STEVE CHABOT,

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CHAIRMAN

RANKING MEMBER

Congress of the United tates
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NOTICE OF HEARING
November 6, 2015 2:00 P.
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North Las Vegas City Hall
Council Chambers
2250 N. Las Vegas Blvd., North Las Vegas, NV 89030

TO: Members, Subcommittee on Investigations, Oversight and Regulations

FROM: Cresent Hardy, Chairman

DATE: Friday, October 30, 2015

The Committee on Small Business Subcommittee on Investigations, Oversight and Regulations will meet for a hearing titled, Regulatory Overload.. The Effects of Federal Regulations on Small
Firms. The hearing is scheduled to begin at 2:00 P.M. on Friday November 6, 2015, at North Las Vegas City Hall, Council Chambers, 2250 N. Las Vegas Blvd., North Las Vegas, NV 89030.

Across the country, federal regulations are a pervasive issue that affects small firms in all industries. While existing regulatory requirements impose significant burdens on small firms, new regulations create challenges as well. The Subcommittee will examine several federal regulations (either in development or implementation) and the impacts on small businesses.

If you or your staff have any questions, please contact Corey Cooke, Counsel for the Committee, at 202-225-5821.

STEVE CHABOT, OHIO NYD1A M. VELAZQUEZ, NEW YORK

CHAIRMAN RANKING MEMBER

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Committee on Small Business
Subcommittee on Investigations, Oversight and Regulations
"Regulatory Overload: The Effects of Federal Regulations on Small Firms"

Friday, November 6, 2015 2:00 P.M.
North Las Vegas City Hall
Council Chambers
2250 N. Las Vegas Blvd., North Las Vegas, NV 89030.

Witness List

Mr. Spencer Hafen

President & CEO

Nevada Bank and Trust Company

Caliente, NV
*Testifying on behalf of the Nevada Bankers Association

Ms. Robin E. Simmers
CEO
Pahranagat Valley Federal Credit Union
Alamo, NV
*Testifying on behalf of the Nevada Credit Union League

Mr. David Jennings
Board Member
Southern Nevada Home Builders Association
Las Vegas, NV

Mr. Mendis Cooper
General Manager
Overton Power District Number 5
Overton, NV
*Testifying on behalf of the Nevada Rural Electric Association

Testimony of

Spencer Hafen

President & CEO

Nevada Bank & Trust Co.
Caliente, Nevada

before the

U.S. House of Representatives
Committee on Small Business Subcommittee on
Investigations, Oversight, and Regulations
Hearing on

Regulatory Overload:
The Effects of Federal Regulations on Small Firms

November 6, 2015
2:00 P.M.
North Las Vegas, NV

before the

U.S. House of Representatives Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations
November 6, 2015

Chairman Steve Chabot, Ranking Member Nydia Velazquez, and members of the committee, my name is Spencer Hafen. I am the President and Chief Executive Officer of Nevada Bank & Trust Co., located in the rural Nevada City of Caliente. I would like to thank you for affording me the opportunity to appear before you to share some information about the effects of federal regulations on small businesses, particular the regulatory effect on small community banks. I may be the voice of one small community bank, but my words can be echoed by hundreds of small institutions across this great country. My hope is to aide in finding regulatory relief that will help all small banks and businesses, regardless of geographic location.

I would like to take a moment and tell you a little about my bank. Nevada Bank and Trust Co. was formed in 1978 by a group of small business owners in Caliente, Nevada. Caliente is located about 150 north and east of Las Vegas along U.S. Highway No. 93. The closest financial institution at that time was located in Pioche, Nevada, about 30 miles north. In order to help solve their own banking problems and to provide financial services in Caliente, this group of individuals formed Nevada Bank and Trust Co. The vision of this group of business owners was not limited to providing banking services locally, but to expand and provide banking services to each small community on U.S. Highway No. 93 throughout Nevada. As the Bank began to grow, it soon expanded to have branches in Alamo, Caliente, Carlin, Ely, Elko, Mesquite, Pioche, Spring Creek, and Wendover. The vision or dream of the founding business men had come to fruition. However, as time went by, the Bank began to feel the effects of regulatory burden and began closing branches that were not profitable. Today Nevada Bank & Trust Co. has four (4) branches located in Caliente, Ely, Elko and Mesquite. We also have a Loan Center located in Elko. As of October 31, the Bank's assets are $112 million, we employ 37 employees, 26 full time and 10 part-time. Nevada Bank & Trust Co. is a privately owned institution, and we have successfully served the needs of our citizens for almost 40 years. Our focus is on our customers

living in the rural communities of the State of Nevada. We strive to provide the best financial services available to the rural areas in which we live. I have come to see that the services we provide are often hindered by the excessive regulations placed on small financial institutions. I do realize that many of the regulations placed on the financial industry as a whole are targeted for larger institutions, and may even come with a caveat that small banks are exempt for such regulations. However, I have also come to the realization that there are many unintended consequences to many of the regulations that have restricted our ability to provide certain financial services.

The financial strength of individuals, communities, states, and this nation are only as strong as the financial institutions. Each has a direct impact on job creation, economic growth and prosperity. The credit cycle that financial institutions facilitate is simply put: customer's deposits provide funding to make loans. The loans allow customers of all kinds, consumers and commercial, to invest in their communities and beyond. The profits generated by these investments flow back into banks as deposits, and the cycle repeats. As this cycle continues the consumer and commercial customers grow, they expand their purchasing power, they hire additional employees, and they improve their quality of life.

I understand that a credit cycle cannot exist in a vacuum. Regulation shapes the way financial institutions do business. Regulation is needed to some degree: however, the changes in regulation by the passing of laws, court cases and legal settlements, directly affect the cost of providing banking products and services to our customers. The ability to provide certain

services
has not been easy with the increase in regulatory burden. I have had to stop providing services because of the overreaching hand of regulation and policy. I feel it is in the best interest of citizens and business' for Congress to take necessary steps to provide some form of regulatory relief on small banks and small business'. When I stop providing services because of the burdens
of regulation, my bank is not the only entity impacted, the customer, consumers and business owners are impacted.

I continue to urge the Committee and Congress to work together to pass legislation to provide regulatory relief to small business', including small financial institutions.

In would now like to address specific items we are dealing with as a small bank, namely:

• Unnecessary Regulatory Burdens
o Mortgage Regulation
o Uniform Overdraft Requirements
o Non-Depository Money Service Industry
• The Cost of Compliance
• Recommendations

Unnecessary Regulatory Burdens

Regulation when done correctly ensures the safety and soundness of the overall banking system. When not done incorrectly, it may constrict a financial institution's ability to provide
credit, and facilitate in job growth and economic expansion. The argument may be made that many of the regulations currently being imposed on the financial industry do not apply to smaller
institutions. However, the constant looming threat of law suits and civil money penalties keep many at bay, translating into services be dropped to avoid any type of scrutiny from regulators.
The role of community banks serving the communities in which they do business is diminishing with the addition of new regulations. The Dodd-Frank Act alone has changed federal financial regulators with writing and enforcing 398 new rules, resulting in at least 22, 534 pages of proposed and final regulations, please keep in mind the act is only two-thirds implemented. Larger institutions have the financial means to spread the expense for regulation implementation
across diverse channels. Small institutions do not have that luxury. We are doing all we can to keep the doors open and provide a service to the community. As mentioned previously, I am not alone; every small financial institution feels the same pain.

Mortgage Regulation

Nevada Bank & Trust Co. in the past has had a home mortgage loan service. With the recent release of additional regulations, particularly the TILA-RESPA Integrated Disclosure (TRID) Rule, we have made the decision to stop providing this service. This decision did not come easy; my Board of Directors are concerned with the impact on the community and our

customers. The new rule is intended to make the disclosure process easier, which it may, combining multiple disclosures into one, the burden comes with compliance. In order to comply with this new regulation I would have to hire additional staff to monitor the rule. In our small
bank, we never made enough money off of what little fees we could charge, to justify the program we had. Simply put, it never paid for itself. Now, with the additional rule, and the need
to hire additional staff, we simply chose to stop offering home mortgage loans.

An interesting point I would like to make pertains to what I will refer to as an "out of the box mortgage". In rural Nevada as a bank we would make mortgage loans to customers that had been rejected by other institutions because their loan just didn't fit into "the box". If a

customer's
credit score just wasn't perfect, or the appraisal had comparisons that were too far away are a couple of examples. A large institution would not understand the local, rural, situation, and reject
the loan application. We understand our customers; we have dealings with them beyond the brick and mortar of the bank, and could work with them in getting a mortgage. Now these customers will have to turn to unregulated sources to obtain a mortgage. And as I have mentioned previously, regulation is needed, just not to the point it becomes a burden. At the end of the day
the people that the rule was created to protect are potentially being damaged because banks just
like us can no longer offer home mortgage loans.

Uniform Overdraft Requirements

The Consumer Financial Protection Bureau ("CFPB") is actively inquiring into overdraft procedures to determine how those practices are impacting consumers. Nevada Bank & Trust Co. does not have an Automated Overdraft Payment Program. We have an "Ad Hoc" overdraft program, which is defined as a program where return items are paid on a case-by-case basis. We have taken a proactive stance and have chosen to apply the February 2012 guidance where feasible. If a customer overdraws his/her account on six (6) or more occasions where a fee is charged in a rolling twelve month period, we will undertake meaningful and effective follow-up action using the "enhanced periodic statement approach". We have also chosen to have a $100.00 maximum daily overdraft charge in place and will not charge an overdraft fee for transactions that overdraw an account by $10.00 or less. We feel this is an adequate program, one that helps our customers if and when they have an overdraft occur.

Recently while meeting with the CFPB in Washington the discussion turned to the overdraft program. The conversation was somewhat disturbing on multiple levels, but one concern I have, is the idea that banks are responsible for any and all mistakes made by a consumer. I have no problem with our overdraft program, it works. Consumers are treated fairly and with equality. If a Uniform Overdraft Program were required, we would have no chose but to close customer's accounts after the proper procedures have been followed to assist the consumer in maintaining his/her accounts. Should this occur, once again the harm would only come to the consumer. If a consumer cannot bank with a financial institution because of poor performance in maintaining his/her account they are forced into the nonregulated cash service industry. This is a
perfect example of the unintended consequences of a uniform overdraft law.

Non Depository Money Services Industry

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In the State of Nevada the number of financial institutions has decreased from 28 banks in 2004 to 13 in 2015. These are state chartered institutions. In the same time period, non-depository establishments have increased from 582 to 1037. These non-depositories, money service companies offer products such as "payday loans" and "title loans" without the burden of regulation. The ads can be seen where I can "get money in minutes". As a small banker in Nevada I have to deal with the impact of these types of companies on both the federal and state level. The CFPB is currently reviewing the practices of non-depository money service companies, which may provide a solution to the problem these companies create. Currently they can take advantage of the underbanked, leaving many in a desolate situation. On a state level, financial institutions are regulated and are required to pay an annual assessment, non-depository
money service companies are not. In this case fair and equitable regulation must be enforced. Our goal of financial institutions is to provide sound and equitable financial services to our customers, and as a small financial institution we do all we can with the regulatory burden placed
upon us.

The Cost of Compliance

In the wake of increased regulation comes an increase in compliance cost. Currently Nevada Bank & Trust Co. spends over $150,000 annually on compliance related expenses,

which does not include salary expenses for personnel. This expense is for compliance education,

audits, and assessments. We have two (2) full time employees where 75 percent of their time is spent on compliance related matters.

Ultimately our customers are the ones who feel the true cost of this burden. They feel it in more expensive financial services and fewer options. For example, 58 percent of banks have held off or canceled the launch of new products – designed to meet consumer demand – due to expected increases in regulatory costs or risks. Additionally, 44 percent of banks have been forced to reduce existing consumer products or services due to compliance or regulatory burden. At the end of the day, this translates into fewer services for the consumer.

Recommendations

A number of bills have been introduced in the House and Senate that would provide significant relief from many of the concerns noted above. I would strongly recommend considering those bills that have regulatory relief to the small business and particularly the small
community bank.

Conclusion

As a small community banker, I understand the need for regulation. There is a place for it to maintain a safe and sound financial industry. However, the overburden of regulation only hinders the progress of small banks and small business. The effects are felt by the consumer when financial institutions have to cut back on the services offered. At the end of the day the unintended consequences place a burden on the very people the regulation is intended to protect.

Thank you for your time, I look forward to your questions.

NEVADA S•o CUNA

CREDIT UNION LEAGUE Credit Union National Association

Testimony of
Robin Simmers

Chief Executive Officer & Manager
Pahranagat Valley Federal Credit Union
Alamo, Nevada

On Behalf of the Nevada Credit Union League & Credit Union National Association

Before The

The Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations

Hearing On
Regulatory Overload: The Effects of Federal Regulations on Small Firms.

Thank you for the opportunity to testify at today's hearing. The Committee's continued focus on the effects of Federal regulations on small businesses is critical. Thank you Chairman Hardy, and to the committee for inviting me to testify today.

My name is Robin Simmers and I am the Chief Executive Officer of Pahranagat Valley Federal Credit Union located in Alamo, Nevada roughly 100 miles northeast of Las Vegas. I am happy to be here today to share the story of Pahranagat Valley a $20 million credit union, and credit unions nationally. Originally chartered in 1958, Pahranagat Valley FCU services the community in Pahranagat Valley including the towns of Alamo, Hiko, and Ash Springs. We are the communities only full service financial institution for a population of roughly 3,000.

I am also pleased to come before the committee on behalf of the Nevada Credit Union League, and the Credit Union National Association which represents roughly 6,300 credit unions nationwide and 104 million credit union members. Currently, there are 18 Nevada based and operated credit unions. Credit unions are not-for-profit financial cooperatives, owned by our members who democratically elect our volunteer board of directors. We do not have stock, are not publically traded, and return all profits to our members in various forms. The credit union model of operation is different from others in financial services as our incentives are to serve the needs of our members. Whether serving a small community or a large metropolitan area, there is consistency in the compliance burdens that credit unions are experiencing.

A little bit about Pahranagat Valley Federal Credit Union: Including myself, the credit union employees 6 full employees serving the financial needs of roughly 2,000 members. Running a small credit union, which is also a small business, presents a variety challenges. With a team of 6, I am not only the CEO and Manager, but I serve as the teller, CFO, COO, HR department, Business Lending Officer, Mortgage Loan Officer and everything in between. Since 2011, our credit union is the only financial services provider for our small town.

Credit unions face a crisis of creeping complexity with respect to regulatory burden and American consumers need Congress to address this crisis. Since the beginning of the financial crisis, credit unions have been subject to more than 202

regulatory changes from nearly two dozen Federal agencies totaling more than 6,000 Federal Register pages. Every time a rule is changed credit unions and their members incur costs. They must take time to understand the new requirement, modify their computer systems, update their internal processes and controls, train their staff, design and print new forms and produce material to help their members understand each new requirement. Even simple changes in regulation cost credit unions thousands of dollars and many hours: time and resources that could be more appropriately spent on serving the needs of credit union members.

Regulatory burden is one of the primary reasons that Main Street financial institutions are disappearing at an alarming rate. The number of credit unions has been halved in the last 20 years – from more than 12,500 in 1995 to a little less than 6,300 today.

The good news is that Congress can help relieve the regulatory burdens on credit unions so they can better serve their members. Changes to the Federal Credit Union Act, the Dodd-Frank Act, and other burdensome laws and regulations will ensure that America's 100 million plus credit union members will continue to benefit from credit union services.

With respect to the Federal Credit Union Act, we believe that changes should be made to allow credit unions to fully serve their small business owning members. In addition to credit union member business lending, we suggest other changes to make sure that credit unions are able to focus on their members.

Restore Credit Unions' Business Lending Authority

Congress should restore credit unions' authority to lend to their small business members. No economic or safety and soundness rationale has ever been established for why credit unions should be subjected to a cap on small business lending, and we

believe Congress should fully restore credit unions' ability to lend to their small business members, as they did without statutory restriction until 1998.

As we have testified many times before, while the small banks were asking for taxpayer money to lend to small businesses, credit unions were pleading with Congress

to permit well-capitalized credit unions with a strong history of business lending to lend beyond the arbitrary cap on business lending that is in statute.

NCUA has testified in support of expanding the business lending cap several times, most recently in February 2015. 1 The administration has supported expanding the business lending cap. 2 There are more than 500 credit unions for which the cap is a significant operational restriction. These credit unions deserve the opportunity to continue to serve their business members and their communities, and Congress should address this issue.

Increase the Member Business Lending Cap

If Congress is unable to eliminate the cap entirely, we strongly urge enactment of legislation that has been introduced in the last several Congresses to permit Federally insured credit unions to make member business loans (MBLs) in an aggregate of 27.5% of its total assets as long as the credit union: (a) is well-capitalized; (b) can demonstrate at least 5 years' experience managing a sound MBL program; (c) has had MBLs outstanding equal to at least 80% of 12.25% of its assets; and (d) complies with applicable regulations. We believe this is a reasonable approach that ensures that business lending in excess of the current statutory cap is conducted by healthy credit unions with a demonstrated history of sound business lending practices. While it does not get credit unions back to the place they were prior to 1998 when they were not subject to a statutory cap on business lending, it will provide several hundred credit unions with relief to continue to serve their small business members and their communities.

Importantly, raising the cap in the manner outlined above would increase small business lending by as much as $4.3 billion, helping to create nearly 50,000 new jobs, in the first year after enactment. This level of growth would have been very helpful in the throes of the financial crisis, but even in the recovering economy, this type of growth is important. And, contrary to the banker argument, this lending would not produce a dollar for dollar reduction in bank lending. In fact, the Small Business Administration

Testimony of Larry Fazio, Director, Office of Examination and Insurance, National Credit Union Administration, before the Senate
Banking Committee Hearing on "Regulatory Relief for Community Banks and Credit Unions." February 10, 2015.
2 Letter from U.S. Secretary of Treasury Timothy Geithner to House Financial Services Committee Chairman Barney Frank. May

25. 2010.

(SBA) commissioned a study that suggested 80% of additional credit union lending would be new small business lending. 3 This would be a benefit for small business owners and it would not jeopardize the banking industry's share of the small business lending market, which for the last two decades has been approximately 93% of the market.

Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, Not Credit Union Business Loans
In addition to legislation to modernize credit union business lending, we encourage Congress to address a disparity in the treatment of certain residential loans made by banks and credit unions. When a bank makes a loan for the purchase of a 1-4 unit non-owner occupied residential dwelling, the loan is classified as a residential real estate loan; however, if a credit union were to make the same loan, it would be classified as a business loan and therefore subject to the cap on member business lending under the Federal Credit Union Act.

We support legislation to amend the Federal Credit Union Act to provide an

exclusion from the cap for these loans. Doing so would not only correct this disparity, but it would enable credit unions to provide additional credit to borrowers seeking to purchase residential units, including low-income rental units. Credit unions would be better able to meet the needs of their members if this bill was enacted, and it would contribute to the availability of affordable rental housing.

NCUA's Proposed Member Business Lending Rule

On June 18, 2015, the NCUA Board issued a proposed member business lending rule designed to give credit unions greater flexibility and autonomy in offering commercial loans. The rule changes the current prescriptive approach to a more principle-based methodology. While the rule provides more flexibility and autonomy to credit unions, the rule emphasizes sound risk management for commercial lending. The rule does not allow credit unions to evade the member business lending cap nor lend to nonmembers. We support the overhaul of NCUA's current MBL regulation.

'Wilcox, James A. "The Increasing Importance of Credit Unions in Small Business Lending." Small Business Administration Office
of Advocacy. September 2011. 20.

Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs
We encourage Congress to improve credit unions' ability to offer SBA and other government guaranteed loans. Specifically, Congress should exempt government guaranteed loans in their entirety from the member business lending cap; currently, only the guaranteed portion of the loan is exempt. Further, Congress should clarify that credit unions participating in Federal and state loan guarantee programs may include terms for such loans as permitted by the loan guarantee programs in both statute and regulations; this would allow credit unions to more fully participate in the SBA's 504 Loan Program.

Other Potential Changes to the Federal Credit Union Act

Improve Credit Union Capital Requirements

One lesson of the financial crisis is "capital is king" and the measures used to assess the capital condition of financial institutions were imperfect, to put it mildly. Financial regulators, including NCUA, have worked in recent years to impose "better" schemes to assess the health of financial institutions; NCUA's new risk based capital rule is its latest attempt in this area. While we appreciate some of the changes that were made to the rule, questions persist with respect to whether all aspects of the proposal are consistent with the agency's legal authority, and whether the costs of implementing the proposal outweigh the benefit to the National Credit Union Share Insurance Fund.

We encourage Congress to consider comprehensive reforms to the credit union capital structure, including authorizing NCUA to define what the different net worth levels must be in order to be "well-capitalized," "adequately capitalized," "undercapitalized," and "significantly undercapitalized," based on credit unions' financial performance, current economic trends and other factors.

We also believe that NCUA should have the authority to allow all credit unions to accept supplemental forms of capital. Under current law, approximately 2,000 credit unions, those designated as low-income credit unions, have this authority. Permitting all credit unions to acquire supplemental capital in a manner consistent with their

cooperative ownership structure would enhance the safety and soundness of the credit union system. Representatives King (R-NY) and Sherman's (D-CA) legislation to permit credit unions to accept supplemental forms of capital would be a good place to start regarding credit union capital reform.

Budget Transparency for the NCUA

We support legislation that requires NCUA to hold an annual hearing on the

agency's budget, most of which is funded by credit union member resources. This would increase transparency and accountability at the agency, and engender public trust, thereby strengthening and supporting the agency's mission.

Suggested improvements to the Dodd-Frank Act

The Dodd-Frank Act is not and should not be considered sacrosanct. There are several improvements that should be made to the law that, in the long run, would enhance consumer protection by ensuring that credit unions are around to serve their members.

Expand and Specify the CFPB's Exemption Authority

The CFPB should go much further than it has to exempt credit unions from its rule making, because credit unions, unlike other financial institutions, have not caused the abuse the Bureau is meant to address. The imposition of regulations designed to curb abuse elsewhere in the system reduces access to affordable products and services offered by credit unions. If the Bureau is unwilling to expand its perspective on the exemption authority Congress should state it more explicitly.

Install a Five-Person Board to Run the CFPB

We encourage Congress to enact legislation to change the leadership structure at the Bureau from a single director to a five-person board. Expanding the Bureau's executive leadership to a five-person board will ensure that more voices contribute to the Bureau's rulemaking and it could help produce regulations that better balance the important mission of the Bureau and the impact the regulations have on the way products and services are provided to consumers.

Require Cost-Benefit Analysis of all CFPB Proposals

We urge Congress to enact legislation to require the CFPB to complete an extensive cost-benefit analysis before the agency proposes a rule and to provide this analysis to the public with any proposal issued. The burden should be on the Bureau to detail the costs and benefits of its proposals, not on the regulated parties to prove that there is a burden.

Codify the Credit Union Advisory Council

Shortly after the CFPB was established, the Bureau's leadership announced the creation of a credit union advisory council (CUAC). This group advises the agency on the impact of the Bureau's proposals on credit unions. However, since CUAC is not required by law, it could be abolished at any time. We believe CUAC is an important resource for the agency and also provides a forum for credit union officials to provide

direct feedback to the agency on how proposals and final rules will affect credit unions' operations.

Additional Regulatory Relief Measures

Exception to Annual Written Privacy Notice

We support legislation that would eliminate the requirement that credit unions send annual privacy notices to their members unless they have changed their privacy policy. This legislation would not only relieve credit unions of an unnecessary regulatory burden, but it would also enhance consumer protection by making privacy notifications more meaningful to consumers.

Credit Unions and the Federal Home Loan Bank

When the Federal Home Loan Bank (FHLB) system opened to commercial banks and credit unions in 1989, the bill contained a drafting error which excluded privately insured credit unions. We support current legislation that would fix this discrepancy. Permitting privately insured credit unions to join the FHLB system would pose no risk to the FHLB because all advances from the FHLB system must be fully collateralized and are subject to strict uniformly applied standards.

Another piece of legislation that we support would ensure that the FHLB membership requirements for credit unions under $1 billion in assets will have parity with similarly sized banks. Currently, banks under $1 billion in assets only have to retain 1% of their assets in mortgages or mortgage related products vs. credit unions of similar size, which have to retain a much higher threshold of 10% of their assets in mortgages or mortgage related products before they can join the FHLB system.

Independent Examination Ombudsman

Current legislation would create an independent examination ombudsman that would facilitate transparency and improve consistency in the examination process. We support this legislation because the current process for lodging examination complaints and appeals simply has not worked for credit unions.

Portfolio Lending and Qualified Mortgages

We support current legislation that would treat mortgages held in portfolio at credit unions and other mortgage lenders as qualified mortgages for purposes of the CFPB's mortgage lending rules. Treating loans that financial institutions hold on their balance sheets in this manner is appropriate because the lender retains all of the risk involved with these mortgages and is subject to significant safety and soundness supervision from its prudential regulator.

CFPB's TILA-RESPA Integrated Disclosure Rule

Congress is currently considering legislation that would provide a reasonable hold-harmless period for enforcement of the CFPB's TILA-RESPA Integrated Disclosure regulation for those that make good-faith efforts to comply. We appreciate that the Bureau indicated that it will be sensitive to the progress made by those entities that make good-faith efforts to comply. However, credit unions need to know that their good faith efforts to comply while still serving their members' needs does not expose them to litigation.

Conclusion

Thank you for the opportunity to discuss regulatory burdens facing credit unions. Unfortunately as a result of overregulation, the credit union system is losing a credit

union a day. With the help of your committee we look forward to stemming this tide and continuing to provide the very best service to our members.

Testimony of David S. Jennings

Executive Board, Southern Nevada Home Builders Association

Division Counsel-Las Vegas, D.R Horton, Inc.

Before the

United States House of Representatives

Small Business Committee, Subcommittee on Investigations, Oversight, and Regulations

Hearing on "Regulatory Overload: The Effects of Federal Regulations on Small Firms"

November 6, 2015

On behalf of nearly 1,000 active members of the Southern Nevada Home Builders Association ("SNHBA"), I appreciate the opportunity to testify today. My name is David Jennings, and I am a member of the Executive Board of the SNHBA. I am also Division Counsel for D.R. Horton, Inc. in its Las Vegas office.

The membership of the SNHBA is diverse and includes homebuilders, trade contractors, mortgage companies, banks, real estate agencies and management companies. Most of our members are local, small businesses that employ local Nevada residents. These members are invested in the Las Vegas community and the State of Nevada as a whole. The SNHBA is devoted to the helping the housing industry, and all of its ancillary industries, to provide safe and affordable housing for Southern Nevada residents, and to contribute to the overall quality of life
in Southern Nevada.

The homebuilding industry is one of the primary drivers of Nevada's economy. Factoring in all of
the various elements of the homebuilding industry -- homebuilders, subcontractors, professional consultants, real estate agents and financial services -- it employs more than 15,000 people in Clark County. The majority of these people are employed by small businesses within the industry.

SNHBA members understand the need for local and federal regulation in the housing industry and beyond. These regulations must be sensible, however, and tied to legitimate public interests.
They should be designed and enforced to protect the public. They should be clear and unambiguous in their application and enforcement not regulation simply for the sake of regulation.

The regulatory scheme on which I would like to offer testimony today is the federal government's
mineral materials program. It directly affects the most important element of homebuildingland. Land makes, and breaks, our business. Federal land comprises the majority of the undeveloped land in Nevada and Clark County. It is a major component of any future growth in the State. The majority of privately-owned land in Clark County was once federally-owned land. Much of that land is encumbered by federal mineral reservations of one form or another.

Smart and fair regulation of federal lands in Nevada is critical to the future success of the homebuilding industry here. It can help keep the industry vibrant and a major contributor to economic growth. On the other hand, costly and cumbersome regulation raises the cost of land acquisition and development which, over time, discourages future investment. As investment in land wanes, the homebuilding industry withers, and consequently, auxiliary businesses also decline.

Certainty and sensibility in the regulation of this important asset is critical for members in the
industry. The current regulatory structure for federal land in Nevada lacks certainty and is negatively impacting this important industry.

Background Information

In the Western United States, various acts of Congress (primarily adopted to encourage settlement) have resulted in split-estate ownership (Small Tract Act, Taylor Grazing Act, Stockraising Homestead Act) where the federal government retains ownership of mineral rights on privately-owned land. This is particularly prevalent in Nevada due to the enactment of the Southern Nevada Public Land Management Act of 1998 ("SNPLMA"), Pub. L. No. 105-263, 112 Stat. 2343. Current federal regulation states that surface owners of these split-estate lands may
only use a "minimal amount" of mineral materials, which the BLM has concluded includes ordinary soils, for "personal use" (43 C.F.R. 3601.71) and any use beyond that "minimal amount" is considered a trespass in the absence of obtaining a material sale contract or permit from the
BLM.

Until recently, homebuilders and developers developed land largely undisturbed by any mineral rights enforcement actions by the BLM. In April, 2014, the Inspector General of the Department of the Interior conducted an audit of the BLM's Mineral Materials Program and issued a report regarding the BLM's opportunity to make mineral claims (the "Report"). The Report was highly critical of the BLM for not obtaining market value for mineral materials and made fifteen recommendations for enhancing BLM's management of its mineral material program. One of

those recommendations addressed the loss of revenue from "unauthorized" uses. In response to the Report, BLM has since vigorously pursued mineral material trespass claims. There are now eighty four pending mineral trespass matters in Southern Nevada. The agency has also issued

policy guidance to clarify the distinction between personal use with commercial use in existing regulation (BLM IM-2014-085) (the "BLM Policy").

In response to the directives in the Report, the BLM in Nevada has for the first time in recent memory begun to pursue developers and homebuilders for use of mineral materials on their own land. Investigations have been made, and a number of mineral trespass notices have been issued, against current members of the SNHBA for common uses of ordinary soil, which may include sand and gravel materials. Below are a few examples of recent mineral rights enforcement activity against SNHBA members in the Las Vegas Valley by the BLM:

1. In a homebuilder's development of a small residential tract in northwest Las Vegas, it was determined that the elevation of the land was too high relative to the surrounding parcels. To allow for development of the property that was compatible with the surrounding parcels, the homebuilder removed several thousand cubic yards of soils from the property to lower the overall grade and match elevations with surrounding property. The property was encumbered by a federal mineral rights reservation under the Small Tract Act. The homebuilder relocated the material to a nearby property that was also encumbered by an identical federal mineral rights reservation. There, the material was used to raise the grade of the second parcel for a similar small residential development. The homebuilder received a mineral trespass notice from BLM for "unauthorized use" and ultimately had to pay tens of thousands of dollars to resolve it.
2. Another homebuilder purchased a large parcel from of land in Henderson from the BLM. The homebuilder later subdivided the parcel into smaller parcels as part of a master-planned combined residential and commercial development. The homebuilder relocated earthen material from one of the smaller parcels to another, but all within the boundaries of the original large parcel purchased from the BLM. The homebuilder received a mineral trespass notice from the BLM for "unauthorized use," and has now spent tens of thousands of dollars contesting the matter.
3. A third builder purchased a parcel of land encumbered by a federal mineral reservation years after the BLM's original conveyance of the property to another party. After the BLM conveyed the property, and before the builder bought it, someone stockpiled earthen material on the property. The builder moved the stockpiled material to another location, because it interfered with the builder's planned development. The builder received a mineral trespass notice from BLM for "unauthorized use" and spent thousands of dollars on legal and other consultant fees trying to resolve the issue.

Current Enforcement of the Mineral Materials Regulation

The BLM's current enforcement policy represents a significant change from the past. That change resulted from the Inspector General's audit and resulting 2014 Report. The Report directs local BLM offices to aggressively enforce the mineral regulations, and provides guidance on what would constitute an "unauthorized use" of mineral materials. The new BLM Policy states, in part:

"A surface owner may extract, sever, or remove only minimal amounts of mineral materials from split estate land for personal use under 43 CFR 3601.71(b)(1) for purposes of improving the surface, even if materials are not removed off of the tract." The Policy further states that "Minimal use . . . would not include large-scale use of mineral materials, even within the boundaries of the surface estate." Then, in a misguided attempt to clarify, the Policy then states

"mineral materials that must be excavated in connection with surface use of the property may be spread on other parts of the surface of that same property regardless of the amount, so long as the material is unaltered and is not used for or in connection with any construction

purpose."

These restrictions on use of the material on land conveyed or purchased from the federal government are at best, confusing, and at worst, arbitrary and unfair. Moreover, the BLM Policy punishes developers who purchased land prior to its adoption or without knowledge of it. Unfortunately for many property owners--including homebuilders and developers--significant acreage was purchased, and is now owned, in reliance on the previous enforcement policies for federal mineral reservations. The fees and fines now threatened with this aggressive enforcement policy were surely not part of these landowners' financial development projections. Furthermore, there are still many unanswered questions about what "minerals" are and are not included within a federal mineral reservation and, more importantly, what use of the surface minerals is allowed and what constitutes an "unauthorized use." The new enforcement policy and these unanswered questions combine to create uncertainty in the industry.

As currently enforced, the regulations also often ignore the very purposes for which the land was originally sold. A determination of whether a particular substance is included in the mineral estate depends on the use of the surface estate contemplated by Congress when adopted. 1 For example, the declared purpose of the Small Tract Act was to "provide for the purchase of public lands for home, cabin, camp, health, convalescent, recreational and business sites."' In the first example cited above, the use of the surface material was entirely consistent with the purposes of the Small Tract Act under which the land was originally sold. It is difficult to see how Congress could have intended to sell the surface for such purposes and contemplate the co-existence of such an incompatible use as mining on the same small five-acre tract. It strains reason to believe that the federal government would be able to enter upon and remove sand and gravel from a

1 Watt v. Western Nuclear, Inc., 462 U.S. 36, 52 (1983).
2 43 U.S.C. § 682 (a) (1970), repealed by Pub. L. 94-579, Title VII, § 702, 90 Stat. 2798 (1976)(FLMPA).

parcel sold to a private party under the Small Tract Act without compensation or otherwise authorize a third party to do the same (assuming, of course, that the sand and gravel is commercially valuable). Homeowners would be equally disturbed at this revelation.

Effects on Small Business

The new BLM Policy is adversely impacting the entire homebuilding industry. First and foremost, it results in extra cost to all developers. It is being retroactively applied to parcels that a small business may have purchased in a private transaction several steps removed from any BLM transaction. That extra cost is especially burdensome on small homebuilders because they cannot spread costs and risks across many projects, and these costs consequently serve as a barrier to small business investment.

In addition, the new BLM Policy has injected uncertainty into the process. Land is the lifeblood of the homebuilding industry. It is the most valuable, and most risky, asset. Like anything else, investment in land depends on favorable projections on costs, revenues and risk. The new enforcement policy inserts additional uncertainty into land investment making it impossible to project costs. This applies to large and small homebuilding businesses, but the impact of unforeseen fines and fees, and possible protracted enforcement actions, can be especially crippling for small businesses. It is rarely certain at the time of initial investment in land whether mineral material will need to be imported or exported from a project, or even relocated within the boundaries of that project. Under the new BLM Policy it is now unclear:

(1) what use of sand and gravel (or ordinary soils) will constitute an "unauthorized use";
(2) whether the use will result in fines or fees; and
(3) if so, what the amount of fines and fees might be?

Can a builder cut down high areas and fill lower areas of his property without being fined? Or is that more than "minimal use" even if all material remains on the property? Is relocating earthen material to create lots and building pads allowed under the regulation or will it generate a trespass notice? These questions are not adequately answered under the BLM Policy. Further uncertainty is created as a result of the fines and fees being based on the BLM's market rate for sand and gravel. With the length of time required for entitlement and engineering work, the time between land purchase and development can exceed 12 to 18 months. The BLM's rates can adjust upward over time. While market conditions change over time in many aspects of homebuilding industry, these additional uncertainties make it even more difficult to accurately evaluate future performance on a land investment. For any business, but especially small business, uncertainty means risk. The greater the risks, the less likely the investment will be made.

Regulatory Flexibility Act

In 1980, Congress enacted the Regulatory Flexibility Act to allow small businesses that are heavily impacted by federal regulations to have some input into the development of those regulations. The RFA requires federal agencies to analyze the impact of federal regulations on small businesses and, where the impact would be significant, to adjust the impacts of such regulations to avoid overly burdensome outcomes. The BLM's Policy avoids the requirements of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Small businesses may be significantly impacted by the new enforcement policy because (1) they are less likely to have the resources necessary to gain full understanding of the new policy, or to challenge an enforcement action, and (2) the financial impact of the unforeseen fines and fees is magnified in a small business setting. The BLM should be required to reconsider the distinction between personal and commercial use of mineral material and to define what constitutes "minimal" in a common-sense rulemaking where there is adequate public notice and comment as opposed to relying on policy to fill the interpretive gaps in existing regulation. This has been a disturbing trend occurring in many federal agencies (i.e., adopting policies that are inconsistent with existing regulation in lieu of notice and comment rulemaking).

Reform of the Federal Land Policy and Management Act ("FLMPA")

Currently, BLM has discretion as to whether to convey reserved minerals to a surface estate owner. FLMPA provides a process for the conveyance to occur, but it is cumbersome and expensive. Applicants must pay all costs for the preparation of a mineral potential report, and reimburse the agency for any incurred administrative costs, and the process can take up to three years to complete. An expedited process should be developed for surface estates conveyed under certain types of patents (i.e., Small Tract Act patents where Congress could not have intended to provide for the simultaneous development of homes and the mining of mineral materials) to expedite much needed certainty for surface estate owners.

Regulation is Costly to Challenge

It is extremely difficult for small business owners to challenge regulations they deem to be erroneous and/or resulting in unfair enforcement. They often lack the resources to mount a legal challenge against the BLM and their enforcement policies or actions. Small businesses typically do not have internal counsel or engineers on staff to help contest trespass matters. The resolution of BLM enforcement actions includes multiple steps of administrative process and appeal. Only after all administrative remedies are exhausted may the BLM be challenged in federal court. The cost of any challenge often will exceed the fine, even where the challenge has merit. As a result, the only options for small business owners are to either pay the fine or, if they

know of the risk, elect not to purchase the property in the first instance.

Insufficient Publicity

Until this week, there has been little or no publication or education on this new BLM Policy. Most small business owners are unaware of it. They may be subject to future fees or fines without any knowledge of that potential liability. Lack of education within the industry and, more generally, in the landowning populace creates a myriad of challenges that are difficult to overcome. When fined, developers are surprised at the extra costs associated with the current mineral regulation. Sometimes those costs can be the difference between a development project being viable or not. Additionally, landowners do not appreciate the extra costs associated with the current mineral regulation. Because those costs are not known, they are not yet reflected in the market. The cost of the private land, coupled with the potential costs associated with the current mineral regulation, are artificially high and often make investment in that land cost prohibitive.

Are Landowners Getting the Benefit of Their Bargain?

Because there has been little or no publication about BLM's new Policy, land owners may not be able to obtain all the benefits of their purchase. They believe they own a piece of land free and clear to develop. It turns out they do not. The very materials that make up the useable land are somehow still the property of the government, and everything short of "minimal use" is prohibited unless that landowner goes through a cumbersome approval process and pays the government additional money. This does not seem right.

Conclusion

Homebuilding is a complex and highly regulated industry. As costs and regulatory burdens increase, the small businesses that make up a majority of the industry must adapt. This can include paying higher prices for land, purchasing smaller parcels, redrawing development or house plans, and/or completing mitigation. All of these adaptations are financed by the builder, and ultimately result in higher prices for consumers and lower production for the industry. As production declines and jobs are lost, other sectors that buy from or sell to the construction industry also contract and lose jobs. Builders and developers, still struggling to emerge from the economic downturn, cannot depend upon the future home buying public to absorb the multitude of costs associated with overregulation.

Compliance costs for regulations are often incurred prior to home sales, so builders and developers have to finance these additional carrying costs until the property is sold. Because of the increased price, it may take longer for the home to be sold. Carrying these additional costs only adds more risk to an already risky business. This new enforcement policy increases costs and decreases certainty for large and small builders alike. It adds to the headwinds that our industry faces.

Homebuyers are extremely price sensitive, and even moderate cost increases can have significant negative market impacts. This is of particular concern in the context of affordable housing where relatively small price increases can have an immediate impact on low to moderate income homebuyers. As the price of the home increases, those who are on the verge of qualifying for a

new home will no longer be able to afford this purchase. The National Association of Home Builders has estimated the number of households priced out of the market for a median priced new home from a $1,000 price increase--nationwide, if the cost of a median priced new home were to increase from $225,000 to $226,000, a total of 232,447 households would no longer be able to afford that home. Here in Clark County, 1,806 households are "priced out" of the market for every $1,000 increase in home price according to Home Builders Research. Simply put, something must be done to curb the tide of federal overregulation and overzealous enforcement. These actions ultimately damage the American public.

Thank you again for the opportunity to testify today.

AUDIT

OFFICE OF

INSPECTOR GENERAL

U.S.DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT'S
MINERAL MATERIALS PROGRAM

Report No.: C-IN-BLM-0002-2012 March 2014

OFFICE OF
INSPECTOR GENERAL

MAR 3 1 2014

Memorandum

To: Tommy P. Beaudreau
Acting Assistant Secre , Land and Minerals Management

From: Mary L. Kendall
Deputy Inspector Gene

Subject: Final Audit Report – Bureau of Land Management's Mineral Materials Program
Report No. C-IN-BLM-0002-2012

This report presents the results of our audit of mineral material sales under the direction of the U.S. Department of the Interior's (DOI) Bureau of Land Management (BLM). BLM's mineral materials program generates millions of dollars in revenue from public lands each year. Our objective was to determine if BLM obtained market value for those materials.

We found that BLM has little assurance that it obtains market value for mineral materials. We also found that management of the program is hindered by outdated regulations and policies, does not always recover the processing costs for mineral materials contracts or verify production
volumes reported for sales. We are also concerned that BLM may not be collecting fees for minerals used on lands that have been sold under the authority of the Southern Nevada Public Land Management Act of 1998, as we found an instance where a private developer used tons of mineral materials without paying for them.

Our report contains 15 recommendations that should enhance BLM's management of the mineral materials program. We believe that if DOI concurs with and implements our recommendations, the program will become more effective. Based on BLM's response to the draft report, we modified our final report as appropriate. In its response, BLM concurred with all
but 1 of our 15 recommendations (see Appendix 5). We consider 14 recommendations resolved

but not implemented and will refer those recommendations to the Assistant Secretary for Policy, Management and Budget for implementation tracking, and we consider 1 recommendation unresolved (see Appendix 6).

We request that BLM reconsider the unresolved recommendation and respond to us, in writing, within 30 days. The response should provide information on actions taken or planned to address the recommendation, as well as target dates and titles of officials responsible for implementation.

Office of Inspector General I Washington, DC

Please address your response to:

Ms. Kimberly Elmore
Assistant Inspector General for Audits, Inspections, and Evaluations

U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428
1849 C Street, NW.
Washington, DC 20240
The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions regarding this report, please contact me at 202-208-5745.

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Results in Brief

The Bureau of Land Management (BLM) manages the sale of mineral materials on Federal lands and is responsible for ensuring that the U.S. Government obtains "adequate compensation" for these sales. During our review of BLM's mineral materials program, we found that BLM has little assurance that it obtains market value for mineral sales, recovers the processing cost for mineral contracts, verifies sales production, and resolves issues of unauthorized mineral use. Specifically, we found that—

- BLM regulations require appraisals for valuing mineral materials, although alternative methodologies may be more efficient;
- BLM guidance for mineral material sales is outdated;
- BLM's regional market appraisals, used to determine market value of mineral materials commodities, have limited usefulness and enough deficiencies to conclude that the estimated values are not credible;
- BLM did not adjust contract prices, resulting in $846,117 of lost revenue to the Government;
- BLM does not recover processing costs for exclusive sales in certain areas;
- BLM rarely verifies production volumes, thus providing little assurance that contractors are only removing the mineral quantities for which they contracted; and
- BLM did not collect fees, informally estimated at more than $1 million, for mineral material removed from split-estate lands.

By updating its program guidance and collaborating with the Office of Valuation Services, BLM has an opportunity to ensure that the mineral materials program operates more efficiently and obtains adequate compensation for mineral materials sold from Federal land.

Introduction

The Bureau of Land Management (BLM) sells mineral materials under the authority of the Materials Act of 1947, as amended.' These mineral materials consist of common types of sand and gravel, stone, pumice, or other materials used mainly in construction and landscaping. The United States uses about 2 billion tons of mineral materials annually. In fiscal year 2011, BLM issued about 2,800 contracts and permits to sell mineral materials, including 2,616 sales valued at approximately $17 million, as well as instances of free use for public purposes such as State and local roadway projects. We reviewed a significant percentage of the mineral materials sales, visiting eight BLM offices in four States. These eight offices had fiscal year 2011 sales valued at over $14 million—comprising more than 80 percent of the mineral materials program's total sales that year (see Appendices 1 and 2).

Objective

We reviewed the U.S. Department of the Interior's (DOI) management of mineral materials sales to determine whether DOI obtained market value for those materials.

Background

BLM may dispose of mineral materials on its lands as provided for by the Materials Act of 1947 and related rules and regulations (43 C.F.R. pt. 3600). Disposal is the common term for the removal of mineral materials by sale or free-use permit. State and local governments, as well as other entities not organized for profit, may be issued permits for free use as long as the materials are not used for commercial or industrial purposes.

BLM sells mineral materials using competitive or noncompetitive contracts. These contracts are classified as either exclusive to individual purchasers in a defined operating area or nonexclusive to multiple users making concurrent purchases in common-use areas and community pits. Common-use areas are generally broad geographic areas of Federal land from which BLM can dispose of mineral materials to many persons with only negligible surface disturbance. Designated community pits also provide mineral materials for many persons, but surface disturbance can be extensive.

Whether selling exclusively to an individual purchaser or nonexclusively to multiple users, the Act currently requires payment of "adequate compensation." BLM's regulations require it to sell mineral materials at not less than market value as determined through appraisal. Bureauwide guidance for performing or contracting for these appraisals, however, was last updated in the mid-1980s. The appraisal profession has evolved considerably since then. Appraisers now use a

30 U.S.C. §§ 601-03.

set of standards called the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, DOI requires its appraisers, whether staff or contractors, to be State licensed.

DOI has established the Office of Valuation Services (OVS) to provide valuation services and related policy oversight for DOI and its bureaus. Within OVS, the Office of Mineral Evaluations (OME) offers mineral evaluation services either through standalone commodity opinions or as part of real property appraisals. Real property appraisers rarely have sufficient minerals expertise to adequately evaluate minerals commodities. OME staff includes mineral economists, geologists, and mining engineers. All of these skills are usually required to render credible mineral opinions.

In addition to collecting revenue from mineral materials sales, BLM also collects fees to recover its costs in certain circumstances. Cost-recovery fees can include the costs of administrative review of permit applications, review of mining and reclamation plans, National Environmental Policy Act (NEPA) reviews, and appraisal services. Further, purchasers of mineral materials, and certain permit holders, may also be responsible for reclamation of lands disturbed by their operations.

Findings

We found that BLM has little assurance that it obtains market value for mineral materials sales. We identified several areas of concern, including whether BLM properly identifies market value and utilizes its authority to adjust prices for existing contracts, recovers its costs for mineral materials contracts, verifies production volumes, and resolves issues that may contribute to cases of mineral trespass.

We identified the following issues that impact the mineral materials program:

- Regulatory language requires use of appraisals, even though other acceptable valuation methodologies exist.
- Bureauwide appraisal guidance is more than 25 years old.
- BLM use of OVS staff, who have expertise specific to valuing mineral

materials, is limited.

- OVS found five of BLM's existing mineral materials appraisals inadequate for valuation purposes and has disapproved them for use.
- BLM did not adjust prices for existing contracts, despite regulatory authority and guidance to do so periodically.
- BLM has made limited efforts to recover exclusive-sale processing costs where the authority exists. Further, a regulatory omission prevents BLM from fully recovering costs related to exclusive sales in community pits and common-use areas.
- BLM provided little evidence that it performs production verification activities to ensure contractors pay for actual volumes of mineral materials removed.
- BLM did not collect fees, informally estimated at more than $1 million, for mineral materials removed from split-estate lands.

Due to insufficient data, we could not determine the overall impact to the Government, but we found that unadjusted contract prices alone resulted in the loss of more than $846,000 in potential revenues.

Limited Assurance That BLM Obtains Market Value for Mineral Materials

Regulations Require Unnecessary Appraisals

The Materials Act of 1947, as amended (30 U.S.C. §§ 601-03), authorizes the disposal of mineral materials while requiring the payment of "adequate compensation." BLM regulations (43 C.F.R. § 3602.13), however, state that "BLM will not sell mineral materials at less than fair market value" and further stipulate that "BLM determines fair market value by appraisal." Taken together, the regulations and professional standards for appraisal place a significant burden on BLM.

An appraisal requires the application of complex and strict standards that have been developed for determining the value of real property, personal property, and business interests. As standalone commodities, minerals such as sand and gravel do not fit well in these categories. The current BLM regulations require that an appraisal be performed to obtain fair market value, but the underlying statute does not. OVS and BLM officials agreed that less-complex valuation methodologies can and should be used to determine the value for standalone commodities and agreed to seek rule change for a more efficient means.

Recommendation

We recommend that BLM:

I. Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.

BLM Guidance Is Outdated

BLM's Mineral Material Appraisal Manual 2 and Mineral Material Appraisal Handbook3 are more than 25 years old. BLM has periodically updated other guidance, but neither of these key reference documents has been updated since the mid-1980s. Since these documents were written, DOI has consolidated appraisal operations and implemented new requirements and standards. Both documents predate Secretarial Order No. 3300, which identified OVS as the authority for valuation services and related policies and procurement. The Order's provisions were included in the Departmental Manual at 112 DM 33, which identifies OVS as "responsible for providing minerals evaluations for the Department's bureaus and offices . . . [and] providing analytical and evaluative support." Yet these changes, among many others, do not appear in BLM guidance. Consequently, those in BLM who are tasked with determining mineral values have utilized inadequate information and methods.

We found that BLM staff generally performed, or relied on, a variety of inadequate price analyses, ranging from outdated price lists to very limited analyses of local market conditions. For example, staff in one office relied on a 2005 price list even though they could not find the appraisal upon which the prices were based, stating that they had a "general sense" that the prices were still valid. In another office, a staff geologist said that he had used mineral materials values from a 2009 Statewide price study as the starting point for determining prices to charge for new contracts. He stated that he then applied unspecified "extraneous factors" to adjust the prices in the study.

2 Mineral Material Appraisal Manual 3630.
3 H–3630–1 Mineral Material Appraisal Handbook.

Recommendation

We recommend that BLM:

2. Work with OVS to update the Bureau's Mineral Material Appraisal Manual 3630 and H–3630 – I Mineral Material Appraisal Handbook.

Mineral Materials Valuations Are Not Credible

We reviewed the regional area mineral materials appraisals performed in the four States in which we conducted site visits (see Appendix 3). Based on the deficiencies identified, we concluded that the quality of work performed did not support the valuations arrived at by each appraiser. As these appraisals are the foundation for the prices used in sales contracts, we requested that OVS perform an independent review of the appraisals based on the standards outlined in each document. In each report, the OVS reviewer—a licensed appraiser—identified enough deficiencies to render the estimated commodity values of the minerals not credible. Based on the results of his reviews, the OVS appraiser recommended that each report should be "disapproved for use" by BLM.

Deficiencies that contributed to the inadequate appraisals included–

- contracts for appraisal that had poorly worded statements of work and required that the work follow inappropriate professional standards;
- inadequate content, detail, or analysis, which is required to comply with professional appraisal standards;
- discussion of elements of comparison for evaluating types of materials, such as quantity, quality, and mining and processing, but no support to confirm if, or how, this methodology was applied to the data provided;
- no evidence that field examinations were performed to determine the quality and quantity of the commodity deposits; and
- no consideration given to account for important, site-specific market value considerations, including specific commodity differences like the grade of materials or the transportation costs for delivering commodities to market.

The appraisal skillset and appraisal contracting function no longer reside within BLM, but with OVS, which has been designated by DOI to provide or contract for appraisal services. BLM's use of OVS services has been limited, while BLM staff has acknowledged that they do not have the skills or training necessary to adequately develop market values.

In light of these findings, BLM acknowledged that the procedures and standards used to perform the appraisals did not conform to applicable guidance. We offer a

series of recommendations to engage OVS and BLM in improving valuation practices for the mineral materials program. Extensive support from OVS might require implementation of a reimbursable services agreement to ensure OVS is

able to maintain sufficient staff, or for contracts awarded in cooperation with BLM.

Recommendations

We recommend that BLM:

3.
Issue guidance to State offices to coordinate with OVS for contracting of mineral materials valuations;
4.
Work with OVS to develop statements of work for preparing mineral materials valuations;
5.
Develop a process for OVS to review mineral materials valuations performed by or for BLM;
6.
Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been "disapproved for use"; and
7.
Develop a mechanism through which BLM will reimburse OVS for mineral materials valuation services as needed.

Revenue Is Lost When Contracts Are Not Timely Adjusted

To ensure that the Government receives fair market value for mineral materials, Federal regulations provide BLM with the authority to periodically adjust the value of mineral materials that have not yet been removed. Despite BLM-issued guidance to adjust prices for existing contracts, we identified 16 contracts in which adjustments were not made. Adjustments can be made through reappraisal or by applying the Producer Price Index (PPI). When applying a PPI, we estimated that BLM lost more than $846,000 in mineral revenues (see Appendix 4).

Regulations at 43 C.F.R. § 3602.13(b) stipulate that BLM may not adjust a contract price during the first 2 years of a contract. BLM policy provides that an adjustment may occur by reappraisal at 2-year intervals thereafter, and the effective life of the initial appraisal may be extended by applying an appropriate PPI. BLM issued an internal memorandum in 2009 that emphasized using a PPI to modify fees. (We note that this guidance has since expired, but the regulatory authority remains in effect.)

We identified 21 (out of 38) multiyear contracts that should have been evaluated using a PPI. Using contractor production documents, we identified the tonnage of minerals produced each year and adjusted the initial contract price by applying the PPI for that period. We then compared revenue received to what could have been

received. In all, we estimated a total monetary loss to the Government of $846,117 for the 16 contracts that were not adjusted (see Figure 1).

State Office Contract Estimated Loss of Revenue
$1,889
2 26,620
New Mexico 3 1,904
4 3,910
5 18,497
6 21,677
7 18,931
8 5,701
Arizona 9 51,542
10 146,132
11 8,688
12 421,626
Wyoming 13 400

14 65,970

Nevada 15 17,760
16 34,870
Total $846,117

Figure I . Estimated loss of revenue to the Federal Government.

BLM staff stated that on occasion, the cost of an appraisal could exceed the benefit of the mineral material sale to small business owners. BLM policy offers State offices guidance to develop an annual ranking of contracts that need to be appraised or reappraised to help prioritize funding for appraisals. None of the four State offices we reviewed, however, had developed a priority list at the time of our site visits.

Recommendations

We recommend that BLM:

8.
Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy; and
9.
Identify and prioritize contracts that need to be valued and revalued.

BLM Does Not Fully Recover Its Costs

Cost-recovery authority allows BLM to recoup costs related to exclusive mineral sales and subsequent contract renewals. Exclusive-sale contracts or permits may occur on exclusive sites where only one operator has rights to remove materials. Exclusive-sale contracts may also be issued to an operator for removal of materials from a dedicated zone within a broader area otherwise designated as a community pit or a common-use area in which many persons also have that right.

Recovering Costs for Exclusive Sales in Exclusive Sites

Federal regulations at 43 C.F.R. § 3602.11(c) allow BLM to recover processing costs related to exclusive sales of mineral materials from exclusive sites at the time of the original contract and during contract renewal. We found that despite the authority to recover costs, none of the 30 exclusive-sales contracts we reviewed had cost recovery associated. Further, only two of the eight competitive contracts reviewed had some form of cost recovery. We could not develop an estimate of the total costs unrecovered due to incomplete data.

The authority to recover costs not only includes the costs to obtain an appraisal but also staff labor costs incurred when assessing market conditions and establishing and renewing contracts. In fiscal year 2006, BLM issued guidance to all field office officials detailing how this could be accomplished. The memorandum explained tools, such as estimation worksheets, that staff could use to track labor associated with each processing step. This guidance has since expired. Evidence suggests that cost-recovery efforts are lax and unnecessary costs are borne by the Government.

Recommendation

We recommend that BLM:

10. Reissue guidance explaining which costs are recoverable for exclusive-sale contracts and ensure that field offices seek reimbursement for costs incurred.

Regulatory Omission Leads to Loss of Revenue From Exclusive Sales in Community Pits and Common-Use Areas

BLM can issue an exclusive contract for a dedicated zone within a community pit or common-use area. The contractor is granted the sole right to remove minerals within that designated zone. A regulation published in 2005 at

43 C.F.R § 3602.11 was intended to provide BLM with the cost-recovery authority to collect upfront processing fees for these sales. An editorial change in the final rule, however, altered the wording and legal effect of the regulation (see Figure 2). The impact of this change was significant, as BLM cannot collect processing fees for those applications without first canceling the common-use area or community pit designation for the proposal area—a process described by a

BLM official as cumbersome and costly. As a result, rather than an applicant paying the processing costs, the Government bears the burden.

43 C.F.R § 3602.11

How do I request a sale of mineral materials?

Current Language	Intended Language
(c) You must pay a processing fee as provided in § 3602.31(a) and § 3602.44(f). If the request is for mineral materials that are from a community pit or common use area this requirement does not apply.	(c) You must pay a processing fee as provided in § 3602.31(a) and § 3602.44(f). If the request is for nonexclusive sales of mineral materials that are for nonexclusive sales of mineral from a community pit or materials that are from a common use area this community pit or common use requirement does not apply.

Figure 2. Language used in the current regulations compared to the intended language.

In such cases where the Government bears the burden, the contractor is subject only to the same fees as other users regardless of new costs that BLM incurs. In contrast, on exclusive sales outside of community pits and common-use areas, the purchaser is independently responsible for all processing costs. BLM provides the interested party an initial estimate of costs for administrative review of the application, review of mining and reclamation plans, applicable National Environmental Policy Act reviews, and appraisal services. According to program officials, this arrangement was intended to carry over to exclusive sales within community pits and common-use areas, but the current regulatory language does not support this, and the Government pays these upfront costs.

Recommendation

We recommend that BLM:

I I. Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost-recovery fees on existing exclusive-sale contracts in community pits and common-use areas.

BLM Does Not Consistently Verify Production

BLM does not consistently verify the volume of mineral materials removed by authorized contractors. BLM policy requires geologists to confirm mineral production by inspecting sites and verifying reported volumes. We identified 33

of 38 contract files that did not have any production verification documentation. Discussions with geologists concerning this matter revealed that many times verification is limited to relying on the individual contractors to submit accurate production reports when they submit their mineral fees.

The frequency of these inspections is based on the size of the contract, with a minimum of one visit per year for small contracts (5,000 cubic yards) or at least two visits per year for large contracts (15,000 cubic yards or greater). Measurement techniques can include navigating the mine site perimeter with GPS equipment, or installing closed-circuit monitoring. This information can then be

used to reconcile with operator data, such as weigh-scale tickets or production reports. While geologists did perform the mandatory site visits, there was little evidence that production was verified.

At a large scoria 4 mine we visited, BLM production verification was limited to checking the math of the contractor's monthly production statement that was submitted with the fee check. In contrast, the contractor had implemented an internal control system using weigh-scale tickets and daily logs to cross-check sales that could be used to verify the accuracy of the reported production.

Production verification ensures accountability by independently monitoring and verifying reported production and payments. Without this verification, BLM cannot ensure that contractors are removing only the quantities of mineral materials contracted for and that the Government is receiving proper compensation.

Recommendation

We recommend that BLM:

12. Reissue policy and guidance on production verification to provide accurate accounting of materials removed, and implement procedures to provide reasonable assurance that field offices comply.

Revenues May Be Lost Due to Unauthorized Use

BLM did not collect fees for mineral materials used on land that it sold to a private developer under the authority of the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Pub. L. No. 105-263, 112 Stat. 2343.

BLM staff informally estimated the value of fees not paid for these materials exceeded $1 million. We are concerned that this issue could exist on other properties disposed of through SNPLMA.

4 Scoria is a dark-colored volcanic rock typically used in landscaping and drainage works.

SNPLMA authorized BLM to sell and exchange Federal lands in Clark County, NV. These disposals created a split-ownership estate, which provided the landowner surface rights for land use and reserved to the Federal Government the rights to subsurface minerals. BLM regulations for landowner use of Federal subsurface mineral materials on split-estate lands are contained in 43 C.F.R. § 3601.71. The regulations specify that absent a mineral materials sale, surface owners may use a "minimal amount" of mineral materials for "personal use." Any use beyond this level is considered unauthorized. Subsequent discussions between BLM officials identified that confusion existed concerning the interpretation of what constitutes a "minimal amount" and whether use of minerals for construction and landscaping of residential properties could be considered "personal use."

This confusion resulted in BLM's Las Vegas Field Office officials approaching the BLM State Office with a request for specific guidance regarding a land disposal under SNPLMA that was developed into a 4,500-acre master-planned community in Henderson, NV. The developer planned to build approximately 15,000 homes on this land. Officials from BLM's Las Vegas Field Office were certain that mineral materials were being processed and used on the site during construction in the early 2000s. An official from the State Office wanted to issue a trespass notice; we could not determine why the notice was never initiated. We do not believe the volume of material alleged to have been used in this instance would be considered a "minimal amount." Further, from 1999 through 2011, BLM has sold or exchanged about 40,000 acres of land under SNPLMA, so situations similar to this instance in Henderson could continue to surface and more resources could be lost to unauthorized use due to this lack of clarity concerning definitions.

We issued a Notice of Potential Findings and Recommendations in September

2012 to BLM about unauthorized use and trespass. BLM concurred in part with

our recommendations.

Recommendations

We recommend that BLM:

13. Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define personal use" versus commercial use, in terms of the property on which those uses are restricted and what specific uses constitute allowable personal use in contrast with restricted commercial use;

"

14. Issue guidance to its State offices to identify and take action to collect the fair market value of the unauthorized removal of mineral materials on split-estate land disposals; and

Recommendations

15. Consult with the Office of the Solicitor to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.

Conclusion and Recommendations

Conclusion

BLM's mineral materials program generates approximately $17 million in revenue from public lands each year. Management of the program, however, is challenged by outdated regulations and policies that hinder BLM's ability to obtain adequate compensation for its mineral materials sales. Most of the issues can be resolved with regulatory and policy updates. We identified the need for BLM to collaborate with OVS to assist in developing the valuations needed to ensure that it sells its mineral materials at fair market value. In addition, BLM has an opportunity to increase revenue through periodic contract adjustments, by recovering processing costs, and collecting the fees due to the Federal Government. BLM can significantly enhance its management of the mineral materials program by implementing our recommendations.

BLM generally agreed with our findings, concurring with all but one of our recommendations (see Appendix 5). We consider 14 recommendations resolved but not implemented and 1 recommendation unresolved (see Appendix 6).

Recommendations Summary

We recommend that BLM:

1.
Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.
BLM Response: BLM will review alternative valuation methodologies and initiate the regulatory process if found appropriate.

Office of Inspector General (OIG) Reply: We consider this recommendation resolved but not implemented. We note that our recommendation is targeted to BLM as the proponent of the regulation cited and suggest—consistent with other recommendations in this report—that BLM consult with OVS as it reviews alternative valuation methodologies. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

2.
Work with OVS to update the Bureau's Mineral Material Appraisal Manual 3630 and H-3630 - 1 Mineral Material Appraisal Handbook.
BLM Response: BLM will consult with OVS as it updates the Mineral Appraisal Manual and Handbook.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

3.
Issue guidance to State offices to coordinate with OVS for contracting of mineral materials valuations.
BLM Response: BLM will coordinate with OVS to identify a revised contracting process for mineral materials valuations.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary

for Policy, Management and Budget for implementation tracking.

4.
Work with OVS to develop statements of work for preparing mineral materials valuations.
BLM Response: BLM will work with OVS to develop standardized statements of work for contracts for performing mineral materials valuations.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

5.
Develop a process for OVS to review mineral materials valuations performed by or for BLM.
BLM Response: BLM will work with OVS to develop a process that

includes the appropriate OVS reviews for the various types of mineral

material valuations.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

6.
Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been "disapproved for use."
BLM Response: BLM will consult with OVS to determine a process for its assistance in determining the market values in this situation.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

7.
Develop a mechanism through which BLM will reimburse OVS for mineral materials valuation services, as needed.
BLM Response: BLM will work with OVS to determine how to reimburse OVS for work on these services.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary

for Policy, Management and Budget for implementation tracking.

8.
Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy.
BLM Response: BLM will issue additional guidance reiterating the mineral materials price adjustment guidance for existing contracts. In addition, BLM will complete periodic reviews on this issue to monitor for compliance.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget.

9.
Identify and prioritize contracts that need to be valued and revalued.
BLM Response: BLM will review existing policy and will clarify and update the policy as necessary.

OIG Reply: We consider this recommendation unresolved. In its

response, BLM did not explain the objective of its policy review. We infer

that such a review might consider approaches other than "annual rankings"

(as referred to in current BLM policy and our draft report) to meet the

intent of identifying and prioritizing contracts for revaluation. We have

modified the wording of the recommendation made in our draft report and

will consult with BLM to resolve this recommendation before referring it

to the Assistant Secretary for Policy, Management and Budget for

implementation tracking.

10. Reissue guidance explaining which costs are recoverable for exclusive-sale contracts and ensure that field offices seek reimbursement for costs incurred.
BLM Response: The BLM has recently identified some possible improvements to the current approaches for recovering costs and will revise its guidance for determining which costs are recoverable and how to collect the costs.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary

for Policy, Management and Budget for implementation tracking.

11. Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost-recovery fees on existing exclusive-sale contracts in community pits and common-use areas.
BLM Response: BLM will work with the Office of the Solicitor to determine if a regulatory revision is necessary or if other administrative options are available to meet this need.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary

for Policy, Management and Budget for implementation tracking.

12. Reissue policy and guidance on production verification to provide accurate accounting of materials removed, and implement procedures to provide reasonable assurance that field offices comply.
BLM Response: BLM will issue new guidance for production

verification. In addition, BLM will periodically monitor field offices for

compliance with guidance on production verification.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

13. Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define "personal use" versus commercial use, in terms of the property on which those uses are restricted and what specific uses constitute allowable personal use in contrast with restricted commercial use.
BLM Response: BLM will issue supplemental guidance to define

personal use of mineral materials under 43 C.F.R. § 3601.71.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

14. Issue guidance to its State offices to identify and take action to collect the fair market value of the unauthorized removal of mineral materials on split-estate land disposals.
BLM Response: BLM will issue supplemental guidance reiterating the requirement to follow existing procedures for recovery of damages for

unauthorized removal of mineral materials from split-estate lands.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

15. Consult with the Office of the Solicitor to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.
BLM Response: BLM will consult with the Office of the Solicitor regarding whether actions can be taken to address similar land disposals.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

OIG Analysis of General and Technical Comments

General Comments

BLM's response to the draft report includes general comments that explain the breadth of activities that BLM undertakes for the Mineral Materials Program. We did not incorporate the additional information in the body of the final report because it is beyond of the scope of our audit. The information BLM provided can be read in its entirety within the BLM response (see Appendix 5.)

The general comments acknowledge that legal changes and advancements in professional context have led to a condition that "warrant[s] revisions to the terminology and guidance for the valuations of mineral materials commodities." BLM states that it will consult with OVS and the Office of the Solicitor to address this condition.

BLM also indicated that it "cannot retroactively identify documentation that would support an enforcement action" in response to a specific instance of potential unauthorized use. We acknowledge the difficulty and encourage BLM to examine its position that this "was an isolated incident." We are also pleased to learn that the BLM Las Vegas Field Office has recently identified two potential unauthorized mineral materials removals from SNPLMA tracts and initiated enforcement actions.

Technical Comments

BLM provided technical comments keyed to the pages of our draft report.

Page 2: last paragraph

BLM stated that this paragraph in the draft report intermixed time periods and suggested that the word "currently" be inserted to bring context to the present requirements of the Materials Act of 1947.

OIG Analysis: As suggested, we added the word "currently" into the final report.

Page 3: last two paragraphs

BLM indicated that the draft report did "not accurately capture the distinction between cost-recovery fees and reclamation fees."

OIG Analysis: We simplified the presentation of background information. BLM's suggested language is included in Appendix 6.

Page 5
While noting that requirements differ, BLM acknowledged that similarities in terminology for real property appraisals and for valuation of mineral material commodities "are causing confusion for BLM personnel and contractors." BLM stated that it needs a guidance update to clearly distinguish the two systems.

OIG Analysis: BLM's technical comments support the underlying issues that we identified. We intended recommendations 1 and 2, in particular, to assist in resolving the confusion.

Page 5: first full paragraph

BLM recommended that OIG include a discussion of other methodologies that would be acceptable for valuating mineral commodities.

OIG Analysis: During our exit conference with OVS and BLM, program officials agreed that less-complex valuation methodologies can and should be used to determine the value for mineral commodities. Specifying valuation methodologies would be beyond the scope and intent of our audit work. Our intent is to encourage BLM to improve the current condition, including circumstances in which (1) the cost of a formal appraisal exceeds the benefit, (2) BLM has not applied the valuation expertise in OVS, and (3) BLM has not exercised the valuation responsibility that lies with OVS.

Page 5: first two sentences of the second full paragraph

BLM reiterated the report's statement that the BLM's Mineral Material Appraisal

Manual and Handbook had not been updated since the mid-1980s and provided a

listing of years when regulations and associated guidance were issued. BLM

requested that we include this information in the report.

Page 6

BLM requested that, in our discussion of "regional area" valuation reports, we

note BLM's position that "the procedures and standards used to perform the

appraisals were not in compliance with BLM guidance."

OIG Analysis: We modified our report language to incorporate BLM's request. Nonconformance exists with respect to both DOI and BLM guidance, and we are encouraged by BLM's commitment to improve not only the policies that govern

the program, but also the implementation of these policies by its State and field offices.

OIG Analysis: We modified the report slightly to acknowledge that guidance other than the Manual and Handbook has been updated periodically.

Page 9: first and second paragraphs
BLM felt that OIG had misinterpreted the current cost-recovery regulations and included an inaccurate description of the cost-recovery finding.

OIG Analysis: We agree that using the word "administering" was incorrect, and we adjusted the report accordingly. The larger issue, however, seems to apply to the question of cost recovery in community pits. We worked closely with BLM and contacted the Office of the Solicitor when developing our understanding of the applicable cost-recovery regulations and guidance. We agree with BLM that current "regulations .. . do not allow for cost recovery for any disposals located within community pits." Our finding, however, focuses on exclusive sales, including those circumstances in which BLM staff complete the cumbersome process of modifying the legal description of the community pit's boundaries in order to set aside what we informally term a "designated zone." We have modified our wording to indicate that such a zone could be created within a broader area that is managed as a community pit. We are encouraged that BLM has identified possible improvements to its cost-recovery practices.

Page 12

BLM indicated that it could not substantiate the amount of mineral materials used in a reported instance of potential unauthorized use and suggested that we modify our finding to point out that BLM staff did not investigate the incident at the time because they misunderstood the new legal circumstances soon after the enactment of SNPLMA.

OIG Analysis: We modified our language to refrain from identifying a specific volume of material and to characterize the monetary estimate, which we developed with information from BLM field staff, as "informal." We appreciate BLM's insight as to causes, but our audit report is focused on the revenue effect, specifically that fees were not collected. The informal estimate provides some context as to the scale of the matter, but we note that this amount is not included in our tally of monetary impact (see Appendix 4).

Appendix I: Scope and Methodology

Scope

We reviewed the Bureau of Land Management's (BLM) mineral materials program to determine if BLM obtained market value for mineral materials removed from Federal land. The mineral materials program staff issue and administer contracts for the sale of minerals used for the construction of roads, foundations, and buildings, as well as commercial and residential landscaping. In fiscal year 2011, BLM issued about 2,800 mineral materials contracts and permits, which included 2,616 sales valuing approximately $17 million.

The Materials Act of 1947 does not include minerals produced or mined under leases for energy and nonenergy development or hard rock minerals subject to location and claim, such as gold and silver under the Mining Law of 1872. Therefore, our audit did not include a review of contracts or leases related to these

types of minerals.

Methodology

To accomplish our objective, we performed fieldwork from February 2012 through January 2013. We interviewed program officials at BLM headquarters, at BLM State and field offices, and at the Office of Valuation Services (OVS). We visited eight BLM offices where we reviewed individual mineral contracts and also visited contractor-operated mineral mining pits. In fiscal year 2011, these offices were responsible for more than $14 million of the $17 million in total program sales. After reviewing regional appraisals and concluding that the quality of work performed did not support the valuations, we requested that OVS perform an independent review of the regional appraisals to confirm our concerns.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

Since the primary focus of our audit was to determine if BLM obtained market value of mineral materials removed from Federal land, we did not rely on or obtain computer-generated data. We did, however, rely on data provided by BLM for mineral materials contracts, permits, and program sales.

Prior Audit Coverage

In fiscal year 2010, we initiated a series of revenue enhancement audits to determine if the Bureau of Land Management (BLM) obtained market value for land use of and products sold on Federal land. The first two published reports, "Management of Rights-of-Way (ROW) in the U.S. Department of the Interior,"

and "Bureau of Land Management's Helium Program," found that BLM's rents do not reflect market value. Both reports included recommendations that BLM work with the Office of Valuation Services (OVS) to establish criteria for ensuring that BLM receives market value for services and products acquired on Federal land.

In December 2009, we issued "Evaluation Report on the Department of the Interior's Appraisal Operations." We conducted this evaluation because of concerns regarding the efficiency and quality of departmental appraisal operations. We found that BLM repeatedly attempted to regain control of appraisal function from the Appraisal Services Directorate (ASD), and we recommended that complete control over contracting for appraisals be given to ASD. In May 2010, Secretarial Order No. 3300 reorganized ASD into OVS and assigned it sole authority for contracting services.

Appendix 2: Organizations Visited or

Contacted

U.S. Department of the Interior
Office of Valuation Services
Lakewood, CO
Bureau of Land Management
Washington Office
Washington, DC

Las Vegas Field Office
Las Vegas, NV

Carson City District Office
Carson City, NV

New Mexico State Office
Santa Fe, NM

Albuquerque District Office
Albuquerque, NM

Carlsbad Field Office
Carlsbad, NM

Rio Puerco Field Office
Rio Puerco, NM

Casper Field Office
Casper, WY

Phoenix District Office
Phoenix, AZ

Appendix 3: Valuation Deficiencies

Wyoming

In 2009, the Bureau of Land Management (BLM) paid $94,300 for a mineral materials appraisal conducted by a State-licensed appraiser. The appraiser completed the work after his temporary Wyoming license expired, which violated State rules and regulations. The appraiser stated that he valued mineral materials in conformity with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP) to arrive at fair market value. UASFLA requires the appraiser to perform additional processes, requirements, and analysis, in addition to following USPAP, when performing appraisals for Federal land acquisition, but the appraiser did not include the necessary content, detail, or analysis required to comply. Moreover, UASFLA was developed to standardize the appraisal process for the Federal Government to acquire land. Federal land acquisition is neither the intent nor the purpose of the Wyoming Statewide Mineral Material Appraisal. On that basis alone, any reference to UASFLA is inappropriate.

We found that of the 13 USPAP standards required for this appraisal, only 4 items conformed. We found that the report did not provide sufficient information to identify the real estate involved in the appraisal, such as the physical and economic characteristics relevant to the assignment as required by USPAP Standards Rule 2-2(b)(iii). Also, while two pricing zones were reported for sand and gravel, only Statewide prices were reported for all other mineral materials in the report. Although the appraiser mentions elements of comparison weighed by market participants when evaluating sources for these types of materials, such as quantity, quality, and mining and processing, his discussion merely explains the reason why each element is considered, not if or how he made actual adjustments to any of the data. The result is a report that does not accurately reflect market value.

Arizona

In 2009, BLM paid $61,800 for a mineral materials price study to update a study performed in 2003. The study provided to BLM excluded the specific comparable

vendor and price data used to conduct it. According to a BLM official, BLM agreed to allow the contractor to destroy the raw data, such as the names of vendors and royalty prices at specific locations, for specific commodities in each zone used to conduct the study. The data that was not provided, however, is critical for BLM staff to adopt market value information to specific local sites.

The commodity price data included in the report was provided in terms of price range as opposed to market value or appraised value, which BLM requested in the statement of work. In many cases, the commodity value range exceeded 200 percent, which made the exclusion of specific comparable data even more critical. BLM staff told us they permitted the contractor to exclude the comparable data in

order to get private industry to cooperate and voluntarily provide the economic and price data on which the study is predicated.

In addition, the study did not identify whether it was conducted by State-licensed appraisers and was not qualified as an appraisal of specific mineral commodities for specific locations. Moreover, the report contradicts itself by using both terms: "study" and "appraisal." Lastly, BLM's statement of work listed several types of rocks, in addition to decorative rock, and requested valuations for each type. The study, however, provided only one category of rock—"Decorative Rock (Landscape)"—rather than information on the individual types as requested in the statement of work.

New Mexico

We visited the Rio Puerco Field Office (Albuquerque District) and Carlsbad Field Office (Pecos District) and reviewed the appraisals performed for these two offices. In 2009 and 2011, appraisals that were performed by State Office geologists for mineral materials commodities sales were approved for use. We found that the authors did not perform field examinations to determine the quality and quantity of the commodity deposits. The geologists failed to account for important, site-specific market value considerations, including specific commodity value differences like its quality and the transportation costs for getting commodities to market. The report does not provide any real indication of market value or appraised value for any of the commodities studied. In addition, staff at one field office noted that the appraisal did not include scoria, even though it is an important commodity in that district.

Regarding unique deficiencies, the author of the Albuquerque District report stated that she performed the appraisal in conformity with USPAP standards. We found, however, that the report contained enough deficiencies and omitted standards to conclude that it did not conform to USPAP. One of these deficiencies involved a USPAP requirement that the report contain a signed certification that is similar in content to a list of nine detailed and specific statements. The author used only two similar statements, included a third statement that missed a key clause, and did not include six other statements. Such a certification deviates enough from the one found in USPAP that it seems to be a likely violation of the requirement that the certification be similar to the standard.

The author of the Pecos District appraisal stated that the report was an appraisal but did not identify any other standards he used to perform it. Moreover, the report stated prices for some of the materials and price ranges for other materials, but the selection of the market value from a list of prices for each category of material was not supported. No qualitative or quantitative adjustments were made to any of the data. The result of this analysis was a conclusion of prices, rather than an accurate reflection of market value.

Nevada

The State office received a mineral materials price study in 2002 from a contract appraiser. The Winnemucca district office currently uses this study to value mineral materials. We found that some of the data used in this study dated back to the "1995 U.S. Bureau of Mines Analysis of Comparable Royalty Rates of

Mineral Materials." Moreover, some of the sites from the 1995 analysis were described as now inactive operations in the 2002 report. The credibility of the 2002 report can reasonably be questioned by relying on at least some data from now inactive operations. In addition, the report is labeled as a price study on the title page and as both a price study and an appraisal in the body of the report, which is inconsistent and potentially misleading to the user.

The State office obligated $96,000 for an appraisal in 2007 to obtain fair market value for eight mineral materials. When the contractor delivered the final report, however, BLM determined the appraisal did not provide fair market value for the specified mineral materials, so BLM denied the outstanding balance due of about $56,000. The contractor appealed to the agency board of contract appeals, and the two parties agreed that BLM failed to provide the contractor with adequate performance objectives in the statement of work. Thus, a poorly worded statement of work resulted in unusable values for BLM. The appeal was settled when BLM paid $35,000 of the $56,000 remaining balance.

We found additional problems in local Nevada BLM offices regarding mineral materials values. At one field office, staff charged the prices for sand and gravel listed on a form that stated the values became effective on April 1, 2005. Staff stated that they were told the prices were based on an appraisal conducted in 2003, but they did not have a copy of the appraisal and no one there had ever read it. The values for sand and gravel had not been updated since the effective date in 2005. Staff in another field office stated that they use a price that has been used in the past for similar materials in a similar area (or same pit) and use the Bureau of Labor and Statistics website to determine what the increase should be depending on when the last sale was completed. They do not rely on values established through a formal valuation process.

Appendix 4: Schedule of Monetary Impact

Issue	Monetary Impact
Potential lost revenue from lack of contract price adjustment utilizing the Producer Price Index.	$846,117

The Bureau ofLand Management's response fol lows on page 29.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, DC 20240
http://www.blm.gov

FEB 10 2014

In Reply Refer To:

1245/3600 (320/830)

Memorandum

To:
Assistant Inspector General for Audits, Inspections, and Evaluations

Through: Ned Farquhar IVA
Deputy Assistant Secretary - Land and Minerals Management

From:
Neil Kornze
Principal Dep ty trector

Subject: Office of the Inspector General Draft Audit Report, Department of the Interior's
Mineral Materials Program (C-IN-BLM-0002-2012)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report, titled "Department of the Interior's Mineral Materials Program" (C-IN-BLM-0002-2012).

The Bureau of Land Management (BLM) appreciates the continued interest of the OIG in the administration of the Federal mineral materials program. The BLM generally agrees with the findings and concurs with the recommendations.

The mineral materials program has historically had limited funding and resources to address the expanding magnitude and scope of workloads. As a result, the BLM's capacity to absorb further workloads is limited. The situation was exacerbated in the 1990's and 2000's as demand for materials and technical requirements increased at the same time that staffing and funding resources contracted.

Over the past year, the BLM has been working to address some of the issues noted in the draft report such as providing more effective guidance and oversight. In addition, the BLM is developing a new online mineral materials production verification training program for mineral materials specialists, expected to be available in Fiscal Year (FY) 2014. Furthermore, the initial
amendments to the Mineral Materials Disposal Handbook (11-3600-1) are in the final stage of processing for issuance. The amendments will include (1) templates for surety and personal bonds; (2) instructions for certification of scales; (3) additional guidance on free use permits for
BLM operations; (4) instructions for reporting reclamation acreage; and (5) a listing of prohibited BLM transactions. The BLM plans to issue additional guidance covering issues such

as reclamation fees and production verification during FY 2014. We believe these ongoing efforts, combined with the implementation of the recommendations made in this report will help to improve the management of BLM's mineral materials program.

In addition to addressing each of the recommendations, the BLM has provided general and technical comments based on its review of the contents of the report. Attachment 1 provides general comments. Attachment 2 provides technical comments and recommended edits to the report. Attachment 3 provides specific responses to each of the recommendations, including a summary of the actions taken or planned by the BLM to implement the recommendation as well as the name of the responsible official and the target dates of implementation.

If you have any questions about this response, please contact Mitchell Leverette, Chief, Division
of Solid Minerals Management, at 202-912-7113, or LaVanna Stevenson, BLM Audit Liaison Officer, at 202-912-7077.

Attachments

Attachment 1

General Comments:

The following comments contain additional information that the BLM produced after having an opportunity to review a draft copy of the report. The OIG may use this information to further enhance the quality of the report. These comments are not meant to identify specific errors or recommend specific edits.

The Bureau of Land Management (BLM) suggests that the following information regarding the breadth of activities the BLM undertakes in carrying out its responsibilities of the mineral materials program be included in the Background section on page two of the report:

The BLM's Mineral Materials Program is responsible for:

- Processing exploration permits and mining authorizations.
- Performing NEPA analyses of disposal applications.
- Performing commodity valuations to determine the value of disposals.
- Issuing sales contracts for disposals to private entities.
- Administering existing contracts and collecting revenue.
- Processing permits for free use of mineral materials by State and local governments and non-profit organizations.
- Inspecting authorized sites for compliance with contract and permit requirements.
- Inspecting and enforcing contracts and permits to verify the accuracy of payments and reported production.
- Taking enforcement actions to ensure compliance with terms and conditions of contracts and authorizations.
- Investigating and taking enforcement actions on unauthorized removal of mineral materials from Federal mineral estate.

The draft report discusses Federal mineral materials regulations and policies, recovery of processing costs, verification of production volumes reported for sales, and collecting fees for minerals used on land that have been sold under the authority of the Southern Nevada Public Land Management Act of 1998.

Limited Assurance that BLM Obtain Market Value for Mineral Materials

OIG' s first and second findings on page 4 state that "Bureauwide appraisal guidance is more than 25 years old", and "regulatory language requires use of appraisals, even though other acceptable valuation methodologies exist."

The BLM guidance for valuations of mineral material commodities is indeed older, but the finding itself without any context suggests that the procedures and methodologies contained in the guidance are outdated and no longer appropriate. Please note that the guidance has been reviewed several times and the basic concepts are still relevant to commodity valuations. The guidance was originally developed as an alternative valuation methodology, patterned after real property appraisals, due to the general absence of formal guidance for commodity valuations.

Although some terminology used for valuations of mineral material commodities is similar to

terminology used in real estate valuations, the mineral material commodity terms are redefined in the Mineral Materials Appraisal Handbook to identify distinctions from realty appraisals. Due to the continued relevance of the BLM's guidance, we do not believe the age of the guidance is an issue; however, we will provide instructions to the BLM field offices to ensure they adhere to and properly cite the BLM guidance instead of other procedures.

Advancements and legal changes in the requirements for performing real property appraisals warrant revisions to the terminology and guidance for the valuations of mineral materials commodities to ensure that BLM personnel and contractors do not confuse these two different types of analyses. The Materials Act of 1947 originally required valuation of materials by appraisal, but subsequent amendments in 1980 removed that requirement. Until 1980, section 2(b) of the Act required BLM to provide Congress with semiannual reports summarizing the details of BLM contracts for the disposal of mineral materials and including in the report the "appraised value of the material involved" under each contract. See Pub. L. No. 87-689, 76 Stat. 587 (1962). The Congressional Reports Elimination Act of 1980 repealed section 2(b), thereby removing the only reference to appraisals in the Materials Act. See Pub. L. No. 96-470, § 102, 94 Stat. 2237 (1980). The change removing the appraisal requirement of the Materials Act was apparently not identified when BLM developed regulations requiring valuations by "appraisal." However, in order to determine "adequate compensation" for mineral materials commodities, the BLM developed alternative valuation methodologies that emulated real estate appraisal methods.

The professional context and usage of "appraisal" has evolved to more specific applications for real property since 1986. Although the word "appraisal" remains in the 43 CFR § 3602.13 regulations, the regulations have always involved commodity valuations for mineral materials disposals, and not valuations of the mineral estate of a tract. The BLM will consult with the Office of Valuation Services (OVS) and the Solicitor's Office to identify an appropriate resolution for this situation. In addition, although the OIG and OVS acknowledge that a real property appraisal is not required for mineral material commodity valuations, neither office has provided information as to what other alternative methodologies they consider to be acceptable.

OVS Assistance

The BLM agrees with the OIG's multiple recommendations to work with OVS to explore potential improvements to BLM's procedures and guidance relating to valuations of mineral materials commodities. The BLM plans to discuss with OVS how it might be able to assist the BLM in the revisions to manuals and handbooks, and how OVS can assist with developing statements of work and review of select mineral materials commodity valuation reports completed by the BLM and contractors. The BLM recognizes that OVS may be able to offer their assistance to the BLM.

Revenues May Be Lost Due to Unauthorized Use

On page 12, the OIG reported that the "BLM did not collect fees for millions of tons of mineral materials used on land that it sold to a private developer under the authority of the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Pub. L. No. 105-263, 112 Stat. 2343. The BLM estimated the value of fees not paid for these materials exceeded $1 million."

The Del Webb/Anthem development identified by the OIG was an isolated incident that involved a completed development on a tract that was transferred through the authority of the SNPLMA. The BLM Las Vegas Office was unable to identify records that could corroborate the OIG's statement about the quantity and value of the unauthorized removal of mineral materials for the Del Webb/Anthem housing development. Although this incident involved a large residential construction development with substantial reconfiguration of mineral materials, the BLM cannot retroactively identify documentation that would support an enforcement action. However, the BLM Las Vegas Office recently identified two potential unauthorized mineral materials removals from other SNPLMA tracts and initiated enforcement actions in 2013.

Attachment 2

Technical Comments

Page 2, last paragraph. The paragraph intermixes time periods, and omits the word "currently" when describing the Materials Act of 1947. The last clause of the first sentence should state "the
Act currently_ requires payment of 'adequate compensation'." When the BLM issued the Bureau-wide appraisal guidance in the mid-1980's, the Act and the regulations required determining the market value of mineral materials commodities through appraisal. At that time, there was no clear guidance for performing appraisals or how to determine adequate compensation for mineral materials commodities, so the BLM developed alternative methodologies to perform commodities valuations, patterned after real property appraisals. Commodity valuation report formats that BLM developed emulated the 1973 format from the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), and adopted its definition of market value. The BLM also referenced some appraisal terminology from the UASFLA but revised the definitions to describe commodities instead of real estate (such as a definition of the highest and best use of
the commodity, rather than of the site). As a result, the BLM guidance and real property appraisals use some of the same words but the meanings are different.

Page 3, last two paragraphs. The description does not accurately capture the distinction between
cost recovery fees and reclamation fees. The BLM suggests replacing these two paragraphs with the following:

Generally, both purchasers and permittees are responsible for reclamation of lands disturbed through exclusive disposals outside of community pits and common use areas. Purchasers, but not permittees, are responsible for cost recovery fees that are paid in advance. The cost recovery
fees can include the costs of the BLM's administrative review of permit applications, review of mining and reclamation plans, National Environmental Policy Act (NEPA) reviews, and appraisal services.

In designated community pits and common use areas, the BLM does not charge cost recovery fees, but purchasers pay reclamation fees that have a component to recoup, over time, the original processing costs for site designation and preparation, preparation of BLM mining and reclamation plans, NEPA reviews, and reclamation-related life-of-mine administration costs. When an exclusive sale occurs in a community pit or common use area and requires a supplemental mining and reclamation plan and NEPA, current regulations do not allow the BLM to charge processing fees in advance so these costs must be recovered incrementally through reclamation fees over the life of the contracts. Permittees usually perform an equivalent amount
of reclamation work in lieu of a reclamation fee.

Page 5. When the BLM Appraisal Manual and Handbook guidance was developed, amendments to the Act had removed the requirement for appraisal, but this was not identified then or when the BLM revised the regulations in 2001, and the wording for the appraisal requirement in the regulations was not changed. As OIG notes, the appraisal profession and legal requirements for real property appraisals have diverged substantially from the valuation requirements for mineral
materials commodities. Although the requirements for commodities are different from those for

real estate, the terminology similarities are causing confusion for BLM personnel and contractors. A guidance update is needed to clearly distinguish the two systems.

Page 5, first full paragraph. The report does not provide additional details regarding what other
acceptable valuation methodologies exist. The BLM recommends that the OIG include a discussion in the report of other methodologies that OIG considers to be acceptable.

Page 5, first two sentences of second full paragraph. The report states that the BLM's Mineral Material Appraisal Manual and Handbook has not been updated since the mid-1980s. Regulations for mineral materials sales were amended in 2001, 2005, and 2008. The associated guidance for sales of these materials was issued in 2002, followed by supplemental guidance in 2003, 2006, 2007, 2009, and 2010, with more in progress currently. The BLM recommends that

this information be included in this paragraph.

Page 9, first paragraph. The BLM believes that the OIG has misinterpreted the current cost recovery regulations for exclusive sales located outside of community pits and common use areas. The cost recovery regulations currently only cover recovery of costs for processing applications to the point of issuance of the disposal. Thereafter, there is no recovery of costs for
administering the contracts. The BLM recommends deleting the last sentence in the paragraph.

Page 9, second paragraph. The second sentence appears to contain an inaccurate description of a finding in the sentence "We found, despite the authority to recover costs, none of the 30 exclusive
sales contracts we reviewed included cost recovery associated with administering the contracts."

Current regulations only allow recovery of costs for processing applications to the point of issuing contracts for applications located outside of community pits, but do not allow for cost recovery for any disposals located within community pits. The 2005 regulations also do not allow recovery of the costs of administering authorized contracts at any location after processing
of the application is completed and the sale is authorized. If OIG's fmding pertained to applications, not to contracts, the fmding should be rephrased to state that "We found that none
of the 30 exclusive sale contracts we reviewed included cost recovery associated with processing
the purchase applications." We also recommend stating how many of the 30 contracts involved disposals from within community pits.

Page 12. "BLM did not collect fees for millions of tons of mineral material used on land that it
sold to a private developer under the authority of the Southern Nevada Public Land Management Act of 1988 (SNPLMA). The BLM cannot substantiate the amount of mineral materials were used. This situation involved an isolated incident that apparently involved misunderstanding of a
mineral reservation soon after SNPLMA was enacted. This resulted in BLM not investigating and documenting the extent of use of reserved minerals by the surface owner in developing a tract. A more accurate wording for the bullet would be "BLM did not investigate a potentially unauthorized use of mineral materials or consult the Office of the Solicitor for a legal interpretation of a mineral reservation."

Pages 6, the first full paragraph discusses deficiencies in mineral materials appraisals performed
in four States where the OIG conducted site visits. The paragraph goes on to reference Appendix 1 (page 16 to 18 of the report), which elaborates on the deficiencies in the valuations performed

in those four States – Wyoming, Arizona, New Mexico and Nevada. Please note that the

valuations discussed in these sections did not conform to BLM guidance. We recommend

inserting a statement at the end of the first full paragraph on page 6 that says "During the preparation of this report, the BLM notified the OIG that in addition to what was identified by

the investigators, the procedures and standards used to perform the appraisals were not in

compliance with BLM guidance."

Attachment 3

Response to the Recommendations included in the Office of the Inspector General Report
Bureau of Land Management's Mineral Materials Program
(C-IN-BLM-0002-2012)

Recommendation 1: Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.

Response: The BLM will review alternative valuation methodologies, and initiate the regulatory process if that is found appropriate.

Target Date: December 31, 2016 (Date for initiation of the rulemaking process, if it is determined a rule

is necessary)
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 2: Work with Office of Valuation Services (OVS) to update the Bureau's Mineral Material Appraisal Manual 3630 and H-3630-1 Mineral Material Appraisal Handbook.

Response: The BLM will consult with OVS as it updates the Mineral Appraisal Manual and Handbook.

Target Date: December 31, 2015

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty

Management

Recommendation 3: Issue guidance to State offices to coordinate with OVS for contracting of

mineral materials valuations.

Response: The BLM will coordinate with OVS to identify a revised contracting process for

mineral materials valuations.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty

Management

Recommendation 4: Work with OVS to develop statements of work for preparing mineral

materials valuations.

Response: The BLM will work with OVS to develop standardized statements of work for contracts for performing mineral materials valuations.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 5: Develop a process for OVS to review mineral materials valuations performed by or for BLM.

Response: The BLM will work with OVS to develop a process that includes the appropriate OVS reviews for the various types of mineral material valuations.

Target Date: December 31, 2014
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 6: Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been "disapproved for use".

Response: BLM will consult with OVS to determine a process for their assistance in

determining the market values in this situation.

Target Date: June 30, 2015
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 7: Develop a mechanism for which BLM will reimburse OVS for mineral materials valuation services as needed.

Response: The BLM will work with OVS to determine how OVS could be reimbursed for work on these services.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 8: Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy.

Response: The BLM will issue additional guidance to supplement its H-36001 Mineral Material Disposal Handbook reiterating the mineral materials price adjustment guidance requirement for existing contracts. Additionally, the BLM will complete periodic reviews on this issue to monitor for compliance.

Target Date: December, 2014 for additional guidance.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 9: Develop annual rankings of contracts that need to be valued and revalued.

Response: The BLM will review existing ranking policy in the H-3600-1 Mineral Material Disposal Handbook and will clarify and update the policy as necessary.

Target Date: December 31, 2014.
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 10: Reissue guidance explaining which costs are recoverable for exclusive sale contracts and ensure that field offices seek reimbursement for costs incurred.

Response: The BLM has recently identified some possible improvements to the current approaches for recovering costs and will revise its guidance for determining which costs are recoverable and how to collect the costs.

Target Date: June 30, 2015.
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 11: Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost recovery fees on existing exclusive-sale contracts in community pits and common-use areas.

Response: BLM will work with the Office of the Solicitor to determine if a regulatory revision is
necessary or if other administrative options are available to meet this need.
Target Date: December 31, 2016 to initiate a regulatory process, if found appropriate.
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty

Management

Recommendation 12: Reissue policy and guidance on production verification to provide

accurate accounting of materials removed, and implement procedures to provide reasonable

assurance that field offices comply.

Response: The BLM will issue new guidance for production verification. Additionally, the BLM will periodically monitor for compliance.

Target Date: December 31, 2014 for issuance of new guidance.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty

Management

Recommendation 13: Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define "personal use" versus commercial use, in terms of the property on which those uses are restricted
and what specific uses constitute allowable personal use in contrast with restricted commercial use.

Response: The BLM will issue supplemental guidance to define personal use of mineral materials under 43 C.F.R. § 3601.71.

Target Date: December 30, 2014
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty
Management

Recommendation 14: Issue guidance to its State offices to identify and take action to collect the
fair market value of the unauthorized removal of mineral materials on split-estate land disposals.

Response: The BLM will issue supplemental guidance reiterating the requirement to follow existing procedures for recovery of damages for unauthorized removal of mineral materials from split-estate lands.

Target Date: December 31, 2014
Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty
Management

Recommendation 15: Consult with the Office of the Solicitor regarding this and similar land disposals to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.

Response: The BLM will consult with the SOL regarding whether actions can be taken to address the land disposal described in this report and similar land disposals.

Target Date: June 30, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty

Management

Appendix 6: Status of Recommendations

The Bureau of Land Management (BLM) concurred with all but 1 of our 15 recommendations.

Recommendations Status Action Required
We will refer these
recommendations to the
I through 8 and Resolved but not Assistant Secretary for
10 through 15 implemented. Policy, Management and
Budget for
implementation tracking
Based on BLM's
response, we modified
our recommendation.
We request that BLM
reconsider the
recommendation and
respond to us, in writing,
9 Unresolved. within 30 days with
information on actions
taken or planned to
address the
recommendation, as well
as target dates and titles
of officials responsible
for implementation.

Report Fraud, Waste,
and Mismanagement

Fraud, waste, and mismanagement in

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et-.4 ‹of Inspector General staff, departmental

employees, and the general public. We
actively solicit allegations of any
inefficient and wasteful practices, fraud,
and mismanagement related to
departmental or Insular Area programs
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Washington Metro Area: 202-208-5300

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By Mail:
U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW.
Washington, DC 20240

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

http://www.blm.gov

April 23, 2014

EMS TRANSMISSION 05/05/2014
In Reply Refer To:
3600/9235 (320) P

Instruction Memorandum No. 2014- 085
Expires: 09/30/2015

To: All Field Office Officials

From: Assistant Director, Energy, Minerals, and Realty Management

Subject: Unauthorized Use of Mineral Materials on Split Estate Lands

Program Area: Mineral Materials.

Purpose: This Instruction Memorandum (IM) clarifies policies for addressing unauthorized uses of mineral materials by surface estate owners, including unauthorized personal uses of the mineral materials.

Policy/Action: Processing mineral materials trespass is a high priority for the Bureau of Land Management (BLM). Field offices must investigate and take enforcement actions on unauthorized removals of mineral materials from split estate land in accordance with established trespass procedures whenever the BLM identifies such removals. As part of the investigation, all BLM offices must verify, with the Office of the Solicitor, that the reserved mineral estate includes mineral materials.

A surface owner may extract, sever, or remove only minimal amounts of mineral materials from split estate land for personal use under 43 CFR 3601.71(b)(1) for purposes of improving the surface, even if the materials are not removed off of the tract.

The preamble to the Federal Register notice publishing the regulations explained the type of use that is regarded as "minimal personal use" for the purpose of 43 CFR 3601.71 (b)(1). The preamble reads:

[W]ithout a contract or permit, or other express authorization, a surface estate owner may make only minimal personal use of federally reserved mineral materials within the boundaries of the surface estate. Minimal use would include, for example, moving mineral materials to dig a personal swimming pool and using those excavated materials for grading or landscaping on the property. It would not include large-scale use of mineral materials, even within the boundaries of the surface estate (66 Fed. Reg. 58894 (Nov. 23, 2001))."

Do not confuse the term "landscaping" in the preamble explanation with specific mineral material landscaping products such as decorative boulders, flagstone for walls and walkways, and crushed rock used for ground cover. The phrase "using those excavated materials for grading or landscaping on the property" means that mineral materials that must be excavated in connection with surface use of the property may be spread on other parts of the surface of that same property regardless of the amount, so long as the material is unaltered and is not used for or in connection with any construction purpose.

Any separation or alteration of the various constituents of the material, through methods such as screening or crushing, constitutes a mineral use of the materials and requires a contract or permit. Furthermore, any use of the materials in a construction project, such as for road base, building foundations, or ornamentation, also constitutes a mineral use of the materials – even if the material was not altered in any way – and also requires a contract or permit.

Timeframe: Effective immediately.

Budget Impact: This policy will not result in any additional impact to mineral materials budgets.

Background: On split estate parcels, mineral materials can be reserved under numerous Federal and State laws. Title to reserved mineral estate can be complex and individual situations must be
analyzed to determine if mineral materials are reserved. BLM regulations at 43 CFR 3601.71(b)(1) do not quantify the minimal amount allowed for personal use and the Federal Register preamble explanation of minimal quantities is not reproduced in the regulations. Handbook H-9235-1, Mineral Materials Trespass Prevention and Abatement, provides extensive guidance on investigation and enforcement procedures but it does not define limited personal use.

Manual/Handbook Sections Affected: This IM transmits interim policy that we will incorporate into H-3600-1, Mineral Materials Disposal Handbook, at Section X.C., and H-92351, Mineral Materials Trespass Prevention and Abatement Handbook, at Sections V.5 and 6 during the next revision.

Coordination: The Division of Solid Minerals consulted with State Offices, and coordinated preparation of this guidance with the Office of the Solicitor.

Contact: If you have any questions concerning the content of this IM, please contact me at 202-208-4201, or your staff may contact Mitchell Leverette, Division Chief, Solid Minerals (WO-320), at 202-912- 7113 or mleverette@blm.gov , or George Brown, Geologist, Solid Minerals (WO-320), at 202-912-7118 or glbrown@b1m.gov .

Signed by: Authenticated by:

Michael D. Nedd Ambyr Fowler

Assistant Director Division of IRM Governance, WO-860
Energy, Minerals, and Realty Management

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of November 4, 2015

Title 43 Subtitle B –*Chapter II –> Subchapter C Part 3600 Subpart 3601 –> §3601.71

Title 43: Public Lands: Interior

PART 3600—MINERAL MATERIALS DISPOSAL
Subpart 3601—Mineral Materials Disposal; General Provisions

§3601.71 What constitutes unauthorized use?

(a) Except as provided in paragraph (b) of this section, you must not extract, sever, or remove mineral materials from
public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction
authorizes the removal by sale or permit. Violation of this prohibition constitutes unauthorized use.
(b) If you own the surface estate of lands with reserved Federal minerals, you may use mineral materials within the
boundaries of your surface estate without a sales contract or permit only in the following circumstances:

(1) You use a minimal amount of mineral materials for your own personal use;
(2) You have statutory authority to use the mineral materials; or
(3) You have other express authority to use the mineral materials.

NEVADA RURAL ELECTRIC

ASSOCIATION

Testimony of Mr. Mendis Cooper
General Manager of the Overton Power District 5
to the Subcommittee on Investigations, Oversight and

Regulations of the Committee on Small Business
United States House of Representatives
November 6, 2015

NEVADA RURAL ELECTRIC

ASSOC:ATION

Thank you for the invitation to provide testimony at this hearing today. My name is Mendis Cooper, and I am the General Manager of Overton Power District #5 (Overton Power). Overton Power is a Public Power District created by the State of Nevada in 1935 to deliver hydropower from Hoover Dam to the rural areas of northeast Clark County, Nevada. Today the Overton service territory covers approximately 1,932 square miles and serves 15,000 meters.

Overton Power is a member of the Nevada Rural Electric Association (NREA) and I am here today representing the Nevada Rural Electric Association. NREA is a group of nine relatively small public electric utilities that represent the collective interests of member-owned public power utilities and their members across the state and neighboring areas. Collectively, NREA serves about 60,000 consumers across about 50,000 square miles of Nevada, and small portions of California, Idaho, Oregon, and Utah.

Electric cooperatives and public power districts are not-for-profit utilities that are owned and managed by their member-consumers. These non-profit utilities were created to provide electric service in areas of the country where it was less profitable for investor-owned utilities to operate. In fact, nationwide electric cooperatives serve an average of just 7 consumers per mile of distribution line, compared to about 35 meters per line for investor-owned utilities. The nonprofit nature of public power entities in Nevada means that governing decisions are made with the primary goals of providing safe, reliable, affordable power to members, and each consumer/member-owner has an equal voice in making those decisions. Nationwide, electric cooperatives and public power districts together serve about 42 million customers and have a presence in 47 states. Although non-profits do not pay income taxes, they do pay property and other taxes.

Rural electrification was sparked by the establishment of the federal Rural Electrification Administration. However, the REA did not directly mandate or force the creation of any single electric cooperative. Rather, this New Deal initiative simply provided those residing in rural America a pathway for creating cooperative organizations for themselves, to pursue their own vision, and to serve their own interests. The federal government provided an opportunity to participate in a low-cost loan mechanism that was made available to privately-held, independent, locally controlled power providers. The federal government then allowed the local organizations to apply the solutions that made the most sense for their particular circumstances. In essence, the federal government created the opportunity and then got out of the way to allow innovation to flourish. That service and innovation continues today.

Today, however we are concerned about the federal regulatory overreach we are seeing from several different agencies, and how these hurdles placed by the federal government threaten
our ability to provide affordable and reliable electric power to our consumers.

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NEVADA RURAL ELECTRIC

ASSOC€ATION

The service territory for much of NREA utility members is surrounded by federal lands, much of it
administered by the Bureau of Land Management (BLM). Therefore, obtaining rights-of-way (ROW) from the BLM is a necessary part of providing electricity to rural Nevadans. Over the past 10
years, the time and cost to acquire ROW permits has increased exponentially. Ten years ago ROW could be obtained for approximately $500/mile. The cost of ROW permits today is over $25,000/mile
and is, in some cases, making electric distribution service cost-prohibitive. In addition, the average time
it takes to obtain a permit has increased from about twelve months to as much as eight years.

BLM land-use decisions also present challenges to NREA members. Permanent or seasonal road closures in NREA utility members' service areas have serious implications for these
members. NREA utility members strongly oppose the closure of any road currently used to access its infrastructure. Without the ability to use these roads, we are unable to quickly and efficiently
access distribution and transmission infrastructure as an essential service for maintenance and emergency repairs.

Other restrictions of activities on federal lands also affect NREA utilities' ability to provide
reliable and affordable power to NREA consumers. Compliance with the Endangered Species Act prohibits transmission line construction, maintenance, and even access to some areas at certain times of year, depending on various species-specific nesting habits and other requirements. For example, even though the Greater Sage Grouse was not listed as a threatened or endangered species, there are still a number of restrictions and requirements placed upon NREA member organizations despite the fact that these organizations have owned and operated electrical lines in
these areas for many years.

Proposed wilderness or monument designations would further restrict existing operations. In a state that is sparsely populated and where the majority of the land is government owned, there is often little room for infrastructure and development when you consider existing federal
designations and proposed wilderness or monument designations. In the past, it has literally taken an Act of Congress to obtain right-of way in some instances. Therefore additional designations greatly restrict, and in some cases prevent the ability of NREA members to provide infrastructure.

We also have seen a regulatory overreach recently in the form of the "Clean Power Plan" proposed by the Environmental Protection Administration (EPA), published in the Federal Register
on October 23, 2015. This 111(d) regulation threatens to make electric generation from coal more
costly by imposing stringent limits on the emission of carbon dioxide. The CPP is one of the most
aggressive and controversial regulations in the history of federal environmental regulation.

The CPP is costly and risky. It will cost electric utilities, including NREA's public power

entities billions of dollars due to plant closures and the need to build additional infrastructure to
replace lost generation. It will force electricity price hikes on our nation's most vulnerable citizens

– those who can least afford to pay more each month. And it will jeopardize the reliable power supply on which the American economy depends.
In the CPP, the EPA reads the Clean Air Act to give the agency much broader authority over the energy sector than it ever has had in the past. Past EPA regulations under the Clean Air
Act have required emission reductions that could be achieved by the power plant. That's not the case with the CPP. The CPP emissions rates chosen by EPA cannot be achieved solely by the coal-fired power plants that are the subject of the regulation. To comply with the CPP, regulated power
plants would have to invest in new natural gas, renewable and/or nuclear generation and in new end-use energy efficiency programs. All of which would be subject to EPA review and indirect regulation.

Currently, NREA member organizations own very little of their own generation. The CPP will raise prices for market purchases of electricity and more importantly may prevent NREA members from installing their own generation in a time when renewable generation is becoming more cost effective and could be partnered with natural gas generation as an effective and reliable
mix of resources.

In summary, over reaching and excessive government regulation have cost impacts on the NREA member organizations. These cost impacts are borne primarily by our consumer/members and small businesses. These small businesses are not national organizations. These businesses are
locally owned by our friends and neighbors. We personally see the impact.

Thank you again for allowing me to share my views and concerns about the regulatory overreach of the federal government. I look forward to questions from the Chairman.

Respectfully Submitted,

Mendis Cooper
General Manager, Overton Power District #5
Board Member, Nevada Rural Electric Association