



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

ADVISORY REPORT

**JASPER LAND EXCHANGE,
BUREAU OF RECLAMATION**

REPORT NO. 00-I-280
MARCH 2000



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MAR 31 2000

MEMORANDUM

TO: The Secretary

FROM: Earl E. Devaney
Inspector General

SUBJECT SUMMARY: Final Advisory Report - "Jasper Land Exchange, Bureau of Reclamation"

Attached for your information is a copy of the subject final advisory report. The executive summary (page 1) synthesizes the report's background, objective, and results and provides the auditee's comments on the report.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Assistant Inspector General for Audits, at (202) 208-4252.

Attachment

cc: Chief of Staff
Assistant Secretary for Policy, Management and Budget
Director, National Business Center
Office of Communications

EXECUTIVE SUMMARY

**Jasper Land Exchange,
Bureau of Reclamation
Report No. 00-I-280
March 2000**

BACKGROUND

The Bureau of Reclamation (BOR) acquires land for constructing its water development projects and for mitigating the environmental impacts associated with those projects. The land involved in the Jasper land exchange is adjacent to and in the vicinity of the Cascade Reservoir, located near Boise, Idaho. The Reservoir was constructed in 1948 as an irrigation and hydroelectric facility. Section 5 of Public Law 86-92, enacted in July 1959, authorizes BOR to exchange Federal lands in the vicinity of the Reservoir that are no longer needed for project purposes for lands of "approximately equal value." When BOR purchased the private property to create the Reservoir, many of the sellers requested and received permanent easement rights to continue to use the land for cattle grazing and farming.

In 1991, BOR prepared a Resource Management Plan, which recommended that BOR address deficiencies in water quality at the Reservoir by acquiring the permanent agricultural easements around the Reservoir, thereby obtaining full title to these lands. The Jasper exchange is the first exchange since the 1970s in which BOR has sought to acquire such an easement. In March 1997, the former Regional Director of the Pacific Northwest Region negotiated a tentative agreement with the Jasper family, which owns an agricultural easement on about 278 acres adjacent to the Reservoir. On April 14, 1998, BOR and the Jaspers signed a land exchange contract.

On July 1, 1998, an official of the Western Land Exchange Project contacted BOR and questioned the adequacy of the environmental documentation for the exchange. Subsequently, on July 17, 1998, BOR's realty and environmental personnel from the Snake River Area Office and the Regional Office determined that a site-specific environmental assessment was needed. As of October 1999, BOR had not initiated work on the environmental assessment, and the land exchange had not been finalized because issues concerning the points of access to the Reservoir had not been resolved.

OBJECTIVE

Our review of the Jasper land exchange was conducted as part of our survey of BOR's land acquisition activities. The objective of our survey was to determine whether BOR conducted land acquisition activities in accordance with applicable laws and regulations and paid a fair price for the land acquired. The results of our overall survey will be presented in a separate report.

RESULTS IN BRIEF

We found that the Pacific Northwest Region did not prepare the required environmental documentation for the Jasper land exchange or establish fair value for the land to be exchanged. The National Environmental Policy Act and the Departmental and Reclamation Manuals establish requirements for environmental documentation, and the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisitions, and the Reclamation Manual provide guidance for preparing and reviewing appraisals and consulting reports. The Reclamation Manual also authorizes regional directors or their designees to acquire land for more than the appraised fair market value within specified limitations. BOR officials told us that the land exchange as originally planned would not have required a separate environmental assessment and that they considered the exchange to be fair because of additional benefits accruing to the Government which they believed equalized the values of the lands being exchanged. In our opinion, however, the Region did not adequately protect the Government's interests when it entered into the Jasper land exchange contract.

RECOMMENDATIONS

This report did not contain any recommendations; however, we made suggestions to the Pacific Northwest Region regarding the land exchange process. Specifically, we suggested that the Region comply with requirements of the National Environmental Policy Act before it enters into binding agreements, request written clarification from the Regional Solicitor on whether BOR has the authority to administratively adjust the value of land exchanges conducted under Public Law 86-92, and use appraisals prepared in accordance with applicable appraisal standards and the Reclamation Manual rather than consulting reports in establishing property values in land exchanges.

AUDITEE COMMENTS

BOR officials generally concurred with the report's findings and our suggestions. We considered the officials' comments and incorporated them into this report as appropriate. Subsequent to the discussion, BOR provided us with a copy of a letter from the Office of the Solicitor, Pacific Northwest Region, dated February 10, 2000, to the Jaspers' attorney, stating that the April 14, 1998, land exchange contract with the Jaspers had been voided because of "mutual mistakes of fact" regarding property boundaries and compliance with environmental assessment requirements.



United States Department of the Interior


OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MAR 31 1999

ADVISORY REPORT

Memorandum

To: Commissioner, Bureau of Reclamation

From: Roger La Rouche 
Acting Assistant Inspector General for Audits

Subject: Advisory Report on the Jasper Land Exchange, Bureau of Reclamation
(No. 00-I-280)

INTRODUCTION

This report presents the results of our review of the pending Jasper land exchange being conducted by the Bureau of Reclamation's (BOR) Pacific Northwest Region in Boise, Idaho. The review was prompted by the Western Land Exchange Project, a nonprofit public interest organization, located in Seattle, Washington, which expressed concerns regarding BOR's compliance with the environmental and land valuation requirements for the exchange. We performed our review as part of our survey of BOR's land acquisition activities. The objective of our survey was to determine whether BOR conducted land acquisition activities in accordance with applicable laws and regulations and paid a fair price for the land acquired. The results of our overall survey will be presented in a separate report.

BACKGROUND

BOR acquires land for constructing its water development projects and for mitigating the environmental impacts associated with those projects. The land involved in the Jasper land exchange is adjacent to and in the vicinity of the Cascade Reservoir, located near Boise. Constructed in 1948 as an irrigation and hydroelectric facility, the Reservoir has become increasingly important for recreational uses, such as swimming, boating, camping, picnicking, and fishing. BOR has attempted to acquire agricultural easements¹ on the land around the Reservoir in an effort to improve water quality by reducing grazing along the shoreline. Section 5 of Public Law 86-92 (an act to add certain lands located in Idaho to the

¹When BOR purchased private property to create the Reservoir, most of the land was used for cattle grazing and farming. Many of the sellers requested and received permanent easement rights to continue these uses, to the exclusion of nonagricultural uses and development. These restrictions applied to both BOR, which retained fee title to these lands, and the private easement holder. Accordingly, by acquiring these agricultural easements, BOR would obtain full title to and control of the land.

Boise and Payette National Forests), enacted on July 17, 1959 (16 U.S.C. §486a-486w), authorizes BOR to exchange Federal lands in the vicinity of the Reservoir that are no longer needed for project purposes for lands of “approximately equal value” within 300 feet of the Reservoir’s shoreline.²

In 1991, BOR prepared a Resource Management Plan to coordinate development and provide guidance for managing the lands and facilities under BOR jurisdiction at the Reservoir. The Plan recommended that BOR address deficiencies in water quality at the Reservoir by acquiring the permanent agricultural easements around the Reservoir, thereby obtaining full title to these lands. The Jasper exchange is the first exchange since the 1970s in which BOR has sought to acquire an agricultural easement within the 300-foot area. In March 1997, the former Regional Director of the Pacific Northwest Region negotiated a tentative agreement with the Jasper family, which owns an agricultural easement adjacent to the Reservoir. Under the agreement, the Jaspers were to relinquish easement rights for 277.83 acres³ and also provide a road access easement to BOR in return for title to 55 acres of Government-owned land, various easements, access to the Reservoir, and resolution of an existing building trespass issue. On April 14, 1998, BOR and the Jaspers signed a land exchange contract.

On July 1, 1998, an official of the Western Land Exchange Project contacted BOR and questioned the adequacy of the environmental documentation for the exchange. Subsequently, on July 17, 1998, BOR’s realty and environmental personnel from the Snake River Area Office and the Regional Office determined that a site-specific environmental assessment was needed. In a January 6, 1999, letter to our office, a Project official reiterated the Project’s concerns about environmental documentation and raised other concerns regarding the fee appraiser’s consulting report for the exchange. As of October 1999, BOR had not initiated work on the environmental assessment, and the land exchange had not been finalized because issues concerning the points of access to the Reservoir had not been resolved.

SCOPE

We conducted our review of BOR’s land acquisition activities, including the Jasper exchange, from June through October 1999 at the Pacific Northwest Region. To obtain an understanding of BOR’s authority to conduct land exchanges, we reviewed relevant laws and regulations and the Reclamation Manual. We also reviewed BOR’s implementing regulations and procedures to identify the specific requirements for conducting land exchanges and reviewed the Jasper land exchange transaction file at the Regional Office to identify key documents and determine why and how the exchange was being conducted. In addition, we interviewed BOR program and realty personnel and the Regional Review

²The shoreline has been established in Public Law 86-92 as the normal water surface elevation of 4828 feet, which represents the Reservoir’s high-water line.

³Of the 277.83 acres, 239.33 acres are below the high-water line and are usable only when the Reservoir recedes. The fee appraiser did not assign a monetary value to the 239.33 acres but only to the 38.5 acres above the high-water line.

Appraiser to discuss the land exchange and verify information and data obtained through our review of the land exchange file.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary to accomplish the objective. As part of the audit, we examined BOR's annual assurance statement on management controls and the Departmental Reports on Accountability for fiscal years 1996, 1997, and 1998, which included information required by the Federal Managers' Financial Integrity Act, and determined that no material weaknesses were reported that related to BOR's land acquisition activities.

We reviewed the system of internal controls over BOR's land acquisition activities and did not identify any significant weaknesses. However, in our review of the Jasper exchange, we found deficiencies in BOR's compliance with environmental laws and regulations and in its establishing fair market value⁴ for the land to be exchanged. These issues are addressed in the Discussion section of this report.

DISCUSSION

We found that the Pacific Northwest Region did not (1) prepare the required environmental documentation for the Jasper land exchange or (2) establish fair value for the land to be exchanged. The National Environmental Policy Act and the Departmental and Reclamation Manuals establish requirements for environmental documentation, and the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisitions, and the Reclamation Manual provide guidance for preparing and reviewing appraisals and consulting reports. The Reclamation Manual also authorizes regional directors or their designees to acquire land for more than the appraised fair market value within specified limitations.⁵ BOR officials told us that the land exchange as originally planned would not have required a separate environmental assessment and that they considered the exchange to be fair because of additional benefits accruing to the Government which they believed equalized the values of the lands being exchanged. In our opinion, however, the Region did not adequately protect the Government's interests when it entered into the Jasper land exchange contract.

Environmental Compliance

The Region signed the land exchange contract without performing an environmental assessment or updating its hazardous material inspection. The Code of Federal Regulations

⁴Fair market value is generally defined as the price that could be obtained in an arm's-length transaction between willing parties in other than a forced or a liquidation sale.

⁵According to the Reclamation Manual (LND 06, 7.G(1)), regional directors or their designees may acquire land above the appraised value as follows: without limitation if the appraised amount is less than \$100,000, by 15 percent if the appraisal amount is between \$ 100,000 and \$500,000, and by 10 percent if the appraisal amount is more than \$500,000.

(40 CFR §1501.2) requires that agencies integrate the National Environmental Policy Act process in planning decisions “at the earliest possible time to insure that planning and decisions reflect environmental values ... and to head off potential conflicts.” In addition, the Departmental Manual (516 DM 3.2.A) requires that an environmental assessment be prepared “for all actions, except those covered by a categorical exclusion, covered sufficiently by an earlier environmental document, or for those actions for which a decision has already been made to prepare an environmental impact statement.” The Departmental Manual (602 DM 2.6.B) also requires that a “pre-acquisition environmental site assessment” (hazardous material inspection) be performed and states that such an assessment “will be considered adequate for a period not to exceed 12 months prior to the date of the acquisition of real property.” (Emphasis added.)

According to the Region’s Lands and Recreation Manager, the Region did not perform an environmental assessment for the land exchange because Regional officials believed that the 1991 Resource Management Plan for the Cascade Reservoir met the requirements of the Act. In preparing the Resource Management Plan, the Region conducted an environmental assessment in which the issue of acquiring perpetual agricultural easements around the Reservoir was addressed, and it issued a “Finding of No Significant Impact.” However, as stipulated in the March 1997 tentative agreement, the land exchange involved additional provisions, such as obtaining public access to the Reservoir, that were not addressed in the environmental assessment for the Resource Management Plan. Despite this expanded scope, the Region did not address the need for further environmental reviews until the Western Land Exchange Project questioned the adequacy of the existing environmental documentation for the land exchange in July 1998, after which the Region agreed that a site-specific environmental assessment was needed. We suggest that the Region, in the future, comply with requirements of the Act before it enters into binding agreements.

In addition, BOR did not perform a hazardous material inspection within 12 months prior to signing the land exchange contract in April 1998, as required by the Departmental Manual (602 DM 2.6.B) and the Reclamation Manual (LND 06-01, 6.E). An inspection had been performed during the summer of 1993, and the environmental concerns identified at that time had been addressed. However, without a current hazardous material inspection, there is no assurance that additional cleanup costs will not be required. We suggest that the Region, in the future, ensure that hazardous material inspections are performed within the required 12 months before it enters into binding agreements.

Land Valuation

BOR did not establish a fair value for the land to be exchanged. The consulting report used by BOR as the basis for establishing the value of the BOR land and the Jasper easement was prepared by an independent fee appraiser who was approved by both BOR and the Jaspers. The consulting report, submitted on October 5, 1995, presented a value of \$65,000 for the Government land to be exchanged. It also presented a value based on the hypothetical use and a value based on the actual use of the agricultural easement owned by the Jaspers. Under the hypothetical use, the value of the agricultural easement was estimated at \$33,000 based on use of the easement primarily as irrigated pasture land. Under actual use, the value was estimated at \$18,000 based on the actual use of the land as dry pasture land. The Regional

Review Appraiser recommended \$18,000 as the fair market value of the agricultural easement because the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice required that the value be based on actual use.

Following negotiations with the Jaspers, the Regional Lands and Recreation Manager administratively equalized the value of the properties to be exchanged by increasing the recommended fair market value of the agricultural easement by \$37,200 and decreasing the value of BOR land by \$9,800, to arrive at an equal value of \$55,200. The Manager stated that she believed the pending exchange was equitable and that it provided benefits to BOR, such as providing public access to the Reservoir, improving the Reservoir's water quality by reducing grazing along the shoreline, and resolving a building trespass issue. Although the Manager has the authority to administratively adjust the value of land to be acquired, we do not believe that this authority extends to exchanges. The authorizing law (Public Law 86-92) for this exchange requires that the non-Federal land exchanged for the excess Federal land be "of not less than approximately equal value"; however, the law does not define "equal value." We suggest that the Region request written clarification from the Regional Solicitor on whether BOR has the authority to administratively adjust the value of land exchanges conducted under Public Law 86-92.

We also noted that BOR did not use an appraisal to establish the values of the properties. The Reclamation Manual (LDN 05-01) requires that the value of the private and public lands exchanged be established based on an appraisal conducted in accordance with Federal regulations and appraisal standards. However, we found that contrary to this requirement, BOR used a consulting report to establish the values of the properties. According to the consultant's October 1995 letter to BOR, the consulting report was not intended to be a "complete or full narrative appraisal report" and was considered limited in scope because it conveyed only the consultant's "preliminary range of values" of the properties.

In addition, the consulting report was 17 months old at the time of the tentative agreement and 30 months old at the time the exchange contract was signed. We believe that the use of a consulting report, especially one that was 30 months old, raises additional concerns as to the fair value of the properties in April 1998, when the land exchange contract was signed. Therefore, we suggest that the Region, in the future, use appraisals prepared in accordance with applicable appraisal standards and the Reclamation Manual rather than consulting reports in establishing property values in land exchanges. In addition, we suggest that appraisals older than 1 year be reviewed and updated if necessary by either the original appraiser or the regional reviewing appraiser familiar with the property.

On February 25, 2000, we discussed the preliminary draft of this report with BOR officials, who generally concurred with the report's findings and suggestions. We considered their comments and incorporated them into this report as appropriate. Subsequent to the discussion, BOR provided us with a copy of a letter from the Office of the Solicitor, Pacific Northwest Region, dated February 10, 2000, to the Jaspers' attorney, 'stating that Property Exchange Contract No. 7-07-L1455, dated April 14, 1998, had been voided because of "mutual mistakes of fact" regarding property boundaries and compliance with environmental assessment requirements.

Since this report does not contain any recommendations, a response is not required.

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the Congress. In addition, the Office of Inspector General provides audit reports to the Congress.

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