

Department of the Interior Office of Inspector General



Site of future visitor center at the Bureau of Land Management's
Red Rock Canyon National Conservation Area,
to be built with SNPLMA capital improvement funds.
Office of Inspector General Photo

Proposed Changes to Management of SNPLMA Costs May Improve Fund Accountability

Report No. W-FL-BLM-0007-2004

April 2007



United States Department of the Interior

Office of Inspector General

Western Region

Federal Building
2800 Cottage Way, Suite E-2712
Sacramento, California 95825

April 05, 2007
7430

Memorandum

To: Director, Bureau of Land Management

From: Michael P. Colombo 
Regional Audit Manager

Subject: Final Report – *Proposed Changes to Management of SNPLMA Costs May Improve Fund Accountability* (Report No. W-FL-BLM-0007-2004)

The attached report presents the results of our follow-up audit of the Bureau of Land Management's (BLM) controls over Southern Nevada Public Land Management Act (SNPLMA) expenditures. In our September 2003 report, we concluded that the rapidly increasing balance in the U.S. Treasury Special Account established for SNPLMA necessitated stricter controls over administrative expenses. BLM agreed to tighten controls; specifically, BLM stated that the SNPLMA Business Manager would report to the Nevada State Office (State Office) and would be given the authority to disallow erroneous or improper salary charges or other administrative charges assessed against SNPLMA funds.

Our follow-up audit revealed that BLM had not increased the authority of the Business Manager and that its reorganization of the SNPLMA Project Office had, in fact, reduced controls over SNPLMA funds. In the absence of independent review and oversight, Las Vegas Field Office (Field Office) officials improperly augmented appropriated funds by at least \$57,000 to as much as \$224,000 by moving salaries and fringe benefits to the SNPLMA implementation account in 2004. In addition, controls over direct transfers of funds to federal partners need to be established in light of the change in the method of payment for SNPLMA projects to federal partners. We are concerned about this funding mechanism because it would transfer accountability to these agencies, while program responsibility would remain vested with the Secretary of the Interior (Secretary). Our report includes four recommendations to help BLM improve controls and accountability for SNPLMA funds.

In its November 20, 2006 response (Appendix 3), BLM generally concurred with our recommendations, stating that it "strongly agreed that the programs authorized by SNMPLA must have effective internal controls to ensure appropriate execution." Based on the

response, we consider Recommendations 1 and 3 to be resolved, but not implemented and are referring them to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. We consider Recommendation 2 to be unresolved and have asked BLM to reconsider the recommendation. Although BLM concurred with Recommendation 4, we have asked for additional information. The status of the recommendations is shown in Appendix 4.

The legislation, as amended, creating the Office of Inspector General (OIG) requires that we report to Congress semiannually on all audit reports issued, the monetary effect of audit findings, actions taken to implement our audit recommendations, and recommendations that have not been implemented. Please see Appendix 1 for the monetary effect of the findings in this report.

Please provide a written response to this report by May 11, 2007. The response should supply the information requested in Appendix 4. We appreciate the cooperation shown by BLM and its partners during our audit. If you have any questions regarding this report, please call me at (916) 978-5653.

Attachment

Contents

	Page
Background	1
Current Practices in Controlling SNPLMA Costs May	
Jeopardize Fund Accountability	3
Controls Over Administrative Costs, Particularly Salary Costs,	
Have Not Improved Since the Prior Audit.....	3
Controls Over Direct Transfers of Funds to Federal Partners	
Need to be Established.....	6
Recommendations.....	8
BLM Response and OIG Reply	8
Appendices	
1 Classification of Monetary Amounts	10
2 Objective, Scope, Methodology, and Prior Audit Coverage	11
3 BLM Response.....	13
4 Status of Audit Recommendations.....	18

Acronyms

BLM.....	Bureau of Land Management
FWS	U.S. Fish and Wildlife Service
NPS	National Park Service
OGC	Office of Inspector General Office of General Counsel
OIG	Office of Inspector General
SNPLMA	Southern Nevada Public Land Management Act
U.S.C.....	United States Code
USDA.....	U.S. Department of Agriculture
USFS	U.S. Forest Service

Background

Congress enacted SNPLMA (Public Law 105-263) in 1998 to facilitate the sale of federal land surrounding Las Vegas, Nevada. Actual and projected land sales revenues are shown in Figure 1.

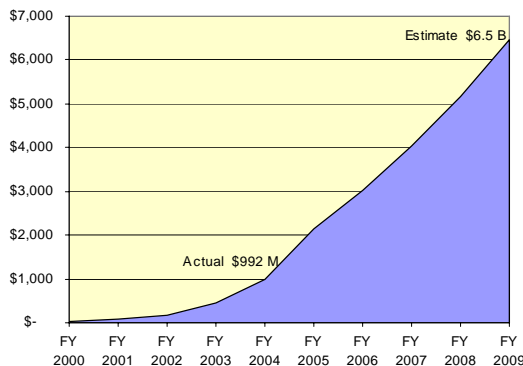


Figure 1: Cumulative SNPLMA land sales revenues, actual and projected.

Receipts from land sales are distributed as follows: 5 percent to the State of Nevada for use in general education, 10 percent to the Southern Nevada Water Authority, and 85 percent to a special interest-bearing U.S. Treasury account established for SNPLMA purposes.

With the Secretary's approval, funds in the SNPLMA Special Account are available for expenditure without further appropriation by Congress. Receipts and interest earnings contained in the Special Account can be used to:

- Purchase environmentally sensitive land in the State of Nevada, with priority given to lands in Clark County.
- Pay for capital improvements at the National Park Service's (NPS) Lake Mead National Recreation Area; the

U.S. Fish and Wildlife Service's (FWS) Desert National Wildlife Refuge; BLM's 2.7 million acres of public land in Clark County, including Red Rock Canyon National Conservation Area; and the U.S. Department of Agriculture (USDA), U.S. Forest Service's (USFS) Spring Mountains National Recreation Area.

- Develop parks, trails, and natural areas in Clark County, pursuant to a cooperative agreement with a unit of local government.
- Reimburse costs incurred by the local offices of BLM in arranging sales or exchanges under SNPLMA.¹

SNPLMA legislation directs the Secretary, in coordination with the Secretary of Agriculture, State of Nevada, local governments, and other interested persons, to ensure accountability and demonstrated results. With the exception of the authority to approve projects, the Secretary has delegated authority to administer SNPLMA to BLM. The offices involved in administering SNPLMA are shown in Figure 2.

¹ Language in Senate Report 106-99 provided clarification to this provision, noting that it was the intent of Congress that this "shall include not only the direct costs for these sales and exchanges but also other [BLM] administrative costs associated with implementing the provisions of the Act."



Figure 2: Offices involved in administering SNPLMA.

BLM spent about \$5 million in 2004 to implement SNPLMA at its three offices shown above. These administrative costs include about \$2 million in salaries, with the majority being spent at the Field Office.

To ensure accountability and demonstrated results, BLM and its federal partners (NPS, FWS, and USFS) created the SNPLMA Implementation Agreement, which established agreed-upon business practices to implement SNPLMA. The Agreement established the Executive Committee, which is chaired by the BLM Nevada State Director and includes regional directors or managers from NPS, FWS, and USFS. The Executive Committee is responsible for recommending projects to the Secretary for approval and for overseeing the use of funds on approved projects. BLM is responsible for overseeing the use of SNPLMA funds for administration.

In our September 2003 report,² we concluded that the rapidly increasing balance in the Special Account and the expansion of the SNPLMA program necessitated stricter controls over administrative expenses. BLM agreed and stated that it would have the SNPLMA Business Manager report to the State Office and give the Manager authority to disallow erroneous or improper salary charges or other administrative charges assessed against SNPLMA funds.

Our audit objective, scope, and methodology, as well as prior audit coverage, are detailed in Appendix 2.

² OIG: *Bureau of Land Management – Implementation of the Southern Nevada Public Land Management Act*, Report No. 2003-I-0065, September 2003.

Current Practices in Controlling SNPLMA Costs May Jeopardize Fund Accountability

Our follow-up to our September 2003 report revealed that BLM has not tightened controls over SNPLMA funds. Rather than increasing the authority of the Business Manager, who is responsible for overseeing SNPLMA administrative expenditures, BLM instead relocated the position to the State Office in Reno, Nevada, while assimilating the SNPLMA Project Office into the Field Office.³ This assimilation not only weakened the Business Manager's authority, but also created tension among the Business Manager; the Field Office, which is responsible for the day-to-day operations of the program; and BLM's Business Center, which is responsible for accounting, investing, and contracting for SNPLMA.

This comes at a time when additional controls need to be established over the changed method of payment to BLM's federal partners to fund SNPLMA projects. We are concerned that BLM's current and proposed practices in controlling administrative costs actually jeopardize the accountability of SNPLMA funds.

Controls over administrative costs, particularly salary costs, have not improved since the prior audit.

While BLM attempted to improve controls over administrative costs by locating the SNPLMA Business Manager in the State Office in Reno, Nevada, it did not give the Business Manager the authority to disallow erroneous or improper salary charges against SNPLMA funds and, in fact, reduced the authority. For example, the Business Manager told us that the Field Office did not respond to a 2003 request for documentation on possible improper Field Office salary charges. When the Business Manager asked to speak with a number of the 15 Field Office supervisors, only one supervisor would speak with her. Further, the Business Manager's fiscal year 2003 financial review of expenditures identified about \$156,000 in Field Office adjustments as questionable and about \$139,000 in Field Office salary charges above budget. Yet BLM took no action based on the Business Manager's review.

The Business Manager's authority was reduced with respect to monetary performance awards. In the prior organization, the Business Manager reviewed all awards paid with SNPLMA funds; if the merit or amount of the award was questioned, the Business Manager submitted the award

³ The SNPLMA Project Office was co-located with the Field Office in Las Vegas, but reported to the State Office. It was primarily responsible for implementing SNPLMA until it was dissolved and its responsibilities incorporated into the Field Office in 2002.

nomination to the State Director. With the assimilation of the SNPLMA Project Office into the Field Office, however, the employee's direct supervisor approves the awards, and the Business Manager is no longer asked to review them. As a result, a fiscal year 2004 financial review by the Business Center cited concerns on the lack of coordination with the Business Manager on \$33,000 in performance awards using SNPLMA funds because of the effect on the SNPLMA budget and the apparent lack of rationale on how the award amounts were determined.

As a result of BLM's failure to implement our recommended controls, it inappropriately augmented its appropriations by at least \$57,000 (for nine employees) and as much as \$224,000 (for a total of 68 employees) in fiscal year 2004 by transferring salaries from the regular BLM appropriation to the Special Account (Appendix 1).

The OIG Office of General Counsel (OGC) opined that costs properly attributable to the BLM's operating appropriation were inappropriately charged to the SNPLMA Special Account. OGC further opined that this cost charging would constitute a violation of 31 U.S.C. § 1301(a) (1982) (otherwise known as the "purpose statute"), an inappropriate augmentation of BLM's appropriation, and a potential Antideficiency Act violation. Given the legal ramifications, BLM should obtain the advice of its solicitor immediately.

As seen in Figure 3, Field Office officials modified administrative salary charges totaling about \$224,000, primarily at the end of the second, third,

and fourth quarters of the fiscal year.⁴ These quarterly modifications affected pay periods throughout the year; for example, a fourth quarter modification altered costs charged during a first quarter pay period.

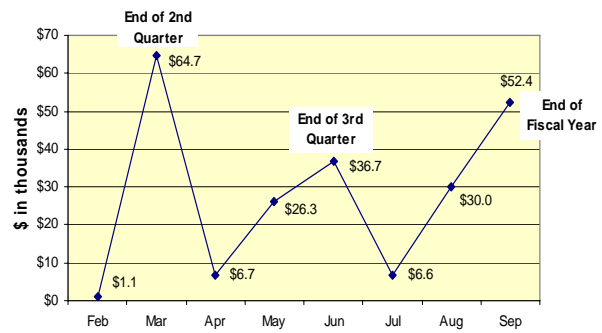


Figure 3: Adjustments in Field Office salary charges to the SNPLMA implementation account.

We tested transactions for nine⁵ Field Office employees whose salary charges to SNPLMA had been collectively increased by \$57,000. In interviews with these employees, they said that they coded their time to the SNPLMA implementation account whenever they worked on implementation activities and that they were unaware of any adjustments increasing their time charges to SNPLMA.

We found that the time charges were modified by Field Office officials to increase the charges to the SNPLMA account without the knowledge of the employees' immediate supervisors.

⁴ Although not a part of our review, we also identified salary adjustments adding \$180,000 to BLM SNPLMA projects during the fourth quarter of fiscal year 2004.

⁵ One of the nine employees was not included in the SNPLMA budget, and we could not find documentation justifying his charges. We believe that these charges should have required, at a minimum, formal approval by either the Business Manager or the program manager.

While controls were in place (supervisor approval for payroll adjustments, as well as source documentation signed and dated by the Field Office's payroll adjuster), none were consistently practiced. We could not find adequate documentation to support the adjustments for any of the nine employees tested, despite BLM requirements to maintain such documentation.

In addition to the tested salary transactions, we identified one employee whose entire salary of \$116,000 was paid by SNPLMA implementation funds in fiscal year 2004, even though the employee was working at the University of Nevada, Las Vegas, under an Interagency Personnel Act assignment to create a model for assessing the effects of privatizing public land in the Las Vegas Valley. The employee worked in the SNPLMA Project Office prior to 2004. While the work at the university may have related to the SNPLMA program, it was not an administrative cost associated with implementing SNPLMA.

Our prior audit occurred before the SNPLMA Project Office was transferred to the Field Office, while this audit occurred afterward; yet both audits found the same control weakness over administrative salary charges. We continue to believe that effective oversight is crucial to ensure that proper fund controls are in place. This oversight should be assigned to a single responsible official with the authority to ensure that controls over charging and adjusting costs are followed and to disallow erroneous or improper salary or other administrative charges assessed against SNPLMA funds. BLM also

needs to ensure that the Field and State Offices give full cooperation in these oversight efforts because without effective fund controls there is a high risk for misuse of funds.

The assimilation of SNPLMA into the Field Office increased the influence of the Field Office on the SNPLMA program, thereby creating tension between the Field Office on the one hand and the Business Center and the Business Manager on the other. The working relationship between the Field Office and Business Center has deteriorated to the point of hindering program execution. For example, the Business Center was not invited to participate in the 2004 update of the business practices contained in the SNPLMA Implementation Agreement, even though the update involved revisions to financial practices.

Subsequently, the Business Center believed that the revised practices, such as allowing other agencies to charge administrative costs to the SNPLMA program, were illegal and asked for a Solicitor's Opinion (the Opinion was issued in February 2005). As a result, projects were delayed because federal partners and local governments were reluctant to submit task orders until the allowability of certain costs was determined.

Since the Business Center is responsible for the financial operations of BLM and reports to BLM's Chief Financial Officer, the Business Center should be responsible for SNPLMA financial matters. As such, the Director of the Business Center should be made a member of the Executive Committee, be kept apprised of Executive Committee

financial matters, and be allowed to voice opinions and concerns on financial matters under consideration by the Executive Committee.

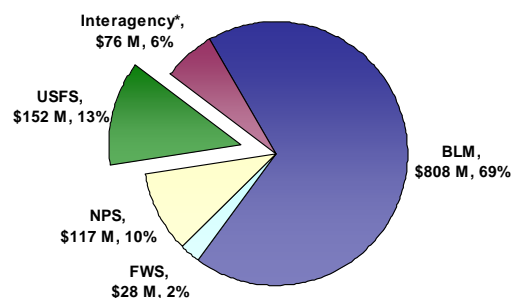
Controls over direct transfers of funds to federal partners need to be established.

The February 2005 Solicitor’s Opinion stated that the current funding method, which gave BLM the “power of the purse” by reimbursing its partners upon project completion, was not authorized by SNPLMA and that payment for approved projects should be made at logical stages in the life of a project. However, the Opinion stated that funding by reimbursement may be authorized by the Economy Act.⁶ As a result, the federal partners proposed, and the Office of Management and Budget and the U.S. Treasury verbally accepted, a change to the method of payment for SNPLMA projects.

Under the change initiated in fiscal year 2006, sub-accounts of the SNPLMA Special Account are now used for NPS, FWS, and USFS. The partners have upfront direct access to SNPLMA funds and are responsible for obligating and spending the money in their sub-account for projects approved by the Secretary.⁷

Giving the federal partners upfront direct access to the SNPLMA Special Account is a concern because BLM abdicates accountability over the funds. For

example, an interagency review team studying changes needed to the Implementation Agreement stated that “the primary operating principle is that when funds are transferred to an agency, accountability also transfers to that agency” and made the “assumption” that “all agencies have internal controls, guidelines, and management and accounting processes in place.” Under SNPLMA, the Secretary, as delegated to BLM, is to ensure accountability and demonstrated results. This may prove difficult, particularly considering the significant amount of money that would be transferred outside the control of BLM and the Department (see Figure 4).



*Signifies approved conservation initiative funding not specified by agency.

Figure 4: SNPLMA funding approved for USFS in USDA.

With reduced disbursement control, BLM needs to establish alternative controls. In this regard, the interagency review team’s recommendations included a third-party audit covering financial management and program effectiveness for projects. In addition, the Business Center proposed that each agency submit to BLM quarterly funding requests for approved projects, as well as quarterly status reports, quarterly trial balance reports, and annual financial data for BLM’s report to Congress.

⁶ 31 U.S.C. 1535. The Economy Act authorizes acquisitions from other federal agencies, as well as other major organizational units within the agency.

⁷ BLM would revert to the funding mechanism used when it first implemented SNPLMA, where it spent directly out of the Special Account for its projects.

In November 2005, the Executive Committee approved a fund transfer process that incorporated a number of the Business Center's proposals. However, the Business Center still objected to certain procedures for transitioning projects to the transfer process. In implementing this direct

funding arrangement, BLM and its partners must ensure that appropriate controls are established and maintained so that SNPLMA funds are properly accounted for throughout the duration of a project and the desired results from the funding are achieved.

Recommendations

We recommend BLM take the following actions to improve controls over SNPLMA administrative and program costs:

1. Seek the advice of the Solicitor's Office to determine the proper disposition of the inappropriate augmentation of BLM's appropriation and a potential Antideficiency Act violation.
2. Formally assign oversight responsibility for SNPLMA business matters to an appropriate official, including the authority to ensure that controls over charging and adjusting costs are followed and the authority to disallow erroneous or improper salary or other administrative charges assessed against SNPLMA funds.
3. Include the Director of the Business Center as a member of the Executive Committee on issues pertaining to the financial practices used in implementing and administering SNPLMA.
4. As part of the direct funding mechanism to federal partners, develop and implement internal controls, such as third-party audits covering financial management and program effectiveness for projects, quarterly funding requests, status reports, trial balance reports, and annual financial data, to ensure accountability and results measurement.

BLM Response and OIG Reply

In its November 20, 2006 response, BLM "strongly agreed that the programs authorized by SNMPLA must have effective internal controls to ensure appropriate execution." BLM stated that "for this reason, we have engaged the services of an independent consulting firm to examine all of the records described in the draft report, and charges to the SNPLMA operating account for Fiscal Years (FY) 2004, 2005, and 2006." According to BLM, the review is scheduled for completion by April 2007.

Additionally, BLM performed its own "extensive review of the program relative to OIG's recommendations" and "has taken several steps to strengthen . . . [its] internal controls."

Recommendation 1. BLM stated that it had obtained the advice of the Solicitor's Office to address the potential augmentation of BLM's appropriation and a potential Antideficiency Act violation. BLM stated that "the Solicitor and BLM have concluded that neither an augmentation of an appropriation, nor a violation of the Antideficiency Act, has occurred." Nevertheless, BLM agreed to make any necessary accounting adjustments once the analysis of the employee's charges to the SNPLMA account is completed.

OIG Reply. Based on BLM's response, our OGC concurred with BLM, contingent on confirmation that accounting corrections are made and conform to the results of the April 2007 review. The OGC stated that the augmentation of BLM's appropriation would be rectified once the necessary corrections are made.

Recommendation 2. BLM believes that its existing "control structure was well designed to manage risk and ensure accountability for the SNPLMA program" and stated that SNPLMA "must be fully integrated into that structure." To this end, BLM's Assistant Director, Fiscal and Business Resources, will review Nevada's risk assessment and internal control testing late in fiscal year 2007.

OIG Reply. Given BLM's prior SNPLMA expenditure practices and this report's findings of continued improper practices, it has been shown that BLM cannot ensure accountability for SNPLMA revenues without assigning such accountability to a single responsible official. This responsibility includes the authority not only to ensure that controls over charging and adjusting costs are followed but also to disallow erroneous or improper salary or other administrative charges assessed against SNPLMA funds.

To provide BLM flexibility in ensuring accountability over SNPLMA charges, we have revised our recommendation and our report

to allow BLM to assign the responsibility for SNPLMA oversight to an appropriate official, rather than specifically to the BLM Business Center.

Recommendation 3. In its response, BLM stated it had submitted a recommendation to the SNPLMA Executive Committee to include "the BLM Assistant Director, Business and Fiscal Resources, or his designee as a member of the Committee."

OIG Reply. The installation of the BLM Assistant Director or his designee will resolve and implement this recommendation.

Recommendation 4. BLM believes that the amended Implementation Agreement signed on June 7, 2006, "affords sufficient control by BLM and the other involved entities and will reinforce existing accountability processes already mandated by federal law."

OIG Reply. We commend BLM for amending the Implementation Agreement to establish controls over the new funding arrangement. However, the Implementation Agreement does not spell out the procedures and processes in place for BLM to detect financial irregularities or program performance problems, which are key components of the overall internal control process to ensure accountability and demonstrated results. Thus we are asking BLM to provide the additional information shown in Appendix 4.

Appendix I

Classification of Monetary Amounts

Source	Funds to Be Put to Better Use
Augmentation of Fiscal Year 2004 BLM Appropriations	\$ 57,000
Inappropriate Use of SNPLMA Administration Funds	<u>116,000</u>
Total	<u>\$173,000</u>

Appendix 2

Objective, Scope, Methodology, and Prior Audit Coverage

Objective, Scope, and Methodology

Our objective was to evaluate the controls in place over SNPLMA expenditures. The scope of our review was controls currently in place over SNPLMA funds.

We conducted our audit in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. To accomplish our objective, we conducted the following activities:

- Interviewed BLM State Office, Field Office, and Business Center officials, and officials from NPS, FWS, USFS, Clark County, and City of Las Vegas.
- Reviewed applicable laws, regulations, and other criteria, such as the SNPLMA Implementation Agreement.
- Reviewed BLM documents, including financial reports, status reports, task orders, Executive Committee minutes, and time and attendance records.
- Reviewed the Department's *Annual Report on Performance and Accountability* for fiscal years 2003 and 2004, including information required by the Federal Manager's Financial Integrity Act. We determined that none of the weaknesses reported by the Department directly related to our objective.
- Reviewed the Department's Strategic Plan and other documents prepared in accordance with the Government Performance and Results Act. These documents did not include goals, measures, or performance data for SNPLMA. However, the Office of Management and Budget concluded from a 2005 review that results were not demonstrated for SNPLMA because of the lack of annual performance measures.
- Reviewed internal controls related to SNPLMA expenditures and found a weakness related to the adjustment of salary charges made against SNPLMA funds. This weakness is discussed in the body of the report. If implemented, our recommendations should improve internal controls in this area.

Prior Audit Coverage

We have issued two reports on SNPLMA in the past 5 years.

- September 2003, *Bureau of Land Management – Implementation of the Southern Nevada Public Land Management Act* (No. 2003-I-0065). This report concluded that BLM had implemented SNPLMA in a businesslike manner, and that its land sales program was a model for success. However, the report noted that BLM needed to improve its controls over administrative expenses, including salaries, because the Field Office inappropriately charged certain salary costs to SNPLMA. As the State Director and the Associate State Director agreed to implement stringent fund controls,

the report did not contain any recommendations.

- June 2001, *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 Land Management Act* (No. 01-I-406). This advisory letter concluded that the SNPLMA Project Office had established sufficient internal controls for tracking receipts from the sale of SNPLMA properties. The evaluation noted a minor weakness in the separation of duties over cash deposits and reconciliations with the Department's collection and billing system, which was resolved prior to issuance of the letter. The letter did not contain any recommendations.

Appendix 3

BLM Response



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, DC 20240
<http://www.blm.gov>





In Reply Refer To:
1245 (830)

November 20, 2006

Memorandum

To: Assistant Inspector General for Audits
Office of Inspector General

Through: C. Stephen Allred 
Assistant Secretary - Land and Minerals Management

From: Kathleen Clarke 
Director, Bureau of Land Management

Subject: Response to Office of Inspector General Draft Report "Proposed Changes to Management of SNPLMA Costs May Improve Fund Accountability"

Thank you for the opportunity to respond to the draft report by the Office of Inspector General (OIG) on proposed changes to management of the Southern Nevada Public Land Management Act (SNPLMA), as well as for the extension of time. The Bureau of Land Management (BLM) has thoroughly reviewed the draft report, and we consider the matters raised to be very significant.

As a preface, we strongly agree that the programs authorized by SNPLMA must have effective internal controls to ensure appropriate execution. For this reason, we have engaged the services of an independent consulting firm to examine all of the records described in the draft report, and charges to the SNPLMA operating account for Fiscal Years (FY) 2004, 2005, and 2006. This review began shortly after we received the draft report. Although some facts are known, the review is not scheduled for completion until April 2007.

In the interim, we have conducted our own extensive review of the program relative to the OIG's draft recommendations. We have already taken several steps to strengthen our internal controls, and would welcome your further input on additional improvements.

Discussion Related to Recommendation 1:

Recommendation 1 states that the BLM "Seek the advice of the Solicitor's Office to determine the proper disposition of the inappropriate augmentation of the BLM's appropriation and a potential Antideficiency Act violation."

The draft report states that the OIG reviewed payroll adjustments from the BLM Las Vegas Field Office for FY 2004, determining that up to \$224,000 of payroll adjustments had been moved from other BLM appropriations to the SNPLMA account. It then indicates that these adjustments amounted to an inappropriate augmentation of an appropriation, constituting a violation of the "purpose statute" at 31 U.S.C. § 1301(a) and a possible violation of the Antideficiency Act at 31 U.S.C. § 1341(a).

As recommended, we sought counsel from the Solicitor's Office Division of General Law. The Solicitor and the BLM have concluded that neither an augmentation of an appropriation, nor a violation of the Antideficiency Act, has occurred.

The first issue is whether an improper augmentation occurred. In general, it would be an improper augmentation for an agency to operate a program beyond the level that can be financed by the appropriation provided by Congress. This most commonly occurs when an agency receives funds or support from an outside source without authority. The potential for improper augmentation may also arise if an agency spends funds from a particular appropriation to accomplish the purposes of a different appropriation, in which case a violation of the "purpose statute" may also occur.

The BLM found that it obligated funds from an account under applicable statutory authority, but later determined the charge to be more appropriately attributable to a Management of Lands and Resources (MLR) account, and thus the BLM made obligatory adjustments to both appropriations. Both accounts are "no-year" appropriations available to meet payroll obligations. The funds involved in these adjustments did not augment either appropriation, but simply constituted administrative correction of time-coding errors.

The draft report states that several employees coded their time to the SNPLMA account when they worked on implementation activities. The auditors then determined that some of those time charges had been adjusted from another account to the SNPLMA account, without the knowledge of the employee or their immediate supervisor. The draft report then cites the auditor's inability to find substantive documentation to support the changes. On that basis, the report appears to conclude that the charges must have been improper.

Considering the breadth of activities authorized by SNPLMA and the significant overlap of activities also funded by BLM's MLR appropriation, the payroll adjustments charged to the SNPLMA account were not necessarily in error. We recognize the possibility that upon further scrutiny, some of these charges may not be determined to be appropriate "necessary expenses" for the SNPLMA account. The BLM's review of the SNPLMA program will include an analysis of the substance of the relevant employees' work to determine the propriety of payroll and operational charges to the SNPLMA account. Should incorrect charges be identified, we will adjust the accounts accordingly.

In addition, the BLM's Director of Human Capital will update and publish requirements, procedures, roles, responsibilities and internal controls for recording, adjusting, and approving time and attendance information, no later than March 2007. The BLM Nevada will ensure that its employees and supervisors receive training on time and attendance reporting, no later than June 30, 2007.

Recommendation 1 also suggests that BLM's actions violated the Antideficiency Act. We believe that adjusting charges from one account to another within the accounts' period of availability does not constitute a violation of the act, even if the initial charges were improper. According to the Government Accountability Office (GAO):

“Even though an expenditure may have been charged to an improper source, the Antideficiency Act's prohibition against incurring obligations in excess or in advance of available appropriations is not also violated unless no other funds were available for that expenditure. Where, however, no other funds were authorized to be used for the purpose in question or where those authorized were already obligated, both 31 U.S.C. 1301(a) and 1341(a) have been violated. In addition, we would consider an Antideficiency Act violation to have occurred where an expenditure was improperly charged and the appropriate fund source, although available at the time, was subsequently obligated, making readjustment of accounts impossible. (“Principles of Federal Appropriations Law,” GAO, citing 63 Comp. Gen. 422, 424 (1984), page 6-42 (Second Edition, 1992)).

The GAO further states that “if the appropriation that should have been charged in the first place has sufficient available funds to enable the adjustment of accounts, there is no Antideficiency Act violation. A violation would exist only if the proper account does not have enough money to permit the adjustment, and this includes cases where sufficient funds existed at the time of the error but have since been obligated or expended.”

There are sufficient unobligated balances in both the SNPLMA and MLR appropriations for FYs 2004, 2005, and 2006 to cover whatever adjustments may be necessary to ensure the correct charging of the approximately \$224,000 in questioned payroll charges. This fact is documented in the BLM's Statement of Budgetary Resources (FACTS II or SF-133, line 9). Therefore, the BLM was able to ensure coding to the correct appropriation without giving rise to a violation of the Antideficiency Act.

The draft report also identifies one employee whose entire salary of \$116,000 was paid by the SNPLMA account in FY 2004 although he worked at the University of Nevada, Las Vegas (UNLV). The report further states: “[w]hile the work at the university may have related to the SNPLMA program, it was not an administrative cost associated with implementing SNPLMA.” Upon further review of the nature of this employee's duties while at UNLV, we have determined that the employee's salary would have been more appropriately split between the SNPLMA and MLR appropriations, with 30 percent charged as a necessary expense of the SNPLMA account. Adjustment of both accounts will be made in December 2006.

We believe that this employee's research activities (amounting to 30 percent of the employee's time), support the SNPLMA Program and can properly be considered a necessary expense of the SNPLMA account.

Discussion Related to Recommendations 2 and 3:

Recommendation 2 states that the BLM should "formally assign oversight responsibility for the SNPLMA business matters to BLM's Business Center, including the authority to ensure that controls over charging and adjusting costs are followed, as well as the authority to disallow erroneous or improper salary or other administrative charges assessed against SNPLMA funds."

Recommendation 3 states that the BLM should "include the Director of the Business Center as a member of the Executive Committee on issues pertaining to the financial practices used in implementing and administering SNPLMA."

The draft report indicates there is a need for improved internal controls over administrative expenses associated with the SNPLMA Program. As an example of inadequate controls, the draft report cites the fact that the SNPLMA Business Manager no longer has responsibility for reviewing awards. The draft also questions the propriety of \$33,000 in awards using SNPLMA funds because of its impact on the SNPLMA budget and the apparently unsound method by which the award amounts were determined. As part of the independent review discussed above, all awards charged to the SNPLMA account will be evaluated, and those found to be improperly charged will be corrected.

We understand and support the necessity for strong internal controls and believe that the existing bureau control structure is well-designed to manage risk and ensure accountability for the SNPLMA Program. We also agree the SNPLMA Program must be fully integrated into that structure.

During the third quarter of FY 2007, the BLM Assistant Director, Business and Fiscal Resources, will review BLM Nevada's risk assessment and testing of internal controls.

After we complete our ongoing independent review of SNPLMA costs, any salary or operational cost found to be improper will be corrected. To prevent future confusion in proper time coding, the budget staff of BLM Nevada, in consultation with the Washington Office budget staff, will provide training on cost coding and integrity to BLM Nevada employees and managers, not later than June 30, 2007.

In view of the SNPLMA Program's rapid change and growth, we will ensure that a budget or financial official is represented on the Executive Committee. To that end, the BLM Nevada State Director has submitted a recommendation to the committee to include the BLM Assistant Director, Business and Fiscal Resources, or his designee, as a member of the committee.

Discussion Related to Recommendation 4:

Recommendation 4 states that BLM, “As part of the direct funding mechanism to federal partners, develop and implement internal controls, such as third-party audits covering financial management and program effectiveness for projects, quarterly funding requests, status reports, trial balance reports, and annual financial data to ensure accountability and results measurement.”

The draft report expresses concern that implementing the sub-account process for transferring funds to participating agencies may not afford sufficient controls over SNPLMA funds throughout the duration of a project, including reporting of project accomplishments.

Since the OIG’s review covered 2004 data, it may not have included the Implementation Agreement (IA) dated June 7, 2006, (see <http://www.nv.blm.gov/snplma/implementation/ia.htm>). We believe this IA affords sufficient control by BLM and the other involved entities. This will reinforce the existing accountability processes already mandated in Federal law. The IA, in Appendix B, identifies in detail what expenses are considered “necessary expenses” for various types of work under SNPLMA, and Appendix L provides controls and procedures for the fund transfer process, including reporting requirements for both financial matters and on-the-ground results.

Summary

We appreciate your time and effort in preparing the draft report, and strongly concur with the overall goal of strengthening internal controls over the SNPLMA Program. We welcome your assistance, and would be happy to consider other possible remedies that might make our SNLPMA Program even stronger. We look forward to sharing with you the findings and recommendations from the independent consulting firm as soon as that information is available. Please feel free to contact me at any time if you would like to discuss this matter. Specific questions relating to this response may also be directed to Mike Ferguson, Assistant Director, Business and Fiscal Resources and Chief Financial Officer, at 202-208-4864, or to Andrea Nygren, Audit Liaison Officer, at 202-452-5153.

Appendix 4

Status of Audit Recommendations

Recommendation	Status	Action Required
1 and 3	Resolved; Not Implemented	We will refer the recommendations to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
2	Unresolved	Reconsider the recommendation and provide a plan identifying actions to be taken, target dates for completion, and the title of the official responsible for implementation.
4	Management Concur; Additional Information Needed	Provide the procedures and processes in place for BLM to detect financial irregularities or program performance problems.

Report Fraud, Waste, Abuse and Mismanagement



Fraud, waste, and abuse in government concerns everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and abuse related to Departmental or Insular area programs and operations. You can report allegations to us in several ways.



By Mail:

U.S. Department of the Interior
Office of Inspector General
Mail Stop 5341 MIB
1849 C Street, NW
Washington, D.C. 20240

By Phone:

24-Hour Toll Free 800-424-5081
Washington Metro Area 703-487-5435

By Fax:

703-487-5402

By Internet:

www.doioig.gov

Revised 07/06