United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

Advisory Letter

JUN 5 2001

Memorandum

To: Director, Bureau of Land Management

From: Roger La Rouche
Assistant Inspector General for Audits

Subject: Evaluation of the Bureau of Land Management's Controls Over Receipts and Disbursement of Funds Derived From Land Sales Authorized by the Southern Nevada Public Lands Management Act (01-I-406)

This advisory letter presents the results of our review of controls over the tracking of receipts and the disbursement of funds derived from land sales authorized by the Southern Nevada Public Lands Management Act (SNPLMA). Our review was conducted in September and October 2000 at the Bureau of Land Management's (BLM) SNPLMA Project Office, which is part of the Las Vegas Field Office. Our review included Project Office activities that occurred from inception of the SNPLMA through September 2000, including the completion of all actions for the first auction held in November 1999 and partial completion of activities for the auction held in June 2000. The review was requested in August 2000 by the then-Director of the BLM.

We believe that the SNPLMA Project Office has established sufficient internal controls for the tracking of receipts for the sale of SNPLMA properties. During our review, we also noted that clarification is needed regarding land transactions covered by both the SNPLMA and by the Santini-Burton Act. Specifically:

- A determination is needed of whether interest earned on the proceeds from the sales of the Santini-Burton Act properties should go into the SNPLMA special account for project purposes or be used for Lake Tahoe acquisitions.

- A determination is needed of whether proceeds from the sales of Santini-Burton Act properties should be available for future purchases or for repayment of losses on prior land transactions conducted under the Act.

The BLM is aware of these issues and has requested an opinion from the Office of the Solicitor.

Background

The SNPLMA (Public Law 105-263), signed into law in October 1998, provides for the disposal of public lands within a specific area in the Las Vegas valley. It creates a special account in which 85 percent of the proceeds of the sale of properties are to be expended for five specified purposes. The remaining 15 percent of the sales proceeds are divided, with 5 percent going to the State of Nevada for the general education program and 10 percent going to the Southern Nevada Water Authority. The SNPLMA also authorized the transfer of all rights and titles and interest in lands identified in the Cooperative Management Area to Clark County. However, Clark County agreed that in the event the land is sold, leased, or other otherwise conveyed, it would be at fair market value and the proceeds divided as described above. Further, the SNPLMA states for any of the properties included in the CMA that are identified on the map as those covered by the Santini-Burton Act (Public Law 96-586), the proceeds from sales, lease, or conveyance are to be contributed to the SNPLMA special account and used for acquisition by the Secretary of Agriculture for environmentally sensitive lands in the Lake Tahoe Basin.

As identified in the SNPLMA, approximately 40,000 acres of land are available for disposal, of which 27,000 acres included in the SNPLMA are planned to be sold. Since inception of the SNPLMA, there have been four auctions--November 1999, June 2000, November 2000, and December 2000. At the time of our review in October 2000, approximately $18 million for 225 acres was generated from the first two auctions and another $151,000 from the interest on the proceeds that the Project Office can use in connection with the project. The potential revenues from the sales are expected to be up to $1 billion.

First Two Auctions

The SNPLMA Project Office administered two successful auctions of properties identified for disposal. The results of the auctions exceeded the appraised values of the properties. Our review showed that there was appropriate tracking over the sales receipts. The amount shown in the accounting records for the special account fund, including interest from investments, reconciled with transaction records.

The SNPLMA Project Office also coordinated the efforts of its partners, the Forest Service, the U.S. Fish and Wildlife Service, the National Park Service, Clark County, and the BLM, in identifying and selecting properties to acquire with the special account funds. In addition, the SNPLMA Project Office limited administrative costs, especially indirect costs that would be covered with special account funds, in order to maximize the amount available to acquire properties and for other authorized uses for the funds.

Santini-Burton Properties

In connection with the provision of the SNPLMA entitled "Airport Environs Overlay District Land Transfer," the BLM transferred approximately 5,200 acres of BLM public land to Clark County. The SNPLMA also required that, in the event of sale, lease, or conveyances of any of this property, 85 percent of the proceeds of the sale would be deposited into the special account. Further, if any of these properties were covered under the Santini-Burton Act, proceeds of the sale would also be deposited into the special account for acquiring environmentally sensitive Lake Tahoe property. However, the Act did not state how the interest from the proceeds should be used. Our review showed that the Project Office was including the interest with the balance of the funds for SNPLMA purposes and not for Lake Tahoe purposes. As of October 2000, approximately $38,000 in interest had been derived from these properties.

Our prior audit report (July 1996) on Nevada land exchange activities (Report No. 96-I-1025) found that there was a negative balance from acquisitions of Lake Tahoe properties that was due, in part, from exchanging properties identified in the Santini-Burton Act rather than from selling them. However, in implementing the SNPLMA, it is unclear whether the proceeds from current sales of Santini-Burton Act properties should be used to offset prior debt from Lake Tahoe purchases or to make new purchases of Lake Tahoe properties.

Subsequent to our review, we requested input from our General Counsel on the two issues. Our General Counsel concluded (see the Attachment) that the interest earned on land sales authorized by the Southern Nevada Public Lands Management Act must be used to purchase environmentally sensitive land and should not be used for other purposes under the SNPLMA. Regarding proceeds from land sales under the Santini-Burton Act, our General Counsel stated that the BLM did not have authority to use the proceeds to pay for "losses" it incurred on prior land transactions. We coordinated our conclusions with officials from the Office of the Solicitor, Pacific Southwest Region.

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

This advisory letter will be listed in our semiannual report to the Congress, as required by Section 5 (a) of the Inspector General Act (5 U.S.C. app. 3).

Attachment

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MAR - 7 2001

To: Roger LaRouche
Assistant Inspector General for Audits

From: Patti Jamison PJ
Attorney-Advisor

Through: Robin Greenwald RG
General Counsel

Subject: Advisory Letter on the Bureau of Land Management Southern Nevada Public Land Management Act Project Office Operations

Background

The Bureau of Land Management (BLM) asked for a review of the Southern Nevada Public Lands Management Act Project Office. The Project Office sells, exchanges and acquires land in Nevada pursuant to the Federal Land Policy and Management Act (FLPMA), the Santini-Burton Act of 1980, and the Southern Nevada Public Land Management Act of 1998 (SNPLMA). The objective of the review was to evaluate the operations and internal controls for the Project Office with emphasis on internal controls for collection of receipts and disbursement of funds.

Questions Presented

You asked for an opinion on two questions that arose during the review:

1) Whether interest earned from sales of Airport Environs Overlay District land by Clark County should go into the special account to be used for general purposes under SNPLMA or whether it should be used for acquisitions of environmentally sensitive land in the Lake Tahoe Basin; and
2) Whether proceeds from the sales of lands under the Santini-Burton Act can be used for future purposes only or whether they can be used to repay lost revenues from previous exchanges that could have been sales.

Conclusion

1) The principle and the interest from sales of Airport District land that are also identified in the Map in the Santini-Burton Act must be used by the Secretary of the Agriculture for purchasing environmentally sensitive land in Nevada. The funds should not be used for other purposes under SNPLMA. If the Airport District lands are not identified in the Map, all of the proceeds and the interest can be used for any of the identified purposes in SNPLMA.

2) There is no authority for the BLM to use proceeds from land sales under Santini-Burton, FLPMA or SNPLMA to pay for "losses" it incurred when it expended funds for acquisitions but had no money coming into the fund because it exchanged land rather than sold it.

The BLM needs to be clear under which authority it is selling or exchanging land, and then treat the proceeds or equalization funds according to the specific statute. Attached are Appendices A through C which illustrate the disposition of proceeds under the various statutes.

Discussion

A. Proceeds and Interest from Sales of Lands by the Airport

If Clark County sells, leases, or otherwise conveys land in the Airport Environs Overlay District, and the land is also identified in the Map in the Santini-Burton Act, then five percent of the proceeds go to the State, ten percent go to the County or other local municipalities, and eighty-five percent goes into the special account where all land proceeds go under SNMPLA. 31 U.S.C. § 6901 note, § 4(g)(4). The special account earns interest. Id. § 4(f). The Secretary of Agriculture must use the proceeds for acquiring environmentally sensitive land in the Lake Tahoe Basin, as the Santini-Burton Act provides. Id. § 4(g)(4).

BLM requested an opinion by the Solicitor's office and asked whether interest generated by FLPMA dispositions can be used for Santini-Burton acquisitions. This is the wrong question, and stems from the apparent confusion over which authority the BLM is using when it disposes of land.

Proceeds from land dispositions under FLPMA go into the general fund of the U.S. Treasury.[1] 43 U.S.C. § 391. Neither BLM nor the Secretary of Agriculture can use the proceeds (or any interest) from sales under FLPMA. Moreover, the Airport Authority does not have authority to sell Santini-Burton lands pursuant to FLPMA, so the question posed by BLM in its request for a Solicitor's opinion is irrelevant to the question at hand. When the Airport District disposes of land, SNPLMA-- not FLPMA-- is the controlling authority. 31 U.S.C. 6901 note, § 4(g).

When Clark County disposes of Airport District land that is also identified in the Map in the Santini-Burton Act, the proper controlling authority is SNPLMA. As section 4(g) sets forth, eighty-five percent of the principle is placed in the special account created under SNPLMA. The principle and the interest have to be used by the Secretary of Agriculture to acquire environmentally sensitive land in the Lake Tahoe Basin.

B. Repayment of Lost Revenues from Land Exchanges

As we understand it, the question is whether proceeds from sales of land can be used to repay "losses" the SNPLMA special account suffered. The "losses" resulted, apparently, because

[1] This statement does not apply to funds used for assembled land exchanges.

BLM was exchanging land rather than selling it, and yet expenditures were made when the Secretary acquired environmentally sensitive land.[2]

It is essential to understand how a loss could occur. If BLM exchanged Clark County land pursuant to FLPMA, the special account is not infused with any equalization payment because the special account is not available under FLPMA. *See* 43 U.S.C. § 1716(b); 43 U.S.C. § 391. Thus, if BLM exchanges under FLPMA with simultaneous expenditures from the special account for acquisitions, a "deficit" results.

If BLM exchanged Clark County land pursuant to SNPLMA, the statute provides that the non-federal party should pay five percent to the State of Nevada and ten percent to the Southern Nevada Water Authority of an amount equal to the fair market value of the Federal land it is receiving. 31 U.S.C. 6901 note, § 4(e)(2)(A). This payment is to be considered a "cost incurred" by the non-Federal party, and the Secretary can reimburse the party if they agree. Id. Therefore, the special account could also suffer a deficit under SNPLMA because there are no payments made to the federal government. [3] *See* H. Rep. No. 105-68 (1997); S. Rep. No. 105-291 (1998).

It is important to note that it is unclear why the special account shows a "deficit" at all. The Secretary is authorized to use any other funds made available to it under any law *in addition to funds in the special account* to acquire the environmentally sensitive land. 31 U.S.C. 6901 § 5(a)(2). So, either the special account does not reflect the use of supplemental funds, or the Secretary is obligating funds it does not have.

That said, the question at hand is whether proceeds from sales can be used to repay the "loss." The answer depends upon the statutory authority under which the BLM is disposing of the land.

Under the Santini-Burton Act and FLPMA, proceeds from sales must go into the general fund of the U.S. Treasury – not into SNPLMA's special account. So, BLM cannot use the proceeds at all under Santini-Burton Act or FLPMA- let alone to pay the special account for previous losses.

Under SNPLMA, eight-five percent of the proceeds from sales go into the special account. There is no legal requirement under SNPLMA that BLM use proceeds from present dispositions to pay back "losses" from previous dispositions. The statute envisions the Secretary will use

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[2] It is BLM's position that the Santini-Burton Act does not preclude BLM from acquiring, disposing, or exchanging land pursuant to FLPMA. On January 10, 1996, the General Counsel for OIG agreed. Memorandum from Richard N. Reback, Chief of Staff and General Counsel, to Judy Harrison, Assistant Inspector General for Audits, dated January 10, 1996 ("OIG legal opinion") (copy attached).

SNLMPA also allows for the exchange of land, so the question becomes whether BLM must exchange Clark County land pursuant to SNPLMA, or whether it can also exchange land pursuant to FLPMA. *See* 31 U.S.C. 3901 note, § 4(e)(2). It is clear, for the same reasoning used in the OIG legal opinion, that nothing in SNPLMA precludes BLM from exchanging land pursuant to FLPMA. 31 U.S.C. 6901 note, § 4(a) ("...the Secretary, in accordance with this Act, the Federal Land Policy and Management Act of 1976, and other applicable law...is authorized to dispose of land...."). Therefore, although the draft audit appears to question this conclusion, it is our opinion that BLM is authorized to exchange land in Clark Country pursuant to either FLPMA or SNPLMA.

[3] For land exchanges that were pending at the time SNPLMA was passed, the proponent paid 85% of the fair market value to the federal government. H. Rep. No. 105-68; 31 U.S.C. § 4(e)(2)(B).

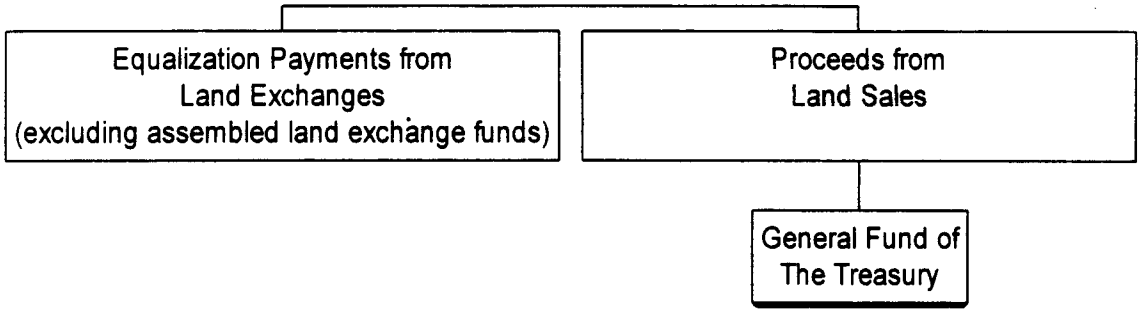
other funds, rather than set up a deficit. 31 U.S.C. § 6901 note, § 5(a)(2). Furthermore, the proceeds must be used as set forth in the statute: five percent to the State, ten percent to the Water Authority and eighty-five percent to the special account. 31 U.S.C. 6901 note, § 4(e)(1). Once in the special account, and those funds can only be used for the enumerated purposes in section 4(e)(3). *See* 31 U.S.C. § 1301(a). Repayment of a deficit due to past acquisitions is not one of the purposes.

Even though the special account should probably not show a "deficit," the BLM does not have Congressional authorization to repay it.

cc: Bob Romanyshyn
Assistant Director, Performance Audits

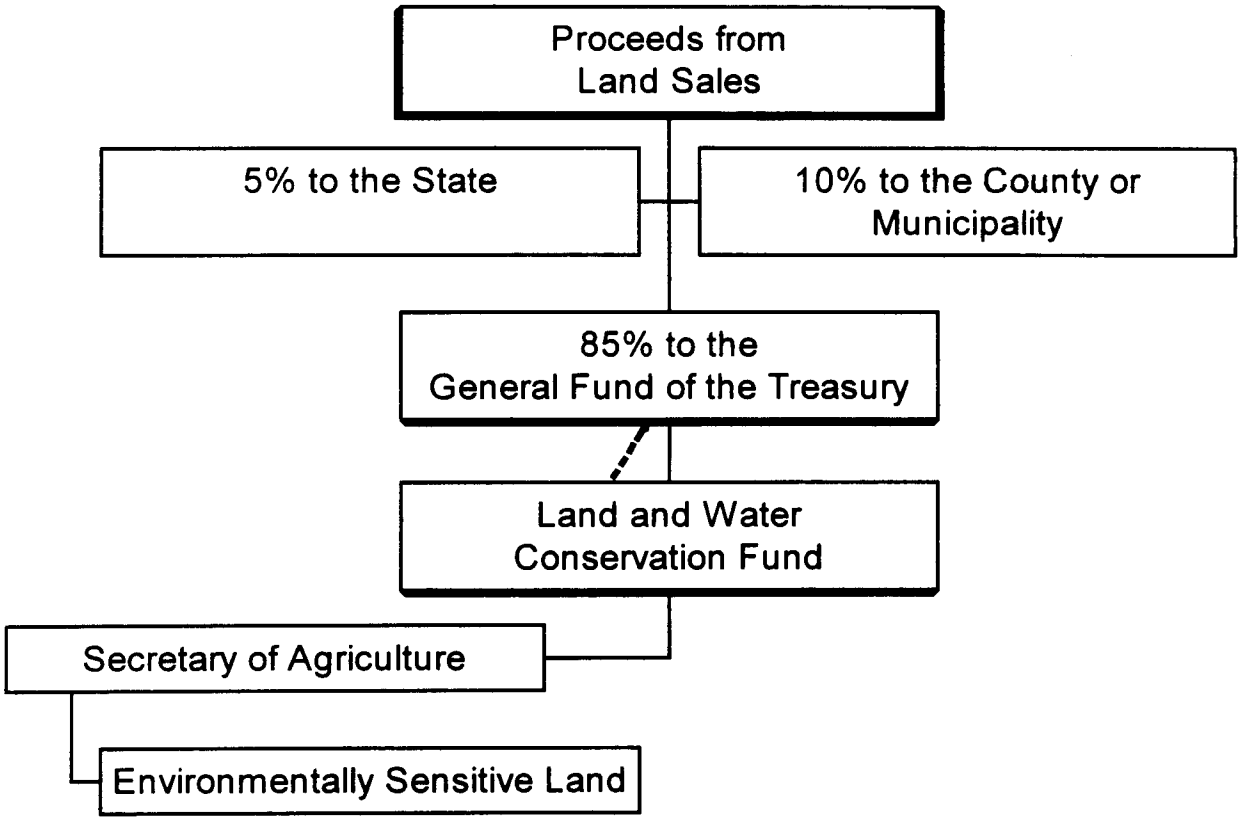
Appendix A

FLPMA Sales and Exchanges



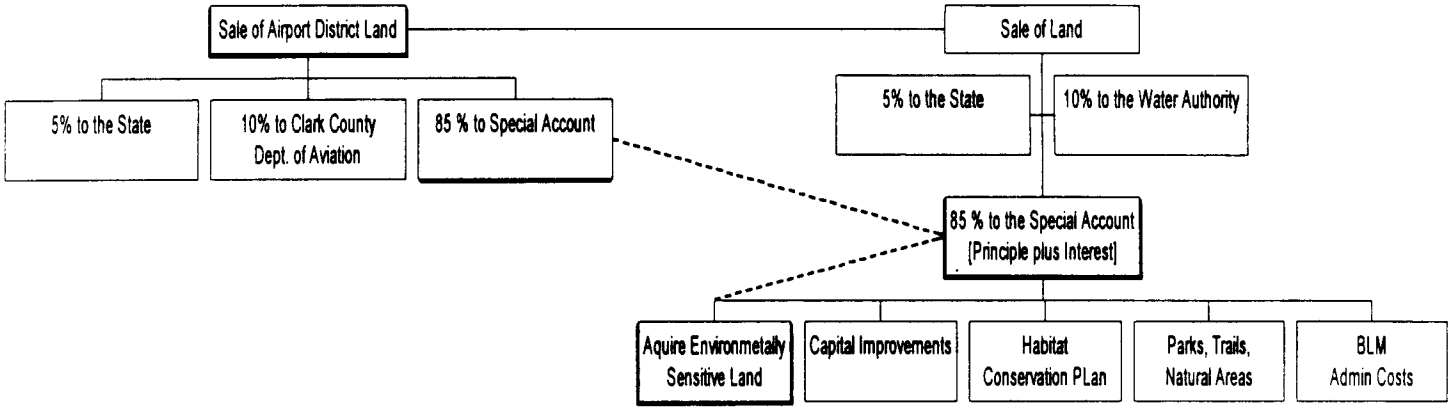
Appendix B

Santini-Burton Act



Appendix C

Southern Nevada Public Land Management Act



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

JUN 10 1996

Memorandum

To: Judy Harrison
Assistant Inspector General for Audits

Through: Richard N. Reback
Chief of Staff and General Counsel

From: Andrew Simonson
Attorney/Advisor

Subject: Interpretation of Santini-Burton Act and FLPMA

This is in response to Charles Lyons' request for legal advice regarding the Santini-Burton Act (Act)[1] and the Federal Land Policy and Management Act of 1976 (FLPMA)[2]. In response to our discussions, our review of the Act will focus on the legal requirements imposed by the Act and the Congressional intent of the Act. Our review of FLPMA will focus on the land exchange process.

SANTINI-BURTON ACT

The Act, which was passed in 1980, has two major purposes. The first is to provide for the orderly disposal of Federal lands in Clark County, Nevada to allow for the development of communities in that county. The Federal lands within Clark County that are designated to be disposed of, are identified on the "Las Vegas Valley, Nevada, Land Sales Map," as stated in the Act. The second is to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin to allow for further protection and management of the unique character of the Basin.

ISSUE 1: Whether the Act requires designated Federal lands in Clark County, Nevada (designated land) to be disposed of by sale only?

The Act does not require all of the designated land to be disposed of by sale only. We base this conclusion on the plain language of the Act, which does not require the sale of all affected lands, and by ascertaining the legislative intent to permit the disposal of lands under pre-existing authority which authorize exchanges.

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[1] Nevada and Lake Tahoe Basin, Land Disposal and Acquisition, Pub. L. No. 96-586 (1980).

[2] Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579 (1976).

Section (1)(b) of the Act states that "The purpose of this Act is to provide for the orderly disposal of Federal lands in Clark County, Nevada . . ." (emphasis added). This language indicates that the purpose is to dispose of the lands, without specifying that the means of disposal must be by sale. Further, Section 2(a) states "The Secretary of the Interior is authorized and directed to dispose of lands" in Clark County, Nevada. The Congressional authorization and direction to the Secretary is to dispose of the lands. The Secretary is not directed to dispose of the land only by sale.

Section 2(a) of the Act also states the disposal of the land shall be "consistent with the provisions of the Federal Land Policy and Management Act (FLPMA) and other applicable law except to the extent necessary to expeditiously carry out the provisions of this Act." The reference to FLPMA, provisions of which allow for the exchange of land, demonstrates that the possibility of the designated land being exchanged is contemplated by Congress, and therefore not prohibited by the Act.

As further evidence that the Act does not prohibit disposal of designated land by means other than sale, the Committee on Interior and Insular Affairs stated in reference to Section 2(a): "The Committee does not intend, by this Act, to prohibit continuation of reasonable land transfers under existing authority for public purposes." H.R. Report No. 96-1023, 96th Cong., 2d Sess. (1980). The "existing authority" referred to certainly includes FLPMA which, as noted, permits exchanges of land.

Under FLPMA, land may be disposed of by exchange when that exchange is "reasonable" (which is not defined by the Committee language quoted above) and: 1) is "consistent with the mission of the department involved with the applicable departmental land-use plans"[3]; or 2) "where the Secretary concerned determines that the public interest will be well served by making that exchange."[4] Thus, we conclude that the Act does not forbid the disposal of land by means other than sale.

ISSUE 2: Whether Congress intended the designated land to be sold as the method of disposal under the Act?

Congress intended that at least some, and perhaps most, of the designated lands should be sold under the Act, but Congress did not prohibit the disposal of some of the designated land by exchange. While disposal of land through sale apparently was contemplated as the primary means of land disposal, it was not intended to be the sole method of disposal.

The Act states "The Congress finds that for orderly development of the communities in that county (Clark County, Nevada) certain of those lands should be sold by the Federal Government," (parenthetical added) Section 1(a)(2). Those certain lands are identified on a "map numbered 7306A, dated May 1980, and entitled 'Las Vegas Valley, Nevada, Land Sales Map.'" Section 2(a). While this does not require the

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[3] See FLPMA, at Section 205.

[4] See FLPMA, at Section 206.

disposal of all designated land by sale as discussed in Issue 1, it requires that at least some, and perhaps most, of the designated lands should be sold.

The stated purpose of the Act is twofold, "to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin." Section 1(b). Congressional linkage of the proceeds of the sale of designated lands to the acquisition of lands in the Lake Tahoe Basin strongly suggests that sale was the intended method of disposal for at least some of the designated lands.

Congress intended the proceeds from the sale of designated lands to cover the costs of acquiring the land in the Lake Tahoe Basin. "The revenues deposited in the general fund of the Treasury of the United States under subsection (d) (designated lands within Clark County, Nevada) are deemed to be in the nature of repayment for those authorizations set forth in section 3 (Lake Tahoe Basin) of this Act," (parentheticals added) Section 2(e). For the purposes of the Act (which includes acquisition of land in the Lake Tahoe Basin), Congress further appropriated "an amount equal to the amount of revenue obtained by the Federal Government for the sale of federally owned lands in Clark County, Nevada." Section 3(g).

Therefore, in order to acquire land in the Lake Tahoe Basin, one of the purposes of the Act, as least some of the designated lands would have to be disposed of by sale. If all the designated land in Clark County were exchanged, only appropriated funds, $10 million for fiscal year 1982 and $20 million for fiscal year 1983, would be available to cover the cost of acquiring the land in the Lake Tahoe Basin. Congress contemplated that more than the $30 million appropriated would be required to acquire the land in the Lake Tahoe Basin as evidenced by their further appropriation of "an amount equal to the amount of revenue obtained by the Federal Government for the sale of federally owned lands in Clark County, Nevada." Section 3(g).

The Act also does not discuss or provide a framework for the disposition of the land by means other than sale which suggests that sale of the land was certainly Congress' focus. Indeed, the Act continuously discusses the sale of the designated land and provides a framework for how the sale of the land should take place. The Act further provides: 1) a limit on the amount of land to be sold annually, Section 2(b); 2) instructions on how to select lands to be sold, Section 2(c); 3) directions as to where the revenues from the sale of the lands go, Section 2(d); and 4) a time by which the first land sale must be offered, Section 2(f).

Thus, the intent of Congress in passing the Act was at least for some of the designated lands to be sold.

FEDERAL LAND POLICY AND MANAGEMENT ACT

The FLPMA, which was passed in 1976, was enacted to establish a comprehensive public land policy covering issues such as the administration, acquisition, disposition, management, protection, development, rights of way and enhancement of public lands.

ISSUE 1: Whether FLPMA provides the Bureau of Land Management (BLM) with the authority to exchange public lands for land and improvements that will be used strictly for administrative purposes?

The FLPMA allows the BLM to exchange lands for administrative purposes when the exchange is consistent with provisions of FLPMA. In this case, BLM exchanged land to obtain land that included a building that could be converted into an administrative complex. Both Sections 205 and 206 of the Act provide BLM with the authority to exchange Federal land for non-Federal land. While neither Section nor the legislative history regarding the Sections specifically mention administrative purposes as a justification to exchange land, the Act does not specifically deny authority to exchange lands for such a purpose when the exchange is consistent with the provisions of FLPMA.

Therefore, it must be determined if the general restrictions provided in Sections 205 and 206 apply to exchanging land for administrative purposes.
Section 205 states acquisitions "shall be consistent with the mission of the department involved and with applicable departmental land-use plans." Section 206 states that land may be exchanged "where the Secretary concerned determines that the public interest will be well served by making that exchange." The land exchange for administrative purposes does not violate these general restrictions. Therefore, BLM has the authority to complete the land exchange for administrative purposes, so long as those administrative purposes are in support of FLPMA.

ISSUE 2: Whether the exchange should have been executed under the standard described in Section 205 or under the standard described in Section 206 of the Act, given the fact that the Bureau initiated the subject exchange for the specific purposes of acquiring a facility for its own use?

The BLM should have executed the exchange at issue under Section 205. Under which Section an exchange is executed appears to be determined by BLM's reason for the exchange. Is BLM's intention to acquire non-Federal land or to dispose of public land? Section 205 allows for the acquisition of non-Federal land by exchanging public land. Section 206 on the other hand, allows for the disposal of public land by exchanging for non-Federal land. Since BLM's reason for the exchange at issue appears to be to acquire non-Federal land for administrative purposes, they should have executed the exchange under Section 205.

While the exchange should have been executed under Section 205, the issue of which Section applies to the exchange at issue is not without ambiguity. The language in Section 205 and Section 206 does not clearly describe how to determine whether the Bureau is intending to acquire land or intending to dispose of land. Further, the legislative history is silent on the applicability of the Sections in different circumstances such as the exchange at issue. Therefore, BLM could make a plausible argument that the exchange at issue could have taken place under either Section 205 or Section 206. Finally, as a practical matter, we do not see a significant legal difference for purposes of the exchange at issue as to whether it is executed under Section 205 or Section 206.

ISSUE 3: Whether the Bureau's actions to replace its Tonopah Resource Area office, represent an "unauthorized augmentation" of appropriated

funds where the Congress specifically appropriated $640,000 for a project that will effectively cost the Government $990,000?

The BLM's actions do not represent an "unauthorized augmentation" of appropriated funds. The project at issue was valued at $990,000 based on the values of the lands exchanged ($350,000) and the amount appropriated by Congress ($640,000). However, BLM did not use "funds" beyond the $640,000 appropriated to acquire the land and building at issue. The exchange of public land for non-Federal land that included the building was executed pursuant to the FLPMA. Since no funds over the appropriated $640,000 were used from another appropriated source and the building was acquired under separate statutory authority, BLM's actions do not constitute an unauthorized augmentation of their appropriations.

Further, the actual appropriations language that includes the project at issue does not specify how the funds appropriated should be apportioned. Although BLM identified the Tonopah Resource Area office as one of a number of construction projects, the actual appropriations language provides no specification of amounts provided for any particular project. The appropriations language states: "For acquisition of lands and interests therein, and construction of buildings, recreation facilities, roads, trails, and appurtenant facilities, $15,386,000 to remain available until expended."[5] The fact that Congress did not specify the amount that should be spent on the project at issue leaves BLM with some discretion as to how the total amount of the authorized appropriation should be spent. Therefore, BLM did not augment its appropriations because it did not spend more than was appropriated for construction in 1991.

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[5] Department of the Interior and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-512 (1990).