from October 1992 through May 1995. These four transactions involved the exchange of over 4,000 acres of Federal land located in the Las Vegas area and appraised at over $63 million. Our audit disclosed three principal issues relating to the land exchanges.

First, in processing the exchanges, the Bureau did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received for the Federal land exchange;

Secondly, the Bureau exchanged, rather than sold, land within the land sale area designated by the Santini-Burton Act, thus reducing the amount of revenues available to offset the cost of acquiring land in the Lake Tahoe Basin; and

Thirdly, the Bureau exchanged valuable Las Vegas area land for a defunct bowling alley with the intention of using this facility as a Bureau administrative complex—an exchange which, in our opinion, does not represent the most effective use of Federal land.

In the area of exchange processing, the Federal Government may have lost an estimated $4.4 million in completing the Oliver Ranch, Red Rock, and Galena Resort exchanges. In the Oliver Ranch exchange, the Bureau included in the exchange a 220-acre parcel of Federal land that was encumbered by a right-of-way granted to the City of Las Vegas. The appraised fair market value of the encumbered land was $2,500 per acre for a total of $550,000.

Unencumbered, the appraised value of the land would have been $25,000 per acre, or $5.5 million.

Following the transfer of the encumbered property to the proponent, the city subsequently relinquished its rights to 189 of the 220 acres, thus retaining only 31 acres of the original right-of-way. We concluded that in view of all of the circumstances, including the fact that 7 years had elapsed with no action by the city toward use of the right-of-way, as well as the Bureau's responsibility under the Code of Federal Regulations to ensure that only as much land is included in an easement as is necessary for the project, the Bureau should have pursued more diligently with the city the issue of relinquishing a portion of the easement. Alternatively, we believe the Bureau should have substituted an unencumbered parcel of Las Vegas area land to complete the exchange. The exchange of the encumbered land resulted in a loss of approximately $4.2 million to the Federal Government.

The Federal Government also lost an additional $157,000 in the Red Rock exchange when the proponent was afforded a discount that should have been available only with the acquisition of additional tracts of land by the proponent.

Further, in the Galena Exchange, the government lost $68,825 when land was acquired at other than the approved exchange value.

In addition to these losses suffered by the government, we found that in the Red Rock exchange the Bureau acquired almost 2,500 acres of land with an exchange value of $2.7 million that was not in conformance with the Bureau's approved land use plan as required by the Code of Federal Regulations. Instead, the Bureau relied on draft land use plans and other planning documents which, in any event, did not support all of its land acquisitions. There was, thus, no assurance that all of the land acquired was consistent with the Bureau's mission-related needs.

Compounding the problem in the Red Rock exchange was the fact that $1.2 million of the $2.7 million value of the private land represented an increase in the approved fair market value of the land that was made without reconciling differing values assigned by two Bureau review appraisers. With respect to the private land in question, its value was initially approved by a chief appraiser in accordance with the Bureau's manual. When the proponent expressed unhappiness with the approved values, the Nevada chief appraiser assigned one of his staff appraisers to conduct another review of the contract appraisals, which resulted in the approval of significantly higher values for the private land. The Bureau subsequently exchanged Federal land using the higher values for the private land without reconciling the significant differences in the values approved by the two review appraisers.

We identified three additional issues in the Galena exchange. First, we concluded that the values of the Federal land and private land exchanged in the initial transaction were not equalized to the greatest extent practicable, as required by the applicable law and regulations. The value of the Federal land conveyed to the proponent in the initial phase of the exchange totaled about $9.6 million more than the value of the private land received by the Bu-

reau. Seven transactions and 9 months later, the proponent still owed the government $8.9 million.

Second, verbal commitments to a proponent to compensate the proponent for certain costs incurred in connection with the exchange transaction were not formalized in the official exchange record as required by the applicable regulations.

Third, a ledger account to monitor the value of the land exchanged, required under the Code of Federal Regulations for exchanges involving more than one transaction, was not used by the Bureau. This requirement is intended to help ensure that the maximum allowable difference between the exchange values of the private land and the Federal land is not exceeded.

In addition to the problems identified in the area of exchange processing, we discussed two additional areas of concern. First, we noted that the Bureau included a total of 446–1/2 acres of Federal land located within the land sale area identified by the Santini-Burton Act in three of the four exchanges that we reviewed. Although based on our legal review we found evidence indicating that the Act does not prohibit the exchange of land within the land sale area, we concluded that Congress intended that revenues from the sale of those lands would be used to offset the cost of acquiring land in the Lake Tahoe Basin. If the Bureau had sold, rather than exchanged, the 446–1/2 acres in question, at least $7.8 million in revenues would have been generated to help reduce the $40 million deficit that existed as of the end of fiscal year 1995 between the acquisition costs for Lake Tahoe Basin land and sales revenues from Santini-Burton Act land.

Second, in the Tonopah exchange, the Bureau exchanged valuable Las Vegas land for a defunct bowling alley with the intention of using the facility and property as a Bureau administrative complex for the Tonopah Resource Area. Although we concluded that the Bureau acted within its authority in completing this exchange, we believe that using the exchange process to acquire administrative property rather than land containing significant public resources may not represent the most effective use of valuable Federal land.

Based on the findings in the report, we made several recommendations that addressed a number of things: first, the need to institute competitive procedures into the land disposal process; second, the need to verify the need for easements on Federal land prior to disposal of the land; third, the need to establish controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures; fourth, the need for the Bureau to submit reports to the appropriate congressional committees as required by the Santini-Burton Act; and fifth, the need to reduce the deficit between the acquisition costs for Lake Tahoe land and the sales revenues generated from the sale of Santini-Burton Act land.

We also suggested that the Bureau consider establishing a policy limiting the use of the land exchange process to acquire administrative facilities for Bureau use.

Although the Bureau took issue with a number of the findings in the report, it concurred with the first three recommendations and the suggestion regarding a policy to limit the use of the land

exchange process to acquire administrative facilities for Bureau use.

As to the Santini-Burton Act recommendations, the Bureau's response did not satisfy the reporting requirements established under the Act, and the Bureau has opted to seek an opinion from the Office of the Solicitor regarding the legality of exchanging Santini-Burton Act lands. Accordingly, these last two recommendations are unresolved.

This concludes my oral statement. I will be happy to respond to any questions from the Subcommittee regarding my testimony.

Mr. HANSEN. Thank you very much for your very complete statement.

Mr. HANSEN. The gentleman from Nevada, Mr. Ensign.

Mr. ENSIGN. Thank you, Mr. Chairman.

I appreciate your being with us today. I want to get down to a couple of pretty basic questions, and some you may or may not be able to answer.

In any of the exchanges you investigated, did you find evidence of illegal action or anything that suggested that BLM operated outside the scope of existing laws or regulations?

Ms. LEWIS. With respect to the part of question pertaining to illegal actions, as I mentioned earlier, the audit scope does not include a review or investigation into alleged improprieties such as illegal actions. To the extent that there are any alleged improprieties that may have resulted from the findings in the audit, those matters are within the province of the investigative side of the office, and on those matters, I am not at liberty to speak at this time.

Mr. ENSIGN. Was there any evidence that any people outside the BLM were involved in any way inappropriately in these exchanges?

Ms. LEWIS. When you say "inappropriately," are you referring to some criminal or civil wrongdoing?

Mr. ENSIGN. Certainly that is a possibility, but also the possibility that they just were involved in a process that was outside the realm of the regulations.

Ms. LEWIS. With respect to being outside the realm of the regulations, I think that there were a number of findings within the report where we concluded that the Bureau had not followed applicable rules and regulations with respect to the land exchanges.

For example, as I mentioned with respect to the Oliver Ranch exchange, there was an easement on the property. The applicable regulations indicated that easements are supposed to be limited to that amount of land necessary for the particular project at issue. We do not believe that the Bureau pursued sufficiently and diligently the issue of relinquishment of the easement by the city.

With respect to the Red Rock exchange, we found also some deficiencies in that matter. In one instance, we had an increase in the value of the private land, an increase totaling $1.2 million. Now, the regulations indicate that the values are to be approved by a chief appraiser. There was some question here because initially the values for the land were approved by the Arizona chief appraiser.

As I mentioned earlier, the proponent came in and expressed unhappiness with the value for the private land, which the proponent believed was too low. At that point, the Bureau took another look at the contract appraisals that had been done. This second review

was assigned to a staff appraiser, and that individual came up with significantly higher values than the Arizona chief appraiser, totaling a difference of $1.2 million.

When we inquired about why that particular review was not approved by a chief appraiser in accordance with the regulations, we were told that the individual, the staff appraiser, was designated as the acting chief appraiser for that particular review. However, we were not able to get any real satisfactory responses as to why this had taken place for this particular review, that is, the designation of this individual as the acting chief appraiser.

Mr. ENSIGN. When you say you haven't gotten "satisfactory responses" from the BLM on the discrepancy there, what does "satisfactory" mean and where do you go with it from there?

Ms. LEWIS. What I mean by "satisfactory" is that we really didn't get any real response, and there was nothing documenting the fact that this individual was in fact the acting chief appraiser.

Mr. ENSIGN. Did they detail out of the difference—the discrepancy, did they detail out where—the difference between the two appraisers, and did that appear to be a legitimate difference?

Ms. LEWIS. That was one of the concerns that we had as well. There was no comparison of the two Bureau appraisals to reconcile the differences between the two. What you had, in actuality, were two appraisals that took different approaches with respect to certain issues; but what we were looking for and what we indicated in the report was that we didn't see, for example, a reconciliation between those two Bureau appraisals indicating—for example, this one is better than the other for these reasons. There wasn't that kind of documentation to give us that information.

Mr. ENSIGN. Along those lines, in your opinion, if you have a proponent coming forward and saying that in fact this appraisal is too low, then you have the Bureau assign somebody else to do the appraisal and now they come up with a higher appraisal value and there is no difference between the two, or they haven't reconciled the difference between the two, if nothing else, at least the appearance of impropriety would seem to be there.

If they haven't given you the documentation as far as why there is a discrepancy there, I certainly want to know why they haven't given you answers to that.

Ms. LEWIS. I think the appearance is a problem.

I should note that I think underlying this entire exchange program is what is fundamentally a problem in the appraisal process itself. There are uniform appraisal standards that are to be used in appraising the land. The problem is, these are general principles and even the uniform appraisal standards themselves indicate that, with the implementation of general principles, wide differences often occur. So what you have holding up this program is a system in which one appraiser can come in and value the land and say it is worth $200,000, and another appraiser can come in and value it a bit differently and say it is worth $700,000; and the issue here is, which is the right value?

Obviously, because there is this problem in the system, you run into problems of the nature that I just described where one Bureau appraiser evaluated it one way, while the other Bureau appraiser evaluated it very differently. The problem here and the question

that obviously comes to one's mind is the circumstances that set this up—the proponent came in and said he was unhappy with the appraisal. Then there is another review and the result is an increase in the value of the proponent's land to exactly what the original contract appraiser had appraised the land for.

Let me explain the process to you to make sure it is clear. The way it works generally, and the way it worked in this particular case, is that the land was appraised by a contract appraiser. Then what happens is that the contract appraisal comes to the Bureau for review and approval by a chief appraiser. The chief appraiser may sign off on the contract appraiser's values. However, the chief appraiser also has the authority in reviewing the appraisal to say, I don't agree with this, and assigns other values.

In this particular case, the Arizona chief appraiser did precisely that. He did not agree with the appraised values that the contract appraiser came up with, and he, in turn, came up with his own values and approved those values. Then, when it went to the second reviewer, the second reviewer again looked at the contract appraisals—appraisers' review values and came up with the same values as the contract appraiser, which were higher than those approved by the Arizona chief appraiser. Therein lay the discrepancy.

Mr. ENSIGN. It would seem to me that several places within your report that outside influences seem to have—the proponents in some cases seem to have affected the process, and when we are talking about the public trust here, it would seem to me it would at least call for an explanation of what you just talked about. When do you expect your investigation will be completed?

Ms. LEWIS. That is very hard to say. I imagine it will be several months. The reason it is difficult to say it that we continue to get allegations, and we are trying to do as complete a job as we possibly can on the investigation. So we take some steps, we do some investigative work, we get another allegation, and we start looking at that. So it is very difficult for me to say it is going to be done on a date certain. I can't imagine that it would be any shorter period of time than several months from now, however.

Mr. ENSIGN. In your audit—the audit portion of this report, can you identify with us or for us who the people in the exchange processes are that authorize? And I want names of people who authorized the exchanges to go through. In other words, who has bottom line to say, yes, this can go through; this can't? Is that the State, is that in Washington, or is that the local office; and who are those people that have authorized these various exchanges that you have identified in this audit report?

Ms. LEWIS. That is something I need to consult on, if I can have a minute.

Mr. HANSEN. Inspector Lewis, if you would like to have those people you are conferring with step up to the mike and identify themselves, that is fine with us. Just tell us who you are. Pull the mike up so we can hear from you.

Ms. LEWIS. This is Mr. Kevin Graves that I introduced earlier who was the auditor in charge.

Mr. GRAVES. Everybody hear me OK?

With respect to the appraisals, final determination and approval of values to be used in an exchange are by the State chief ap-

praiser, so that is at the State office. With respect to the exchange itself, the State office has——

Mr. ENSIGN. Could you go through each one of these exchanges and tell us who authorized the exchange to go through, and was that person at the State office, at the local office, or in the Washington office; and could you give us a name?

Mr. GRAVES. There is no way I could go through and enumerate those. That individual could conceivably be different for each exchange. I don't know without looking back at documentation who signed off on it.

Mr. ENSIGN. Could you get that information for us in writing?

Mr. GRAVES. It would be in the work papers, yes.

Mr. ENSIGN. I would appreciate each person—let's just be clear here. I would appreciate each person that authorized each level of the exchange process and whether that person was in the local office, at the State office, or in the D.C. Office for each one of these exchanges that you have audited, OK?

[The material submitted may be found at end of hearing.]

Mr. HANSEN. We will do another round. Let me go——

Mr. GRAVES. I will only be able to do that to the extent we found the documentation in the exchange file, which is the way we did the review. To the extent that documentation was lacking in the file, we won't have it in our work papers either.

Mr. HANSEN. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Ms. Lewis, is there a need to change existing law to better protect the interest of——

Mr. HANSEN. Excuse me, can I intrude for just a moment? I have another meeting, and I will turn the Chair over to the gentleman from Nevada, and I apologize for interrupting.

Mr. KILDEE. Is there a need to change existing law in order to better protect the interest of the United States in these land exchanges? Have you reached any conclusion that is the cause or root for some of the problems in existing law or the administration of existing law?

Ms. LEWIS. I think that the biggest concern that we had, the biggest problem we think existed—as I mentioned a moment ago to Congressman Ensign—is the exclusive reliance of this program on the very uncertain appraisal process. That is why we made the recommendation—and we strongly believe that this is the way to go with this program—we made the recommendation to introduce competition into the process. While you would still need to get appraisals of the Federal and private land, we believe that by introducing competition into the process, it would open up the process. It would result in less of a situation where you have one proponent coming in and dealing with the Federal Government, just looking at that particular appraisal, and, therefore, relying solely on that offer, as opposed to having a bidding-type process, which would introduce the benefits that competition necessarily brings to a process.

So I am not sure it is really the case that there is a need for wholesale changes in the law. I think there were some situations here where the Bureau needed to follow some of its regulations, and that is an implementation issue. But the most fundamental

problem we saw is reliance on an appraisal system that admittedly is not an exact science, and we are seeing wide fluctuations in appraisals of the same parcels of land.

Mr. KILDEE. Did you find any instances where it appears on the initial appraisal, the private appraisal, that there were any unqualified appraisers involved?

Ms. LEWIS. We found no indication of that, no.

Mr. KILDEE. They met the requirements of State law, met all the requirements of law for appraising?

Ms. LEWIS. Let me clarify and say Mr. Graves has indicated to me that we didn't review the individuals' credentials, so I guess anything is possible. But there was nothing that jumped out at us in that regard to suggest there was a problem in that particular area, although we did not, in fact, review the credentials of the appraisers.

Mr. KILDEE. In the role of the Inspector General, do you make suggestions to the Department as to possible changes in law to better protect the interest of the United States? Is that done in other instances.

Ms. LEWIS. Yes, to the extent that we believe that such a change would promote efficiency, effectiveness, economy, et cetera; yes, we would make that kind of recommendation.

Mr. KILDEE. When you complete your review, might that, too, be something you would bring to the attention of the Department?

Ms. LEWIS. Yes, it would be brought to the attention of the Department in the form of the audit report, the final audit report that is issued to the Department. We issue a draft audit report to the Department—they review that draft and provide a response to the draft. In the draft we would have the recommendations. So to the extent we were recommending pursuing a change in the law, for example, the Bureau would then have an opportunity to respond and say they either concur or we don't concur, whatever the situation might be. Then we would issue the final audit report, which would include the Bureau's response.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman.

Mr. ENSIGN. [presiding.] Does the gentleman from California, Mr. Doolittle, wish to inquire?

Mr. DOOLITTLE. Ms. Lewis, in your report discussing the changes, it sounds like there were some real problems with that office of the BLM. In doing your report, did you conclude that it was appropriate that land exchanges be terminated or delayed for a substantial time?

Ms. LEWIS. We did not draw that conclusion, no.

Mr. DOOLITTLE. Can you tell us again what your conclusion was again relative to how these things should proceed in the future?

Ms. LEWIS. We made a number of recommendations. The first one was that we believe that competitive procedures should be introduced into the land disposal process. The competitive procedures would either be by sale, or there is an innovative process that has been used by the Forest Service, which is a competitive exchange. I know generally about competitive exchanges, although I don't know all the specifics. Basically I believe it involves receipt of bids for a particular parcel of property.

The Federal Government would put, for example, in the newspaper what property it is interested in disposing of, and it would receive bids from entities, citizens, or whomever regarding exchanges that the particular entity might be interested in pursuing with the Federal Government. That would open up the exchange process and allow competition into the process. So that was our first recommendation.

We also recommended that the Bureau should verify the need for easements on Federal land prior to the disposal of the land. That recommendation was generated as a result of the Oliver Ranch Exchange, where the Bureau had transferred 220 acres encumbered by an easement that was valued at $2,500 per acre; whereas if that easement were not on the property, the value of the property would be $25,000 per acre. So we recommended that they look more closely at the easements or rights of way that they have granted prior to exchanging land and try to tailor those rights of way to precisely the amount of land that is necessary for the project.

We also recommended that the Bureau establish controls to ensure that the land exchange process operated in accordance with laws, rules, and regulations. We pointed out, in particular, some of the areas we had problems, and we said that, at a minimum, the controls should ensure that the land to be acquired is in accordance with approved land-use plans. That recommendation arose as a result of the Red Rock Exchange where we concluded that over 2,500 acres were acquired that did not conform to the existing land use plan.

The other aspect of that recommendation is that land acquired and disposed of should be properly valued. Here again we go to the appraisal issue and the valuation issue and point to the Red Rock Exchange once again where there were differing values that didn't appear to us to be reconciled, as well as one of the other exchanges where they actually did not use the approved values.

We also recommended that all significant decisions involving the exchange transactions, particularly those affecting land valuation, should be fully justified and documented in the exchange file. That, once again, goes to the question of land values, which, as I mentioned before, is really at the heart of this problem; that the record should be such that anyone can go in and look and see why the Bureau went in one particular direction as opposed to another.

The other recommendations that we had dealt with, the Santini-Burton Act issues——

Mr. DOOLITTLE. Let me just stop you there. I want to go back to the three recommendations you just commented on. The Nevada State Bureau BLM concurred with those three things; did it not?

Ms. LEWIS. Yes, it did.

Mr. DOOLITTLE. It is your belief that they will be aiming to implement those recommendations expeditiously?

Ms. LEWIS. They have provided dates in their response by which they hope to have implemented the recommendations. I have no reason to doubt that they would be able to implement them according to the plan that they have set forth. I assume they have looked at the issues carefully and put forward dates they believe that they can meet.

Mr. DOOLITTLE. By June 1st, 1997, they will evaluate different competitive approaches. I guess recommendation number two, by October 1st, 1996, they will prepare guidance for that; number three, on the land use and so forth, March 1st, 1997.

Was it your testimony that these appraisals are somewhat subjective?

Ms. LEWIS. Yes, they are subjective. There are general rules that have to be followed, but appraisers can differ in their application of the general rules to a given situation. The uniform appraisal standards recognize that differences occur in implementing those general rules. So yes, it is to a large extent a subjective process.

Mr. DOOLITTLE. OK, thank you.

Mr. ENSIGN. The gentleman from Guam.

Mr. FALEOMAVAEGA. American Samoa.

Mr. ENSIGN. American Samoa. Excuse me.

Mr. FALEOMAVAEGA. Ms. Lewis, I was going through the report, and I am just curious about the fact that the IG's Office has now made recommendations. These recommendations are made to the Secretary of the Interior.

Ms. LEWIS. The report is addressed to the Assistant Secretary for Land and Minerals Management.

Mr. FALEOMAVAEGA. Basically through that channel, Assistant Secretary to the Secretary?

Ms. LEWIS. Yes. I sign off on a letter that goes to the Secretary attaching a copy of the report.

Mr. FALEOMAVAEGA. Is it your recommendation that all of this can be done by secretarial directive for proper change in the policy regulations within the BLM? In other words, the point I am making is that do we have to pass any national law to make any certain amendments by statute in order to fulfill the recommendations that you are making that you think is better than what it is now as far as BLM is concerned?

Ms. LEWIS. I don't think that passage of law is necessary because I think that the existing laws are broad enough such that if the Bureau chooses to introduce competition into the exchange process, it can. The only issue that will arise is if the Bureau chooses not to do that. Obviously they have the discretion not to introduce competition if they choose to as well. However, they indicated that they plan to do that.

Mr. FALEOMAVAEGA. My point is the Bureau chooses not to do that at one point, and who is going to make the final decision as to what direction this policy should turn?

Ms. LEWIS. Right now the Bureau has indicated in its response that it intends to proceed with a pilot-type program to introduce competition into the exchange program. I imagine that to the extent that they review this pilot program, they will determine within the Bureau—and I am really guessing now—but I would imagine the Bureau Director, the Assistant Secretary for Lands and Minerals Management and maybe even up to the Secretary will ultimately make a call as to whether the pilot program has worked efficiently and effectively and whether they believe it is the way to go.

Mr. FALEOMAVAEGA. I am a little surprised, and I suspect if the BLM has been in existence well over 100 years, and if the BLM has

not established standardized procedures for competitive bidding in land exchange processes, I am somewhat amused that we come up with this problem. I would think that issues as fundamental as these, that the BLM should at least have some kind of a streamlining process to remedy these kinds of problems. Am I making my comment clear on this?

How long has the BLM been in existence?

Ms. LEWIS. I hear from the audience 50 years.

Mr. FALEOMAVAEGA. 50 years. Then I take it back; not 100 years, but 50 years.

Are you suggesting here that the regional office, the BLM regional office in Nevada, has a different set of policies from other regional office? Is there more than one regional office, BLM?

Ms. LEWIS. Yes, there is certainly more than one State office. This is the Nevada State office. There are other State offices throughout the country.

Mr. FALEOMAVAEGA. How many regional offices does the BLM have?

Ms. LEWIS. That I do not know. I understand from the audience there are 12.

Mr. FALEOMAVAEGA. My next line of questioning is do you mean that among the 12 regional offices, each region has a very subjective and different approach to these two processes?

Ms. LEWIS. We, of course, have not looked at the land exchange process any place else other than Nevada. However, the Bureau has implemented regulations for the land exchange process. You know, there are laws—the Federal Land Policy and Management Act, the Federal Land Exchange Facilitation Act and implementing regulations.

Mr. FALEOMAVAEGA. My point is that the State offices in Colorado and Utah have different implementing regulations from the State office in Nevada?

Ms. LEWIS. Not to our knowledge, no.

Mr. FALEOMAVAEGA. Well——

Ms. LEWIS. In other words, there are implementing regulations the Bureau came out with in December of 1993 to implement land exchange laws.

Mr. FALEOMAVAEGA. I understand that. And that is a national regulation, right?

Ms. LEWIS. Yes, that is in the CFRs.

Mr. FALEOMAVAEGA. And all 12 regional offices should comply with that national policy?

Ms. LEWIS. That is correct.

Mr. FALEOMAVAEGA. Are you suggesting in the IG report in the Nevada instance there is a difference in applying that policy?

Ms. LEWIS. What we are indicating in the report is this: In some instances the Nevada office did not follow the policies and procedures set forth for the land exchange process.

Mr. FALEOMAVAEGA. I think as a followup question for the gentleman from Nevada, I think we can be specific enough because we are talking about the Oliver Ranch Exchange, the Red Rock and Galena Exchange, and that the gentleman from Nevada has asked specifically to name the parties involved in the exchange prospective bidding process. So we now are in the process. I think this is

the whole reason why we are here and wanted to find out what the problem is.

My concern is if we are going to drag this issue on for another 11 or 10 years, or does this require an immediate remedy by introducing legislation to correct these inequities? Or are these inconsistencies? If it happens in the regional office in Nevada, I can imagine the same problems exist in Utah, Colorado, Idaho, where there is a tremendous presence of BLM as far as Federal lands are concerned.

Mr. ENSIGN. If the gentleman would take a look at the Ensign-Bryan bill we just introduced, we think it addresses most of the recommendations that the Inspector General has written in the report.

Mr. FALEOMAVAEGA. So in that instance it is already by statute. The question is is BLM applying the——

Mr. ENSIGN. That bill is pending right now, and hopefully we are conferencing that bill very shortly.

Mr. FALEOMAVAEGA. Is it very likely we will have the administration's support?

Mr. ENSIGN. After this process today, we hope so.

Mr. FALEOMAVAEGA. I thank the gentleman from Nevada, and I just wanted to pursue that line of questioning. My problem, Ms. Lewis, is that I have been through with audit—IG audit reports before, and when I raised the question with your predecessor, all right, so you made the recommendations, so what happens if the agency says, I don't accept the IG's recommendation? Then who makes the final decision?

My problem is your predecessor said, we don't know where to go from there, and I suspect, and I thought, and I presumed that the Secretary of the Interior should be the one then making the final policy decision on issues based on whatever recommendations that the IG's Office makes.

Ms. LEWIS. With respect to how the process works, once we issue the draft report, the Bureau indicates whether or not it concurs or doesn't concur with each of the recommendations. The Bureau comes back with its response. We then consider that response and decide whether the information provided by the Bureau is such that we should alter any of our recommendations or whether we should keep the recommendations as is.

If we decide to keep the recommendations as is, and the Bureau has not concurred with them, after we issue the final report, they have another period of time, usually about 60 days or so, when we hope that we can achieve concurrence with the recommendations. If we don't achieve concurrence with the recommendations and we are at odds with the Bureau, it is then referred to the Assistant Secretary for Policy, Management and Budget, who is the resolution officer for the Department with respect to differences between the IG's position on a particular recommendation and the Bureau's position on a particular recommendation. Hopefully, it is resolved there.

Conceivably you could have a situation where it is resolved in a way with which the IG's Office is not satisfied. But as I said, hopefully there is some resolution on the point. If it is not resolved in a way that the IG's Office is comfortable with, our office has no en-

forcement authority. Our office only has recommending authority. So what then happens is we issue audit reports. We issue semi-annual reports to Congress. We indicate to Congress where there are outstanding recommendations with respect to audit reports, and it is somebody else's battle at this point because we really don't have the authority to force a Bureau to do anything.

Mr. FALEOMAVAEGA. Ultimately the Secretary of the Interior takes that responsibility?

Ms. LEWIS. For the Department, certainly.

Mr. FALEOMAVAEGA. My concern is in the 8 years I have been on this committee—this is not in any way reflective of your office and the good job you have done—I have had problems with agency squabbles that have taken 10, 15 years and still have not been resolved. That is why we are here to hope that legislatively we can find a better remedy to solve the problems, because we never resolve the problem because of squabbles between agencies.

I want to say to the gentleman from Nevada that I will fully support the legislation when it comes before the committee for consideration.

Mr. ENSIGN. I thank the gentleman from American Samoa.

The gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman, and let me apologize for having been late. I flew in on a red-eye to be here on time, and it was 2 and a half hours late leaving Phoenix last night. I came from the airport here and had no time to change. I apologize for my appearance, and I do have questions I would like to ask and information I would like to bring forward.

Let me first start with just the law that we are operating under. It is my understanding that these exchanges are governed by at least in part 43 CFR 2200 and a subpart .O-b which sets forth criteria. I won't read all of those criteria, but I want to confirm that your understanding is that these aren't—well, number one, the BLM is to ensure that, quote, better management—the better management of Federal lands, quote, that the needs of the State and local residents and their economies are met by the exchange; that more logical and efficient management and development is promoted by the exchange, and the expansion of local communities all are a part of the mix or all are a part of the factors that you look at in the exchange.

Is that your understanding?

Ms. LEWIS. To my understanding, the determination is made with respect to an exchange based on the question as to whether the public interest will be best served. And the factors that you have enumerated are factors that are taken into consideration in determining whether the public interest would be best served and therefore deciding whether the exchange should go forward.

Mr. SHADEGG. Certainly local support expressed by community leaders, State and local officials, and organizations would indicate that kind of support, I take it?

Ms. LEWIS. I would imagine that support for a particular exchange from community leaders, local leaders, et cetera, would be one of the considerations used in determining whether the public interest is well served.

Mr. SHADEGG. Those would be factors you would think would be appropriate for the BLM to look at.

Ms. LEWIS. I would, yes, under the standards set forth.

Mr. SHADEGG. I notice on page 11 in your report on the section called "Summary," you pretty clearly identified that in the—and as I understand it, there are three exchanges you reviewed. There were instances where it appears that the purchaser or the private party involved in the exchange was not an end user; that is, they immediately double-escrowed or flipped the property; is that correct?

Ms. LEWIS. That is what we found, yes.

Mr. SHADEGG. Is that something that you find common in abuses—in exchanges where you have found abuses?

Let me state it differently: Is that a problem you identified in each of these three investigations regarding these three exchanges.

Ms. LEWIS. I don't know that it was in each of the three. I know it was in at least one of them.

Mr. SHADEGG. Your report talks about being in at least two of them. It talks about 70 acres sold for an exchange value of $763,000 to the private party and sold by the private party for $4.6 million on the same day. And then it refers to another transaction, 40 acres acquired in the exchange at an exchange value of $504,000, also sold on the same day for a million dollars.

Ms. LEWIS. I am made to understand that these were in two of the exchanges. And let me just clarify one point. One of the values of looking at resale values is to come to the conclusion, at least we did, that maybe this appraisal process isn't working the way it should work, because if the resale value is so much higher than the appraised value, once again you are relying on a system that doesn't appear to be serving the process as well as it should.

There is nothing, obviously, that precludes somebody from receiving the land as a proponent and then turning around and selling it if they choose to do that. There is nothing in the law that prevents that, but I think it points up the problem with the appraisal process.

Mr. SHADEGG. If, in fact, there were significant local support for the exchange, and, it is indicated, support by the community for how the private exchange—private party involved in the exchange was going to use the property, that is to do the thing set forth in 43 CFR, meeting the needs of local residents through their use of the property or aiding the needs of the State and local residents and their economy through the use of the property, that certainly would solve or address this concern where somebody acquires the property and apparently does not fully disclose what they are going to do with it immediately or how they are going to end use it; would it not?

Ms. LEWIS. I am not sure I understood your question. Are you asking me whether, if individuals were required to indicate what they were going to do with the property, whether this would address that problem?

Mr. SHADEGG. Your report indicates, for example, that the land—one of the criterias you recommend, you say the Bureau should ensure the land to be acquired is in conformance with an approved land use plan. If, for example, the party acquiring the land is, in

fact, going to use it pursuant to an approved land use plan and has gotten local support from elected officials for that use in conformance with the land use plan, would that not at least suggest to you that it is being used in conformance with the land and that it is meeting those criteria of the law?

Ms. LEWIS. I think we are mixing two different things here. The Bureau has to ensure that the land that it is acquiring is in conformance with approved land use plans. That is to say that the land use plans are supposed to address the types of properties that would support mission-related needs; for example, habitat, environmental considerations and so forth. The Bureau needs to make sure whatever lands it is acquiring are, in fact, in conformance with these plans, as sort of a guarantee that it is obtaining land that supports its mission-related needs.

Mr. SHADEGG. You are saying in that regard that the Bureau needs to look at the land it is acquiring and be sure that it fits with a land use plan if there is an existing land use plan.

Ms. LEWIS. Yes, and there is supposed to be an existing land-use plan, according to the applicable regulations.

Mr. SHADEGG. And it adds value to the BLM for whatever mission it has for that particular land?

Ms. LEWIS. That is correct.

Mr. SHADEGG. You indicated that—I think you just made the statement a moment ago that you were looking at a failure to comply in these exchanges with regulations by the Nevada regional office; is that correct?

Ms. LEWIS. Nevada State office, yes.

Mr. SHADEGG. You did not look at any failure to comply by BLM officials at a different level of government; for example, at the Federal level in Washington?

Ms. LEWIS. To the extent that there was a failure to comply with the regulations, wherever that failure occurred, would have been reflected in our report to the extent that we detected that failure.

Mr. SHADEGG. My question is did you detect any failure at the Washington level, or was it, as you said in your statement, failures at the Nevada State office level?

Ms. LEWIS. What we detected was at the State office level, yes.

Mr. SHADEGG. Thank you very much.

I have a series of policy questions I want to ask, and I am not sure if you are the right person to ask them, and I will ask them. If you think they are not appropriate for you to answer, maybe can you direct someone else and BLM—or direct someone else at BLM who can provide the committee with answers.

Ms. LEWIS. I will do my best.

Mr. SHADEGG. It seems to me it would be helpful in the degree to which that BLM, whether it is a regional office or BLM Washington, would be interested in knowing and be influenced by, for example, the support of State, county and local authorities for the exchange. That is something that it would, in fact, be interested in knowing, I take it, and that support would add to the reason to proceed with an exchange; would it not?

Ms. LEWIS. Under the criteria that is set for determining public interest, I would think that would be one of the things that could be considered—that would be considered, yes.

Mr. SHADEGG. That would be true for support from an environmental organization, community support?

Ms. LEWIS. I want to make clear I can't respond as to what BLM actually takes into account. If that is the focus of your question, then I am the wrong person to be asking.

Mr. SHADEGG. Is it, however, from what you understand of the law, because that is your obligation, one of the things BLM should be looking at in that it is one of the criteria set forth in the law?

Mr. GRAVES. The land exchange process is a public one. Local publications identify the proposed exchange and solicit comments on it, so to that extent anybody, any agency, any individual who is interested in providing comments can provide them, and they are considered to one degree or another by the Bureau.

Mr. SHADEGG. And indeed they are also required to be considered under the regulations we looked at earlier which require BLM to look at meeting the needs of State and local residents and their economies. That is a direct quote out of regulation. So that would fit with that specific——

Mr. GRAVES. Yes, to the extent they receive comments from the local jurisdictions.

Mr. SHADEGG. [continuing]—that fit within the category of meeting the needs of State and local residents.

Mr. GRAVES. Yes.

Mr. SHADEGG. Similarly, the economic impact of an exchange that benefits the community would fit within that criteria as well; for example, create jobs or housing.

Ms. LEWIS. Yes, I believe that is all part and parcel of the impact on a particular community.

Mr. SHADEGG. Let me just kind of conclude by asking so far as you understand it, what you had in these cases, I believe there are three points you make. One is that in some instances there was a faulty appraisal process.

Ms. LEWIS. I am sorry, it was a——

Mr. SHADEGG. A faulty appraisal process with regard to the three exchanges that you reviewed?

Ms. LEWIS. Yes.

Mr. SHADEGG. Second, there is an indication that the BLM acquired land that was not consistent with a land management plan?

Ms. LEWIS. Approved land-use plan.

Mr. SHADEGG. The third one; that is, BLM exchanged land that should have been sold under the existing Santini-Burton statute.

Let's take the first two: Clearly in some instances in these exchanges there were regulations that were not complied with, correct?

Ms. LEWIS. That is correct.

Mr. SHADEGG. One of your recommendations is that, of course, the Nevada office should be complying with all regulations for such an exchange.

Ms. LEWIS. Yes.

Mr. SHADEGG. You would agree with me, however, that if all the regulations have been complied with, that these exchanges are in many instances extremely beneficial to the community and to the Federal Government?

Ms. LEWIS. Are you asking whether as a general matter I believe exchanges are beneficial?

Mr. SHADEGG. Right.

Ms. LEWIS. I think they have a lot to commend them, certainly.

Mr. SHADEGG. So when the regulations have been complied with and a property value has been established, then there is no reason so far as you know under the law that such an exchange shouldn't go forward?

Ms. LEWIS. Assuming that it is in compliance with all the applicable laws, rules and regulations, as the Inspector General's Office, we certainly would have no objection.

Mr. SHADEGG. And particularly with regard to valuation, so that wasn't what happened in these exchanges, and that is a clear indication within perhaps minutes of the sale or the exchange that the value was not properly established?

Ms. LEWIS. Well, once again we get to the valuation issue, and that is the crux of the problem. You know, we have several examples of situations where there is one value for the property, and then there is another, and maybe there is a third. I cannot sit here and say that because a particular individual appraiser comes in with a particular value that it is necessarily the right value. I don't know that anybody can.

Mr. SHADEGG. I am not suggesting that you do that. Indeed, valuation is somewhat subjective. What we have to do is do our best to establish a proper value, and once we have done that, or once BLM has done that, then it ought to proceed with the exchange, and hopefully it obtained it—assuming all the other regulations have been complied with, it has followed the rules, and the exchange should go forward, and hopefully the proper value was established and used.

Ms. LEWIS. Assuming that all the laws, rules and regulations are complied with, then from the Inspector General's perspective there would be no basis for us to say that there is a problem with the exchange.

With respect to the policy ramifications, we don't normally get into the policy issues. I would restrict my response to the question of whether as the Inspector General's Office we would have a problem with a particular exchange. Assuming it complies with all the applicable laws, rules and regulations, the answer would be no.

Mr. SHADEGG. I appreciate that very much, and I think that is a perfect way for me to conclude my questioning. In my view, the policy is pretty well set forth in the statute, and it makes it quite clear that exchanges can be extremely beneficial both to the government and the private parties and local economy, and where they are—where they meet those criterias, and regulations have been followed, and, in fact, people, by following the regulations, have done a genuine and fair effort to establish the correct market value as close as can be achieved, then it is the policy, the law, that the exchange go forward, and I think that is for the benefit of everyone, and I would hate to see exchange stopped.

Thank you very much Mr. Chairman.

Mr. ENSIGN. The other gentleman from Arizona, Mr. Hayworth.

Mr. HAYWORTH. I thank the gentleman from Nevada, and I am pleased to be known as the other gentleman from Arizona with my

colleague here. We share the experience of red-eye flights, but not the same air carrier, so that is why there may be a difference in wardrobe this morning.

From the gentleman from Nevada, I know that both Arizona and Nevada share the distinction of being States with lots of sand and very little surf, and yet this morning as I heard the line of questioning from my colleague from Arizona, and I am aware of your concerns, it seems that there is a new form of flipper involving not a dolphin, but those who would flip land for a quick buck.

I think we just need to go on the record, Inspector Lewis. I just want to ask you this: Aren't we just asking for trouble when we don't encourage end users, the folks who actually create jobs and pay most of the taxes, to participate in the process, and on the other hand roll out the red carpet for land speculators when these same-day profits may rightly belong to the taxpayer?

Ms. LEWIS. I am sorry, I am not sure I understand.

Mr. HAYWORTH. I am saying in other words, based on criteria that has been established here citing the statutes that exist, there seems to be a very fundamental guideline that these land transfers should be for the public good. The public good may be defined as economic development in terms of job creation; may be defined as long-term interest of those who are participating in the land exchange.

I am just wondering from your point of view and in terms of the context of reasonableness, aren't we asking for trouble if we simply allow the flips to go on without taking the long view of who really has an interest in economic development, who really has an interest in accommodating environmental concerns, who really has an interest in the community in the area in which the exchange is going on as opposed to the quick-buck artist?

Ms. LEWIS. Certainly to the extent that the policy behind the statute is not being well served, then certainly there is a need to ensure that the policy is well served.

Mr. HAYWORTH. I think, Inspector Lewis, I realize the difficulty in terms of trying to answer encyclopedically any number of issues that may come before you, because as you pointed out, there may be a difference in your responsibility in terms of exactly what you oversee with some of the questions that develop today. Nonetheless I would like to formalize something that my colleague from Arizona brought up, and I will ask it of you, and if there are others here from BLM, I would like to have some response from the appropriate members.

I would be most interested in being advised within 5 days in writing how the exchange priority system in Nevada works. Specifically I would be interested in knowing how the following impact the priority system, if at all: Number one—and again it echoes what my colleague from Arizona said, but I want to formalize this—number one, the support of Federal, State, county and local authorities for an exchange; number two, the support of environmental organizations for an exchange; number 3, the potential impacts to thousands of employees, contractors and vendors for an exchange; and number four, the clear request of a State's congressional delegation that an exchange be afforded expedited treatment as a matter of fairness.

Because I believe those four criteria form the foundation for what has been expressed in terms of the statute, and I would just like to see, since we talk about a discrepancy between what is going on in the Nevada regional office as perhaps the course of action taken here in Washington, or, as my colleague from American Samoa suggested, throughout the system of regional offices, I think it is very important both philosophically and economically to engage this performance based on these four criteria.

Ms. LEWIS. I think that that question would be more properly directed to the Bureau of Land Management because they are obviously the ones that set the priority and make the determinations with respect to that issue.

Mr. HAYWORTH. Forgive me as the gentleman here—we are new to this place. I don't know what congressional protocol demands, but I would take it there are officials from BLM who could help us with that, and if it is within your purview to pass this request along for us.

Mr. ENSIGN. Is there anybody here from the BLM that would like to step forward and say they will have the gentleman from Arizona's question answered within the next 5 days?

Would you just step forward and identify yourself for the record.

Mr. HAYWORTH. Enter and sign in, please.

Mr. ENSIGN. Would you identify yourself for the record at the microphone, please.

Ms. MORRISON. Nan Morrison. I work in the BLM legislative office.

Mr. HAYWORTH. Ms. Morrison, thank you very much. We appreciate that, and also any advice my dad gave me about volunteering. I thank you very much, and thank you, Inspector Lewis, for your time.

I think it is important, Mr. Chairman, to articulate these criteria to see what has happened in the past because I think it has great bearing on what can happen in the future, and I appreciate your leadership on this issue, and with that I yield back the balance of my time.

Mr. ENSIGN. Just to let you know, we will be going for another round of questions. However long we need to stay here and get our questions answered, we will stay. I still have several other questions, and I do want to follow up on the lines that both of the gentlemen from Arizona have talked about.

I have a letter from the Bureau of Land Management that I had officially asked, along with Chairman Hansen and Chairman Young, for a halt to the exchange process, a moratorium basically. This was right in the whole process of the exchanges in your audit report which was pending, and there was a draft audit report, I guess, that had been leaked.

[The letter may be found at end of hearing.]

Mr. ENSIGN. Then there was a report in the Las Vegas papers about this exchange that had gone through that reportedly had included sand and gravel rights that was going to be worth millions of dollars. And so I had asked for, at this point, a moratorium on the land exchange process because it appeared anyway that the taxpayer was getting shorted on fair market value.

Let me read just a little bit of their—the BLM's response. Basically they rejected the request for a moratorium. Some of the reasons they stated in there because—and I will make this letter part of the record today—but it says because of the high demand in the Las Vegas Valley, "BLM has instituted several procedural and policy changes to set priorities on exchange proposals, to streamline the paperwork process, to improve coordination with local governments, to improve management of the land exchange process and to assure that the public receives a fair value for land exchanges."

The county commission has approved—has put a partial moratorium other than six prioritized land exchanges going on in the Las Vegas valley. There has been a lot of work, and the letter states—refers to these six exchanges as well.

The question, I guess, to you today—and I don't know if you feel qualified to answer this—there are a lot of interests—locally there is local environmentally sensitive lands that we would like to see into the—obviously into the public trust. There are some business concerns that are going on.

The question is do you feel that the BLM can go forward with this process, with the recommendations that you have brought forward, with what you have seen going on right now, with their responses? Do you feel that these six exchanges prioritize, you know, for greatest need and greatest concern to the local governments could go through and a taxpayer as quoted here receive a fair value for the lands exchanged?

Ms. LEWIS. I do not believe that the results indicated in our audit report require a moratorium on land exchanges. We did not come to that conclusion. We believe that there are problems with the process that need to be addressed and that should be addressed as promptly as possible, but I would not go so far as to say we have concluded that there is a need for a moratorium on land exchanges.

Mr. ENSIGN. Conversely if you don't think there is a need for the moratorium, are you indicating that you think that the six exchanges could go through and the pending exchanges could go through under close scrutiny that would allow the taxpayer to get—the public to receive the fair value for the land exchanges?

Ms. LEWIS. Three of the four exchanges that we looked at are already completed.

Mr. ENSIGN. Correct. I am talking about the six that are pending at the County Commission that they have been talking about. I know you have investigated it. We have six pending in Las Vegas Valley.

My question basically is based on the response from the BLM, the BLM feels that they have put into place the recommendations that you have indicated for these six exchanges to go through and for the public to get fair market value for the land.

I guess my question to you—and that is why I didn't know whether you feel qualified to answer—do you feel that the BLM can put forward what they are saying they can put forward that would ensure that the public would get fair market value based on the recommendations that they are putting into place?

Ms. LEWIS. I cannot answer that question.

Mr. ENSIGN. OK. Several other questions that I have for you. First of all, in the Galena Exchange there is a question of the

money that is still owed to the Federal Government as far as your report was concerned. First of all, has this money been paid back to the government? And also, why was the proponent in this exchange allowed to exceed the 25 percent ceiling of the money owed to the Federal Government for the exchange, and did you find any justification for that?

Ms. LEWIS. Our audit concluded in May of 1995, so we don't have anything in the report that would indicate what happened subsequent to that time period. As of May 1995, there was still an outstanding balance of $8.9 million, but I don't know what has happened since that point in time.

Mr. ENSIGN. Was interest being charged on this money that was owed?

Mr. GRAVES. There is no basis in any agreement for an interest assessment by the government.

Mr. ENSIGN. We are talking about that, and it was a 9-month period of time, correct?

Ms. LEWIS. It was over 9 months, yes.

Mr. ENSIGN. At the very minimum, we have a company that has $9 million, interest free?

Ms. LEWIS. That is the result, yes.

Mr. ENSIGN. Interest on $9 million is not exactly chump change. That is a significant amount of money for anybody who has been in business. You are talking about a very, very significant amount of money. Even just a reasonable 7 or 8 percent interest on money would be—and you are not going to be able to get that low of an interest rate on land speculation.

Anybody that is in pure land speculation knows they are going to pay a pretty hefty premium interest rate, if they are going to be able to get that; and so we are talking about a major shortfall that was not eventually indicated in your report as far as a dollar figure that was on it, but the taxpayer clearly in this case has been basically shortchanged, potentially a couple million dollars.

Ms. LEWIS. Let me respond to one earlier point that you made; then I will continue to comment.

You mentioned exceeding the 25 percent value. We found that they had exceeded it, I believe for a 3-week period of time when one of the transactions were going forward. Our findings—we did not find that they exceeded that 25 percent maximum in any other period of time up through at least May of 1995.

The regulations are such that these "assembled exchanges," as they are called, where there are multiple transactions, allow for this kind of carrying of a balance. There is a little bit of an inconsistency. On the one hand, the law and the regulations talk about trying to ensure that the land values are equalized to the greatest extent possible. If you just look at that portion, your conclusion would be—to the extent that they were not contiguous pieces of Federal land that were being exchanged, you could exchange them as the private land is available.

Mr. ENSIGN. Did they justify to you why they did not do that?

Ms. LEWIS. Based on the information that we have, there was an indication that the parties expected more private land to be forthcoming. Apparently, there were willing and available buyers for the

Federal land; they expected private land to be forthcoming, and I don't know, for whatever reason, it was not.

Mr. ENSIGN. Who told you that and who do they say were the willing buyers? Do they have any documentation to justify that? We are talking about millions of dollars here to the taxpayer, just this interest charge.

Mr. GRAVES. There were a number of exchange proposals and the exchange agreement identifies a number of private properties that potentially would be conveyed to the Federal Government in exchange for the land in Las Vegas. Some of those had been acquired by the Federal Government at the time the work concluded in May, others had not.

It would have been some of those additional properties that are identified, but had not yet been acquired that we were being told about; and yes, we were told that by the Bureau of Land Management realty specialist, that the reason for providing more Federal land was that they expected some of this additional private land to come to the Federal Government shortly, but it hadn't happened yet.

Ms. LEWIS. If I could, I just wanted to finish the other point I was making about assembled exchanges, which is that the regulations are such that I believe it requires equalization within a 3-year period. So on the one hand, while there is a legal requirement that the Bureau should try to equalize the exchangs as much as possible at the outset, the regulations permit carrying a balance over a period of time up to 3 years. So you are sort of between those two principles as set forth in the applicable law.

Mr. ENSIGN. So if you are allowed a land exchange, you would basically have interest-free carrying charges for up to—depending on how—what happens at the BLM office, you could have interest-free carrying charges for quite some time, especially on significant amounts of money?

Ms. LEWIS. Conceivably that could happen, although the regulations are such that the first thing that is supposed to be attempted is equalization.

Mr. ENSIGN. "Supposed to," and that happened here; they did not coincide, what was supposed to happen. And they easily had the option because the noncontiguous land tracts we are talking about here, it would seem to me, in the best interests of the taxpayer, because of the amount of money in interest carrying charges, can be applied to this money—that easily those lands should have been kept out.

Ms. LEWIS. We made that point in the audit report, saying that we thought there was a problem here with respect to equalization.

Mr. ENSIGN. Thank you. A couple of other quick questions on this.

There was a copy of an interagency report that you reference regarding the Galena Resort. Do you have—can you provide us with a copy of that?

[The report may be found at end of hearing.]

Ms. LEWIS. Just to make sure that we know what you are referring to, Congressman, are you referring to the competitive exchanges and——

Mr. ENSIGN. Yes.

Ms. LEWIS. Yes. OK, we will make that available.

Mr. ENSIGN. I have some correspondence from a Mr. Charles Hancock. Are you familiar with Mr. Hancock?

Ms. LEWIS. Yes.

Mr. ENSIGN. Mr. Hancock was for 16 years the chief appraiser of the State of Nevada. He has concerns that he has expressed to the Inspector General, actually quite well documented, and a lot of his concerns, from what I read, has turned out to be what your audit report turned up.

I guess my question is—to the Inspector General's Office is, first of all, why weren't—why didn't this investigation happen sooner? His recommendation—his documentation in a lot of these problems have been going on for several years. It would seem to me that last year a lot of this was done in response to Chairman Hansen's request, at my request, but he documented a lot of similar types of problems that you came up with and wrote those to the Inspector General.

I guess my question is, why, or can you explain what the Inspector General did with his request?

Ms. LEWIS. To the best of my knowledge—and this predated my arrival as the IG—we received some correspondence from Mr. Hancock regarding various concerns about the land exchange program; and we responded, indicating that we would be taking a look at the program, the land exchange program, and in particular the types of concerns that he had.

So this was, I believe, sometime in the early part of 1995, if I am not mistaken. Then it was put into our audit planning process to go ahead and conduct this audit.

Mr. ENSIGN. So you felt that you were responding to his—just part of the time—process that it sometimes takes you—you felt you were taking his concerns into account and were responding to his concerns?

Ms. LEWIS. Yes, that is correct, because as I said, the office received the correspondence from Mr. Hancock and responded to him as well, indicating that we would be conducting a review of the issues.

Mr. ENSIGN. Does the gentleman from California, Mr. Doolittle, wish to inquire?

Mr. DOOLITTLE. In your draft report, on page 19, there is a paragraph that reads in part—it says, quote, "There was significant congressional interest in the Bureau acquiring the property"—this is the Galena property—"for the U.S. Forest Service to manage. The congressional interest appears to have resulted in taking additional measures to quickly accomplish the exchange," end of quote. Then it goes on to talk about how that interest was expressed.

I guess my question is, why was that paragraph deleted from the final report?

Ms. LEWIS. Let me approach that by describing for you what the audit process is that we have in the office.

The report to which you are referring was a preliminary draft. After the field work is done for an audit, a preliminary draft document is prepared and that is done principally to facilitate the conduct of audit exit conferences. The Bureaus believe that the conferences are more productive when they have a working document

which they can review and talk to the auditors about during the course of the conference. So we prepare that preliminary draft principally for the purpose of the conference and to have a document from which the auditors can speak in discussing with the Bureau personnel the direction that the audit appears to be going, based on the field work that has been conducted. That draft is a very preliminary document.

It is not only a very preliminary document, but it is a working document. It is a document that goes through substantial revisions, because once the conference is over, the auditors start to prepare what will ultimately be a formal draft report that goes out to the bureaus formally, for them to provide a response.

In going from the preliminary to the formal draft, the auditors in the particular region go through numerous drafts, and they go through these drafts making changes, as appropriate, in order to come out with what they believe is the most accurate product, the clearest product, the most thorough product, et cetera, et cetera. It is a document that is fully supportable, based on the information that they have gathered during the course of field work and so forth.

So the document goes through a number of drafts within the region itself. The region then submits its proposed draft to headquarters, and the draft goes through several layers of review at headquarters, including through the Assistant IG for Audits and, ultimately, through me.

When I get a draft, I am a cold reader of the draft and I read it for purposes of satisfying myself—in effect, not knowing what is in the work papers or what is not in the work papers—satisfying myself that the report hangs together; conclusions follow from the facts that we have laid out; the recommendations make sense in light of what we have in the report; it is clear; it is thorough; whether there are any holes or gaps in the document, as I read it as a cold reader, that don't make sense to me; and so on and so forth. So I am part of the review process as well.

I have said all of this basically to say that the preliminary draft that you cited was a very, very early document, and between that and the final there are numerous drafts. The process of getting from the preliminary to the formal draft and, ultimately, the final document, which also goes through numerous revisions as well, is designed to ensure the accuracy, the thoroughness, the clarity, the supportability of the final audit report.

So changes are made; that is part of the review process and in this case, that particular change was made.

I know you have asked me why the particular change was made, and I guess I would like to express my concern and suggest caution with respect to those types of questions.

My concern is one that is based on the integrity of the process, which I think, with all due respect to the Congressman, is compromised to the extent that the IG's Office has to come before a committee and explain why a particular phrase was left in or taken out from one draft to another.

The process is such that auditors in the field, for example, are required on a regular basis to make judgments, and they make those judgments, when they come out from the field work to start

working on drafts. And I think it could have a real chilling effect on GS–11 or –12 or –13 auditors in the field if they believe that, as a result of a phrase or whatever they might put into an early draft of an audit report, several months later they can come before a congressional committee and have to explain why they put it in initially and why they took it out after that.

I think it could have a chilling effect on the process. I think it could compromise the integrity of the process. I think auditors might decide, I am not going to write down anything until I am absolutely sure. And I think that would interfere with the ability to put early thoughts on paper, and revise them as is appropriate and move forward.

I have real concerns, and I thought I should express those concerns for the record with respect to this type of questioning.

I will say to you that this audit report—or the preliminary draft, because it was an unauthorized disclosure—got lots of publicity, probably more publicity than most audit reports have prior to the time of disclosure of a final audit report. Notwithstanding that, this audit, like all the other audits we prepare, was done—and we take our job seriously—without any influence by anybody outside the IG's Office.

With respect to the question of the congressional interest issue, and I assume you want me to answer the question, so I will answer it. However, I wanted to register my concern for the record with respect to the congressional interest issue, because that reference was in a preliminary draft.

I never saw that preliminary draft because I normally don't get into the process that early; but I did see a subsequent draft in or around January or so of 1996, which was a few months after the preliminary draft, that had the same language, or similar language in it. I don't believe it was the same, but it was similar. It mentioned the congressional interest issue.

When I did my markup on the draft that I received in January of 1996, I had a teleconference with the auditors in the field; and I was going through my comments about the report, and one of them was the congressional interest issue.

I said to the auditors that I would like to see whatever support we have for that statement in the audit report itself, and if we don't have support for the statement, then we shouldn't be making those statements. So I basically turned it back to them and said, go back and look—if you have support, I want to see it in the report; if we don't have support, we shouldn't be making that statement.

When they took it back, ultimately it came out without the statement and I relied on their professional judgment to go back and do what they do on a regular basis, which is to look at the documents and the work papers, decide whether there is sufficient support for a particular statement and proceed accordingly.

So it was a judgment, made in the field, following my comment to them about whether there was support for that statement, that resulted in taking out that statement from the report.

With respect to that statement, there was a concern that I had—and others, actually, within the review process—which was whether there was going to be a causation issue suggested from the

statement. That is, as a result of congressional interest, these problems came about. And, I think you read the sentence, and it can lead to that kind of a conclusion; and that is why I wanted to make sure that if that was a conclusion we were coming out with, that in fact there was support for it and we indicated that support in the audit report.

I was informed by the auditors, when I was preparing for this hearing during the course of the past several days, that when they took it back and looked at it in the field, they came to the conclusion that they did not have support to draw that nexus—that is, a causal relationship between congressional interest and the problems. Ultimately that is why they made the call to take the sentence out.

Mr. DOOLITTLE. Would it be fair to say then that they are withdrawing this comment because it says in the report that congressional interest appears to have resulted in the Bureau taking added measures to quickly accomplish the exchange? The measure included one assigned field special assistant to the director, located in Boise, Idaho, to oversee the exchange and serve as liaison, the Assistant Secretary for Policy Management and Budget; and two, moving responsibility for the process in the initial transaction involved in the Galena Resort property from personnel in the Nevada State office to those in the California State office. They are quite specific and that has all fallen out of the final report.

Ms. LEWIS. To the best of my knowledge, from what I have learned from the auditors, those facts are not incorrect, that is, the facts you have read in—I believe there might be three of them—that are not incorrect. Those are correct facts.

The issue, however, was the first part of the sentence, the linkage of the congressional interest and how that was being linked to the added measures, and how the added measures, in turn, might be linked to the problems at hand. And the question that the auditors were grappling with in response to my comment to them about putting in the document whatever support we have was whether or not you could really draw that nexus as neatly as was suggested there—that is, one sort of causing the other and the other causing the third.

So the facts are not incorrect; however, it was taken out because of the possibility of drawing the nexus, and the conclusion was reached out in the region that we did not have sufficient support to draw the nexus between those various facts.

Mr. DOOLITTLE. Do you know who or what was meant by the term "congressional interest"?

Ms. LEWIS. I was told by the auditors in preparation for the hearing that there were two letters from Congress that were in the work papers; and as they were going through their analysis of whether or not they had sufficient support for their references to "congressional interest," they looked at those letters. Other than comments from the Bureau, the actual documentation they had were these two letters. Both of the letters predated the exchange by about 3 years, and I guess that suggests that it didn't really reflect expedition. The other thing was that——

Mr. DOOLITTLE. That is fast for the Bureau.

Ms. LEWIS. I hope not but you might be right.

The other thing about the documents is that they refer to an area that still has not been consummated as part of an agreement. It referred to 7500 acres of Las Vegas land that up to now has not been part of an exchange agreement. And the proponent for the exchange that was mentioned in one of those two letters did not end up being the proponent for the exchange. I think as they were going through deciding whether this documentation was sufficient support for the statement that they had, they also analyzed those three facts and determined that this really wasn't the kind of support that they are willing to rely on to make the statements in the report regarding congressional interest.

Mr. DOOLITTLE. Can you tell us the identities of authors of those letters?

Ms. LEWIS. We have the letters here. One letter is a letter dated June 26th, 1991, to the then-Secretary of the Interior, Manuel Lujan, and it is signed by Harry Reid, Richard Bryan, Barbara Vucanovich, and James Bilbray.

The second letter is dated November 7th, 1991, and that also is addressed to the then-Secretary Manuel Lujan, and it is signed by Harry Reid, James Bilbray, and Richard Bryan.

Mr. DOOLITTLE. So in the case of the one letter, that was the entire Nevada congressional delegation as it then existed, and in the case of the second letter it was the entire delegation minus Mrs. Vucanovich, I guess.

Ms. LEWIS. That appears to be the case, yes.

Mr. DOOLITTLE. Whom were the letters directed to, which official at Bureau of Land Management.

Ms. LEWIS. No, they are addressed to the Secretary—the then-Secretary Manuel Lujan.

Mr. DOOLITTLE. Who at the Bureau of Land Management felt that this was material that should be included, I guess if you know?

Ms. LEWIS. I am not sure I understand your question.

Mr. DOOLITTLE. Do you have in your reports any local BLM official that was involved with that congressional delegation, for example, in advising them how to do this?

Ms. LEWIS. In other words, you are asking whether or not we are aware of any Bureau of Land Management officials who were advising the delegation——

Mr. DOOLITTLE. I guess what I am trying to get to is how did this—obviously the authors of the draft, I know you have explained the criteria used, by which this was taken out, but the original authors of this draft thought that this was significant and then this was dropped out. I am just wondering why did they think it was significant as far as you know?

Mr. GRAVES. I was probably the original author of that statement as the auditor in charge. You will note I think that it says that it appears. That in itself is an indication that it wasn't based on a tremendous amount of solid documentary evidence. It is probably a function of the process itself.

I write my report to include a lot of items, anything that I might think is significant or that appears to me to be significant or bears upon the finding and the issue that I'm talking about, but that doesn't mean that I expected all of those will eventually run

through the process. The process itself, with reviews beyond me in the office in Sacramento and in the office in headquarters, almost always results in a certainty of changes, additions, and deletions. So the answer is probably that I write a lot of things in a preliminary draft report in an attempt to cover everything and provide as much information forward as possible.

Mr. DOOLITTLE. Did you at some point conclude there wasn't this kind of congressional interest?

Mr. GRAVES. I concluded that I didn't have the documentary support to make that statement and to have it interpreted the way that I wanted. It seemed that what it was saying to every cold reader who looked at it was that congressional interest results in problems. I was not trying to say that. All I was trying to say was that we found a problem.

What we were told by the Bureau people was that some of the problems we were identifying had to do with the fact that they were working hard and fast to do the exchange, and part of the reason for that was that there was a lot of visibility on this exchange. That is all I really was trying to say. When it got written—it got to that point in time everybody who read it kind of focused on the two things you are focusing on also, and that really wasn't my intent in writing it.

Mr. DOOLITTLE. I am looking at it and seeing a congressional interest produced, special personnel and expedited proceeding. I find that rather encouraging, frankly.

Ms. LEWIS. There is nothing wrong with it.

Mr. GRAVES. That was one of the questions that came up.

Ms. LEWIS. Bob Williams the regional audit manager is saying that is another reason they deleted the statement. The way it was drafted there was almost a suggestion that there is something wrong here, there is something improper about it because we are ultimately linking it to—or there is a possibility of ultimately linking it to—the problems that we have identified in the report. That was a concern. We didn't want to mislead the reader.

Like I said—as Mr. Graves mentioned—when the cold reader has read it, and when I read it I said if we are going it make this statement, I want to make sure we have the goods and we put it in the report. If we don't have the goods, we have to take this statement out because it can be read to suggest that as a result of congressional interest these problems came into being. And, quite frankly, if we didn't have the support for that inference I didn't want to be sitting before a congressional committee having somebody ask me precisely the opposite questions—that is, Ms. Lewis, what was your support for saying that as a result of congressional interest these problems occurred? If we didn't have the support for that conclusion, then the statement shouldn't be in the audit report. Ultimately that was the judgment made in the field—that there was insufficient support for that conclusion based on what we had in the record, and that is why it came out.

Mr. DOOLITTLE. I realize I have gone on. I will ask one more question then yield back.

In the letter—I wish the Bureau were here. I guess next month or at the break we will hear from them in another hearing; is that right?

OK. That is being worked on.

Let me ask you, the letter that Mr. Ensign got from the BLM indicated there were six high-quality exchanges and that those three—those six exchanges were characterized by a signed initial exchange agreement where significant work had been completed, the process of the exchange and exchanges, where significant resource values would be acquired.

Now, in the BLM's responses they are not going to have your recommendations, those three major recommendations implemented until June of next year, but I gather from the response Mr. Ensign got that they are proceeding ahead of time or prior to doing those three things or at least maybe they are doing those three things on these six parcels while they are working them out for the rest. I don't know, but it is your impression, Ms. Lewis—I think I heard you testify that a moratorium, in your opinion, was not called for—was it your intent that land exchange be suspended pending the full implementation of those three full recommendations?

Ms. LEWIS. We had not drawn that conclusion. Obviously, our hope was that the exchange process itself has some value too. My hope was these recommendations could be implemented as quickly as possible.

Mr. DOOLITTLE. Does that seem like this, in fact, is the track that they are on even though that may indeed take a year?

Ms. LEWIS. The only information that we have—I did not have access to the letter that you are reading from—is the Bureau's response to our audit report with respect to the timeframes that they have set forth, and presumably they are trying to implement the recommendations as quickly as they believe they can.

Mr. DOOLITTLE. Did the times they gave in their responses seem reasonable to you? I think one was competitive exchanges, was June the 1st of 1997, the sharing adequate controls with all the laws and regulations that was going to be March the 1st of 1997, and then guidelines required all rights-of-way be reviewed, et cetera, would be by October 1st of 1996.

Was it the Inspector General's opinion that those three time tables were reasonable?

Ms. LEWIS. We do not generally evaluate the timeframes that the Bureaus provide us with. To the extent that there is a period of time of more than a year, we generally have them give us interim responses with respect to where they are. But we don't usually, as a matter of course, assess whether or not compliance with a particular recommendation within the timeframe is appropriate or reasonable.

Mr. DOOLITTLE. Let me withdraw the word "reasonable" and you would use the expression "as quickly as possible." Do these three time tables fit within your sense of "as quickly as possible"?

Ms. LEWIS. Obviously, we would like to see them done yesterday but I am not in a position to know exactly what the Bureau has to do in order to implement these recommendations. The most that we can say is we think that they are significant recommendations. We think they have a significant bearing on the process, so obviously from our perspective the sooner they can do it, the better.

The competitive exchange issue, for example, is one that we continue to harp on because we continue to believe that—the way the

system works now, there is just a fundamental flaw in the system and that there will continue to be these types of issues and problems cropping up unless we really open the system up to more competition. That is an issue that apparently has been discussed based on the Bureau's response for a couple of years now, so I am hoping that based on those discussions, and whatever else the Bureau needs to do, they will get it in place as soon as possible. They have indicated 1997. I guess that is based on their assessment of what else they need to do with respect to this competitive exchange recommendation to put it into place.

Mr. DOOLITTLE. Was it your expectation that no future land exchanges would occur without the implementation of those three recommendations; or rather was your expectation that some land exchanges would occur without those while the recommendations were in the process of being implemented?

Ms. LEWIS. Obviously it would be our hope that any future exchanges incorporate the recommendations that we have made. It is not the case, for example, with the easement. Every parcel of land that is being exchanged is not going to necessarily have an easement on it, so that might be a recommendation that doesn't even apply to exchanges that might be in the pipeline right now.

There are certain things like ensuring that appraisal values are approved by a chief appraiser. That is something that doesn't require any period of time to implement. It is something that can be implemented instantaneously.

I think based on the Bureau's response, they are talking about reviewing all of their processes to ensure that, in fact, they are in compliance with the applicable rules and regulations. But it is certainly my hope that the particular items that we have pointed out in the audit report, to the extent they arise again in another exchange, that they would be able to do it the right way, notwithstanding the fact they might not have been completely finished with their entire review of their full process.

Mr. DOOLITTLE. Getting back to congressional interest where you have got a situation, say, where the Governor and Senators and the Congressmen are unsupportive of the project and carefully reviewed the—in other words, using these three criterias, which I realize you haven't seen, but you heard me articulate, would not then that assure protection for the parties concerned while at the same time not losing some of these valuable resources that otherwise might be lost if a moratorium were in place, which you said you did not feel was justified in requiring all exchanges to wait until the Bureau can implement everything by June the 1st of next year?

Ms. LEWIS. Assuming that what the Bureau is suggesting with respect to the six pending exchanges is that they will be implementing the recommendations that we have made, in the context of those exchanges. That is precisely what I was referring to before when I said the Bureau is referring to going through and, for example, reviewing all easements. I have that page before me. To the extent there is an easement in a particular land exchange now, that is the one they need to focus on before the land exchange is completed. To the extent they can incorporate the recommendations that we have made into the pending exchanges, notwithstanding the fact that they might not have done a complete review such that

they can say, we have reviewed all our processes, and we can ensure all the Is are dotted and the Ts are crossed, our concerns would be addressed. The longer period of time for the full review would be understandable, but nonetheless the Bureau would be incorporating in their current exchanges the recommendations that we have made in the audit report.

Mr. DOOLITTLE. I suppose the stumbling block here would be the issue of competitive exchange. That probably can't be complied with for these six. Do you see that as an insurmountable obstacle?

Ms. LEWIS. I don't see it as an insurmountable obstacle. I just think there has to be a recognition by all that we are dealing with a system that is not a perfect system. So having said that it is not insurmountable, they might come out with an appraisal for a particular parcel of land, and somebody will say that is not the right value. Not introducing competitive exchanges is going to exacerbate the problem or the potential for that to come about.

As long as everybody recognizes that we are dealing with an appraisal system that is not an exact science, and there can well be differences between appraisals. To the extent that there are, then the Bureau can attempt to reconcile then, particularly if there are differences within the Bureau itself, as was the case with the Red Rock Exchange. As long as we understand what we are dealing with under the current system, then, you are right, it is not an insurmountable problem.

Mr. DOOLITTLE. We are in transition from the old way of doing things to the new way. While you are in transition, it is going to be sort of a balancing of equity.

Ms. LEWIS. Yes. Certainly you balance the equities in the transition, and you determine whether or not from the perspective of the benefits it makes sense to go forward with it, recognizing that you don't have a perfect system and probably never will. You have to decide whether the benefits outweigh the disadvantages.

Mr. DOOLITTLE. Thank you.

Thank you, Mr. Chairman.

Mr. ENSIGN. Does the gentleman from Arizona wish to inquire?

Mr. SHADEGG. Briefly, I hope, Mr. Chairman.

First of all, I was fascinated with the discourse on the issue of congressional interest. And maybe my question, Ms. Lewis, is for your colleague. I do want to get a clear statement on the record there is nothing wrong with congressional interest as you perceive it; is that correct?

Ms. LEWIS. As we perceive it, there is nothing wrong with congressional interest, no.

Mr. SHADEGG. Certainly BLM officials, when they get a letter, aren't excused from doing their job or following their regulations.

Ms. LEWIS. Oh, no, not at all.

Mr. SHADEGG. I guess it was your—you indicated it was your thought to insert that in the first place.

You also see nothing wrong with Members of a congressional delegation, as in this case the entire delegation, expressing an interest in a land exchange?

Ms. LEWIS. No.

Mr. SHADEGG. And you would expect that the BLM officials involved would continue to do their jobs and fulfill their regulations?

Mr. GRAVES. Yes, I would.

Mr. SHADEGG. I want to understand that—I want to make sure if I express interest in a transaction, I am not doing something you view is improper, or the mere expression of interest by me as a Member of Congress will cause you or BLM officials not to do your job or their jobs.

I also want to follow up on the line of questioning by my colleague, Mr. Doolittle, to the extent that we can go in that direction. As I understand it, you have made a reference to future exchanges, and there is also the review of past exchanges. The Inspector General's Office looks only at past completed conduct; is that correct?

Ms. LEWIS. That is not always the case. Traditionally our audits focus on completed conduct, yes, because traditionally auditors would go in after a particular program or whatever is in place and review that program. However, there is also opportunity to go in before a program is completely finished and look at it from the perspective of whether there are controls that needs to be put in place to make the program better, as it is being developed, and we do that on occasion as well.

Mr. SHADEGG. If you were requested to, you could go and look at a pending exchange and do an audit of a pending exchange?

Ms. LEWIS. We could do an audit of actions taken up to a particular point in time, certainly.

Mr. SHADEGG. Is that normal, or is that extraordinary?

Ms. LEWIS. I don't think we have done it in this particular context before, but we are doing more proactive work in the Department with respect to programs and activities than we have done in the past, under the notion that our mission is not only to detect fraud, waste and abuse, but it is also to prevent it. And to the extent we can get in a little bit earlier on occasion, when invited by the Bureau, to look at a particular program or activity and give, based on the expertise of the auditor, some indication as to where there might be problems or where they might need to put in controls to avoid potential problems, we are doing more of that kind of work.

I just hesitated because I was thinking of how it would play out in the context of a land exchange, because obviously we haven't done it in this context to this point in time.

Mr. SHADEGG. In this instance part of what you discovered is that existing rules and regulations governing these types of exchanges were not, in fact, followed. Rules were there. They were supposed to be followed. They were not.

Ms. LEWIS. Right.

Mr. SHADEGG. Clearly that is inappropriate. Everyone should live by the rules and regulations as they exist. But what you are saying with regard to some of your other recommendations is that you view it as also a part of your function to look at—I guess they would not be rules and regulations and laws, but rather practices that could be used to improve the process that are not in current regulation; is that right?

Ms. LEWIS. That is correct. For example, the Tonopah Exchange is an example of that. We looked at that and determined that based on the law as written, there is nothing that prevents the Bu-

reau from making a determination that it wants to exchange valuable land to get an administrative facility. That is not precluded.

The determination is whether the public interest is well served, and one can make arguments however one chooses with respect to what is in the public interest. But in that particular case, we can't say there was a violation, but there was a question in our minds as to whether this land exchange process was really designed to acquire land for that purpose as opposed to environmentally sensitive land, resource value, that type of thing. That is why we have it in an "other matters" section as opposed to in the "Findings" section, because there was no finding of a violation of an applicable law or regulation.

Mr. SHADEGG. I kind of want to go at the issue of—we had a series of rules and regulations and practices in the past. You made a series of recommendations for the future. We are not looking at what is going to apply to those that are currently pending.

Congressman Doolittle referred to the interim or this hiatus between the emergence of your current recommendations and the new exchanges which may be begun at some point in time after your recommendations come forward and those that are currently pending, and I want to say they have some concern about changing the rules of the game while somebody is midway through the process.

And in that regard let me ask, with regard to any exchange that was ongoing, since you are making a recommendation as to practices that would improve the process, for example, more consistently lead to a proper valuation, just as an example, it would be my understanding that your recommendation of that practice at least applied to an exchange which has already been begun would be satisfied not that they necessarily went back and did that practice, but rather looked at the exchange and determined that, in fact, the question of valuation had been properly met.

Ms. LEWIS. I think that's right to the extent that they look at the pending exchange and make a determination that there was no violation of an existing law, rule or regulation; that if, in fact, they did it according to the applicable laws, rules and regulations, then that would suffice.

Mr. SHADEGG. That is the point I want to make, and I appreciate that.

My concern is this: If that is not the case, then every time the Inspector General reaches a conclusion that we ought to engage in some different practice in the future, if that means that every pending practice of the Interior Department has to go back at that point in time to when you weren't doing that and start over again, we are going to have the government going forward, and stepping back, and going forward, and stepping back.

It seems to me that if, in fact, the recommendation in the future is that we should change the rules and regulations, or, as the gentleman from American Samoa suggested, change the law, that is well and good, and we perhaps in some instances need to do that. But where the suggestion is, well, this is a practice we think would be better, it seems to me at least for those that are pending, if you have established that all the rules and regulations were followed and that the ultimate end to be achieved, that is a proper valu-

ation, has been achieved, then at least at that point you have satisfied everything the law should require for anything that is in the pipeline.

Ms. LEWIS. I think that is reasonable. It seems to me that to the extent that there is a violation of law, that has to be corrected regardless of whether you have things in the pipeline or not. You need to correct that. To the extent that the recommendation goes more to something that is not a violation of law, but is something that you are looking toward improving the process in a particular way, then I think it is reasonable to say that to the extent you have ones in the pipeline, you will do it for the future.

Mr. SHADEGG. No more questions, but that if you have a regulation that requires certain things should be done, that is not adequate, period.

Let me go to one last point. Mr. Hansen asked you about the six pending exchanges, and you said that you could not know, because you had not reviewed them, whether or not they should go forward. You had also indicated that you hadn't concluded that a moratorium was necessary.

If BLM is satisfied that it has followed all the rules and regulations, and looks at those existing exchanges and determines that the policy of the law has been met, and perhaps maybe even looking backward at some of your recommendations and that the goal that your recommendations are designed to achieve, for example, fair valuation has, in fact, occurred, then certainly you would know of no reason once that has been done why those exchanges shouldn't go forward.

Ms. LEWIS. That is correct. The way our audit process works is that implementation issues are left to the particular Bureau. The Bureau reports to us, for example, that they have implemented recommendations A, B, and C. We don't know for a fact whether they have implemented them until we do a followup audit, and sometimes we will go in and find out they haven't implemented them, or they have. But implementation, following the issue of our audit report, is the responsibility of the Bureau.

Mr. SHADEGG. You have got your job, they have got theirs. If they are satisfied they have fulfilled the law and the regulations, then that is their call, and they make that decision. You may or may not be asked to second-guess them later.

Ms. LEWIS. That is their call until we go back in.

Mr. SHADEGG. Thank you, Mr. Chairman. That is all I have.

Mr. ENSIGN. Couple of other questions. First of all, in your report I notice that you talked about between 1992 and 1995, the six exchanges had taken place. Were those the only exchanges that had taken place? That is what it leads me to believe, your audit, that only six had taken place.

Ms. LEWIS. During that period of time.

Mr. ENSIGN. There were only six total?

Ms. LEWIS. Yes.

Mr. ENSIGN. I just wanted to clarify that.

Second thing is on the Oliver Ranch Exchange, the 220 acres for the flood control basin that was where the big controversy was that, I think what it came down to, a little over 30 acres were actually needed for that. I just want to bring up a couple of other fac-

tors under that that I don't—I didn't see mentioned in your report. From what I understand talking to people, that the city got the $400,000 cash plus other factors. One of the other factors was that the private company built the flood control basin.

Ms. LEWIS. Yes.

Mr. ENSIGN. How much is the value of that, and would that offset the law—in other words, if the city is looking at this thing—well, we will take away our right, and we know that is going to increase the value of the land. And so to offset that they are going to give us $400,000, plus they are going to build this flood control retention basin, and that would cost us more if we kept it. And so we will allow the developer to make some money over here on selling the land, because in exchange for that, they are going to build us this flood control retention basin.

In other words, did the value of building that—I know it was several million dollars over here versus $400,000, but if you add on the value of the building, I don't know how much those things cost, that is why I am asking—do we know—was that asked how much that cost?

Mr. GRAVES. It wasn't constructed. At the time we did our review there was no construction, at least to our knowledge—no, there was no construction at that point in time.

Mr. ENSIGN. Was that part of the agreement? That was part of the agreement, they would build that?

Ms. LEWIS. Yes.

Mr. ENSIGN. Were there other factors or other goodies that they put into the pot besides just that?

Mr. GRAVES. The Bureau provided a document in its response that was the agreement, and by way of looking at that document, it identifies the $400,000. It also identifies the cost of design and construction, and it may contain other items. I don't know what those are, and I don't have a value to attach to them.

Mr. ENSIGN. Hopefully the BLM or somebody can get us the value of the construction, because something that looks rather like the taxpayer got shorted there may, in fact—may not have been, because if the value—if the cost of construction design and all of that at the flood control basin mitigateed the difference in the cost, it certainly would appear then that the taxpayer got the fair value; would you agree or disagree?

Ms. LEWIS. I guess ultimately the question is whose benefit is it supposed to be? The Federal Government has granted a right-of-way to a city. Under the applicable regulations, the Federal Government is only supposed to grant that much land that is necessary to support the particular project or facility. However, under your scenerio, the Federal Government grants more than that, the city is aware that it is not going to use that excess land, but then the city can hold onto that, then later on enter into an agreement that allows them to benefit from the fact that they have gotten extra land in violation of a regulation.

I am not sure it works out quite so nicely to say that the city got a benefit, so you reduce the amount that the Federal Government should have gotten by the benefit that the city receives. That is because the question is whether the city should have received

that benefit to begin with, whether it was rightfully their property to barter and negotiate to turn into a benefit to the city.

I am not sure I agree with you that that would be the appropriate way to look at this unless there was a determination made that, yes, it was OK to have the city barter away what really should have been Federal property.

Mr. ENSIGN. I guess from a person who represents Las Vegas, I don't have that big of a problem with that part of it if this is a mitigating fact. I can understand where other Members might have a problem with it, but I would have a serious problem if it was just the private developer that got the windfall. But if it happened to benefit the good of the Las Vegas Valley, that doesn't seem to be anything nefarious going on in there in the least.

Ms. LEWIS. I appreciate your interest.

Mr. ENSIGN. Overall on these exchanges did you find that the problems lay mostly in following proper procedures, and guidelines lay with the State office or the local office, and was there any connection with the Washington, D.C., office?

Mr. GRAVES. We didn't identify a connection with anything that had a problem being in Washington, D.C.

Mr. ENSIGN. So there was this D.C. involvement that you identified?

Mr. GRAVES. No, not that I can recollect. Nothing comes to my mind right offhand. The decisions and the activity all took place in the district's resource area, the district and the State office, and there is a certain amount of paperwork that passes back and forth for approvals between those offices. So it is all within the State office because the district is a part of the State, but exactly at which location, I don't think I could tell you. That kind of goes back to your first question, who approved what.

Mr. ENSIGN. Hopefully when we get the written responses to this, we can more closely determine on where some of the responsibility has laid out.

Congressman Faleomavaega gave a talk about that one, the purpose for this. You can't say, well, the taxpayer got shorted, we really don't know who is responsible for it. Someone ultimately has to take responsibility for what is going on here if the taxpayer has been shorted by not following proper procedures that you have outlined there.

We need to be able to put a name and position onto who is responsible because we are talking about the taxpayer trust. And in the form of government that we have, the individual out there, the small taxpayer out there has to have their interest protected, and that is what your office and our office is responsible for is holding sacred that public trust. And we have to look out for that taxpayer, the little person out there that can't—that doesn't have the resources to look out for their own particular interest.

That is what our charge is, and that is why I think it is important to find out exactly who is responsible for making some of these decisions. First of all, I think it can help prevent them in the future, but it can lay responsibility, because there are many, many qualified, competent people working within the Bureau of Land Management, and we don't want to broad brush, to hurt everyone's reputation. If it was even a few of them that made the mistakes

or didn't follow proper procedures, those people should be identified so the other people's good names can be protected.

One thing I wanted to say before we close out, I don't know if you have more questions, Mr. Doolittle. I certainly do not, but we will be submitting other written questions for the Inspector General's Office. We would appreciate timely answers to those, and other than that, if we have nothing else, do you have any other concluding remarks to make, and if not——

Ms. LEWIS. Nothing further, thank you.

Mr. ENSIGN. If not, then this hearing is adjourned.

[Whereupon, at 12:22 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

U.S. Department of the Interior
Office of Inspector General

Testimony of

Wilma A. Lewis
Inspector General
U.S. Department of the Interior

on Audit Report No. 96-I-1025,
"Nevada Land Exchange Activities,
Bureau of Land Management"

Before the Subcommittee on National Parks,
Forests, and Lands
Committee on Resources
U.S. House of Representatives

July 30, 1996

Mr. Chairman and members of the House of Representatives Subcommittee on National Parks, Forests, and Lands, Committee on Resources:

I am pleased to be here today to provide testimony on an audit report recently issued by the Office of Inspector General involving land exchange activities conducted by the Bureau of Land Management, U.S. Department of the Interior.

On July 15, 1996, we issued Audit Report No. 96-I-1025, entitled "Nevada Land Exchange Activities, Bureau of Land Management." The objective of our audit was to determine whether the Bureau conducted land exchanges in accordance with applicable laws and regulations and whether the Bureau received fair market value in these land exchanges. The Bureau exchanged approximately 710 acres in fiscal year 1993; 2,910 acres in fiscal year 1994; and 725 acres through May 31 of fiscal year 1995. Of the six exchanges processed by the Bureau from October 1, 1992, through May 31, 1995, we focused our review on the four largest exchanges, of which three were completed during the period audited and one, a multiple-transaction exchange, was partially completed. The Federal land exchanged in these four transactions was located in the Las Vegas area and was appraised at about $63.2 million. We did not review the two remaining exchanges, for which the Federal land involved had a total appraised value of only $22,900.

By way of background, the Bureau conducts land exchanges under the authority of Section 206 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579), which authorizes the Secretary of the Interior to dispose of Federal land by exchange when the public interest will be well served. Land exchanges may be initiated by either the Bureau or other interested parties. In recent years, the Bureau has identified about 70,000 acres of Federal land for disposal in the Las Vegas Valley of Nevada, which the U.S. Bureau of Census has reported was the fastest growing metropolitan area in the United States between 1990 and 1994. Real estate development in the private market associated with this growth has created significant interest in acquiring this Federal land.

The values of public and private land exchanged are established by appraisals that are to be conducted in accordance with principles defined in the "Uniform Appraisal Standards for Federal Land Acquisitions." The "Standards" provides for a uniform approach to addressing appraisal problems and prescribes requirements for adequate supporting data to develop justifiable market values. Specifically, the "Standards" requires that

each appraisal be carefully reviewed by a qualified review appraiser and that the review be documented by a written report indicating the scope of the review and the action recommended by the reviewer. Nonetheless, the "Standards" recognizes that in the application of its general rules, "wide differences of opinion occur."

As discussed further below, our audit disclosed three principal issues relating to land exchanges. First, we found that while the Bureau had acquired some high quality properties by exchanging land with private entities, or proponents, it did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. Second, we found that the Bureau exchanged, rather than sold, 446 acres of land within the land sale area designated by the Santini-Burton Act. Based on our legal review of the legislation, we believe that, while the Act does not prohibit land exchanges, the Congress intended that the land within the designated area should be sold to offset the costs incurred for land acquisitions in the Lake Tahoe Basin. Finally, we noted that the Bureau exchanged a portion of its Las Vegas area land to obtain a defunct bowling alley with the intention of using this facility as a Bureau administrative complex for the Tonopah Resource Area. We believe that such an exchange may not represent the most effective use of valuable Federal land.

Exchange Processing

We concluded that the Federal Government may have lost an estimated $4.4 million in completing the Oliver Ranch, Red Rock, and Galena Resort exchanges as follows: Oliver Ranch - $4.2 million; Red Rock - $157,000; and Galena Resort - $68,825. We also found that, in the Red Rock exchange, the Bureau acquired 2,461 acres of land, with an exchange value of $2.7 million, that was not in conformance with an approved land-use plan. Of the $2.7 million, we found that $1.2 million represented an increase in the approved fair market value of the private land that was made without reconciling differing values assigned by Bureau review appraisers.

Oliver Ranch Exchange. In the Oliver Ranch exchange, the Bureau acquired a 300-acre privately owned property, valued at about $7.7 million, that had two houses and storage buildings. This property, located about 15 miles southwest of Las Vegas, was within the boundaries of the Red Rock Canyon National Conservation Area, a popular recreation area managed by the Bureau. The Bureau said that it acquired this property to prevent future development on the land and to preserve the scenic nature of the Conservation Area.

In acquiring the Oliver Ranch, the Bureau exchanged 591 acres of Federal land, valued at about $8.7 million. The transaction was completed in two phases: the exchange of approximately 146 acres of the Oliver Ranch for 389 acres of Federal land on March 30, 1993, and the exchange of the remaining approximately 154 acres of the Oliver Ranch for 202 acres of Federal land on August 5, 1993. The proponent paid the Bureau $925,000 to equalize the established exchange values. However, we found that, before the first phase of the exchange took place, Bureau management did not adequately verify the need for an easement granted to the City of Las Vegas on a 220-acre parcel of Federal land, which ultimately resulted in a loss to the Federal Government of approximately $4.2 million on this exchange. (This amount was incorrectly shown in Appendix 1 of the audit report under the column for funds to be put to better use instead of under the column for lost revenues.)

In 1986, the Bureau granted a 30-year right-of-way to the City of Las Vegas for construction of a flood control detention basin. On December 7, 1992, at the City's request, the Bureau extended the duration of the right-of-way into perpetuity without obtaining any additional documentation from the City regarding its plans for use of the easement. With the easement, the appraised fair market value of the 220-acre parcel was $2,500 an acre, or a total of $550,000. Without the easement, the appraised value per acre was $25,000, or a total of $5.5 million.

Because the Bureau did not adequately verify that the entire 220-acre parcel would be used in accordance with the existing land-use easement, the Government incurred a significant loss. Specifically, on March 30, 1993, just 4 months after the easement was extended, the Bureau conveyed the 220-acre parcel to the proponent as part of the exchange. Later that same year, the proponent and the City were engaged in negotiations that resulted,

in December 1994, in the City's relinquishing its rights to the easement on 189 acres, retaining only 31 acres for construction of the detention basin. Based on the original appraisal values, the 189 acres exchanged for $2,500 an acre were thus worth at least $25,000 per acre. Accordingly, the Government effectively lost about $4.2 million on this exchange. The Government's loss represented a gain for the proponent, as well as for the City, which obtained $400,000 in cash and an agreement from the proponent to design and construct the flood control detention basin as part of the City's arrangement to relinquish a portion of the easement to the proponent.

In attempting to justify this transaction, the Bureau stated that, while it was aware of the potential for this loss, it decided that the "benefits" related to acquiring the Oliver Ranch warranted the expeditious transfer of the Federal land to private ownership. The Bureau stated further that the value it had established for the 220-acre parcel of Federal land encumbered with a flood control easement to the City of Las Vegas was "accurate" based on information available to the review appraiser at the time of the exchange. In that regard, the Bureau cited a March 16, 1993, letter from the City to the Las Vegas District Office, which stated that the City had "active plans to use [the] right-of-way grant . . . for a water detention basin for flood control purposes" and that it "wish[ed] to retain its right-of-way grant . . . ."

We do not question the Bureau's decision to acquire the Oliver Ranch, nor do we question the appraised value of the encumbered 220-acre parcel of land. We believe, however, that under the circumstances as presented, the Bureau should have taken additional measures to protect the Federal Government's interests, such as by pursuing more diligently with the City the issue of relinquishing the unneeded portion of the easement or by seeking to substitute an unencumbered parcel of Las Vegas area land to complete the exchange.

Under Title 43 of the Code of Federal Regulations, the Bureau has a responsibility to ensure that the amount of land included in an easement is limited to only those lands which the authorized officer determines "[w]ill be occupied by the facilities authorized . . . [and] be necessary for the construction, operation, maintenance, and termination of the authorized facilities . . . ." Accordingly, in our view, the City's brief reference, in its letter of March 16, 1993, to its "active plans to use [the] right-of-way

grant," without more details, provided insufficient justification for the Bureau not to pursue relinquishment of a portion of the easement by the City. This is especially so here, where an internal memorandum to the file, written by the Bureau's review appraiser 4 days before the exchange, acknowledged that at that time--some 7 years after the easement had been granted--"no facilities ha[d] been built under the R/W [right-of-way] grant" and the City could give "no timeframe for construction or even an idea of what may be built . . . ." The internal memorandum further recognized that it was unlikely that all of the land would be used by the City for the proposed flood detention basin and that a "windfall profit" would accrue to the landowner if any portion of the easement was released by the City.

In view of the escalating property values in the Las Vegas area, the fact that 7 years had elapsed with no action by the City, the uncertainty that had been demonstrated by the City as to its needs and plans, and the Bureau's responsibility under the Code of Federal Regulations, we do not believe that the Bureau was sufficiently diligent in pursuing with the City the matter of relinquishing a portion of the easement. As the facts reveal, the City ultimately retained only 31 acres of the 220 acres for construction of the detention basin, which resulted in a loss to the Federal Government of approximately $4.2 million as a result of this exchange.

Red Rock Exchange. In the Red Rock exchange, the Bureau exchanged 769 acres of land in Las Vegas, valued at $9.9 million, for 3,562 acres of private land in Nevada, valued at about $8.3 million. To equalize the value of the exchange, the proponent made payments totaling about $1.6 million. The transaction was completed in two phases: on July 19, 1994, and on February 6, 1995.

In the exchange, the Bureau acquired 27 separate parcels in Clark and Esmeralda Counties, Nevada. The Bureau's stated reasons for acquiring these various parcels were to prevent future development and to manage the land for threatened and endangered species. One parcel, a 30-acre vacant lot, valued at $1.2 million, was located west of Las Vegas in Calico Basin, which is a small community of private homes within the Red Rock Canyon National Conservation Area. Twenty-two parcels, consisting of 2,061 acres, cumulatively valued at about $2.5 million, were located about 55 miles northeast of Las Vegas in the Virgin River Valley, which is managed by the Bureau. One parcel, a 400-acre piece of land, valued at $210,000, was

located about 55 miles west of Las Vegas in the Pahrump Valley, which is also managed by the Bureau. The remaining three parcels, consisting of 1,071 acres, cumulatively valued at about $4.4 million, were located within the Inyo and Toiyabe National Forests and were acquired for the U.S. Forest Service to manage in accordance with its forest management plans.

We identified three problems with this exchange. First, we concluded that the Bureau's acquisition of 2,461 acres of land, valued at about $2.7 million, in the Virgin River and Pahrump Valleys did not conform to the Bureau's approved land-use plan, as required by Title 43, Part 2200, of the Code of Federal Regulations. Second, we found that the Bureau increased the established fair market value for some of the private land exchanged from $1.5 million to $2.7 million without reconciling the different approved values. Finally, we concluded that the Government lost an additional $157,000 on Federal land exchanged by granting the proponent an unjustified purchase discount.

On the first issue, the Bureau maintained, in its response to our draft report, that the Virgin River Valley acquisition was consistent with the need to "manage for woundfin (an endangered species) habitat along the Virgin River," as identified in the Clark County Management Framework Plan and in the U.S. Fish and Wildlife Service Woundfin Recovery Plan. The Bureau also noted that the Virgin River parcels were evaluated by a qualified wildlife biologist who determined that the entire Virgin River is "historic habitat for endangered fishes, i.e., the woundfin and the Virgin River roundtail chub."

The inherent problem is that the Bureau is relying on a draft plan as opposed to a current approved land-use plan to support its acquisitions. We do not intend, nor do we have the expertise, to question the scientific evaluation of the properties made by the wildlife biologist. However, the Code of Federal Regulations requires the Bureau to consider only those exchange proposals which conform to an approved land-use plan in order to ensure that the land acquired is necessary to fulfill the Bureau's mission.

Further, even the Bureau's draft plan did not support all of its land acquisitions. The Bureau's May 1994 "Supplement to the Draft Stateline Resource Management Plan," which has not been finalized, identified the area north of Halfway Wash, in Nevada, as a proposed area of "critical

environmental concern." Based on our review of the area of critical environmental concern and the acquired lands, which were identified on maps by a Bureau wildlife biologist, we noted that only 120 acres of the 2,061 acquired acres were within the boundaries of the proposed area of critical environmental concern. We also noted that another 420 acres of land outside the area of critical environmental concern, as reflected in the 1994 "Supplement," might be construed as land to be acquired because the land parcel involved was completely or partly in the river bed. Thus, at best, acquisition of only 540 acres of the 2,061 acres acquired might be justified in accordance with the most recent draft of the land-use plan.

The Bureau also sought to justify its acquisitions by citing the U.S. Fish and Wildlife Service Recovery Plan for the woundfin and the Virgin River roundtail chub. This plan did not contain specific boundaries for acquisition of land along the Virgin River. Accordingly, we contacted the Chief of Listing and Recovery of Endangered Species for the U.S. Fish and Wildlife Service, in Denver, Colorado, to obtain this information. This official stated that the high priority area for the Virgin River was in Utah and that the area north of Halfway Wash was also a priority. As noted earlier, the Bureau's land acquisition included land outside this area of critical environmental concern.

The Bureau also stated that the Pahrump Valley acquisition was consistent with proposals in a Draft Resource Management Plan to acquire land to protect the desert tortoise and with a "proposed potential tortoise management area" under the Clark County Short-Term Habitat Conservation Plan. However, this statement does not reflect the existence of other significant draft and final planning documents which indicate that the Pahrump Valley land was not needed for protection of the desert tortoise. In that regard, we noted that, on August 30, 1993, 3 months before the Bureau and the proponent signed an exchange agreement, the U.S. Fish and Wildlife Service had issued a Draft Recovery Plan for the desert tortoise, which did not include a proposal for managing any land in the Pahrump Valley. This draft plan was finalized on June 28, 1994. The Bureau's "Supplement to the Draft Stateline Resource Management Plan," issued on May 2, 1994, also did not propose any special wildlife management area in the Pahrump Valley. Accordingly, the basis for the acquisition of the Pahrump Valley acreage was questionable.

We believe that the Bureau should update and amend its current land use plan, as appropriate, to conform to any scientific or other assessments on which it is relying so as to remove any doubt as to whether its land acquisitions are consistent with its mission-related needs. Such amendments should occur prior to exchange transactions being consummated.

The second concern raised in our audit report regarding the Red Rock exchange involved the values established for the private land. Section 9310.04.D.2 of the Bureau's Manual states that a "chief appraiser shall approve an amount which represents the Bureau's estimate of fair market value." We found that the values of the first seven parcels of private land exchanged in the Virgin River Valley were originally approved by the Arizona Chief Appraiser and subsequently approved by the Nevada Chief Appraiser. The initial phase of the exchange was processed using those approved values. However, the values of the remaining 17 parcels, approved by the Arizona Chief Appraiser, were not used for the second phase of the exchange transaction.

A Bureau employee told us that the Bureau's former Nevada State Director wanted his appraisal staff to perform another review of the contract appraisals for the remaining parcels because the proponent was "unhappy" with the values previously established. The Nevada Chief Appraiser assigned the review to one of his staff appraisers, who approved significantly higher values. The difference between the values approved by the two Bureau appraisers ranged from $5,500 to $413,679. For example, the Arizona Chief Appraiser's approved value of $288,750 for a 540-acre parcel of land was subsequently overridden by the staff appraiser's approved value of $702,429. The Bureau subsequently exchanged Federal land using the higher values without reconciling the significant differences in the values approved by the two review appraisers.

In addition, we were not provided documentation to indicate that the values derived by the subordinate staff appraiser were approved by a State Chief Appraiser, as required by the Bureau Manual. Bureau personnel told us that the staff appraiser had been designated as the Acting Chief Appraiser for the remaining parcels of Virgin River Valley land after the proponent's expressed "unhappiness" with the values previously established by the Arizona Chief Appraiser. However, the Bureau was not able to explain why the staff appraiser was designated as the Acting Chief Appraiser for this

review. Thus, we question the Bureau's decision to override the values approved by the Arizona Chief Appraiser and to accept values for the private land that were $1.2 million higher without a reconciliation of the differences and under the circumstances as presented here.

In this exchange, we also found that the Bureau incorrectly included a discount of $157,000 when it established the fair market value for 66 acres of Federal land in the Las Vegas area. Specifically, a contract appraiser had prepared separate appraisals of four noncontiguous tracts of Federal land totaling 1,311 acres and had established a total value of $16,440,000 for the four tracts. Further, the appraiser concluded that a single buyer would be entitled to a 10 percent discount on three of the four tracts, but only if all four tracts were acquired. However, the Bureau allowed the proponent to take the discount, even though only the two smallest tracts, with appraised values totaling $1,570,000, were acquired. The Bureau did not have documentation to support why the discount was given.

Galena Resort Exchange. The Galena Resort exchange involved, through May 31, 1995, eight transactions that transferred 2,677 acres of Federal land, valued at $44.3 million, for 31,391 acres of private land, valued at $35.4 million. To eliminate the $8.9 million ($44.3 million minus $35.4 million) exchange balance owed the Government, additional land transfers or cash payments from the proponent will be required.

The Galena Resort exchange was a large exchange in which the Bureau acquired 10 privately owned parcels located throughout Nevada. According to the Bureau, these parcels were acquired primarily for three reasons: to prevent development within the Toiyabe National Forest; to benefit the Pyramid Lake Indian Reservation; and to improve the Bureau's management of adjoining public land. The centerpiece of this exchange was the Galena Resort property. This mostly unimproved 3,864-acre parcel, valued at $19.9 million, was located southwest of Reno within the U.S. Forest Service's Toiyabe National Forest. Two additional parcels, consisting of 8,524 acres, valued at $5.6 million, were located on the northern part of Reno within the Toiyabe National Forest. Four parcels and a portion of a fifth parcel, consisting of 3,276 acres, cumulatively valued at about $7.7 million, were located east of Reno on or adjacent to the Pyramid Lake Indian Reservation. The remaining two parcels and a portion of a third, consisting of 15,727 acres, cumulatively valued at about $2.2 million, were

located east and north of Reno adjacent to other public land managed by the Bureau.

In conducting this exchange, we found that the Bureau did not use the Nevada Chief Appraiser's approved fair market value estimate as the basis for acquiring portions of a property known as the DePaoli Ranch in two separate transactions. In particular, the Bureau paid $107,525 more than the approved value on one transaction without documentation to justify using other than the approved value. In a related transaction, the Bureau acquired other DePaoli lots at no additional cost, although the approved exchange value was $38,700. Overall, the Government's cost exceeded the approved exchange value of the property by $68,825.

In addition, we found that the values of Federal land and private land exchanged in the initial transaction were not equalized. Specifically, the value of the Federal land conveyed to the proponent in this exchange totaled about $9.6 million more than the private land received by the Bureau. The Federal Land Policy and Management Act, as amended, and the Bureau's implementing regulations require Bureau officials to attempt to reduce the difference between the values of the Federal and the private land exchanged to as small an amount as practicable. Bureau personnel told us that as much Federal land as possible was included in this transaction because the proponent had buyers ready to purchase the land and because the proponent was expected to equalize the exchange shortly. However, 9 months after the exchange and after seven more transactions, we found that the proponent still owed the Government $8.9 million of the $9.6 million. In our opinion, the Bureau should have limited the amount of Federal land exchanged to minimize the difference in the values between the Federal land and private land. The fact that the Federal land exchanged consisted of a large number of small, noncontiguous tracts of land would have enabled the Bureau to easily remove parcels of Federal land from the exchange so as to equalize the values between the Federal land conveyed and the private land received.

We also found two additional issues pertaining to the Galena exchange in which the Bureau did not ensure full compliance with laws, regulations, and procedures. First, the Bureau made a verbal commitment to a proponent to compensate the proponent for its costs related to appraisals, environmental assessments, title work, and mining claims. However, the Bureau did not include this commitment in the official exchange record, as required by the

Federal Land Exchange Facilities Act of 1988. As of May 31, 1995, the proponent's claimed compensation costs totaled about $283,000. Second, Bureau personnel were not using a ledger account to monitor the relative values of the land exchanged. As a result, the Bureau was unaware of its brief noncompliance with the provision of the Federal Land Policy and Management Act that requires the value difference between Federal and private land exchanged not to exceed 25 percent of the total value of the Federal land conveyed.

Summary. We believe that the Bureau can take better advantage of the unique opportunity that exists to use the highly marketable land identified for disposal in the Las Vegas area to acquire land for mission-related purposes. As we recommended, the Bureau could accomplish this, in part, by ensuring that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures. In that regard, the Bureau should ensure that the land to be acquired is in conformance with an approved land-use plan or properly executed amendments to the plan; all land is valued properly; and all significant decisions involving the exchange transactions, particularly those affecting land valuation, are fully justified and documented in the exchange file.

In addition, in order to maximize the public benefit in disposing of the Las Vegas area land, we recommended that the Bureau introduce competition into the disposal process to the maximum extent practicable. Our review of land documents at the Offices of the Assessor and the Recorder for Clark County indicated that land exchange proponents have been very successful in realizing sizeable gains by selling land received from the Bureau in smaller parcels shortly after title to the land was transferred. For example, according to the County's records, one exchange proponent sold 70 acres acquired at an exchange value of $763,000 for $4.6 million on the same day the exchange was completed. The proponent sold another 40 acres acquired at an exchange value of $504,000 for $1 million, also on the same day the exchange was completed. Finally, the proponent sold another 25 acres acquired at an exchange value of $909,000 for $1.6 million within 2 months of completing the exchange. While the County's records did not provide sufficient information to determine the underlying reasons for the apparent substantial profits, these examples, in our opinion, demonstrate that the Government can sometimes obtain greater returns through a sale than through an exchange. They also demonstrate the difficulty of establishing

the fair market value for public land in the Las Vegas area real estate market through the appraisal process.

Another means of introducing competition into the land disposal process that we recommended in our audit report is through the use of "competitive land exchanges." This process, which has been used successfully by the U.S. Forest Service, involves sending a bid prospectus to interested parties or advertising, in newspapers, the availability of specific Federal land for exchange. Once again, the goal here would be to introduce the benefits of competition into the exchange process.

Santini-Burton Act Land

The Bureau included 446.5 acres of Federal land located within the land sale area identified by the Santini-Burton Act (Public Law 96-586) in three of the four exchanges we reviewed. Twenty-five acres were transferred in the Red Rock exchange; 191.5 acres in the Oliver Ranch exchange; and 230 acres in the Galena Resort exchange. The Act authorizes the Secretary of the Interior to sell certain Federal land in and around Las Vegas to finance the acquisition of environmentally sensitive land in the Lake Tahoe Basin of Nevada and California. However, the Bureau had taken the position that the Act did not specifically prohibit the Bureau from exchanging Federal land within the legislatively identified area based on the Bureau's authorities in the Federal Land Policy and Management Act. As a result, the Bureau exchanged land that, if sold, would have returned at least $7.8 million to the U.S. Treasury to repay a portion of the $93 million the Federal Government has spent in acquiring land in the Lake Tahoe Basin as of the end of fiscal year 1995.

Our office performed a legal review of the Santini-Burton Act and its legislative history and found some evidence indicating that the Bureau is not precluded from exchanging land within the Congressionally identified land sale area. Specifically, in House Report No. 96-1023, dated May 16, 1980, the Committee on Interior and Insular Affairs stated, "The Committee does not intend, by this Act, to prohibit continuation of reasonable land transfers under existing authority for public purposes." On the other hand, it seems equally clear from other language in the legislative history and the Act that the Congress intended the Bureau to minimize its exercise of other land disposal authorities for the specified land to help ensure that sufficient

revenue was generated to offset the cost of acquiring the Lake Tahoe Basin land. For example, in the House Report, the Committee also stated, "The Committee has determined that the costs incurred as a result of enactment of this bill will be relatively nominal." Senate Report No. 96-1026, dated November 21, 1980, also included a statement by the Senate Committee on Energy and Natural Resources that it amended the House bill "to assure that any appropriations from the Land and Water Conservation Fund are offset by revenues from the land sales authorized in section 2 [of the Santini-Burton Act]." Also, Section 2(e) of the Act states that the land sale revenues generated by the Bureau would be considered repayment for funds appropriated for Lake Tahoe Basin land purchases. In addition, the Act requires the Secretary to prepare and submit accounting reports of Santini-Burton Act income and expenditures to the appropriate Congressional oversight committees twice per year. Neither the Bureau nor the Department could provide us with copies of these reports.

Based on information obtained from the U.S. Forest Service and the Bureau, we learned that Santini-Burton Act acquisition costs exceeded sales revenues by about $40 million as of the end of fiscal year 1995. This deficit could have been reduced if the Bureau had not chosen to exchange about $9.2 million of designated Santini-Burton Act land that would have generated $7.8 million in additional revenues for the U.S. Treasury. This substantial cost burden of $40 million, which represents 43 percent of the acquisition costs through fiscal year 1995, will ultimately be borne by the American taxpayers if the Bureau does not sell sufficient land to offset the revenue shortfall. Accordingly, we recommended that the Bureau use the land sale process, except in compelling circumstances, when disposing of its Santini-Burton Act land until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs.

Tonopah Administrative Facility

The final principal issue is the Tonopah exchange, in which the Bureau exchanged Federal land to acquire a defunct bowling alley.

The Federal Land Policy and Management Act, as amended, provides the Bureau with wide latitude in determining what constitutes a beneficial exchange. Specifically, Section 206 of the Act authorizes the Bureau to dispose of land through an exchange when an authorized Bureau official

determines that the public interest will be well served. In our review of the Tonopah exchange, we noted that the Bureau used this latitude to acquire a defunct bowling alley on 8.2 acres of land with the intention of using this facility and property as a Bureau administrative complex for the Tonopah Resource Area.

We found that, in 1989, the Bureau determined that its Tonopah Area facilities were inadequate and needed to be replaced. The Bureau therefore asked the Congress to appropriate $640,000 in fiscal year 1991 to construct a new 7,000 square-foot office complex on a 5-acre parcel of land already in Federal ownership. Subsequently, the Bureau allotted $621,000 to its Nevada State Office from its fiscal year 1991 construction appropriation to build a new Bureau complex in Tonopah. However, rather than proceed with the construction, as originally planned, the Bureau proposed an exchange of some of its Las Vegas area land for a 16,000 square-foot bowling alley in Tonopah that it believed could be converted into a new administrative complex.

An exchange for this property was completed on June 29, 1994, when the Bureau conveyed 25 acres of Las Vegas area land, valued at $665,000, to the private landowner in return for the bowling alley property plus $166,000 to equalize the difference in the appraised values of the properties. From available documentation and discussions with Bureau personnel and with our legal counsel, we concluded that the Bureau acted within its authority in completing this exchange. However, we believe that management's use of the exchange process to acquire administrative property rather than land containing significant public resources, such as critical fish and wildlife habitat or recreational opportunities, may not represent the most effective use of valuable Federal land. Bureau personnel said that additional proposals to acquire administrative facilities through land exchanges may be forthcoming based on the precedent set at Tonopah. Thus, we suggested that the Bureau consider establishing a policy limiting the use of the land exchange process to acquire administrative facilities for Bureau use.

This concludes my prepared statement. I would be happy to respond to any questions that the Subcommittee may have concerning my testimony.

U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

NEVADA LAND EXCHANGE ACTIVITIES, BUREAU OF LAND MANAGEMENT

REPORT NO. 96-I-1025
JULY 1996

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUL 15 1996

MEMORANDUM

TO: The Secretary

FROM: Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Nevada Land Exchange Activities, Bureau of Land Management" (No. 96-I-1025)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether the Bureau of Land Management's Nevada State Office conducted land exchanges in accordance with applicable laws and regulations and whether the Bureau received fair market value in the land exchanges.

We found that while some high quality properties had been acquired by exchanging lands with private entities, the State Office did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. We also found that the State Office exchanged rather than sold land within the land sale area designated by the Santini-Burton Act. Based on our legal review of the legislation, we believe it is clear that, while the Act does not prohibit land exchanges, the Congress intended that the lands within the designated area should be sold to offset the costs incurred for the Lake Tahoe Basin land acquisitions in order to keep the costs of enacting the Santini-Burton legislation nominal. Finally, we noted that the State Office exchanged a portion of the Bureau's Las Vegas area lands to obtain a defunct bowling alley with the intention of using this facility as an administration complex for the Tonopah Resource Area. We believe that such an exchange may not represent the most effective use of valuable Federal land.

Based on the Bureau's response, we requested additional information for the three recommendations relating to land exchanges. However, we considered the two recommendations pertaining to Santini-Burton Act lands as unresolved, and the Bureau was requested to respond further to these recommendations.

If you have any questions concerning this matter, please contact me or Ms. Judy Harrison, Assistant Inspector General for Audits, at (202) 208-5745.

Attachment

W-IN-BLM-003-95

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUL 15 1996

Memorandum

To: Assistant Secretary - Land and Minerals Management

From: Judy Harrison
Assistant Inspector General for Audits

Subject: Final Audit Report on Nevada Land Exchange Activities, Bureau of Land Management (No. 96-I-1025)

This report presents the results of our audit of certain land exchanges conducted by the Nevada State Office of the Bureau of Land Management from October 1, 1992, through May 31, 1995. The objective of the audit was to determine whether the Nevada State Office conducted land exchanges in accordance with applicable laws and regulations and whether the Bureau received fair market value in the land exchanges.

We found that while the Nevada State Office had acquired some high quality properties by exchanging lands with private entities (proponents), it did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. In some instances, this occurred because State Office management wanted to expedite the exchanges, given that the proponent had willing buyers available or land purchase options that were close to expiring. In other instances, management proceeded with an exchange in a certain manner without documenting the rationale used to support the action. As a result, the State Office exchanged Bureau land for 2,461 acres of private land, valued at $2.7 million, that was not in conformance with current land-use plans and therefore had no discernible mission-related purpose. In addition, the Government may have lost about $4.4 million in completing three of the exchanges reviewed. We also concluded that the State Office has a unique opportunity to use its highly marketable Las Vegas lands to acquire more land for mission-related purposes and could take maximum advantage of this opportunity by introducing competition into the disposal process for the Las Vegas lands. To improve operations in these areas, we recommended that the Director of the Nevada State Office institute competitive procedures (sale or competitive exchange) into the land disposal process; take appropriate action to have unneeded easements removed from Federal lands before processing transactions for the exchange or sale of those lands; and establish the controls necessary to ensure that land exchanges are processed in full compliance with applicable laws and regulations.

We also found that in three of the four exchanges reviewed, the State Office exchanged a total of 446 acres of Federal land within the land sale area designated by the Santini-Burton Act (Public Law 96-586). The Santini-Burton legislation does not specifically prohibit the Bureau from exchanging lands in the sale area under the authorities provided

by the Federal Land Policy and Management Act. However, it is clear that the Congress intended that proceeds from the sale of lands within the designated area would be used to offset the costs incurred for the Lake Tahoe Basin land acquisitions in order to keep the costs of enacting the Santini-Burton legislation nominal. We concluded that because these lands were exchanged rather than sold, sales revenues of at least $9.2 million were not generated, of which about $7.8 million would have been remitted to the U.S. Treasury to repay incurred Lake Tahoe Basin land acquisition costs. At the time of our review, the Lake Tahoe Basin acquisition costs ($93 million) reportedly exceeded the sales revenues remitted to the U.S. Treasury by about $40 million. Accordingly, we recommended that the Director of the Nevada State Office use the land sale process, except in compelling circumstances, when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. We also recommended that the required accounting reports be prepared and submitted so that the cost/revenue relationship can be properly monitored by the appropriate Congressional oversight committees.

Finally, we noted that the State Office initiated an exchange of 25 acres of the Bureau's Las Vegas area lands, valued at $665,000, in order to obtain a defunct bowling alley with the intention of using this facility as an administrative complex for the Tonopah Resource Area. We provided information on this exchange because we believe that such exchanges may not represent the most effective use of Federal land and because Bureau personnel said that additional proposals to acquire administrative facilities through land exchanges may be forthcoming based on the precedent set at Tonopah.

In the July 5, 1996, response from the Director, Bureau of Land Management (Appendix 2), the Bureau concurred with Recommendations A.1-A.3 and B.1, did not indicate concurrence or nonconcurrence with Recommendation B.2, and disagreed with some of the report's findings. Although the Bureau concurred with Recommendation B.1, the corrective actions described are not consistent with the actions needed to adequately correct the deficiency. The Bureau also provided additional comments, which we incorporated into the report as appropriate. Based on the response, we requested that the Bureau provide additional information for Recommendations A.1-A.3, reconsider the corrective action associated with Recommendation B.1, and provide a response to Recommendation B.2 after it pursues the interim step of obtaining an opinion from the Department's Office of the Solicitor (see Appendix 3).

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by September 16, 1996. The response should provide the information requested in Appendix 3.

We appreciate the courtesies extended to our staff during the course of the audit.

CONTENTS

INTRODUCTION

BACKGROUND

The Bureau of Land Management is responsible for managing and protecting 270 million acres of Federal land, of which 48 million acres are in the State of Nevada. The Congress has emphasized the use of land exchanges and fee purchases to acquire lands containing resource values of public significance and to improve the manageability of Federal land by consolidating its land ownership. Land exchanges are the Bureau's preferred method of acquiring land[1] and may be initiated by either the Bureau or other interested parties, called proponents. In recent years, the Bureau has identified about 70,000 acres of Federal land for disposal in the Las Vegas Valley of Nevada, which the U.S. Bureau of the Census has reported was the fastest growing metropolitan area in the United States between 1990 and 1994. Real estate development in the private market associated with this growth has created significant interest in acquiring this Federal land.

The Bureau conducts land exchanges under the authority of Section 206 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579), which authorizes the Secretary of the Interior to dispose of Federal land by exchange when the public interest will be well served. Under Section 206 of the Act, the values of the lands exchanged must be equal or, if not equal, must be equalized by a cash payment by either party. Section 206 specifically directs the Secretary to make the amount of such payments as small as possible, but in no event may the value difference between the properties exceed 25 percent of the value of the Federal land exchanged. On August 20, 1988, the Congress enacted the Federal Land Exchange Facilitation Act (Public Law 100-409), which granted the Secretary limited authority to approve adjustments in the values of lands exchanged as a means of compensating proponents for incurring certain costs. The Bureau finalized comprehensive regulations for land exchanges (Title 43, Part 2200, of the Code of Federal Regulations) to implement the provisions of both Acts in December 1993.

The values of the public and private lands exchanged are established by appraisals conducted in accordance with principles defined in the "Uniform Appraisal Standards for Federal Land Acquisitions," issued by the Interagency Land Acquisition Conference in 1973. These principles acknowledge that the appraisal process is not an exact science and that estimates of the fair market value of the property may differ among appraisers. Consequently, the "Standards" provides for a uniform approach to addressing appraisal problems and prescribes requirements for adequate supporting data to develop justifiable market values that can withstand legal challenges. The "Standards" stipulates that each appraisal be carefully reviewed by a qualified review appraiser and that the review be documented by a written report indicating the scope of the review and the action

[1]The Bureau prefers to acquire land through exchanges because of the relatively low impact that exchanges have on local Government tax revenues.

recommended by the reviewer. Section 9310 of the Bureau Manual provides specific instructions on implementation of these requirements.

OBJECTIVE AND SCOPE

The objective of our audit was to determine whether the Bureau of Land Management's Nevada State Office conducted land exchanges in accordance with applicable laws and regulations and whether the Bureau received fair market value in the land exchanges. The Nevada State Office exchanged approximately 710 acres of land in fiscal year 1993; 2,910 acres in fiscal year 1994; and 725 acres through May 31 of fiscal year 1995. Of a total of six exchanges processed by the Bureau's Nevada State Office from October 1, 1992, through May 31, 1995, we focused our review on the four largest exchanges. Three of the four exchanges reviewed were completed, and one, a multiple-transaction exchange, was partially completed. The Federal land exchanged under these transactions was located in the Las Vegas area and was appraised at about $63.2 million. The two exchanges that we did not review involved Federal land with a total appraised value of $22,900.

This audit was made, as applicable, in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. The audit was conducted from May 1995 through April 1996 and included visits to the Bureau's Nevada State Office in Reno, Nevada; the California State Office in Sacramento, California; the Las Vegas District and Stateline Resource Area Offices in Las Vegas, Nevada; and the Battle Mountain District Office in Battle Mountain, Nevada.

To accomplish our objective, we reviewed the following: relevant laws and legislative histories to obtain an understanding of the Bureau's authority to conduct land exchanges; the Bureau's implementing regulations and procedures to identify the specific requirements for conducting land exchanges; selected exchange case files to identify key documents demonstrating how and why the exchanges were conducted; and land records in the Offices of the Recorder and Assessor, Clark County, Nevada, to identify the resale prices of some of the exchanged lands. In addition, we contacted Bureau officials to solicit their views about the exchanges and to verify information and data obtained through our review of documents in the case files. We also spoke with representatives of the Department of Agriculture's U.S. Forest Service concerning the Red Rock and Galena Resort exchanges; representatives of the U.S. Fish and Wildlife Service concerning the Red Rock exchange; a representative of the Department of Agriculture's Soil Conservation Service concerning the Tonopah exchange; and a representative of the Department of Public Works, City of Las Vegas, concerning the Oliver Ranch exchange. Further, we interviewed individuals who had contacted the Office of Inspector General to express complaints about the Bureau land exchange activities taking place in Nevada.

As part of the audit, we performed an evaluation of the Bureau's system of internal controls related to the land exchanges at the Bureau offices visited to the extent we considered necessary to accomplish the audit objective. We noted weaknesses associated with the Nevada State Office's actions in acquiring land that was not in conformance with approved land use plans and obtaining less than fair market value for the exchanged lands. These weaknesses are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve the internal controls in the areas with identified weaknesses. We also reviewed the Department of the Interior's Annual Statement and Report, required by the Federal Managers' Financial Integrity Act, for fiscal years 1993 and 1994 and determined that none of the reported weaknesses were directly related to the objective and scope of this audit.

PRIOR AUDIT COVERAGE

The Office of Inspector General has issued two audit reports during the past 5 years addressing various aspects of the Bureau's land exchange activities as follows:

- "Land Exchange Activities, Bureau of Land Management" (No. 91-I-968), issued in June 1991, reported that the Government's interests had not been properly protected and that the Government had not received fair value for the land exchanged because the appraisals used by the Bureau did not comply with Federal appraisal standards or because approved land value information had been changed by unauthorized personnel. We recommended that the Bureau establish the necessary controls to ensure that: (1) Bureau offices comply with instructions for reviewing appraisals for conformance with appraisal standards and for preparing written review determinations; (2) changes in land values are documented, justified, and approved by a state chief appraiser; and (3) value adjustments based on property size or location are applied consistently. Based on the Bureau's response to the report and subsequent actions, we considered all the recommendations resolved and implemented.

- "Land Acquisitions Conducted With the Assistance of Nonprofit Organizations, Department of the Interior" (No. 92-I-833), issued in May 1992, reported that while nonprofit organizations provided beneficial assistance in acquiring land, the Government's interests were not always adequately protected and nonprofit organizations benefited unduly from some land acquisition transactions. The report also stated that Departmental agencies, including the Bureau of Land Management, established land values based on appraisals that were not timely, independent, or adequately supported by market data. We made seven recommendations to improve controls over land acquisition activities and to ensure consistency and equality in the Department's transactions with nonprofit organizations. On October 11, 1995, the Chief, Division of Management Control and Audit Follow-up, reported that the Office of the Secretary had completed the actions required to implement the seven recommendations.

FINDINGS AND RECOMMENDATIONS

A. EXCHANGE PROCESSING

The Bureau of Land Management's Nevada State Office successfully acquired some high quality lands, such as the Oliver Ranch and Galena properties, in exchange for Federal land identified for disposal in the Las Vegas area. However, the State Office did not consistently follow the prescribed land exchange procedures and regulations and ensure that fair and equal value was received in completing three of the four exchanges we reviewed.

The Federal Land Policy and Management Act of 1976 authorizes the acquisition and disposal of land through land exchanges when the acquisition and disposal are in consonance with the Departmental mission and Bureau land-use plans. Title 43, Part 2200, of the Code of Federal Regulations details the rules governing the processing of land exchanges, including the requirement that each exchange should be based on appraised fair market values for all the lands involved. In some instances, the applicable regulations and procedures were not followed or equal value was not attained because State Office management wanted to expedite the exchanges, given that the exchange proponent had willing buyers or had land purchase options that were close to expiring. In other instances, State Office management proceeded with an exchange without documenting the rationale used to support the action. As a result, we concluded that the State Office acquired 2,461 acres of land, with an exchange value of $2.7 million, which was not in conformance with current land-use plans and therefore had no discernible mission-related purpose, and that the Government may have lost an estimated $4.4 million in completing the Oliver Ranch, Red Rock, and Galena Resort exchanges.

Oliver Ranch Exchange (No. N-56458)

In the Oliver Ranch exchange, the Nevada State Office exchanged 591 acres of Federal land, valued at $8,655,000, for the Oliver Ranch, a 300-acre property, valued at $7,730,000. The proponent paid the Bureau $925,000 to equalize the established exchange values. The transaction was completed in two phases: on March 30, 1993, and on August 5, 1993 (389 acres and 202 acres, respectively). State Office officials said that the Bureau wanted to acquire the Ranch because the Ranch was located entirely within the boundaries of the Bureau's Red Rock Canyon National Conservation Area.[2] However, based on our review of available documentation and discussions with various officials, we concluded that the Government's interests were not fully protected in the first phase of this exchange because Bureau management did not adequately verify the need for an easement on a 220-acre parcel of Federal land prior to exchanging the land.

[2]According to the Bureau's Environmental Assessment Report for this exchange, the Oliver Ranch is the only noncommercial private property within the Red Rock Canyon National Conservation Area. The Report further stated that the transfer of these lands into Federal ownership would prevent future development on the land and preserve the scenic nature of the Conservation Area.

The inclusion of this particular property in the exchange resulted in a loss to the Government of about $4.2 million.

Fair Market Value. The State Office exchanged the 220-acre parcel of Federal land for about 10 percent ($550,000) of the land's potential value. The Las Vegas District Office had encumbered the entire 220-acre parcel in 1986 by issuing a 30-year easement to the City of Las Vegas for construction of a flood control detention basin. The State Office's approved fair market value of this parcel, as encumbered by the easement, was $2,500 per acre, or a total of $550,000. However, State Office appraisal documents indicated that the fair market value of this same property without such an easement was $25,000 per acre, or a total of $5.5 million.

In reviewing the exchange files, we found various documents that indicated the City did not intend to use the entire 220 acres for the flood control basin. Specifically, documents dating back to 1991 showed that the City intended to relinquish its rights on at least 30 acres of the parcel. Other documents indicated that the City was contemplating the construction of a water reuse facility on only 20 to 30 acres of this parcel. As such, the City's need for the easement on the entire parcel was less than certain. Accordingly, the State Office should have fully reviewed the need for the easement to properly protect the Government's interests prior to including this property in an exchange.

Title 43 of the Code of Federal Regulations specifically limits the amount of land that may be included in easements to only those lands which the authorized officer determines "[w]ill be occupied by the facilities authorized . . . [and] be necessary for the construction, operation, maintenance, and termination of the authorized facilities." However, we found that on December 7, 1992, the Las Vegas District Manager amended the 220-acre easement to extend its expiration date into perpetuity without reviewing the easement for compliance with regulations.

Because State Office personnel did not adequately verify that the 220-acre parcel would be used in accordance with the existing land use easement, the Government incurred a significant loss. Specifically, on March 30, 1993, just 4 months after the easement was extended, the State Office conveyed the 220-acre parcel to the proponent as part of the exchange. In December 1994, the City relinquished its rights to an easement on 189 acres, retaining only 31 acres of the original 220 acres for construction of the detention basin. Once the agreement to relinquish the easement rights was reached, the value of the land increased substantially. Based on the original appraisal values, the 189 acres exchanged for $2,500 an acre were worth at least $25,000 per acre. Thus, the Government effectively lost about $4.2 million on this exchange. The Government's loss represented a gain not only for the proponent but also for the City, which obtained $400,000 in cash and other inducements as part of its deal to relinquish the easement to the proponent.

Documentation in the exchange file indicated that State Office management was aware that such a loss to the Government was possible but decided that the "benefits"[3] of

[3]The term "benefits" was not explained in the documentation.

acquiring the Oliver Ranch warranted the expeditious transfer of the land to private ownership. During this phase of the exchange, the Bureau received land valued at $3,770,000. In exchange, the Bureau provided the first parcel of land (169 acres of the 389 acres) valued at $3,590,000. The exchange difference of $180,000 could have been equalized by providing 7 to 8 acres of other Federal land in the Las Vegas area, which was generally valued at $25,000 per acre. Instead, the Bureau included the 220-acre parcel in the exchange, the value of which was significantly reduced because of an encumbrance. We do not believe that State Office officials had sufficient justification to support this course of action. In our opinion, because of the potential for the increase in the value of the land, the Government's interests would have been better served had the State Office officials proceeded to equalize the exchange using Federal land other than the 220-acre parcel.

Red Rock Exchange (No. N-57773)

In the Red Rock exchange, the Nevada State Office exchanged 769 acres of land in Las Vegas, valued at $9.9 million, for 3,562 acres of private land in Nevada, valued at about $8.3 million, as follows:

General Location of Private Land Received in Exchange	Acres of Private Land Received	Exchange Value
Virgin River Valley, Nevada	2,061	$2,484,929
Inyo National Forest, Nevada	792	475,000
Toiyabe National Forest, Nevada	279	3,900,000
Calico Basin, Nevada	30	1,200,000
Pahrump, Nevada	400	210,000
Total	3,562	$8,269,929

To equalize the value of the exchange, the proponent made equalization payments totaling about $1.6 million. The transaction was completed in two phases: on July 19, 1994, and on February 6, 1995.

In reviewing this exchange, we concluded that the State Office did not fully protect the Government's interests. Specifically, the State Office's acquisition of 2,461 acres of land in the Virgin River and Pahrump Valleys, valued at about $2.7 million, did not conform to the pertinent land use plans, as required by the Code of Federal Regulations. In addition, we found that the Bureau increased the established fair market value for some of the exchanged private land from $1.5 million to $2.7 million without a documented rationale to substantiate that action. As a result, the unneeded private lands were overvalued by $1.2 million. Finally, the Government lost an additional $157,000 on the Federal lands exchanged by granting the proponent an unjustified purchase discount.

Land-Use Plans. Title 43, Part 2200, of the Code of Federal Regulations requires the Bureau to consider only those exchange proposals that conform to approved land-use plans to ensure that it acquires only the land necessary to fulfill its mission. Title 43, Part 1610.5-5, of the Code allows the Bureau's land-use plans to be amended and, as such, provides the Bureau with flexibility to acquire needed land that may not otherwise have been in conformance with the initial plans. The Clark County Management Framework Plan, dated 1984, is the Bureau's current approved land-use plan for the County and provides authority to acquire and dispose of public lands in the County. We found that the existing plan did not support the acquisition of lands in the Virgin River and Pahrump Valleys but instead indicated that some of the Bureau's landholdings in the Virgin River Valley were available for disposal. Nonetheless, the State Office exchanged Federal land in the Las Vegas area to acquire 2,061 acres of noncontiguous Virgin River Valley land and 400 acres of land in the Pahrump Valley.

The State Office did provide us with a proposed planning document for the area, the May 1994 "Supplement to the Draft Stateline Resource Management Plan," which identified a proposed Virgin River area of critical environmental concern encompassing the northern portion of the river in Nevada. With the assistance of Bureau personnel, we identified 120 acres of acquired land within this area of critical environmental concern. We identified another 420 acres of land outside this area where the land parcel involved was completely or partly in the river bed. Thus, it appears that, at most, 540 acres (but more likely only 120 acres) of the 2,061 acres acquired in the Virgin River area might be construed as lands to be acquired for endangered fish habitat. However, this plan supplement had not been finalized by the State Director. Accordingly, the State Office did not properly demonstrate that the Bureau had a need to acquire any of the Virgin River or Pahrump Valley properties. We believe that by using highly marketable lands to acquire private lands that are not in conformance with approved land-use plans or properly executed plan amendments, the Bureau reduced the amount of marketable lands available for use in the acquisition of properties deemed necessary to satisfy mission-related needs.

Fair Market Value. Title 43, Part 2200, of the Code of Federal Regulations requires land exchanges to be based on market values as determined through real property appraisals. To ensure that exchanges are completed at fair market value, Section 9310.04.D.2 of the Bureau's Manual states that a "chief appraiser shall approve an amount which represents the Bureau's estimate of fair market value." For the initial exchange transaction, we found that, in July 1994, the Chief Appraiser for the Arizona State Office reviewed the appraisals performed by a contract appraiser to determine the fair market value of 24 properties (2,151 acres) of Virgin River Valley land. The Arizona Chief Appraiser established an approved fair market value for each property, and on July 19, 1994, the Nevada State Office acquired 7 (360 acres) of the 24 properties based on the Arizona Chief Appraiser's approved values. An exchange transaction for 15 (1,701 acres) of the remaining 17 properties (1,791 acres) was initiated the following week.

In exchanging Federal land for the 15 properties, the Nevada State Office did not use the approved land values established by the Arizona Chief Appraiser despite the recency of

the appraiser's review. A State Office employee stated that the former Nevada State Director wanted his appraisal staff to perform another review of the contract appraisals for the 15 properties because the proponent was "unhappy" with the values previously established. In response, the Nevada Chief Appraiser assigned the review to one of his staff appraisers. This appraiser approved significantly higher values for the private land. We found that State Office management subsequently exchanged Federal land for the 15 properties, whose valuation had increased by about $1.2 million, without reconciling the significant difference in values approved by the two Bureau review appraisers. We were not provided sufficient documentation to support why the values established by the Arizona Chief Appraiser were overridden and the higher values were used for the second phase of the exchange. Therefore, we question the use of the higher values.

For the Federal land included in the exchange, we also found that the Nevada Chief Appraiser incorrectly included a discount of $157,000 when he established the fair market value of 66 acres of Federal land in the Las Vegas area. In this instance, a contract appraiser estimated a fair market value of $16,440,000 for four noncontiguous tracts of Federal land totaling 1,311 acres. Each tract was appraised separately by the appraiser, who summarized the four values in one report. The appraiser concluded that a single buyer was entitled to a 10 percent purchase discount on three of the four tracts of land only if all four tracts were acquired. However, the Nevada Chief Appraiser allowed the proponent the discount, even though only the two smallest tracts with appraised values totaling $1,570,000 were acquired. Documentation that justified applying the 10 percent discount to the $1,570,000 appraised value was not available. Accordingly, the Bureau may have lost $157,000 during this exchange of Las Vegas area land.

Galena Resort Exchange (No. N-57877)

The partially completed Galena Resort exchange is the largest of the four land exchanges that we reviewed. Through May 31, 1995, there were eight transactions involving the exchange of 2,677 acres of Federal land, valued at $44.3 million, for 31,391 acres of private land, valued at $35.4 million. The private lands received in the exchange are as follows:

General Location of Private Land Received in Exchange	Acres of Private Land Received	Exchange Value
Toiyabe National Forest	12,388	$25,494,000
Pyramid Lake Reservation	3,276	7,681,000
Bureau of Land Management Lands	15,727	2,201,000
Total	31,391	$35,376,000

To eliminate the $8.9 million exchange balance owed the Government, additional land transfers or cash payments from the proponent will be required. In reviewing the eight completed transactions, we found that the State Office did not properly ensure that the exchange was conducted in full compliance with laws, regulations, and procedures. As a result, the Government may have lost about $69,000 in one transaction and included more Federal land in the exchange than was appropriate.

The centerpiece of this exchange was the Galena Resort, a 3,864-acre parcel of mostly unimproved private land located on the eastern slope of the Sierra Nevada mountains, southwest of Reno. The initial exchange of Nevada properties occurred on August 12, 1994, which, according to an official in the Las Vegas District Office, was the date on which the proponent's option to purchase some of the private property was to expire. The Bureau's initial transaction was processed by the California State Office and involved an exchange of 2,362 acres of Federal land, valued at $39.1 million, for 12,880 acres of private land, valued at $29.5 million. The unequal land values resulted in a balance of $9.6 million owed the Government. After the Galena Resort property was acquired, the responsibility for completing additional transactions to eliminate the outstanding exchange balance was transferred from the California State Office to the Nevada State Office, which subsequently processed seven other transactions.

Fair Market Value. As noted earlier, Section 9310.04.D.2 of the Bureau Manual requires a chief appraiser to establish the Government's estimate of fair market value for properties to be acquired in an exchange. We found that the Bureau complied with this requirement in six of the eight transactions completed to date. However, the Bureau did not use the Nevada Chief Appraiser's approved fair market value estimate as the basis for acquiring portions of the DePaoli Ranch in two separate transactions. As a result, the Government lost about $69,000 in the exchange of this property.

The DePaoli Ranch property was located on and adjacent to the Pyramid Lake Paiute Indian Reservation. An appraiser estimated the value of several different types of property being acquired and prepared three appraisal reports. During the appraisal review process, the Nevada Chief Appraiser reduced the approved exchange values to recognize discounts appropriate for a single buyer of the entire property. The original appraised values and the State Chief Appraiser's approved exchange values for the private property are as follows:

Property Description	Original Appraised Value	Approved Exchange Value
Home Ranch	$4,132,525	$4,025,000
Pah Rah Rangeland	955,000	821,300
Residential Lots	45,000	38,700
Total	$5,132,525	$4,885,000

We found that the Bureau acquired the DePaoli home ranch in the initial exchange transaction on August 12, 1994, for $4,132,525, which was $107,525 more than its approved exchange value of $4,025,000. There was no documentation to justify completing this exchange at other than the approved exchange value. We also found that the Bureau acquired the DePaoli residential lots in a subsequent transaction on January 31, 1995, at no additional cost to the Government, or for $38,700 less than their approved exchange value. As a result, the Government's cost to acquire the entire DePaoli Ranch property exceeded the approved exchange value of the property by $68,825 ($107,525 minus $38,700).

Other Management Issues. In reviewing the Galena Resort exchange, we identified three additional areas where the Bureau's management of the exchange did not ensure full compliance with laws, regulations, and procedures. While this has not resulted in any direct losses to the Government, the potential exists for future losses if these issues are not corrected.

We found that California State Office personnel processing the initial transaction did not formalize a verbal commitment to compensate the proponent for certain costs[4] and to make this commitment a part of the official record for the exchange. The Federal Land Exchange Facilitation Act authorizes the Bureau to compensate the proponent for processing costs ordinarily borne by the Government when such compensation is clearly in the public interest and the rationale for the compensation is established and documented at the beginning of the exchange process. We believe that a formal agreement should have been prepared to substantiate the allowability and reasonableness of claimed compensation costs, which, at the time of our review, totaled approximately $283,000.

We also found that the values of Federal land and private land exchanged in the initial transaction were not equalized. A California State Office official stated that as much Federal land as possible was included in the initial transaction because the proponent had buyers ready to purchase the land and because the proponent was expected to provide additional private land to equalize the exchange shortly thereafter. However, the Federal Land Policy and Management Act, as amended, and the Bureau's implementing regulations require Bureau officials to attempt to reduce the difference between the value of the Federal and the private land exchanged to as small an amount as practicable. Nonetheless, Federal land conveyed to the proponent in the initial exchange transaction totaled about $9.6 million more than the private lands received by the Government. Nine months later and after seven more transactions, the proponent still owed the Government $8.9 million. In our opinion, the State Office should have removed Federal lands as needed to equalize the values of land exchanged and could have done so because the

[4]At our request, the California State Office obtained an itemized list of the costs claimed by the proponent through September 19, 1995. The list identified costs of $282,847 to be compensated by the Government associated with appraisals, environmental assessments, and title work on the Federal land exchanged, as well as costs incurred before and after August 12, 1994, to eliminate mining claims encumbering some of the Federal land conveyed to the proponent.

Federal land conveyed to the proponent in this exchange consisted of a large number of small, noncontiguous tracts of land.

Finally, we found that Nevada State Office personnel were not using a ledger account to monitor the relative values of lands exchanged.[5] Title 43, Part 2201.1-1(e), of the Code of Federal Regulations requires the use of a ledger for exchanges involving more than one transaction. A ledger provides a mechanism which identifies the amount owed the Government or the proponent in an ongoing exchange and helps ensure compliance with the provision of the Federal Land Policy and Management Act which requires that the value difference between Federal and private lands exchanged not exceed 25 percent of the total value of the Federal land conveyed. Because a ledger was not used to monitor the value of lands exchanged, the State Office exceeded the 25 percent limit when 282.5 acres of Federal land were conveyed to the proponent on November 23, 1994. This transaction increased the balance owed the Government from $8.3 million to $13.0 million, which was 29.7 percent of the value of the Federal land exchanged at that time. The balance owed was lowered to acceptable limits by December 15, 1994; however, we believe that the State Office should use a ledger to monitor and control future exchange activity because of the significant dollar amounts of land being exchanged.

Conclusion

We believe that the Nevada State Office can take better advantage of the unique opportunity that exists to use the highly marketable land identified for disposal in the Las Vegas area to acquire land for mission-related purposes. The State Office could accomplish this, in part, by ensuring that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures. In this regard, the State Office should ensure that the land to be acquired is in conformance with approved land-use plans or properly executed amendments to the plans; value all land properly; and fully justify and document in the exchange file all significant decisions involving the exchange transactions, particularly those affecting land valuation.

In addition, we believe that the State Office could maximize the public benefit in disposing of the Las Vegas area land by introducing competition into the disposal process. Our review of land documents at the Offices of the Assessor and the Recorder for Clark County indicated that land exchange proponents have been very successful in realizing sizeable gains by selling land received from the Bureau in smaller parcels shortly after title to the land was transferred. For example, according to the County's records, one exchange proponent sold 70 acres acquired at an exchange value of $763,000 for $4.6 million on the same day the exchange was completed. The proponent sold another 40 acres acquired at an exchange value of $504,000 for $1 million, also on

[5] At our request, California State Office personnel retrieved a ledger that they developed during the initial exchange transaction from their computer files and updated this document to reflect subsequent transactions completed by Nevada State Office personnel. The Nevada State Office was provided with a copy of this ledger prior to the conclusion of our audit.

the same day the exchange was completed. Finally, the proponent sold another 25 acres acquired at an exchange value of $909,000 for $1.6 million within 2 months of completing the exchange. While the County's records did not provide sufficient information to determine the underlying reasons for the apparent substantial profits, these examples, in our opinion, demonstrate that the Government can sometimes obtain more value through a sale than through an exchange. They also demonstrate the difficulty of establishing the fair market value for public lands in the Las Vegas area real estate market through the appraisal process.

Another way to introduce competition into the land disposal process and to reduce reliance on the appraisal function is through the use of "competitive land exchanges." A competitive land exchange is an innovative process that has been used successfully by the U.S. Forest Service. This type of exchange involves advertising in newspapers or sending interested parties a bid prospectus which identifies specific Federal land that is available for exchange for non-Federal land. This would assist the agency in meeting its mission-related goals.

In November 1994, Bureau officials discussed this methodology with representatives of the Department of the Interior, other Federal agencies, state and county governments, environmental organizations, and land exchange facilitators at a meeting convened at the request of the Department to discuss the land exchange process. At the meeting, competitive exchanges were suggested as a methodology for use when comparable sales on which to value the exchange lands are not available. An interagency team from the Department, in its June 1995 draft report "Land Exchanges: Ideas for Improvement," also discussed this methodology as an approach to deal with the valuation of highly speculative lands. The report indicated that the Bureau should conduct at least two pilot competitive exchanges to test this approach. The introduction of competition into the disposal process for highly speculative properties, such as those in and around Las Vegas, would help alleviate some of the negative publicity the Bureau has received over the land appraisal values the State Office has used for both the Federal and the private lands included in its exchanges.

Recommendations

We recommend that the Director, Nevada State Office:

1. Institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable.

2. Direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before the Federal lands are exchanged or sold.

3. Establish the controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures. At a minimum, these controls should ensure that land to be acquired is in conformance with

approved land-use plans or properly executed plan amendments; land acquired and disposed of is properly valued; and all significant decisions involving the exchange transactions, particularly those affecting land valuation, are fully justified and documented in the exchange file.

Bureau of Land Management Response and Office of Inspector General Reply

In the July 5, 1996, response from the Director, Bureau of Land Management (Appendix 2), the Bureau concurred with Recommendations 1-3. Based on the response, we requested that the Bureau provide additional information for these recommendations (see Appendix 3). The Bureau also provided comments on specific land exchanges and information discussed in this finding, which are presented below.

Additional Comments

Oliver Ranch Exchange

Bureau Response. The Bureau stated that the value it had established for the 220-acre parcel of Federal land encumbered with a flood control easement to the City of Las Vegas was "accurate" based on information available to the review appraiser at the time of the exchange. The Bureau included in its response a copy of a March 16, 1993, letter from the City to the Las Vegas District Office, stating that the City had "active plans to use [the] right-of-way grant . . . for a water detention basin for flood control purposes" and that it "wish[ed] to retain its right-of-way grant . . . ." The Bureau stated that the review appraiser accordingly "concluded that the City had no plans to relinquish the easement and therefore approved a value of $550,000 for the 220 acre tract." The Bureau also included a copy of the subsequent agreement between the City and the new landowner under which the City agreed to relinquish over 180 acres of the right-of-way in exchange for $400,000 in cash and payment of the costs of engineering and constructing a water detention basin, including off-site improvements.

Office of Inspector General Reply. We considered the March 16, 1993, letter when we reviewed the processing of this exchange. However, this letter should not be read in isolation because there were other factors known to the Bureau prior to the exchange that should have been considered.

By focusing on the March 16 letter as justification for proceeding with the exchange of the encumbered property at a value 10 times lower than the value of the unencumbered land, the Bureau does not address the totality of the circumstances surrounding this transaction. Those circumstances were explained, in part, in a March 26, 1993, memorandum to the file by the Bureau's review appraiser, which stated:

> The City of Las Vegas was contacted regarding their plans for this property since no facilities have been built under the R/W [right-of-way] grant. They can give no timeframe for construction or even an idea of what may be built

> although it was mentioned that a minimum of 80 acres would be needed for the project. A letter from the City, however, stated that no portion of the R/W would be relinquished at this time.
>
> It is evident that any future release of any portion of this R/W grant by the City will create a "windfall profit" to the underlying landowner . . . since the unencumbered value is ten times the appraised price. Because of the irregular shape and large size of the parcel, it appears likely that not all of the land will be used by the City for the proposed Flood Detention Basin. This situation has been explained to . . . DSD [Deputy State Director] Operations, and, in turn, on March 22, 1993, to . . . [the] Nevada State Director. The management decision was that the benefits of this exchange warranted transfer of the land to private ownership without further delay.

Although we do not challenge the Bureau's decision to acquire the Oliver Ranch property, in view of all the circumstances, we do not believe that the Bureau was sufficiently diligent in pursuing with the City the matter of relinquishing the easement. First, the easement was granted to the City in 1986. In 1993--7 years later--the March 26 memorandum stated that "no facilities ha[d] been built under the R/W [right-of-way] grant" and that the City could give "no timeframe for construction or even an idea of what may be built . . . ." Indeed, in a 1994 memorandum from the City's Director of Public Works to various City officials urging approval of a subsequent agreement between the City and the new landowner to relinquish over 180 acres of the easement, the Director acknowledged that no funding had been identified for the detention basin for the next 10 years. This degree of uncertainty several years after the easement was granted appears inconsistent with the Bureau's responsibility under the Code of Federal Regulations to ensure that the amount of land included in an easement is limited to only those lands which the authorized officer determines "[w]ill be occupied by the facilities authorized . . . [and] be necessary for the construction, operation, maintenance, and termination of the authorized facilities . . . ." In fact, notwithstanding the uncertainty surrounding the City's use of the easement, in December 1992, the Bureau had extended the expiration date of the easement on the entire 220-acre tract into perpetuity.

Second, the Bureau was cognizant of the "windfall profit" to the proponent that would result from any future relinquishment of any portion of the easement, given that the value of the unencumbered property was 10 times the appraised value of the encumbered property. In other words, the easement resulted in a 90 percent devaluation of the Government land. In view of the escalating property values, the fact that 7 years had elapsed with no action by the City, the uncertainty that had been demonstrated by the City as to its needs and plans, and the Bureau's responsibility under the Code of Federal Regulations, we believe that the City's brief reference, in its letter of March 16, 1993, to its "active plans to use [the] right-of-way grant," without more details, provided insufficient justification for the Bureau not to pursue relinquishment of the easement by the City. Indeed, as the facts reveal, the City ultimately retained only 31 acres of the 220 acres for construction of the detention basin.

Third, the Bureau's lack of diligence in assessing the City's stated continued need to encumber the entire 220-acre parcel is further underscored by two additional facts contained in the City's November 1994 memorandum regarding the proposed agreement with the new landowner. First, within only a few months after the exchange, the City and the new landowner had entered into negotiations for the City to relinquish over 180 acres of the flood control easement. Second, in providing background information, the City's memorandum noted that a number of events had occurred since the easement was granted in 1986, including the fact that Clark County had identified the need for a maximum of only 32 acres for the detention basin.

Accordingly, notwithstanding the Bureau's response, we continue to believe that under the circumstances as presented, the Bureau's State Office management should have taken additional measures to protect the Federal Government's interests, such as by pursuing more diligently with the City the issue of relinquishing the easement or by seeking to substitute an unencumbered parcel of Las Vegas area land to complete the exchange.

Regarding the role of the City in the removal of the easement, we have revised the report to clarify that the Government's loss represented a gain for the City as well as for the proponent.

Red Rock Exchange

Bureau Response. The Bureau stated that the Federal Land Policy and Management Act and implementing regulations and guidance "do not require" that land acquired by the Bureau "be specifically identified in land use plans . . . [but that] acquisitions be *consistent* with the mission of the Department and with applicable land use plans." According to the Bureau, the Virgin River Valley acquisition was consistent with the need to "manage for woundfin (an endangered species) habitat along the Virgin River," as identified in the Clark County Management Framework Plan and in the U.S. Fish and Wildlife Service Woundfin Recovery Plan. In addition, the Bureau said that the Pahrump Valley acquisition was consistent with proposals in a Draft Resource Management Plan to acquire lands to protect the desert tortoise and with a "proposed potential tortoise management area" under the Clark County Short-Term Habitat Conservation Plan.

The Bureau also stated that our draft report was "misleading by stating that the second review appraiser [of the Virgin River properties] established significantly higher values for the properties" than the first review appraiser." According to the Bureau, the second review appraiser had "evaluated areas of disagreement" between the original appraiser and the first review appraiser and had "accepted the original appraisal on all but one of the parcels." The Bureau further stated that the second review appraiser concluded that the first review appraiser was generally "more conservative" in his approach than the original appraiser and used a "different technique to establish value," particularly in assigning a value to "access limitations on several of the properties." The Bureau provided the review statement of the second review appraiser with its response to show the rationale used in his review.

Office of Inspector General Reply. We agree that the Federal Land Policy Management Act and implementing regulations do not require that land acquired by the Bureau be specifically identified in land use plans but rather that the acquisitions be in conformance with the plans. We have clarified that point in this report.

We still question, however, whether the Bureau's acquisition of lands in the Virgin River and Pahrump Valleys was in conformance with the current land-use plan for the area--the 1984 Clark County Management Framework Plan. Because the U.S. Fish and Wildlife Recovery Plan for the Woundfin and Virgin River Chub, referenced in the Bureau's response, did not contain specific boundaries for acquisition of land along the Virgin River, we contacted the Chief of Listing and Recovery of Endangered Species for the U.S. Fish and Wildlife Service, in Denver, Colorado, during the audit, to obtain this information. This official stated that the high priority area for the Virgin River was in Utah and that the area north of Halfway Wash, in Nevada, was also a priority.

The Bureau's May 1994 "Supplement to the Draft Stateline Resource Management Plan," which, as noted earlier, has not been finalized, identified the area north of Halfway Wash as a proposed area of "critical environmental concern." Based on our review of the area of critical environmental concern and the acquired land, which were identified on maps by a Bureau wildlife biologist, we noted that only 120 acres of the 2,061 acquired acres were within the boundaries of the proposed area of critical environmental concern. We also noted that another 420 acres of land outside this area, where the land parcel involved was completely or partly in the river bed, might be construed as lands to be acquired. Thus, at best, only 540 acres of the 2,061 acquired acres appear to be justified by the current land-use plan. Further, the 1994 "Supplement" did not appear to support the acquisition of any of the 400 acres of Pahrump Valley lands for tortoise habitat.

It should also be noted that the planning documents cited by the Bureau as support for its acquisitions in the Virgin River and Pahrump Valleys included only vague references to the land which might be acquired, such as "land along the river." In our opinion, Bureau management should ensure that it acquires only properties which clearly satisfy mission-related goals and objectives in exchange for highly valued Las Vegas lands. While it is not our intention to question the identification of land by the Bureau wildlife biologist as being of "critical environmental concern," we do believe that the "Supplement" should be more specific regarding the location and amount of land of such concern. Otherwise, the Bureau may exchange its highly marketable property for lands of questionable or limited program quality, which serves only to reduce the resources currently available to assist the Bureau in meeting its habitat preservation goals.

Regarding the issue of fair market value of the Virgin River properties, we do not believe that the report is misleading in its statement that the Nevada staff appraiser established significantly higher values for the private land than the Arizona Chief Appraiser. Whether the staff appraiser accepted the contract appraiser's value conclusions or developed his own is not at issue. According to the Bureau's Manual, the critical requirement is approval of an amount representing the Bureau's estimate of fair market value by a chief appraiser. Accordingly, our point was that the second review conducted by the Bureau, which was performed in response to the proponent's expression

of displeasure with the review by a chief appraiser, increased the Government's cost to acquire the land by $1.2 million without reconciliation of the differences between the two reviews.

During the audit, we reviewed the contract appraisal and both appraisal reviews, and we interviewed both Bureau personnel who had performed appraisal reviews of the property. Although the Bureau responded that the second review appraiser had concluded that the first review appraiser had taken a conservative approach in making value determinations, the actual statement of the second review appraiser does not acknowledge that a previous review was performed by the Arizona Chief Appraiser. In addition, the statement does not comment on the significantly lower value determinations for the private lands reached by the first reviewer considering the same factors.

Also important, in our opinion, is the fact that the values of the private lands were originally approved by a State Chief Appraiser in accordance with Bureau Manual requirements and the initial phase of the exchange was processed using those approved values. The subsequent review was performed by a subordinate to the Nevada Chief Appraiser, with no documentation to indicate that the values derived by the subordinate staff appraiser were approved by a State Chief Appraiser, as required by the Bureau Manual. Bureau personnel told us that the staff appraiser had been designated as the Acting Chief Appraiser for the 17 properties of Virgin River Valley land for which the proponent had indicated unhappiness with the values previously established by the Arizona Chief Appraiser. However, we noted that the staff appraiser had signed the Appraisal Review of these 17 properties as the Reviewing Appraiser and not as the Acting Chief Appraiser. Further, the Bureau was not able to explain why the staff appraiser was designated as the Acting Chief Appraiser for this review. Thus we question the State Office's decision to override the values approved by the Arizona Chief Appraiser and to accept values for the private lands that were $1.2 million higher without a reconciliation of the differences and under the circumstances as presented here.

In our view, in order to properly protect the Government's financial interests, the substantive differences between the two Bureau reviews should have been discussed by the parties involved and reconciled prior to completing the exchange. In this instance, not only was a reconciliation not performed, but also the Arizona Chief Appraiser advised us that he was unaware that a second review had even taken place. As such, he was not afforded an opportunity to explain and defend his decision.

Galena Resort Exchange

Bureau Response. Regarding the issue of fair market value, the Bureau stated that "credit may have been inappropriately allowed to the proponent" on this exchange. The Bureau further stated that it would "carefully" review the ledger account "to determine the correct amount which is owed to the United States" and would make "proper adjustments . . . to the ledger account before this assembled exchange file is closed." Regarding "other management issues," the Bureau agreed that verbal commitments made "to compensate proponents for [certain] costs" must be formalized. The Bureau further noted that, although an exchange agreement that is "normally used

to identify these compensation costs was not developed, the exchange proponent was notified by letter" of the costs the Bureau would cover. The Bureau has, however, expressed its intention to consummate agreements on these issues in the future.

Office of Inspector General Reply. The actions to be taken by the Bureau in regard to the fair market value appear to be a reasonable approach to recouping the $68,825. As to the "other management issues," Bureau personnel did not provide a copy of the letter to the exchange proponent when such documentation was requested during our fieldwork. In any event, the Bureau's apparent acknowledgement that even such a letter would be insufficient and its statement that it will formalize its compensation commitments in future transactions is sufficient to alleviate our concerns regarding this issue.

Conclusion

Bureau Response. Regarding the statement in our draft report that the exchange proponents have realized "sizeable gains" by reselling lands obtained from the Bureau, the Bureau stated that the examples cited in our draft "represent subsequent sales that are probably not arms length market transactions and therefore are not necessarily indicative of the true market value of the properties." Regarding one of our examples, the Bureau stated:

> The 70-acre parcel . . . was originally acquired through a land exchange by [an organization that was a joint venture], an entity controlled by a Las Vegas developer. That same developer subsequently acquired the property through a paper transaction. The developer had both a seller and buyer interest in the property and therefore this sale may not represent an arms-length market transaction.

In addition, the Bureau stated:

> Las Vegas has experienced explosive growth over the last several years. This has created a speculative environment where values are difficult to estimate. It is also difficult to predict what buyers will do once they have acquired the lands; i.e., resell the land, sell off smaller tracts, or begin development.

Office of Inspector General Reply. Regarding the 70-acre transaction, our report recognizes that sufficient information was not available to determine the underlying reasons for the apparent substantial profits. However, the Bureau provided no support, such as comparable sales, to demonstrate that the sales price was not, in fact, representative of the value of the land. Therefore, we do not believe that the Bureau's speculation is sufficient to justify its position that the resale values determined from Clark County land records were not indicative of the true value of the properties. Without having information to the contrary, we believe that the resale values obtained from the Clark County land records are the best indicator of the prevailing market value of the Bureau's lands at the time of the exchanges.

We agree that "explosive growth in the Las Vegas area has created a speculative environment where values are difficult to estimate," which was the basis for our conclusion that the best way to protect the Government's interests is through the introduction of a competitive process.

B. SANTINI-BURTON ACT LAND

The Bureau of Land Management's Nevada State Office included 446.5 acres of Federal land located within the land sale area identified by the Santini-Burton Act (Public Law 96-586) in three of the four exchanges we reviewed. The Act authorizes the Secretary of the Interior to sell Federal land in and around Las Vegas to finance the acquisition of environmentally sensitive land in the Lake Tahoe Basin of Nevada and California. However, the Bureau had previously taken the position that the Act did not specifically prohibit the Bureau from exchanging Federal lands within the legislatively identified area based on the Bureau's authorities in the Federal Land Policy and Management Act of 1976. As a result, the State Office exchanged land that, if sold, would have returned at least $7.8 million to the U.S. Treasury to repay a portion of the $93 million the Federal Government has spent in acquiring land in the Lake Tahoe Basin.

On December 23, 1980, the Congress enacted the Santini-Burton Act to address the need for the Government to sell some of its Nevada land and to acquire and protect environmentally sensitive land in the Lake Tahoe Basin. Under Section 1 of the Act, the Congress found that the Bureau had extensive land ownership in urban areas of Clark County and that it should sell some of those lands "for the orderly development of the communities in that county." Under Section 2 of the Act, the Secretary was authorized and directed to dispose of the Bureau land as shown on the May 1980 map entitled "Las Vegas Valley, Nevada, Land Sales Map" (No. 7306A). The map shows the boundary of a 182-square-mile land sale area of Clark County centered on Las Vegas and containing approximately 7,000 acres of Bureau land. Section 2 of the Act also required the Bureau to deposit 85 percent of the proceeds from these land sales into the general fund of the U.S. Treasury as repayment for funds appropriated to the Department of Agriculture's U.S. Forest Service for the purchase of Lake Tahoe Basin land.[6] It also directed the Secretary, in cooperation with the Secretary of Agriculture, to keep the appropriate Congressional oversight committees apprised of the status of repayment by submitting biannual accounting reports of income and expenditures provided for by the Act.

We found that the State Office exchanged land in the designated land sale area in three of the four exchanges reviewed as follows:

[6] The remaining 15 percent of the proceeds were to be paid to the State of Nevada and affected local governments.

Exchange No.	Santini-Burton Acreage Exchanged	Appraised Market Value	Revenues Foregone (85 Percent)
Red Rock (N-57773)	25.0	$909,000	$772,650
Oliver Ranch (N-56458)	191.5	4,555,000	3,871,750
Galena Resort (N-57877)	230.0	3,690,000	3,136,500
Total	446.5	$9,154,000	$7,780,900

According to Bureau documentation, Bureau officials exchanged the land within the legislatively identified land sale area because they believed that they had a wider latitude for disposing of this land under the authorities in the Federal Land Policy and Management Act. For example, in dismissing a private citizen's protest that the inclusion of Santini-Burton Act land in the Oliver Ranch exchange (No. N-56458) violated the intent and objectives of the Act, the Bureau's Director stated, "There is nothing in the legislation that prohibits us from disposing of the public lands within the Santini-Burton area under other authorities."

Our office performed a legal review of the Santini-Burton Act and its legislative history and found some evidence indicating that the Bureau is not precluded from exchanging land within the Congressionally identified land sale area. Specifically, in House Report No. 96-1023, dated May 16, 1980, the Committee on Interior and Insular Affairs stated, "The Committee does not intend, by this Act, to prohibit continuation of reasonable land transfers under existing authority for public purposes."

On the other hand, it seems equally clear from other language in the legislative history and the Act that the Congress intended the Bureau to minimize its exercise of other land disposal authorities for the specified lands to help ensure that sufficient revenue was generated to substantially offset the cost of acquiring the Lake Tahoe Basin lands. For example, in the House Report, the Committee also stated, "The Committee has determined that the costs incurred as a result of enactment of this bill will be relatively nominal." In our opinion, such can occur only if the sales revenues closely approximate the acquisition costs. Senate Report No. 96-1026, dated November 21, 1980, also included a statement by the Senate Committee on Energy and Natural Resources that it amended the House bill "to assure that any appropriations from the Land and Water Conservation Fund are offset by revenues from the land sales authorized in section 2." Also, as discussed previously, Section 2(e) of the Act stated that the land sale revenues generated by the Bureau would be considered repayment for funds appropriated for Lake Tahoe Basin land purchases. In addition, a monitoring process was established that required the Secretary to prepare and submit accounting reports of Santini-Burton Act income and expenditures to the appropriate Congressional oversight committees twice per year. We also noted several other statements published in the "Congressional Record" as follows:

- One of the Congressional authors of the bill stated that the bill involves "selling certain Federal 'checkerboarded' lands in the Las Vegas Valley and considering the proceeds repayment for acquisition of private environmentally sensitive land in the Lake Tahoe Basin." (Congressional Record-House, September 8, 1980, p. 24553)

- Another Congressman stated that the bill "makes money available at no net loss to the American taxpayer to buy the most dangerous of these lots." (Emphasis added.) (Congressional Record-House, September 8, 1980, p. 24558)

- A Senator stated that the bill "creates a self-sustaining fund for the acquisition of lands deemed to be environmentally sensitive . . . generated by the sale of checkerboarded Federal lands in Nevada." (Emphasis added.) (Congressional Record-Senate, December 4, 1980, pp. 32384-85)

- Another Senator stated that under the bill, "The revenue generated by the sale of Bureau of Land Management lands in Nevada will provide the funds necessary for the Forest Service to purchase environmentally sensitive lands at Tahoe." (Congressional Record-Senate, December 4, 1980, p. 32385)

To evaluate the effect of the Bureau's decision to exchange rather than sell 446.5 acres of Santini-Burton Act land, we attempted to determine the total amount of program income and expenditures to date by obtaining copies of the biannual accounting reports required by Section 2(e) of the Act. However, Bureau officials were unable to provide these reports and referred us to a representative in the Department's Office of Policy Analysis. The representative stated that she was not aware of such reports. We then contacted officials in the U.S. Forest Service's Lake Tahoe Basin Management Unit and the Bureau's Division of Finance for this information. These officials estimated that by the end of fiscal year 1995, the Forest Service will have spent about $93 million of appropriated funds to acquire Lake Tahoe Basin properties, while the Bureau will have deposited only about $53 million of land sale revenues into the general fund of the U.S. Treasury to repay the amounts appropriated. As a result, Santini-Burton Act acquisition costs exceeded sales revenues by about $40 million. This deficit could have been reduced if the State Office had not chosen to exchange about $9.2 million of designated Santini-Burton Act land that would have generated $7.8 million in additional revenues for the U.S. Treasury. This substantial cost burden of $40 million, which represents 43 percent of the acquisition costs, will ultimately be borne by the American taxpayers if the Bureau does not sell sufficient land to offset the revenue shortfall.

By selling rather than exchanging the designated Santini-Burton Act lands, the Bureau would help not only to repay more fully the cost of the Lake Tahoe Basin land acquisition program but also to ensure that the Government maximizes its return in disposing of these valuable properties. For example, we found that less than 2 months after the Bureau exchanged the 25 acres of Santini-Burton Act land for $909,000 as part of the Red Rock exchange (No. N-57773), the proponent resold the land for $1.6 million, or almost 80 percent more than the approved appraised value used for the exchange. Also, Bureau records indicated that Santini-Burton Act lands were appraised and sold in small tracts, rarely exceeding 20 acres in size, to maximize sales revenue,

whereas 374 acres of this land were exchanged (Oliver Ranch and Galena Resort) based on appraised values for two large tracts of 169 acres and 205 acres. Because smaller tracts of land are generally appraised at higher per acre values than larger tracts of land, the 374 acres of Federal land could have yielded a higher value if they had been sold in smaller tracts. Based on our review of prior sales and resales, we believe that the Bureau could have sold the 446.5 acres of Santini-Burton Act land for substantially more than the $9.2 million value established for exchange purposes.

Recommendations

We recommend that the Director, Nevada State Office, take appropriate action to ensure that:

1. The accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees.

2. The Nevada State Office uses the land sales process, except in compelling circumstances, when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. Any exchange proposals from that time on should be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

Bureau of Land Management Response and Office of Inspector General Reply

In the July 5, 1996, response from the Director, Bureau of Land Management (Appendix 2), the Bureau stated agreement with Recommendation 1. However, the actions the Bureau described for Recommendation 1 are not consistent with what we recommended. Regarding Recommendation 2, the Bureau did not state concurrence or nonconcurrence but stated that it would request an opinion from the Office of the Solicitor. Based on the response, we consider Recommendations 1 and 2 unresolved. The Bureau is requested to reconsider its response to Recommendation 1 and respond to Recommendation 2 following receipt of the legal opinion from the Solicitor's Office (see Appendix 3).

Recommendation B.1. Concurrence.

Bureau Response. The Bureau agreed with the recommendation, stating that it has been submitting the accounting reports on an "annual basis," which is consistent with its "annual accounting procedures."

Office of Inspector General Reply. Since Section 2(e) of the Santini-Burton Act requires "biannual" rather than annual reporting, the submission of reports on an annual basis would not be in compliance with the Act. Further, we were not able to confirm during our review that the Bureau had been submitting reports annually. Specifically,

Bureau officials were unable to provide these reports and instead referred us to a representative in the Department's Office of Policy Analysis, who told us that she was "not aware of such reports."

Recommendation B.2. Concurrence/nonconcurrence not indicated.

Bureau Response. The Bureau stated that "[t]he exchange of lands in the Santini-Burton area should not be continued if [such exchanges are] inconsistent with Public Law 96-586" and that it would ask the Office of the Solicitor to provide guidance on this matter by the end of calendar year 1996.

Office of Inspector General Reply. We agree with the Bureau that the lands should not be exchanged if such exchanges are inconsistent with Public Law 98-586. The Bureau, however, in lieu of addressing our recommendation, stated in its response that it will request an opinion from the Office of the Solicitor. Our finding and recommendation were based on a legal review performed by the General Counsel's Office, Office of Inspector General. However, we have no objection to the Bureau's obtaining an opinion from the Solicitor's Office in order to provide a response to our recommendation.

Additional Comments

The Bureau also stated that our draft report "creates an impression that $7.8 million was lost, when, in fact, lands with important natural resource values were acquired through exchange." While we agree that some of the land was exchanged for high quality lands, as noted in our report, the purpose of our finding was to demonstrate that the Bureau should sell rather than exchange Santini-Burton Act land to ensure that the cost to acquire land in the Lake Tahoe Basin is not borne by the taxpayer. Regardless of whether valuable land was acquired, the fact remains that, by exchanging the land rather than selling it, the Bureau lost the opportunity to return funds to the U.S. Treasury as the Act intends.

OTHER MATTERS

During our review, we noted that the Federal Land Policy and Management Act of 1976, as amended, provides the Bureau with wide latitude in determining what constitutes a beneficial exchange. Specifically, Section 206 of the Act authorizes the Bureau to dispose of land through an exchange when an authorized Bureau official determines that the public interest will be well served. In the Oliver Ranch and the Galena exchanges, the Nevada State Office used this latitude to obtain private land that had been identified for acquisition in existing land-use planning documents because of its scenic and recreational resource values. In our review of the Tonopah exchange (No. N-57468), we noted that the State Office used this latitude to acquire a defunct bowling alley on 8.2 acres of land with the intention of using this facility and property as an administrative complex for the Tonopah Resource Area.

We found that, in 1989, the Bureau determined that its Tonopah Area facilities were inadequate and needed to be replaced. The Bureau therefore asked the Congress to appropriate $640,000 in fiscal year 1991 to construct a new 7,000 square-foot office complex on a 5-acre parcel of land already in Federal ownership. Subsequently, the Bureau allotted $621,000 to the Nevada State Office from its fiscal year 1991 construction appropriation to build a new complex in Tonopah. However, rather than proceed with the construction, as originally planned, the Bureau's Battle Mountain District Manager proposed an exchange of some of the Bureau's Las Vegas area lands for a 16,000 square-foot bowling alley in Tonopah that he believed could be converted into a new administrative complex.

An exchange for this property was completed on June 29, 1994, when the Bureau conveyed 25 acres of Las Vegas area lands, valued at $665,000, to the private landowner in return for the bowling alley property plus $166,000 to equalize the difference in the appraised values of the properties. The Bureau said that based on current cost estimates, it expects to spend about $2.1 million to renovate the property acquired, which is over $1.5 million more than the amount currently appropriated for the Bureau to construct a Tonopah administrative complex.

From available documentation and discussions with Bureau personnel and with our legal counsel, we concluded that the Bureau acted within its authority in completing this exchange. However, we believe that management's use of the exchange process to acquire administrative property rather than lands containing significant public resources, such as critical fish and wildlife habitat or recreational opportunities, may not represent the most effective use of Federal land. Bureau personnel said that additional proposals to acquire administrative facilities through land exchanges may be forthcoming based on the precedent set at Tonopah. Thus, we believe that the Bureau should consider establishing a policy limiting the use of the land exchange process to acquire administrative facilities for Bureau use.

Bureau of Land Management Response and Office of Inspector General Reply

In the July 5, 1996, response from the Director, Bureau of Land Management (Appendix 2), the Bureau agreed to establish a policy limiting the use of the land exchange process to acquire administrative facilities for Bureau use. The Bureau stated that it "will provide guidance to field offices by December 1, 1996 as to when these types of exchanges are appropriate." The Bureau's actions are sufficient to address our concerns regarding this issue.

APPENDIX 1

CLASSIFICATION OF MONETARY AMOUNTS

Finding	Lost Revenues	Funds To Be Put To Better Use
A. Exchange Processing		
Exchange No. N-56458 Fair Market Value		$4,200,000 [1]
Exchange No. N-57773 Land Use Plans		$2,700,000 [2]
Fair Market Value	157,000 [3]	
Exchange No. N-57877 Fair Market Value	69,000 [4]	
Subtotal	4,426,000	2,700,000
B. Santini-Burton Act Land	7,800,000 [5]	
Total	$12,226,000	$2,700,000

[1]Represents the value the Bureau lost because 189 acres of Federal land unnecessarily encumbered by a flood-control easement were exchanged at 10 percent of their potential value.

[2]Represents the exchange value of 2,461 acres of private land acquired in the Virgin River and Pahrump Valleys that were not reflected in current land-use plans as needed for mission-related purposes. The $2.7 million is composed of the fair market value approved by the Arizona State Chief Appraiser ($1.5 million) and an increase in the approved fair market value made without proper substantiation ($1.2 million).

[3]Represents the value the Bureau lost because a purchase discount was incorrectly included when establishing the fair market value of Federal lands.

[4]Represents the value the Bureau lost because the approved fair market value estimate for some of the private lands acquired was not used.

[5]Represents lost revenues to the U.S. Treasury because of the lost opportunity to sell Federal land in the identified land sale area.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

In Reply Refer To:
1245(420)

96 JUL -5 P4:10

July 5, 1996

Memorandum

To: Assistant Inspector General for Audits

JUL 5 1996

Through: Bob Armstrong, Assistant Secretary, Land and Minerals Management

From: Acting Deputy Director, Bureau of Land Management Cathie Sharpe

Subject: Response to Draft Audit on Nevada Land Exchange Activities, Bureau of Land Management (Assignment No. W-IN-BLM-003-95)

The Bureau of Land Management (BLM) appreciates the opportunity to review and comment on the Office of the Inspector General's draft audit report. We generally agree with the report recommendations and will utilize them to improve our land exchange program in Nevada, however, we disagree with several of the specific report findings.

In Nevada, land exchanges have proven to be a valuable tool to acquire environmentally sensitive lands, while making public lands available near urban areas zoned for residential and commercial uses, such as those in the Las Vegas area. Recent land exchanges have added key property to recreation and scenic areas and provided lands that have aided in the recovery of desert tortoise populations. The Marys River exchange, completed in 1991, is an excellent example of the public benefits which can be obtained through the exchange program. This acquisition facilitated management and improvement of 55 miles of riparian habitat important to the Lahonton cutthroat trout (a federally listed threatened species), placed 8,600 acres of wet meadows, marshes, and willows into public ownership, and provided 50 miles of public access to the Marys River area of northeastern Nevada.

In order to improve the exchange process, the BLM in Nevada has instituted a number of procedural and policy changes to set priorities on exchange proposals; streamline the paperwork process, improve coordination with local governments, and improve management of land exchanges. The Nevada BLM is also considering a process to incorporate competitive bidding into exchanges in the Las Vegas area.

The BLM published regulations in December of 1993, implementing procedures contained in the Federal Land Exchange Facilitation Act. These regulations offer new processes designed to better facilitate the timely completion of land exchanges. Since that rule has been published, the BLM has drafted a handbook for processing land exchanges. This handbook, anticipated to be finalized by March 1, 1997, will describe procedures and provide sample documents to assist BLM staff in the completion of land exchange transactions. It will

include appropriate guidance to help prevent procedural deficiencies identified in this audit report from occurring in other BLM States.

The BLM's response to the subject audit report is attached. We have addressed several of the report findings, attached additional supporting information, and responded to all of the audit recommendations.

If you have general questions concerning this response, please contact Gwen Midgett, BLM Audit Liaison Office, at (202) 452-7739. If you have specific questions, please contact Ted Milesnick, Special Areas and Land Tenure Team, at (202) 452-7727.

[NOTE: ALL ATTACHMENTS NOT INCLUDED BY OFFICE OF INSPECTOR GENERAL.]

1

RESPONSE TO THE INSPECTOR GENERAL'S DRAFT AUDIT REPORT
NEVADA LAND EXCHANGE ACTIVITIES
Bureau of Land Management
(Assignment No. W-IN-BLM-003-95)

A. Discussion of Findings

Oliver Ranch Exchange

The draft audit report (page 8) concludes that Nevada BLM's handling of the Oliver Ranch Exchange resulted in a loss of $4.2 million and that the BLM did not verify the continuing need for a right-of-way on the 220 acre tract. The BLM was concerned that the City of Las Vegas may no longer need the right-of-way and requested information from the City prior to the completion of the exchange. On March 16, 1993, the City of Las Vegas responded to the Las Vegas District Office affirming their need for the water detention basin and a 50-acre Recreation and Public Purposes lease on the parcel to be exchanged. The first sentence of the second paragraph from this letter states "The city has active plans to use right-of-way grant N-37232 for a water detention basin for flood control purposes. The city wishes to retain its right-of-way grant on the entire parcel of land [270 acres] except for 50 acres to be used as a recreation and public purpose lease in conjunction with a 10 acre City Park lease (N-37111)." Based upon this letter, the review appraiser concluded that the City had no plans to relinquish the easement and therefore approved a value of $550,000 for the 220 acre tract. We have attached a copy of the letter from the City of Las Vegas to the District Manager.

This parcel was subsequently patented on March 30, 1993. In December 1994, the buyer reached an agreement with the City to relinquish approximately 183 acres of a flood control right-of-way. In exchange, the owner agreed to pay $400,000 in cash to the City and also pay the cost of engineering and construction of a water detention basin and certain off-site improvements. In exchange, the City agreed to permit the owner to construct and operate a recreational facility in the area relinquished by the City. We have attached a copy of this agreement.

In conclusion, we feel that the value established by BLM was accurate given the information available to the BLM regarding the City of Las Vegas' intentions prior to its disposal.

Red Rock Exchange

Land Use Plans

The draft audit report (page 12) concludes that BLM did not protect the Government's interest by acquiring land which was not identified in the land use plan and was not needed for mission-related purposes.

The Federal Land Policy and Management Act and subsequent regulations and manual guidance do not require that land acquired by BLM be specifically identified in land use plans. However, they do require that acquisitions be *consistent* with the mission of the Department and with applicable land use plans. At the time this exchange was being processed, the land in the Virgin River and Pahrump Valleys were analyzed to determine if they contained resource values important to BLM's mission.

The acquisition of lands in the Virgin River Valley were consistent with the management recommendations in the Clark County Management Framework Plan (MFP). This MFP identified the need to manage for woundfin (an endangered species) habitat along the Virgin River, consistent with the U.S. Fish and Wildlife Service (FWS) Woundfin Recovery Plan for this species (Wildlife Decision 2.2). The 1985 FWS Recovery Plan for the Virgin River Fishes recommended land management agencies obtain management authority over woundfin habitats. A subsequent 1995 revision of the recovery plan recommends that land management agencies "acquire land and/or protective easements along the Virgin River for preservation of important habitats for woundfin and Virgin River chub."

The Virgin River parcels were evaluated by a qualified wildlife biologist before the exchange was completed to assess resources values. The biologist determined that the entire Virgin River is historic habitat for endangered fishes, i.e., the woundfin and the Virgin River roundtail chub.

At the time the offered lands in Pahrump Valley were being processed for exchange, the Draft Resource Management Plan (RMP) proposed an Area of Critical Environmental Concern (ACEC) to incorporate the lands for desert tortoise protection. The area was also included in a proposed potential tortoise management area under the Clark County Short-Term Habitat Conservation Plan for desert tortoise recovery.

Fair Market Value (Re-review of Virgin River Properties)

The draft audit report (page 15) states that the Nevada BLM directed a second review of the appraisal regarding 15 properties in the Virgin River and that the second reviewer established significantly higher values for the properties without providing adequate supporting documentation. A second review of the appraisal was completed because the exchange proponent expressed concern that the first review appraiser rarely accepted the findings of the original appraiser and that the values were considerably lower than the option prices on the parcels. The second review appraiser concluded that the first review appraiser generally took a more conservative approach and utilized a different technique to establish value. Among other differences, the original appraiser and the first review appraiser assigned different values stemming from access limitations on several of the properties. The second review appraiser evaluated areas of disagreement and accepted the original appraisal on all but one of the parcels and directed the original appraiser to correct that one appraisal report. The draft audit report is misleading by stating that the second review appraiser established significantly higher values for the properties. Actually, he merely accepted the first appraiser's value

conclusions. The rationale utilized by the second review appraiser is included in his review statement which is in the files of the Appraisal Branch of the Nevada BLM. We have attached a copy of this review statement for your consideration.

Galena Resort Exchange

Fair Market Value

The draft audit report (page 17) asserts that the Government may have lost $68,825 in two transactions of the Galena Resort Exchange. After a review of the ledger for this assembled land exchange, it appears that credit may have been inappropriately allowed to the proponent. The account will be carefully reviewed to determine the correct amount which is owed to the United States and proper adjustments will be made to the ledger account before this assembled exchange file is closed.

Other Management Issues

The draft audit report (page 18) indicates that the BLM did not formalize verbal commitments to compensate the exchange proponent for certain costs. We agree that commitments to compensate proponents for costs to be incurred must be identified and agreed to in writing in advance of any funds being spent by the proponent. Although an initial exchange agreement, which is normally used to identify these compensation costs was not developed, the exchange proponent was notified by letter of the costs the BLM would cover. We will take the necessary action to ensure that on future transactions, initial exchange agreements are completed to document these commitments.

Conclusion Statement

The draft audit report (page 21) concludes that exchange proponents have realized sizeable gains by reselling lands obtained from the BLM.

The examples cited in the draft audit report (page 22) represent subsequent sales that are probably not an arms length market transaction and therefore are not necessarily indicative of the true market value of the properties. The 70-acre parcel for example was originally acquired through a land exchange by [redacted]an entity controlled by a Las Vegas developer. That same developer subsequently acquired the property through a paper transaction. The developer had both a seller and buyer interest in the property and therefore this sale may not represent an arms-length marke transaction.

Las Vegas has experienced explosive growth over the last several years. This has created a speculative environment where values are difficult to estimate. It is also difficult to predict what buyers will do once they have acquired the lands; i.e., resell the land, sell off smaller tracts, or begin development.

[NOTE: THE NAME OF THE BUSINESS ENTITY HAS NOT BEEN INCLUDED BY THE OFFICE OF INSPECTOR GENERAL.]

Santini-Burton Act

The draft audit report (page 25) concludes that some lands within the Santini-Burton area were exchanged, rather than sold, causing a loss of revenues of at least $9.2 million ($7.8 million of which would have been remitted to the U.S. Treasury to repay incurred Lake Tahoe Basin land acquisition costs). The draft audit report creates an impression that $7.8 million was lost, when, in fact, lands with important natural resource values were acquired through exchange.

Under the auspices of the Santini-Burton Act, the BLM has sold 2,700 acres of public land during the 16 years since its passage, generating $64 million. Also within the Santini-Burton boundary, approximately 2,200 acres have been leased or patented under the authority of the Recreation and Public Purposes Act to local government and non profit entities. Additionally, approximately 900 acres within the Santini-Burton area have been exchanged to obtain valuable resources benefitting the public. There are approximately 3,500 acres managed by BLM remaining within the Santini-Burton area. Nearly all of these remaining lands are located within the airport noise impact area and will be managed in accordance with a Memorandum of Understanding with Clark County.

Other Matters

The draft audit report (page 32) indicates the BLM should consider establishing a policy limiting the use of the land exchange process to acquire administrative facilities for BLM use. We agree. Since other proposals may be forthcoming, the BLM Washington Office will provide guidance to field offices by December 1, 1996 as to when these types of exchanges are appropriate.

B. Response to Recommendations

Exchange Processing

Recommendation 1:

Institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable.

Response:

We agree. Nevada BLM is working to develop a strategy (competitive sale or exchange) to incorporate competitive procedures into the land disposal process. By June 1, 1997, the Nevada BLM will evaluate different competitive approaches and recommend an option for a prototype competitive land exchange. Depending on the results, a pilot project will be developed and tested. We believe a competitive process is an attractive alternative in assuring payment of fair market value.

Recommendation 2:

Direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before the Federal lands are exchanged or sold.

Response:

We agree. By October 1, 1996, Washington Office BLM will prepare guidance requiring all rights-of-way be reviewed and actions taken to clear those that are no longer needed before transfer of the Federal lands.

Recommendation 3:

Establish controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures. At a minimum, these controls should ensure that land to be acquired is within approved land-use plans or properly executed plan amendments; land acquired and disposed of is properly valued; and all significant decisions involving the exchange transactions, particularly those affecting land valuation, are fully justified and documented in the exchange file.

Response:

We agree. Washington Office BLM will review the Nevada BLM exchange process to assure that adequate controls are in place to comply with applicable laws, regulations and BLM procedures. This review will be completed by December 1, 1996. In addition, by March 1, 1997, the BLM will finalize its BLM-wide land exchange handbook.

Santini-Burton Act

Recommendation 1:

The accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees.

Response:

We agree. Section 2(e) of the Act requires submittal of an accounting report to the appropriate House and Senate committees. The BLM has been submitting these reports on an annual basis. This is consistent with our annual accounting procedures.

Recommendation 2:

The Nevada State Office uses the land sales process, except in compelling circumstances, when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. Any exchange proposals from that time on should be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

Response:

The exchange of lands in the Santini-Burton area should not be continued if it is inconsistent with Public Law 96-586. We will ask the Department of the Interior Solicitor's Office to review the legislative history and provide guidance on the exchange of lands located within this area. We will ask that guidance on this issue be provided by the end of calendar year 1996.

APPENDIX 3

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
A.1-A.3	Management concurs; additional information needed.	Provide titles of officials responsible for implementation.
B.1	Unresolved	Reconsider the response to indicate how compliance is to be achieved with the biannual reporting requirement of Section 2(e) of the Santini-Burton Act.
B.2	Unresolved	Respond to the recommendation, and provide a copy of the opinion to be requested from the Office of the Solicitor.

ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO THE OFFICE OF INSPECTOR GENERAL BY:

Sending written documents to:

Calling:

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U.S. Department of the Interior
Office of Inspector General
1550 Wilson Boulevard
Suite 402
Arlington, Virginia 22210

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Office of Inspector General
Eastern Division - Investigations
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Arlington, Virginia 22209

(703) 235-9221

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North Pacific Region
238 Archbishop F.C. Flores Street
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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

2200 (420)

July 19, 1996

Honorable John Ensign
House of Representatives
Washington, D.C. 20515

Dear Mr. Ensign:

Thank you for your letter of June 20, 1996, cosigned by House Resources Committee Chairman Don Young and Subcommittee on National Parks, Forests and Lands Chairman Jim Hansen, to Secretary of the Interior Bruce Babbitt, requesting a moratorium on processing land exchanges in Nevada. Secretary Babbitt has asked the Bureau of Land Management (BLM) to respond.

The BLM's land exchange program in Nevada provides the opportunity to meet local community needs and to acquire private lands with high recreational, wildlife habitat, scenic, and cultural resource values. Halting all land exchanges in Nevada might result in the loss of these public interest values since there may not be future opportunities to bring these lands into Federal ownership.

Most of the BLM's land exchange activity in the State of Nevada is occurring in the Las Vegas Valley area because of the extraordinary growth this area is experiencing. Because of this high demand, the BLM has instituted several procedural and policy changes to set priorities on exchange proposals, to streamline the paperwork process, to improve coordination with local governments, to improve management of the land exchange process and to assure that the public receives a fair value for land exchanges.

The BLM Nevada Office has imposed a partial moratorium on the number of land exchanges currently being processed in the Las Vegas Valley area. The BLM is concentrating on completing six high priority exchange proposals for which initial exchange agreements have been signed, significant work has been completed to process the exchanges, and significant resource values would be acquired. The BLM has placed a moratorium on 25 other exchange proposals in the Las Vegas Valley area and is not processing any new proposals involving lands in this area.

The BLM is sensitive to the Office of the Inspector General's audit of Nevada land exchange activities and agrees with most recommendations in the report. The BLM is initiating measures to ensure that recommendations identified in the report are adhered to in processing future exchanges in Nevada.

I feel confident that the BLM's current approach to complete exchanges in Nevada at a prudent and reasoned pace, along with implementing improved management practices, will meet everyone's needs. We look forward to working cooperatively with you on Nevada's land exchange program in the future. Similar letters are being sent to your colleagues.

Sincerely,

Acting Director

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP - 5 1996

BY SPECIAL MESSENGER

Honorable Don Young
Chairman
Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is the transcript of the oversight hearing before the Subcommittee on National Parks, Forests and Lands, held on July 30, 1996, regarding the Inspector General Audit Report on BLM Land Transactions in Nevada.

The transcript has been reviewed and corrected by the Department's witness, Ms. Wilma Lewis, Inspector General. The information requested page 24, line 543; and page 63, line 1471, is enclosed for insertion in the record.

Thank you for the opportunity to review the transcript.

Sincerely,

for Jane M. Lyder
Acting Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosures

cc: Honorable John Ensign (inserts only)

Insert on Page 63, line 1471

OLIVER RANCH EXCHANGE

Land Exchange Approvals

Land exchange agreement, signed by Ben Collins, Las Vegas District Manager

Phase 1

Decision Record and Finding of No Significant Impact, recommended by Patricia Hall, Realty Specialist, Stateline Resource Area and decided by Marvin D Morgan, Area Manager, Stateline Resource Area.

Final Decision to Exchange, signed by Ben Collins, Las Vegas District Manager

Phase 2

Decision Record and Finding of No Significant Impact, recommended by Patricia Hall, Realty Specialist, Stateline Resource Area and decided by Marvin D Morgan, Area Manager, Stateline Resource Area.

Final Decision to Exchange, signed by William T Combs, Las Vegas District Manager

Appraised Value Review / Approvals

Federal Land disposed

The values of the Federal land in both phases of the exchange were reviewed by Kenneth Thompson, Nevada staff appraiser; no documentation for Chief Appraiser approval.

Private Land acquired

The value of the Oliver Ranch was reviewed and approved by Kenneth Thompson, Nevada staff Appraiser; no documentation for Chief Appraiser approval.

RED ROCK EXCHANGE

Land Exchange Approvals

Land exchange agreement, signed by Gary Ryan, Las Vegas Acting District Manager

Phase 1

Decision Record and Finding of No Significant Impact, recommended by Patricia Hall, Realty Specialist, Stateline Resource Area and decided by Gary Ryan, District Manager, Las Vegas District Office.

Final Decision to Exchange, signed by Gary Ryan, Las Vegas Acting District Manager

Phase 2

Decision to Exchange, signed by Gary Ryan, Las Vegas Acting District Manager

Appraised Value Review / Approvals

Phase 1

Federal Land disposed

One appraisal reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser. Two appraisals reviewed by Kenneth Thompson, Nevada staff Appraiser and approved by Gerald Stoebig, Nevada Chief Appraiser.

Private Land acquired

7 Virgin River parcels reviewed by Michael S Redfield, Arizona Chief Appraiser and approved by Gerald Stoebig, Nevada Chief Appraiser.

Pahrump property reviewed by Kenneth Thompson, Nevada staff Appraiser, and approved by Gerald Stoebig, Nevada Chief Appraiser.

Aleman property reviewed by Richard Webster, USFS; approved by R. Ronald Ashley, Chief Regional Appraiser, USFS; subsequently approved by Gerald Stoebig, Nevada Chief Appraiser.

Sky Mountain property reviewed and approved by R. Ronald Ashley, Chief Regional Appraiser, USFS; subsequently approved by Gerald Stoebig, Nevada Chief Appraiser.

Anderson property reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

Phase 2

Federal Land disposed

Don't have signature page of appraisal review report to show who performed the review. Also, no memo in the file demonstrating approval by Nevada Chief Appraiser.

Private Land acquired

15 Virgin River parcels reviewed by Michael S Redfield, Arizona Chief Appraiser; subsequently reviewed and higher values established by Kenneth Thompson, Nevada staff Appraiser; no documentation for Chief Appraiser approval.

Calico Basin property reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser

GALENA RESORT EXCHANGE

Land Exchange Approvals

Land exchange agreements (original dated 9/20/93, amended dated 11/1/93, and second amended dated 3/7/94), all signed by Billy Templeton, Nevada State Director and Ed Hasty, California State Director.

Decision Record and Finding of No Significant Impact/Supplement to the Environmental Assessment, signed by Billy Templeton, Nevada State Director on 11/1/93. This is the decision to complete the "American Land Conservancy-North Las Vegas Exchange".

Decision Record and Finding of No Significant Impact, Environmental Assessment #NV-054-94-83, Exchange N-57877, signed by Gary Ryan, Las Vegas Acting District Manager on 6/14/94.

Appraised Value Review / Approvals

Federal Land disposed

The value of all Federal land in the exchange was reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

Private Land acquired

-- Galena Resort, reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

-- Peavine - Granite Construction, reviewed by John H. Moore, USFS; approved by R. Ronald Ashley, Chief Regional Appraiser, USFS; subsequently reviewed by Kenneth Thompson, Nevada staff Appraiser.

-- Peavine - Reno Ranch, reviewed by John H. Moore, USFS; approved by R. Ronald Ashley, Chief Regional Appraiser, USFS; subsequently reviewed by Kenneth Thompson, Nevada staff Appraiser.

-- Depaoli Ranch, reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

-- Urrutia Ranch, reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

-- Pulver property, reviewed by Kenneth Thompson, Nevada staff Appraiser; no documentation for Chief Appraiser approval.

-- Comer property, reviewed by Kenneth Thompson, Nevada staff Appraiser; no documentation for Chief Appraiser approval.

-- Massacre Ranch, reviewed and approved by David Reynolds, Acting California Chief Appraiser.

-- Crean Property, reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

-- Bitner Ranch, reviewed and approved by the California Chief Appraiser (written name is illegible).

TONOPAH EXCHANGE

Land Exchange Approvals

Land exchange agreement - none

Decision Record and Finding of No Significant Impact attached to the Environmental Assessment, recommended by Patricia Hall, Supervisory Realty Specialist, Stateline Resource Area and Kevin Finn, Realty Specialist, Tonopah Resource Area; decided by Gary Ryan, District Manager, Las Vegas District Office and James Currivan, District Manager, Battle Mountain District Office.

Appraised Value Review / Approvals

Federal Land disposed

The value of the Federal land in the exchange was reviewed by Kenneth Thompson, Nevada staff appraiser, and a slightly different value was approved by Gerald Stoebig, Nevada Chief Appraiser.

Private Land acquired

The value of the bowling alley and land were reviewed and approved by Gerald Stoebig, Nevada Chief Appraiser.

United States Department of Interior

Bureau of Land Management

LAND EXCHANGES: IDEAS FOR IMPROVEMENT

September, 1995

Executive Summary

Land exchanges are one of the most complex land transactions that Bureau employees can process. However, the gains to improving public land management are tremendous. Disposing of difficult to manage lands is a cost savings in itself. When the disposal action is part of a land exchange, not only is the cost to manage the public lands reduced but lands with valuable resources are added to the public domain.

We have reviewed The Keystone Center report of November 17 - 18, 1994 as a springboard to looking at ideas to improve upon the Bureau's land exchange program. We found many elements of the report to be based on perceptions. In many cases, this points out a need for outreach efforts rather than major procedural fixes. There were several areas, however, where procedural ideas for improvement surfaced. This report will deal with those issues identified by the Keystone group as well as additional areas probed by the team.

In summary, the team is recommending that an outreach program be developed to deal with the misconceptions and perceptions. Additionally, there are seven recommendations that deal with the management of the program or processing of exchange transactions.
Those recommendations are as follows:

1. Utilize a project management strategy for each land exchange.

2. Develop processes to deal with valuing highly speculative and unique property, including the use of competitive land exchanges.

3. Finalize the BLM land exchange handbook, looking at ways to establish consistent approaches among agencies who deal with land exchanges.

4. Utilize incentive awards to recognize those employees who are involved in processing difficult or highly complex land exchanges.

5. Propose legislation to the Congressional subcommittees to eliminate certain impediments.

6. Promote regional planning.

7. Look at innovative methods such as land banking to reduce processing costs and increase stakeholder involvement.

Land Exchanges: Ideas for Improvement

Objective

The primary objective of this report, prepared by an interagency team, is to offer ideas to improve or streamline the BLM's land exchange process. Originally the team was considering recommendations regarding all agencies. Since the team was chartered by BLM it was determined that those ideas involving other agencies steamlining would be identified but passed on to the agency. The Keystone Center report of November 17 - 18, 1994, was utilized as a springboard for brainstorming ideas. Those elements that are more perception than reality are separated. Problem areas have been captured and recommendations made. Action steps are provided to resolve the problem areas.

Team Members

Following are the team members:

Don Simpson	*BLM Washington Office*
Craig McBroome	*FWS Atlanta Regional Office*
Bob Abbey	*BLM Jackson, MS District Office*
Bill Ruddick	*BLM Phoenix, AZ District Office*
Mike Williams	*USFS Washington Office*
Dick Young	*NPS Denver Regional Office*

Agency Programs

The four primary resource management agencies have different missions and different authorities but all share the ability to exchange lands. The BLM and USFS are more closely aligned because they are both authorized to conduct land exchanges through the Federal Land Policy and Management Act (FLPMA) and the Federal Land Exchange Facilitation Act (FLEFA). The following summary table shows the exchange programs of the four agencies on an annual basis:

Agency	*Acreage Acquired*	*Acreage Conveyed*	*# of Transactions*	*Value of Lands*
BLM	*135,000 acres*	*75,000 acres*	*62*	*$62 million*
USFS	*80,000 acres*	*50,000 acres*	*115*	*$60 million*
FWS	*600 acres*	*160 acres*	*11*	*$ .5 milllion*
NPS	*6,000 acres*	*5,000 acres*	*40*	*$ .6 million*
TOTAL	*221,600 acres*	*130,160 acres*	*228*	*$123.1 million*

Effects of FLEFA

It has been 18 months since publication of the final rulemaking implementing the FLEFA. The rule was prepared jointly with the Forest Service. Since publication of the rule, a draft handbook has been prepared and distributed for use in the field with a review of the procedures and finalization to occur next fiscal year. Training was developed and conducted in each of the State Offices for all managers and field personnel involved in land exchanges. The passage of FLEFA did not eliminate the law requiring environmental documentation, the clearance process for critical resources and the review of the lands for legal and physical problems such as title problems and the existence of hazardous materials. The passage of FLEFA did, however, add tools to the Bureau's toolbox to assist in navigating through the process. With the full utilization of the provisions contained in FLEFA, land exchange processing will improve and the success rate for individual land exchanges will be considerably higher.

Team Findings

A. Public Perception

When reviewing the Keystone Center report it was felt that certain items identified go beyond the scope of exchange processing and are more perception than reality. An outreach program is recommended to reduce or eliminate perceptions. Those areas that appeared to be strictly perception problems are as follows:

1. *Appraiser incompetency*
2. *Agencies do not scope land exchanges*
3. *Ecosystem management has not been defined*
4. *Socio-economic impacts are not factored into evaluation process*
5. *There is no method for prioritizing land base*

B. Program Issues/Recommendations

Recommendations have been made in the order of importance dealing with the following seven issue areas:

1. *Project Management/Team Concept*
2. *Valuation*
3. *Policy and Procedure*
4. *Employee Recognition and Incentives*
5. *Legislation*
6. *Collaborative Planning Efforts*
7. *Land Bank*

Attached are discussions of the above listed issue areas containing recommendations and an action plan.

PROJECT MANAGEMENT/TEAM CONCEPT

Current Situation

Agencies have inconsistent approaches to processing land exchanges. Levels of environmental documentation vary between agencies and between offices within agencies. Components such as contributed funds, cost sharing, assumption of costs and compensation for assumed costs are applied inconsistently. Documents common to all land exchanges such as escrow instructions and exchange agreements also vary. Variations in processing leave the public confused and the agencies subject to administrative challenge.

The agencies are experiencing a shrinking talent pool leading to higher processing costs and an increased probability of errors. The loss of experienced personnel is compounded by inefficient use of scarce skills.

It is felt by many outside of the agencies that there is no one point of agency contact for exchange proponents. It has been expressed by many non-Federal parties that due to limited upper management commitment, local managers are not willing to take on controversial exchanges, regardless of the resource values involved.

Most offices have little accountability for the timely completion of land exchanges. This is caused by competing lands transactions such as rights-of-way, leases, permits, sales, etc. that are all handled by the same realty specialist. This other realty workload often forces land exchanges onto the back burner as a low priority.

Many exchanges proposed by the non-Federal party are not in the public interest, only enhancing the non-Federal holdings.

Recommendation

Prioritize land exchanges and reject those not in the public interest.

Encourage the use of core teams staffed with experienced personnel and supplemented with a matrix organization for each project. The core team should be comprised of only the necessary professional and technical staff needed to accomplish the transaction. This will maximize the use of the limited expertise and serve to expose newer employees to the process. Additionally, the processing will be uniform with a higher quality standard.

Require all major land exchanges to be headed by a project manager who will be responsible for efficiently managing resources to complete the exchange. The project manager and associated core team would typically be an ad hoc group reporting directly to the responsible field manager. This would involve properly tracking actions through the utilization of a timeline. In less encumbered cases the project manager may only be involved in the exchange processing a few hours per week and can still accomplish other work.

Assign direct accountability to a line officer.

Utilize the core team concept as on the job training (OJT) for less experienced field employees and develop formal training for specific areas of need.

Action Plan

In conjunction with the Forest Service develop instruction to the field to transition into a project oriented exchange process. Send a copy of the policy to other resource management agencies for their consideration and use.

In conjunction with the National Training Center, redesign the advanced land acquisition course to include appropriate land exchange and project management training. Work with the other land managing agencies to allow for multi agency attendance.

Review current skills mix and encourage training/OJT/Apprenticeships to assure adequate skills for processing land exchanges.

VALUATION

Current Situation

Unique and highly speculative properties are difficult to value.
This often results in failed land exchanges or time-consuming processes to finally consummate the transaction.

The agencies are receiving negative publicity for the values used for both the private and Federal lands involved. Allegations have been made that Federally approved appraisals are completed by incompetent appraisers or that we have customized the values.

When processing exchanges on a first come - first served basis, there is no competition involved. Market forces are not allowed to work as they would be in a competitive situation where a property is marketed in the traditional private sale market. Certain public lands with a competitive interest may bring more private lands under a competitive approach.

Land managing agencies often place sole reliance on the appraiser's estimate of market value to determine exchange values. Managers are reluctant to use other numbers for fear of public scrutiny and lost exchange opportunities.

Recommendation

Pilot several competitive land exchanges where conditions warrant. A competitive land exchange would involve:

1) offering Federal lands through a prospectus as available for exchange for non-Federal lands containing certain resource values for a period of time. The proposal offering the greatest public benefit would be selected. Ideal conditions would involve Federal lands with unique or highly speculative values creating a competitive interest. Examples would be lands in a ski area or near a growing urban area.

2) identifying non-Federal lands with critical resource values to see what Federal lands are desired as part of an exchange.

Explore the full utilization of the existing tools provided in FLEFA to assist in negotiating an agreed upon exchange. This includes the use of a statement of value, instead of an appraisal, for those lands that are similar in character and worth less than $150,000 in value. In the BLM and USFS regulations a statement of value is defined as "a written report prepared by a qualified appraiser that states the appraiser's conclusion(s) of value". Share options with managers of methods where values were determined using bargaining and other methods using the estimate of value as a point of beginning rather than the answer.

Action Plan

Pilot at least two competitive land exchanges; one pilot utilizing a third party and one with an open market approach. Capture the processing steps and criteria used for selection of both the public and the non-Federal lands. Accept and/or revise the recommendations and implement the process through instruction to the field.

Develop a process to gather information, analyze the process and disseminate the approaches and techniques used to reach an agreed upon value (bargained and other methods) to the field offices.

POLICY AND PROCEDURE

Current Situation

There are different levels of intensity to the resource clearance and analysis process (NEPA, Floodplain & Wetlands (EO 11988 & 11990) and Native American Consultation, etc.) used by the Federal land managing agencies.

Cultural resource clearances are very costly and time consuming to complete. This is due in part to cumbersome regulations and part is a function of the unique character of the State Historic Preservation Officer (SHPO) in each state.

Hazardous Materials clearances are approved at the department (or regional level in the case of USFS), rather than at the appropriate field office level.

Federal Advisory Committee Act (FACA) limits non-Federal participation at advisory meetings. Meetings with exchange proponents and local officials could be considered advisory meetings with potential FACA violations. The lack of guidance in this area has created a multitude of opinions on proper implementation.

Recommendations

The land managing agencies need to work towards streamlining and consistency in processing exchanges. Common ground must be established regardless of the agency authorities. Agencies should also review Federal Acquisition Regulations contracting alternatives (ie Architects and Engineers Standards) to see if streamlined methods are available.

Action Plan

In coordination with the USFS, review the land exchange processing steps looking for ways to promote consistency and efficiency. If resource specific clearance or evaluation processes can be streamlined, identify those areas (ie T & E species, minerals, etc) and establish teams to develop methodology.

Establish a cultural resources process analysis team to specifically address streamlining cultural clearances. This team should involve field representatives, establishing guidance in consultation with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers.

Review the hazardous material clearance approval process and revise policy as appropriate with the goal of streamlining and delegating authority to the lowest organizational level possible.

In coordination with the USFS, finalize the land exchange processing handbook to fully implement the 12/93 rulemaking implementing FLEFA with full interagency coordination.

EMPLOYEE RECOGNITION AND INCENTIVES

Current Situation

Managers prioritize a large workload and in many cases determine that the best use of the tax payers dollars is to avoid complex and controversial actions.

There is little recognition of those employees processing land exchanges and the line officers who place priority on land exchanges and take appropriate risks.

Recommendation

Recognize employees (staff and line officers) who initiate and complete high public value exchange proposals.

Action Plan

Evaluate the merits of either utilizing the current incentive award program or developing a high profile monetary award to give annual recognition to those units completing land exchanges with high public values.

LEGISLATIVE PROPOSALS

Current Situation

There is currently a high level of Congressional interest in streamlining the land exchange process. There have been oversight hearings and briefings during the past few months. It is expected that there will be continued Congressional interest during the next year.

FLPMA restricts interstate exchanges. Case by case legislation is required to process land exchanges which cross state lines. The exception is the processing of land exchanges under the authority of the National Wildlife Refuge System Act.

USFS and FWS have Congressional Committee oversight for land exchanges as follows:

> *USFS exchanges processed under the Weeks Law and valued over $150,000 require 30 day review by the House and Senate Agriculture Committees along with approval by the Deputy Under Secretary of Agriculture for those valued in excess of $250,000.*
>
> *FWS is required to obtain approval from the House and Senate Appropriation Subcommittees on Interior and Related Agencies for all exchanges valued over $100,000. Additionally, a 45 day review is required by the Senate Environment and Public Works Committee and the House Committee on Resources. Additional overview is required by the Committees on Energy and Natural Resources and Interior and Insular Affairs for land exchanges in Alaska.*

USFS boundary adjustments require Congressional and Secretary level approval (except Weeks Law) when acquired lands are located outside but adjacent to current parks and forests.

It is difficult to utilize government surplus property (ie closing military bases) as trading stock.

Agencies can not utilize cash equalization moneys for subsequent acquisition.

Federal land managing agencies appear to fall under the provisions of CERFA (PL 102-426, 106 Stat. 2175) which amends Section 120 (h) of CERCLA. Under this act, conveyances involving uncontaminated Federal lands may require additional concurrence from appropriate state agency or EPA.

NPS can not acquire lands outside of park boundaries through land exchange but can purchase those same lands as uneconomic remnants. These remnant properties involve land that is part of the property purchased but located outside of the park boundary and not economically feasible to retain by the land owner.

Recommendation

Create a national Burton-Santini type authority similar to that contained in the National Wildlife Administration Act allowing agencies to utilize land sale receipts and/or cash equalization funds for direct acquisition. The bill could also contain a provision to eliminate the limitation on exchanging lands across state boundaries. Notification of Governors and affected Congressional delegations would suffice.

Exempt Federal land managing agencies from CERFA provisions.

Modify Congressional review process to be a true oversight function instead of case by case review that currently exists for the agencies other than BLM.

Give USFS boundary adjustment authority for all exchanges similar to the Weeks Law Act.

Allow land managing agencies to use government surplus property as trading stock.

Provide NPS authority to acquire lands adjacent to their boundaries through land exchange similar to their purchase authority.

Action Plan

Notify the Director/Chief of the land managing agencies of the recommendation to revise oversight and modify boundary related legislation.

Work with GSA, Military, FDIC, Drug Interdiction Agencies, FmHA, FHA, HUD, etc. to understand processes for using surplus lands as trading stock and assure they understand the benefits that using these lands offers the land managing agencies.

After utilizing FLEFA and associated rule for a reasonable period of time, make recommendations to the Secretary regarding legislative needs to enhance or streamline the process.

PLANNING

Current Situation

Planning has historically been segregated by the Federal agencies to meet individual unit needs. The localized or "piecemeal" approach is viewed as conventional because of the resources allotted to individual agencies.

We are not able to deal with large scale issues such as biological diversity with current geographic boundaries.

Collaboration with non-Federal parties such as communities and other stakeholders has been limited.

Recommendation

Encourage regional planning approach structured such that varying levels or tiers are developed in lieu of planning based on small administrative units.

Standards (criteria regarding resource quality or quantity) and guidelines (preferred approach to managing activities) should be prepared to handle localized activities.

Action Plan

Establish a point of contact knowledgeable with the land exchange process to work with the planning team as the planning process is revised and implemented. The contact will look at innovative ways to simplify and consolidate the planning process, develop exchange criteria and target locations to pilot regional and tiered planning efforts.

> *Note: The Florida Conservation and Recreation Lands (CARL) program is a success story in itself and is an excellent example of how the quasi regional planning concept has been implemented. Their statewide planning initiative could possibly be used as a model to develop a similar strategy for use by Federal agencies. The State of Florida has also developed a criteria for priority ranking of land acquisition projects which could be similarly used for exchange transactions by Federal entities.*

LAND BANK

Current Situation -

Historically, exchange proponents have expected the federal agencies to bear the burden of costs and risks associated with land exchanges while the proponents enjoyed sole participation in any and all profits derived from subsequent land sales associated with the completed exchanges.

Where values of the non-Federal and the Federal lands are not equal and the proponent pays to the agency a cash equalization payment, the agencies are not allowed to capture equalization funds and apply such funds to future acquisition.

The land exchange process has become more expensive due to ever increasing costs associated with resource inventories, NEPA analysis and mitigation.

Agencies are faced with budget reductions, shrinking staffs and the loss of experienced personnel in the land exchange program.

Exchange transactions are subject to greater public scrutiny as populations and interest in resource issues increase.

Recommendation

Look at innovative methods such as land banking to achieve reduced processing costs, increase stakeholder and non profit organization involvement and recapture funds for future acquisitions. The concept of a land bank involves an assemblage of land, a facilitator and the commitment of funds or expertise from the BLM and interested parties willing to fund the transactions to steer the outcome of the transaction. The assembled lands would be exchanged in a series of transactions by the exchange facilitator. Funding from the interested NPO's, proponents and stakeholders would pay for all or part of the transaction processing costs. Specialists from BLM would be responsible for acceptable resource clearances even though BLM may not physically conduct the clearance or fund the workload.

Action Plan

Develop guidelines and policies for the use of the land bank trial process.

In conjunction with the USFS, complete a pilot land exchange project utilizing a multi-stakeholder approach in a western location. Solicit non profit organization involvement, identify a suitable area, critique process and recommend continuation, termination, modification or alternative approaches.

○

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