



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

WR-IS-BLM-0001-2010

MAR - 3 2010

The Honorable John Culberson
House of Representatives
Washington, D.C. 20515-4307

Dear Mr. Culberson:

I am writing in response to your August 6 letter to Secretary of the Interior Ken Salazar, regarding your constituent, Ms. Barbara King, and her inquiries concerning the Emerald Mountain Land Exchange in northwest Colorado. The Secretary referred your letter to the Director of the Bureau of Land Management (BLM), who responded to you in a letter dated December 31, 2009, enclosed. My staff evaluated the Director's response and confirmed the accuracy of the information provided by BLM.

In your letter, you asked the Secretary for information regarding the notification provided to adjacent landowners. In his response, the Director stated that BLM used a variety of means to notify the public of the proposed exchange and followed all applicable laws and regulations. He indicated that the notice of the exchange proposal was published in four local newspapers and that BLM held three public meetings in the area to gather input from the community. He also stated that all exchange participants were notified directly of the authorized officer's decision to approve the exchange, as were jurisdictional, State and local governments, and the congressional delegation, as required by regulation. Finally, he explained that while Ms. King is an adjacent land owner, BLM did not notify her of the land exchange because she was not a direct party to the exchange. Rather, Ms. King had a private, third-party agreement with a land exchange participant who was directly notified of the exchange proposal and the exchange decision.

We confirmed that BLM followed applicable laws and regulations regarding the notification of adjacent landowners. BLM's public notification process for this exchange also conformed to the BLM "Land Exchange Handbook" (Handbook) regarding the publication of the Notice of Exchange Proposal (NOEP). The Handbook specifies that the NOEP be sent to all authorized users of the federal and non-federal land involved in the exchange, to local government and elected officials, and to the U.S. congressional delegation(s) representing the land involved in the exchange proposal. The Handbook states that BLM "...may also send the NOEP to ... adjoining landowners," but places no requirement on BLM to make such a notification. We concluded that the guidance in this part of the Handbook is consistent with all applicable laws and regulations regarding the notification of adjacent landowners.

While reviewing BLM's compliance with the Handbook, we noticed one small inconsistency. Exhibit C of Illustration 4-1 of the Handbook provides an example of the type of checklist BLM offices are expected to use to manage exchange projects. The checklist in the

illustration suggests that a step in the process would be to develop a mailing consultation list that includes adjacent landowners. This suggested action is inconsistent with applicable laws, regulations, and the body of the Handbook, which do not require that adjacent landowners be notified. We have notified BLM realty officials of this issue so that the inconsistency can be corrected in a future release of the Handbook.

You also asked the Secretary to provide information on the appraisal. In his response, the Director informed you that the parcels included in the exchange were appraised in accordance with the appraisal standards set forth in the federal exchange regulations (43 CFR § 2200), and that the Department of the Interior's Appraisal Services Directorate approved the values for these lands, as required by Departmental policy. The quality of land appraisals prepared in support of the Department's land acquisition activities has long been a concern of this office, as poor quality appraisals can result in federal property being undervalued. We therefore reviewed the appraisal for the parcel of BLM land adjacent to Ms. King's property and confirmed that the appraisal appeared to have been prepared in accordance with federal appraisal standards.

We found nothing to suggest that the transaction was not compliant with law, policy, and regulation. BLM's notification of the public followed all applicable laws and regulations and the land appraisal was consistent with federal appraisal standards. As such, our staff confirms the accuracy of the information provided by BLM and concurs with the response made by the Director.

If you have any questions, please do not hesitate to call me at (202) 208-5745 or your staff may call Kris Kolesnik at (202) 513-0326.

Sincerely,



Mary L. Kendall
Acting Inspector General

Enclosure



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>

DEC 31 2009

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House of Representatives
Washington, DC 20515

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I am writing in response to your letter of August 6, 2009 to Secretary of the Interior Ken Salazar, regarding your constituent, Ms. Barbara King, and her inquiries regarding the Emerald Mountain Land Exchange in northwest Colorado. Secretary Salazar has asked me to respond on his behalf and I apologize for the delay. In your letter, you requested that we provide you and Ms. King with any information related to the appraisal of the property as well as the steps the Bureau of Land Management (BLM) took to notify the public of the exchange. In particular, you asked us to address the notification provided to adjacent landowners. You also asked for information about the agreement between the BLM and the facilitator, Western Land Group (WLG), and for information on the type of oversight mechanisms in place for land exchanges.

We appreciate the opportunity to clarify the issues raised by your constituent. In the late 1990s, a group of citizens concerned about the possibility that Emerald Mountain would be sold by the State of Colorado (State), formed a partnership named the Emerald Mountain Partnership (EMP), for the purpose of protecting Emerald Mountain from private commercial or residential development. The EMP worked with WLG and the State of Colorado Land Board to develop a proposal to present to the BLM to effectuate an assembled land exchange under BLM's exchange regulations at 43 CFR Part 2200. This assembled land exchange involved parcels of BLM land that were deemed to be administratively inefficient to manage and therefore worthy of disposal. The BLM transferred these parcels of land to the State in exchange for land of equal value at Emerald Mountain. The State worked with WLG to sell the land they received to private parties. For the administrative convenience of all involved, the exchange was conducted using an escrow process so that all transactions were completed simultaneously.

Third-party facilitators, such as WLG, are not agents of the Federal government and freely negotiate and participate in real estate transactions at their own risk. That is, at EMP's behest, WLG looked for members of the public who might be interested in participating in the exchange. WLG would then represent such members of the public in the exchange transaction. Any compensation that WLG received was a result of financial transactions conducted between WLG and the private parties that it represented. The BLM did not pay any compensation to WLG.

In 2004, pursuant to 43 CFR 2201.1, the BLM entered into an Agreement to Initiate (ATI) with all parties directly involved in the transaction, that is: EMP, WLG (as representative of members of the public who were exchange participants), and the State. This ATI outlined the roles and responsibilities of each of the entities in the land exchange, and included a transaction schedule and costs to be shared. Copies of this document have been provided to Ms. King in response to her Freedom of Information Act (FOIA) requests. This document and other supplementary

documents and reports related to the Emerald Mountain Exchange can be found at http://www.blm.gov/co/st/en/fo/lfsfo/plans/emerald_mtn.html, under the Documents/Reports section.

The BLM used a variety of means to notify the public of the proposed exchange, following all applicable laws and regulations. Notice of the exchange proposal was published in four local newspapers. In 2005, the exchange was advertised with a Notice of Intent in the *Craig Daily Press* on February 11, 18, 25, and March 4; the *Hayden Valley Press* on February 9, and March 2; the *Steamboat Pilot* February 13, and March 6; and the *Moffat County Morning News* on February 12, 20, 27, and March 6. A copy of the text of the announcement is enclosed.

These public notices invited interested parties to submit comments to the BLM's Little Snake Field Office. The BLM also held three public meetings in the area to gather input from the public on March 7, 8 and 9, 2005 in Steamboat Springs, Oak Creek, and Hayden, respectively.

All exchange participants were notified directly of the authorized officer's decision to approve the exchange, as were jurisdictional, State and local governments, and the congressional delegation, as required by regulation. While Ms. King is an adjacent land owner, the BLM did not notify her directly of the land exchange, as she was not an exchange participant.

From information provided by Ms. King's attorney, Mr. Michael Connelly, it appears that Ms. King had an indirect interest in the land exchange through a private, third-party agreement with a land exchange participant. The exchange participant with whom Ms. King had an agreement was directly notified of the exchange proposal and the exchange decision. While the BLM is aware that Ms. King had an arrangement with the exchange participant regarding the eventual use and ownership of the parcel at issue, this agreement was a private matter and did not involve the BLM in any way. During the public process and comment period, Ms. King did not raise any objections to the disposal of the parcel in question, nor did she at any time request to be considered a participant in the exchange.

The parcels included in the exchange were appraised in accordance with the appraisal standards set forth in the federal exchange regulations (43 CFR Part 2200). All reservations, restrictions, and encumbrances that would be included in the conveyance documents for the lands were identified and considered in the appraisal prepared for the properties. In accordance with Departmental policy, the Department of the Interior's Appraisal Services Directorate approved the values for these lands.

The BLM Land Exchange Handbook, H-2200-1, sets out the various procedural steps and identifies the officials responsible for completion of each step. See H-2200-1, Illustration 1-1 (enclosed). Before an exchange may proceed, the Regional Solicitor's Office, the BLM State Director, the BLM National Land Exchange Team (Pg. 2-9 & 9-3 in BLM Land Exchange Handbook, H-2200-1), and the Deputy Director of the BLM must all review the proposed exchange. If the Deputy Director authorizes the exchange to proceed, the actual processing of the exchange begins. A similar review occurs before the exchange is ultimately completed. The Emerald Mountain land exchange was conducted according to this procedure. All appropriate review and approval was obtained and there were no irregularities in the process.

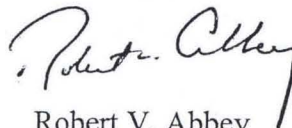
As of November 2009, the BLM has responded to 15 FOIA requests from Ms. King and her attorney. The information provided has ranged from copies of signed agreements and contracts, relevant sections of handbooks and memoranda that set forth BLM policy, copies of correspondence between entities within the BLM and also with other parties such as WLG, information related to the land appraisal process, and steps taken to notify the public of the exchange, including adjacent land owners. In its response to her FOIA requests, the BLM has provided Ms. King with comprehensive administrative records related to the land exchange. In response to a request from Ms. King, the BLM Colorado State Director, David Hunsacker thoroughly reviewed the Emerald Mountain Land Exchange and confirmed, by a letter dated August 27, 2009, that the exchange was conducted properly.

Over the course of the summer of 2009, Ms. King contacted the Department of the Interior's Office of the Assistant Secretary of Lands and Minerals Management, as well as Secretary of the Interior, Ken Salazar's office, with questions about the exchange. Please find a copy of Deputy Assistant Secretary Ned Farquhar's letter to Ms. King enclosed. Counsel representing Ms. King submitted materials produced by Ms. King for consideration by the Department, and requested that the Secretary rescind that portion of the exchange involving the parcel that was the subject of Ms. King's third-party agreement. In July 2009, Representative John Salazar sent a letter on Ms. King's behalf, requesting that Secretary Salazar have the Department's Inspector General, or other appropriate Departmental official, examine the appraisal process used in the exchange.

Inquiries to date have provided nothing to suggest that the transaction was not conducted in compliance with law, policy and regulation. As it appears that Ms. King's dispute is with a private landowner regarding a third-party agreement to which the BLM was not a party, it is unclear what further assistance the Department could provide in this matter.

Thank you again for your continued interest in the activities of the BLM and the Department concerning the management of Federal public lands. If you have any questions or issues you would like to discuss further, please do not hesitate to contact me at (202) 208-3801.

Sincerely,



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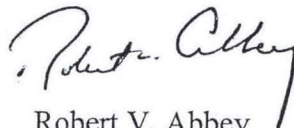
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