



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

REVIEW OF BUREAU OF LAND MANAGEMENT'S CONCESSION MANAGEMENT PRACTICES

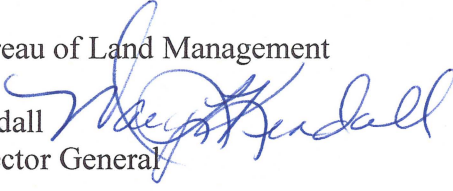


**OFFICE OF
INSPECTOR GENERAL**
U.S. DEPARTMENT OF THE INTERIOR

MAR 30 2015

Memorandum

To: Neil Kornze
Director, Bureau of Land Management

From: Mary L. Kendall 
Deputy Inspector General

Subject: Final Evaluation Report – Review of Bureau of Land Management’s Concession Management Practices
Report No. C-EV-BLM-0013-2013

The Office of Inspector General has completed an evaluation of the Bureau of Land Management’s (BLM) legal authority to (1) allow businesses to operate concessions, in the form of resort and recreational facilities, on BLM-managed land along the lower Colorado River in Arizona and California; and (2) continue to collect and retain lease fees from these businesses.

We found that while the Federal Land Policy and Management Act (FLPMA) gives BLM the authority to issue concessions leases, BLM’s lease practices are inconsistent with the provisions of the statute. Its lease fees are not based on fair market value, and its cost-recovery amounts are not based on the actual costs of administering the leases. Under FLPMA authority, a substantial portion of these monies cannot be retained, as is BLM’s current practice, but should be deposited in the U.S. Treasury General Fund if no other authority is applicable.

BLM also cites the Federal Land Recreation Enhancement Act (FLREA) special recreation permit authority to justify its retention of revenue from FLPMA leases. While FLREA does authorize BLM to charge and retain a percentage of concession (lease) revenue for recreational activities, BLM’s application of FLREA is inconsistent with the authority as concessions operating along the lower Colorado River include not only recreational activities, but also businesses such as gas stations, dining facilities, and convenience stores.

We believe that BLM invokes multiple statutes because it does not have a clear concession program authority. Therefore, we offered seven recommendations in this report to ensure that BLM is properly applying the provisions of the statutes it is invoking and to encourage BLM to move toward seeking explicit statutory authority to establish a robust concession program.

Based on BLM’s response, we consider recommendations 1, 2, 6, and 7 resolved but not implemented and recommendations 3, 4, and 5 unresolved. We are referring the recommendations to the Assistant Secretary for Policy, Management and Budget to track their implementation or resolution and implementation.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

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

Table of Contents

Results in Brief	1
Introduction.....	2
Objective	2
Background	2
Federal Land Policy and Management Act	3
Federal Lands Recreation Enhancement Act.....	3
Findings.....	4
BLM’s Lease Practices Are Inconsistent With FLPMA Authority	4
Lease Fees Are Not Set at Fair Market Value	4
Cost-Recovery Practices Are Not Based on Actual Costs	4
BLM Is Retaining Some Funds Inappropriately Because It Does Not Limit FLREA’s Provisions to Bona Fide Recreational Activities	5
BLM’s Concession Program Authorities Are Not Clearly Established.....	6
Conclusion and Recommendations.....	9
Conclusion.....	9
Recommendations Summary.....	9
Appendix 1: Scope and Methodology.....	15
Appendix 2: Response to Draft Report.....	16
Appendix 3: Status of Recommendations.....	23

Results in Brief

We examined the Bureau of Land Management's (BLM) legal authority to (1) allow businesses to operate concessions, in the form of resort and recreational facilities, on BLM-managed land along the lower Colorado River in Arizona and California; and (2) continue to collect and retain lease fees from these businesses. We initiated this evaluation because the statutes cited by BLM did not appear to provide clear authority to operate and retain the revenues from these activities. We focused on the Federal Land Policy and Management Act (FLPMA) lease provisions that BLM invokes as its authority to allow businesses to operate concessions on these lands, and we analyzed BLM's application of the Federal Land Recreation Act's (FLREA) "special recreation permit fee" provision for collecting and retaining lease fees from businesses operating under BLM-issued leases.

We found that FLPMA does authorize BLM to issue leases to operate concessions, but BLM's methods of determining lease fees and cost-recovery amounts, as well as its fee retention practices, are inconsistent with FLPMA's lease authority. While FLPMA's implementing regulations call for BLM to charge fair market value for long-term leases on its lands, BLM instead charges leaseholders without any evidence that it has determined market value. In addition, while FLPMA allows BLM to recover costs that it incurs from administering leases, BLM instead retains what appears to be an arbitrary percentage that is not supported by actual incurred costs of issuing or administering the concession leases.

We also found that FLREA's special recreation permit fee authority does authorize BLM to charge and retain a percentage of revenues from recreational activities. BLM's application of FLREA appears to be inconsistent with the authority, however, as concessions operating along the lower Colorado River include not only recreational activities such as campgrounds and horseback-riding tours, but also businesses such as gas stations, dining facilities, and convenience stores. Such operations appear to extend well beyond bona fide recreational activities and thus are not appropriate for FLREA authority.

BLM invokes multiple statutes in its concession program because, in contrast to its sister agency the National Park Service, it does not have clear concession program authorities. Therefore, six of the recommendations we offer in this report are intended to ensure that BLM properly applies the provisions of the statutes it currently invokes. Our seventh recommendation encourages BLM to move toward seeking explicit statutory authority to establish a robust concession program.

Introduction

Objective

We examined the Bureau of Land Management's (BLM) legal authority to (1) allow businesses to operate concessions, in the form of resort and recreational facilities, on BLM-managed land along the lower Colorado River in Arizona and California; and (2) continue to collect and retain lease fees from these businesses. See Appendix 1 for the scope and methodology of this evaluation.

Background

BLM's concession program began as an ad hoc way to address illegal occupants on its lands, but it has evolved into a leasing structure that is far more permanent, commercial, and complex. In 1902, the Bureau of Reclamation (USBR) began a decades-long process of withdrawing lands to build dams and levees along the lower Colorado River.¹ Over 800 trespassers had built homes and businesses on these lands by 1961, the first year the U.S. Department of the Interior (DOI) appears to have tracked this information. Three years later, DOI signed the "Lower Colorado River Land Use Plan" (Plan), in part to correct the illegal-occupancy problem. The Plan described the situation in the Parker Strip Area, the land below the Parker Dam, as typifying the "uncontrolled" use of Federal lands, not only in that area but all along the river:

Commercial interests [have] established motels, trailer parks, fishing camps, and resort developments along the river in both Arizona and California. These people were fully aware of the illegal status of their occupancy but in the absence of effective Federal action to evict them, they stayed on with the eventual hope of securing title to the land.

To deal with the illegal occupancy, DOI established a permit program whereby the illegal occupants could apply for 4-year permits to use the lands in return for paying "fair rental value." DOI also transferred management of the lands from USBR to BLM in 1968. The Plan proposed phasing out the individual permits and replacing them with long-term (up to 50-year) leases to State, county, and city governments. In return, the lessee governments were supposed to contract with private entities to provide facilities and services for public recreational use of the lands. Instead of following the Plan's proposal, BLM has leased the facilities directly to private entities as "concession" leases.

BLM has issued these concession leases to resorts, recreational facilities, and other business ventures along the lower Colorado River in Arizona and California,

¹ The Federal Land Policy and Management Act authorizes Federal agencies to "withdraw" Federal lands, meaning designate the lands for specified purposes, and to limit activities, including mining and settlement, during the designation.

charging each leaseholder a lease fee. BLM allows the owners of these properties to operate their businesses under long-term leases (30 to 50 years in duration).

BLM provided us a representative example of a concession lease, which cites 43 C.F.R. part 2920—the Federal Land Policy and Management Act’s (FLPMA) implementing regulations—as the authority under which the leases are entered into. In its correspondence with us, BLM has invoked the Federal Lands Recreation Enhancement Act (FLREA) as its authority to retain a portion of the lease fees.² The lease we reviewed, however, did not cite this authority.

Federal Land Policy and Management Act

FLPMA § 302 authorizes BLM, through the Secretary of the Interior, to allow occupancy and development of its land through long-term leases. FLPMA’s regulations also give BLM the authority to collect lease fees—but not the authority to retain them—based on the fair market value of its FLPMA leases. FLPMA § 304 does, however, allow for cost recovery “to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands.”

Federal Lands Recreation Enhancement Act

FLREA gives BLM the authority to establish, modify, charge, and collect recreation fees at Federal recreational lands and waters. Recreation fees include those collected from holders of special recreation permits. FLREA’s section on special recreation permit fees authorizes the Secretary to issue permits for specialized recreation uses “such as group activities, recreation events, [and] motorized recreational vehicle use.”³ FLREA’s implementing regulations also require BLM to set fees consistent with certain criteria, including costs incurred by the U.S. Government, the types of services provided, and fees comparable to those charged by nearby public- and private-sector operators providing similar services.⁴

² Specifically, the special recreation permit fee authority of FLREA § 803(h), codified at 16 U.S.C. § 6802(h).

³ 16 U.S.C. § 6802(h).

⁴ 43 C.F.R. § 2932.31(b).

Findings

We found that while FLPMA does authorize BLM to issue leases to operate concessions, BLM's methods of determining lease fees are inconsistent with FLPMA's lease authority. First, BLM has provided no evidence that its fees are set through consideration of comparable fees charged by other service providers to obtain at least fair market value. Second, BLM's retention of amounts that bear no relation to its actual costs conflicts with FLPMA's cost-recovery authority. Finally, BLM appears to be improperly collecting and retaining FLREA special recreation permit fees from facilities that do not involve bona fide recreational activities. In essence, BLM has assembled its concession program from a variety of regulatory sources, not all of which are appropriate or sufficient for the type of program BLM is attempting to manage.

BLM's Lease Practices Are Inconsistent With FLPMA Authority

Lease Fees Are Not Set at Fair Market Value

FLPMA implementing regulations require BLM to charge, at a minimum, fair market value for long-term leases on its land.⁵ Consistent with this requirement, the representative lease agreement that we were provided mandates BLM to "conduct studies at the time of lease renewal in order to determine and document full fair market value for the opportunity to conduct business on the lease premises." We found that instead of determining fair market value for leases, BLM charges leaseholders a 4 percent lease fee, calculated from a percentage of the company's annual gross revenue, without any discernible market basis.

In fiscal year 2010, concessions around Lake Havasu, in Arizona, reported about \$20 million in income. BLM charged recreation concession leaseholders 4 percent as their lease fees—a combined total of about \$664,000. BLM's current practice of establishing lease fees without a market study is not consistent with FLPMA regulations and does not provide any assurance that the Government is receiving, at a minimum, fair market value for the use of its lands.

Cost-Recovery Practices Are Not Based on Actual Costs

FLPMA contains a provision to allow BLM to recover the costs it incurs from administering leases.⁶ The manner in which BLM has established the cost-recovery amount it retains, however, is not consistent with that authority. Instead of calculating the actual costs to recover from each leaseholder along the lower Colorado River, BLM retains a set portion—currently 55 percent—of every lease fee except for one.

⁵ 43 C.F.R. § 2920.8. ("Holders of a land use authorization shall pay . . . a rental as determined by the authorized officer. . . . In no case shall the rental be less than fair market value.")

⁶ 43 U.S.C. § 1734(b).

This 55 percent appears to be an arbitrary amount. We found no evidence during our review that the percentage is related in any way to BLM’s actual incurred costs of issuing or administering the concession leases, or that BLM has even calculated such costs at all.

Recommendations

We recommend that BLM:

1. Set lease fees at fair market value in accordance with 43 C.F.R. § 2920.8; and
2. Base cost-recovery fees on actual costs incurred, in accordance with FLPMA § 304.

BLM Is Retaining Some Funds Inappropriately Because It Does Not Limit FLREA’s Provisions to Bona Fide Recreational Activities

Unless specifically authorized by law to do so, Federal agencies may not retain any portion of incoming funds for their own use. Under the “miscellaneous receipts” statute, agencies generally must surrender all money they receive from outside sources (other than Congress) to the U.S. Treasury General Fund.⁷ During our review, BLM cited FLPMA as its authority to issue leases, and 16 U.S.C. § 6802(h)—FLREA’s “special recreation permit fee” provision—as its authority to charge and retain portions of the lease fees. BLM has stated that FLPMA and FLREA allow this fee collection and retention because the leases are not just leases, but a hybrid instrument BLM recently created, which it terms a “lease/special recreation permit.”

FLREA allows BLM to charge recreation fees and to retain related revenues, but this authority may only be used for bona fide recreational activities and enterprises (such as campgrounds and horseback-riding tours) as reflected in FLREA and its regulations. The concessions operating along the lower Colorado River include not only recreational activities, but also businesses such as gas stations, dining facilities, and convenience stores. Such business operations appear to extend well beyond bona fide recreational activities and thus are not appropriate for FLREA authority.

In addition, while the representative lease BLM provided us invokes FLPMA’s leasing authority, it does not reference FLREA’s special recreation permit authority, nor does it describe the recreational activities relevant to the use of such

⁷ 31 U.S.C. § 3302(b).

authority. Moreover, while FLREA special recreation permits may only be issued for durations of up to 10 years,⁸ the concession leases last for much longer periods.

Recommendations

We recommend that BLM:

3. Work with DOI's Office of the Solicitor to ensure that FLREA's special recreation permit authority is used only for bona fide recreational activities;
4. For revenues from bona fide recreational activities, retain only amounts that fairly reflect special recreation permit fees under FLREA or legitimate cost-recovery amounts under FLPMA, or both, and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts;
5. For revenues that do *not* derive from bona fide recreational activities (gas stations, dining facilities, convenience stores, etc.), retain only legitimate cost-recovery amounts under FLPMA and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts; and
6. In those instances where FLPMA authority is invoked to issue a lease but FLREA special recreation permit authority is cited to retain fees, clearly state in the lease—
 - a. the intent to use FLREA authority;
 - b. a description of the recreational activities relevant to the use of such authority;
 - c. the amount of the fees (as determined from the factors set forth in 43 C.F.R. § 2932.31); and
 - d. the duration of the permit (up to 10 years under 43 C.F.R. § 2932.42).

BLM's Concession Program Authorities Are Not Clearly Established

In the absence of more suitable authority, BLM appears to have assembled its concession program from statutes and regulations that were designed for other purposes. As discussed previously, BLM cites FLPMA to establish its concession authority and cites FLPMA's cost-recovery authority and FLREA's special

⁸ 43 C.F.R. § 2932.42.

recreation permit authority to justify its retention of revenue from FLPMA leases. While FLPMA § 302 allows BLM to issue long-term leases, it does not explicitly authorize concessions or provide the myriad of powers and rules needed to run such operations effectively. This section of FLPMA merely provides a vehicle—the long-term lease—through which BLM may allow businesses to continue to operate on BLM-managed lands; it does not explicitly safeguard the public’s interests or provide accountability for a concession program.

In stark contrast to BLM’s minimal authority, the National Park Service’s (NPS) extensive framework, as established by Congress, provides detailed and explicit statutory authority for all aspects of its concession program.⁹ For instance, NPS’ authority provides that—

1. concession contracts must be awarded through a competitive selection process that includes publicly solicited proposals and detailed prospectuses;
2. Congress must be notified of any proposed concession contract with anticipated annual gross receipts in excess of \$5 million or a duration of more than 10 years;
3. franchise fees must be allocated into two Treasury accounts, with 20 percent allocated to one account to support activities for all NPS units and the remaining 80 percent going to the other account and credited to each NPS unit that collected it; and
4. concession terms must be limited to less than 10 years, with approval by the Secretary of the Interior required for terms of up to 20 years.

These provisions establish reasonable limitations to prevent mismanagement, waste, and abuse of the program, as well as providing unmistakable authority to retain and distribute fees for later expenditure. None of these features—from express allowance of concession contracts to clear authority to charge and retain franchise fees for those contracts—are in FLPMA, which BLM cites as the basis for its concession leases. Another notable contrast is that while the word “concession” appears nowhere in BLM’s provisions, NPS’ statutory scheme specifically states: “[T]he Secretary shall utilize concessions contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to units of the National Park System.”¹⁰

⁹ 16 U.S.C. §§ 5951-5966.

¹⁰ 16 U.S.C. § 5952.

Recommendation

We recommend that BLM:

7. Work with DOI's Office of the Solicitor and Office of Policy, Management and Budget to develop a proposal for legislation that clearly establishes concession authority and addresses related revenue-retention parameters.

Conclusion and Recommendations

Conclusion

Without clear concession authority, BLM has patched together existing statutes to establish an ad hoc concession program. BLM currently cites FLPMA to establish its concession authority, and cites FLPMA's cost-recovery authority and FLREA's special recreation permit authority to justify its retention of revenue from FLPMA leases.

We found that these practices have resulted in funds not being properly calculated or deposited. Rather than calculating the actual costs to recover from each leaseholder, BLM instead retains an arbitrary set percentage of every lease fee. In addition, BLM does not deposit this money to the U.S. Treasury General Fund as required under the "miscellaneous receipts" statute.

We also found that BLM is invoking FLREA's special recreation permit authority for operations that appear to extend well beyond bona fide recreational activities. We believe that these issues have developed, in part, because the statutes and regulations BLM has used to create its concession program were designed for other purposes—unlike the clearly established concession program operated by NPS.

By implementing our first six recommendations, BLM will be prepared to properly calculate, retain, and deposit fees, as well as correctly apply statutory authorities. Implementation of the seventh recommendation will be a step toward establishing a BLM concession program that will provide the explicit statutory authority required for all aspects of a robust concession program.

Recommendations Summary

We issued a draft version of this report to BLM and received a response to our recommendations. In Attachment 1 of its response, BLM disagreed with our statement that activities allowed by the leases "appear to extend well beyond bona fide recreational activities and thus are not appropriate for FLREA authority."

BLM stated that the activities we mention, including gas stations and dining facilities, are "inherently recreational enterprises," without which "it would be impossible to recreate" along the lower Colorado River corridor. According to BLM, these activities are "support services," similar to those allowed in most major NPS concession operations and vending operators authorized under FLREA special recreation permits.

In essence, BLM asserts that anything that indirectly supports recreation consequently counts as recreation. We see a number of problems, however, with this interpretation.

First, we disagree with BLM's proposition that facilities providing support services (such as fueling stations, restaurants, and supply stores) may be considered recreational activities. Things that support or lead to an activity do not themselves count as the activity. If they did, there would be no distinction between the two in the first place. As such, recreation and support for recreation are two distinct categories of activity.

BLM's assertion also conflicts with legal authorities. BLM's broad interpretation of "recreational" activity to include support services is not supported by FLREA. FLREA's special recreation permit fee provision¹¹ allows such permits to be issued "for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, [and] motorized recreational vehicle use." This clearly describes types of recreation activities, not indirect support services such as gas stations and restaurants.

Also, a FLREA provision¹² sets forth a requirement for BLM to set up a committee with a "balanced and broad representation from the recreation community" by including persons that represent—

- (I) Winter motorized recreation, such as snowmobiling.
- (II) Winter non-motorized recreation, such as snowshoeing, cross country and down hill skiing, and snow-boarding.
- (III) Summer motorized recreation, such as motorcycles, boaters, and off-highway vehicles.
- (IV) Summer nonmotorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting.
- (V) Hunting and fishing.

While this committee does not have direct authority over BLM, the above-listed categories provide further evidence of what Congress meant by "recreational" activities under FLREA. Conspicuously absent from any of these categories are gas stations, restaurants, or anything akin to such enterprises. The list consists entirely of types of outdoor recreation, without a single reference to businesses that indirectly support recreation.

Second, BLM asserts that "similar facilities are available through most major [NPS] concession operations." We agree; however, we note that unlike NPS, BLM does not have a statutory basis for "major . . . concession operations," so the comparison is not valid. Rather than a unified concession authority, BLM has separate authorities for different uses. Under FLPMA, BLM has authority to lease facilities that cater to the needs of the recreating public and recover costs. Under

¹¹ 16 U.S.C. § 6802(h).

¹² 16 U.S.C. § 6803(d)(5)(D).

FLREA, however, it has authority for recreation activities—with full fee retention authority.

Finally, we do not agree with BLM’s expansive interpretation of “vending” operations. BLM states: “These services [gas stations, restaurants, and supply stores] are similar to vending operations which are a type of SRP [special recreation permit].” Vending has a specific meaning in FLREA, and this meaning does not include the types of activities BLM describes. FLREA defines vending as “the sale of goods or services, *not from a permanent structure*, associated with recreation on the public lands or related waters, such as food, beverages, clothing, firewood, souvenirs, photographs or film (video or still), or equipment repairs [emphasis added].”¹³

In other words, the FLREA regulations do not allow using special recreation permits for vending that goes beyond temporary stands set up to sell things one would normally associate with outdoor recreation, such as camping, sightseeing, off-roading, and boating. Gas stations, restaurants, or supply stores operating from permanent structures plainly fall outside FLREA’s regulatory definition of vending and thus may not use a special recreation permit.

For these reasons, we believe that BLM’s assertion that gas stations, restaurants, and similar types of enterprises qualify as recreation activities justifying application of a special recreation permit fee is incorrect. BLM cannot charge and retain a percentage of its revenue under FLREA for these types of activities. Because BLM relied on this assertion for its responses to three of our recommendations, we consider these recommendations unresolved. Summaries of BLM’s responses to all of our recommendations, as well as our analyses, are below. (See Appendix 2 for the full text of the response; Appendix 3 lists the status of each of our recommendations.)

We recommend that BLM:

1. Set lease fees at fair market value in accordance with 43 C.F.R. § 2920.8.

BLM response: In its response to our draft report, BLM concurred with this recommendation and stated that it will issue guidance to set all land-use lease fees at fair market value. As part of this process, BLM said, it will complete an appraisal of fair market values for renting land and Government-owned facilities. BLM will also deposit rental fees into a designated U.S. Treasury account and will update existing leases to comply with the regulations at 43 C.F.R. § 2920 when it receives a request for a lease amendment.

¹³ 43 C.F.R. § 2932.5.

Office of Inspector General (OIG) analysis: Based on the information provided, we consider this recommendation resolved, but not implemented.

2. Base cost-recovery fees on actual costs incurred, in accordance with FLPMA § 304.

BLM response: BLM concurred with this recommendation and will enforce the requirement to assess cost-recovery fees in accordance with FLPMA. BLM stated that it will also issue guidance on how to properly assess, calculate, and track cost-recovery amounts.

OIG analysis: Based on the information provided, we consider this recommendation resolved, but not implemented.

3. Work with DOI's Office of the Solicitor to ensure that FLREA's special recreation permit authority is used only for bona fide recreational activities.

BLM response: BLM stated that it will work with DOI's Office of the Solicitor to create guidance that will ensure FLREA's special recreation permit authority is used only for appropriate recreational activities.

OIG analysis: Because we disagree with BLM's assertion that gas stations, restaurants, and similar types of enterprises qualify as recreation activities that would justify the use of special recreation permit fees, we consider this recommendation unresolved and not implemented.

4. For revenues from bona fide recreational activities, retain only amounts that fairly reflect special recreation permit fees under FLREA or legitimate cost-recovery amounts under FLPMA, or both, and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts.

BLM response: BLM partially concurred with this recommendation, noting that its interpretation of "bona fide recreation activities" differs from ours (see our analysis above). BLM stated that it will issue guidance for the management and oversight of both the special recreation permit and cost-recovery components of its concession program.

OIG analysis: As stated above, we believe that BLM's classification of gas stations, restaurants, and similar types of enterprises as recreation activities is incorrect. Therefore, we consider this recommendation unresolved and not implemented.

5. For revenues that do *not* derive from bona fide recreational activities (gas stations, dining facilities, convenience stores, etc.), retain only legitimate

cost-recovery amounts under FLPMA and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts.

BLM response: BLM partially concurred with this recommendation, noting our different interpretations of bona fide recreation activities, and stated that it will issue guidance to ensure proper accounting for the management and oversight of the SRP and cost-recovery components of its concession program.

OIG analysis: As with Recommendations 3 and 4, we believe that BLM's classification of gas stations, restaurants, and similar types of enterprises as recreation activities is incorrect. Therefore, we consider this recommendation unresolved and not implemented.

6. In those instances where FLPMA authority is invoked to issue a lease but FLREA special recreation permit authority is cited to retain fees, clearly state in the lease—
 - a. the intent to use FLREA authority;
 - b. a description of the recreational activities relevant to the use of such authority;
 - c. the amount of the fees (as determined from the factors set forth in 43 C.F.R. § 2932.31); and
 - d. the duration of the permit (up to 10 years under 43 C.F.R. § 2932.42).

BLM response: BLM concurred with this recommendation and stated that it will accomplish the recommendation's objectives by using separate authorizations (special recreation permits and surface use leases) and creating guidance to identify and carefully control the deposits of the funds collected under each authority.

OIG analysis: Based on the information provided, we consider this recommendation resolved, but not implemented.

7. Work with DOI's Office of the Solicitor and Office of Policy, Management and Budget to develop a proposal for legislation that clearly establishes concession authority and addresses related revenue-retention parameters.

BLM response: BLM concurred with this recommendation, stating that in past congressional testimony DOI has requested clear concessions authority for BLM-managed lands. BLM also stated that it has begun to work with the DOI offices we recommended to develop a formal legislative proposal for a concession program.

OIG analysis: Based on the information provided, we consider this recommendation resolved, but not implemented.

Appendix I: Scope and Methodology

We reviewed the Bureau of Land Management's (BLM) legal authority to (1) allow businesses to operate concessions, in the form of resort and recreational facilities; and (2) continue to collect and retain lease fees from these businesses. Our evaluation focused on BLM-managed lands along the lower Colorado River in Arizona and California.

To accomplish our objective, we—

- gathered general, administrative, and background information to provide a working knowledge of the concession program along the lower Colorado River;
- identified and reviewed policies and procedures related to the concession program;
- conducted site visits to interview personnel at BLM's Lake Havasu and Yuma field offices;
- reviewed legislation and regulations cited by BLM to operate its concession program; and
- analyzed the legal authorities cited by BLM and discussed this analysis with the U.S. Department of the Interior's Office of the Solicitor.

We conducted our evaluation in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

Appendix 2: Response to Draft Report

The Bureau of Land Management's response to our draft report follows on page 17.



United States Department of the Interior
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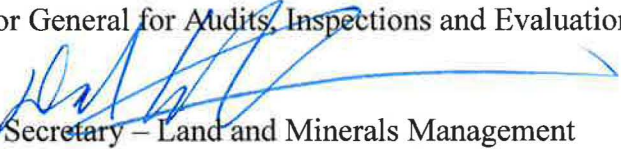


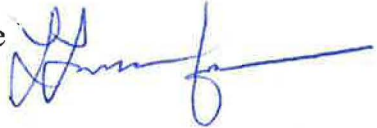
JAN 22 2015

In Reply Refer To:
1245/2930 (830/250)

Memorandum

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

Through: David E. Haines 
Deputy Assistant Secretary – Land and Minerals Management

From: Neil G. Kornze 
Director

Subject: Office of Inspector General Draft Evaluation Report – “Review of Bureau of Land Management’s Concessions Practices” (C-EV-BLM-0013-2013)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) Draft Evaluation Report, “Review of Bureau of Land Management’s Concession Management Practices” (C-EV-BLM-0013-2013). The Bureau of Land Management’s (BLM’s) recreation commercial service program¹ consists of 16 recreation commercial service authorizations operating along the lower Colorado River in Arizona and California. These operations are a major economic contributor to the area, reporting approximately \$20 million in revenue annually. The BLM agrees with the report’s central finding that explicit concession authority from Congress would allow the bureau to better manage and expand this program that is so important to local businesses.

To manage its recreation commercial service program, the BLM uses the authorities of the Federal Land Policy and Management Act (FLPMA) and the Federal Lands Recreation Enhancement Act (FLREA) and the implementing regulations of 43 CFR 2920 and 2930. The BLM refers to this hybrid program as recreation commercial service.

The 16 recreation commercial service authorizations were originally established under the authorities of other Department of the Interior (DOI) bureaus and were assigned to the BLM in

¹ As a result of OIG’s review of BLM’s concession program BLM is now referring to all of the concession-type arrangements as a “recreation commercial service” to better reflect the arrangement BLM has with the operators and because this term reflects the type of authorizations BLM issues to the operators.

1984 under Secretarial authority as described in Departmental Manual 613, Special Programs. The program guidance and administrative procedures for these individual leases have changed over time and new guidance has been incorporated as the leases were renewed, reassigned, or modified.

The BLM is in the process of establishing guidance that addresses the major points raised by the OIG's report. The BLM continues to work with DOI's Office of the Solicitor to address the cost recovery methods and to clarify which activities are authorized under the special recreation permit (SRP) authority, which allows for the bureau to permit and charge fees for certain commercial recreational activities on public lands. This new guidance will be incorporated into commercial service authorizations as they are issued or reauthorized. The BLM will continue to draft regulations to clarify BLM's recreation commercial service program.

However, as your office notes in its report, the BLM's recreation commercial service program is limited by its hybrid legal authority. In order to fully improve and expand the program, the BLM is preparing a legislative proposal for a robust BLM concession program. The Department of the Interior previously testified in support of exploring potential opportunities for such an authority.² A uniform statutory authority for a BLM concessions program would increase future opportunities on BLM lands where commercial business opportunities align with the goals and interests of local communities.

Attachment 1 provides general comments on the draft report. Attachment 2 provides a summary of the actions taken or planned by the BLM to comply with the recommendations as well as the name(s) of the responsible management official(s) and target dates for completion.

If you have any question concerning the response to this report, please contact Andy Tenney, Chief, Division of Recreation and Visitor Services, at 202-912-7094 or LaVanna Stevenson, BLM Audit Liaison Officer, at 202-912-7077.

Attachments

² Statement of Tom Iseman, Deputy Assistant Secretary for Water and Science, Before the Natural Resources Committee, Subcommittee on Water and Power, on H.R. 4166, June 10, 2014.
<http://www.doi.gov/ocl/hearings/113/hr4166_061014.cfm>

Attachment 1
General Comments on the Office of the Inspector General Draft Evaluation Report
“Review of Bureau of Land Management’s Concession Management Practices”
(C-EV-MOA-0013-2013)

Page 1 paragraph 3: The report makes reference to the Federal Lands Recreation Enhancement Act (FLREA). FLREA is currently set to expire in September 2016. The BLM is unsure whether FLREA will be reauthorized or whether special legislation providing the BLM with concession authority will be passed, which creates some uncertainty in the BLM’s recreation commercial service program. Regardless, development of new recreation commercial service guidance premised on existing authority will be a BLM priority.

Page 5 paragraph 3: As noted in the report, the BLM does not have a concessions statute. However, the BLM has the authority to regulate recreational use and surface use of public lands. The BLM disagrees with the assertion that some business functions and entities "... appear to extend well beyond bona fide recreational activities and thus are not appropriate for FLREA authority." The BLM has used FLREA authority together with a FLPMA lease in order to recognize the unique, but interdependent, connection between the public lands and recreational activities along the lower Colorado River.

Although the purpose of these properties has evolved over the years, we believe these are inherently recreational enterprises designed for maximum enjoyment of the lower Colorado River and Lake Havasu. It would be impossible to recreate within this corridor without the support of the associated fueling stations, restaurants and food vendors, and supply stores. These support services provide value to the recreating public, and similar facilities are available through most major National Park Service concession operations. These services are similar to vending operations which are a type of SRP, as described in the Recreation Permit and Fee Handbook (H-2930-1, page 1-3). The BLM will conduct an inventory and analysis of each recreation commercial service operation to determine what, if any, part of the business is a lease and what part of the business is a SRP. This information will be used by the authorizing officer to standardize the terms of the lease at its next reauthorization.

Attachment 2

Response to the Recommendations included in the Office of the Inspector General Draft Evaluation Report “Review of Bureau of Land Management’s Concession Management Practice” (C-EV-MOA-0013-2013)

Recommendation 1: Set lease fees at fair market value in accordance with 43 C.F.R. § 2980.8

Response: The Bureau of Land Management (BLM) concurs with this recommendation and will issue guidance through an Instruction Memorandum (IM) to set lease fees at fair market value per 43 C.F.R. § 2920.8 for all land use leases. Through this process, the BLM will complete a Fair Market Value (FMV) appraisal for rent of land and government owned facilities in accordance with 43 CFR 2920.8. The land and government owned facility rental fee for the lease will be deposited in a designated U.S. Treasury account. Regulations require that the lease include terms and conditions, including bonding requirements for reclamation purposes, as necessary to ensure that the use of the public lands is appropriate for the location and activity supported by the lease. Further, the BLM will update existing leases to comply with 2920 surface use regulations. The BLM will also use any request for lease amendment to update the existing lease to incorporate all regulatory terms.

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 2: Base cost-recovery fees on actual costs incurred, in accordance with FLPMA § 304

Response: The BLM concurs with this recommendation and will enforce the requirement to assess cost recovery fees in accordance with Federal Land Policy and Management Act (FLPMA). The BLM will issue specific guidance on assessing cost recovery as noted in BLM’s Response to Recommendation 1. This guidance will provide instructions and criteria to help BLM authorized officers in determining the amount of cost recovery that is appropriate. Cost recovery will be charged for both the lease and the SRP. The respective cost recovery amounts for the FLPMA lease and FLREA SRP will be calculated and tracked separately, using the proper collection and billing codes, to ensure reimbursement (actual costs) for processing and monitoring the lease and the SRP.

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 3: Work with DOI’s Office of the Solicitor to ensure that FLREA’s special recreation permit authority is used only for bona fide recreational activities.

Response: The BLM will work with the Department of the Interior's (DOI) Office of the Solicitor (SOL) to ensure that FLREA's SRP authority is used only for appropriate recreational activities and issue guidance as noted in BLM's Response to Recommendation 1. SRPs will be issued for the commercial operation of only appropriate recreational activities associated with the lease. To assist the field, the IM will provide guidance on what activities are legitimately included in an SRP. Field offices will evaluate the recreation activities and uses occurring on the current land lease and permit those recreational uses and activities under a SRP. These activities will be administered in accordance to regulations and policies pertaining to the FLREA.

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 4: For revenues from bona fide recreational activities, retain only amounts that fairly reflect special recreation permit fees under FLREA or legitimate cost-recovery amounts under FLPMA, or both, and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts.

Response: The BLM partially concurs with this recommendation, noting our different interpretation of bona fide recreation activities, as noted in Attachment 1. The BLM will issue guidance in the IM noted in BLM's Response to Recommendation 1 to ensure proper accounting for the management and oversight of the SRP and cost recovery components of the recreation program. The current SRP fee applied to recreation commercial service authorizations is 3 percent of gross revenue of the recreation activities and uses occurring on the lease. The 43 CFR 2930 SRP funds will be deposited into the appropriate account separate from the 43 CFR 4920 land use lease funds. As noted above, cost recovery should be logged and charged for both the lease and SRP. The respective cost recovery amounts for the FLPMA lease administration and FLREA SRP will be calculated separately to ensure actual cost reimbursement for processing and monitoring the lease and SRP. All other funds will be deposited in the U.S. Treasury General Fund as miscellaneous receipts.

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 5: For revenues that do not derive from bona fide recreational activities (gas stations, dining facilities, convenience stores, etc.), retain only legitimate cost-recovery amounts under FLPMA and deposit all remaining amounts into the U.S. Treasury General Fund as miscellaneous receipts.

Response: The BLM partially concurs with this recommendation, noting our different interpretation of bona fide recreation activities, as noted in Attachment 1. As noted above in the

response to Recommendation 4, the BLM will issue an IM to ensure proper accounting for the management and oversight of the SRP and cost recovery components of the recreation program.

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 6: In those instances where FLPMA authority is invoked to issue a lease but FLREA special recreation permit authority is cited to retain fees, clearly state in the lease –

- a. The intent to use FLREA authority;
- b. A description of the recreational activities relevant to the use of such authority;
- c. The amount of the fees (as determined from the factors set forth in 43 C.F.R. § 2932.31); and
- d. The duration of the permit (up to 10 years under 43 C.F.R. § 2932.42)

Response: The BLM concurs with this recommendation. As noted in the Response to Recommendations above, the BLM will accomplish this utilizing its separate authorizations (SRP and surface use leases) and outlining procedures in the IM noted above to identify and carefully control where funds collected under each authority are deposited (whether for the activity or cost recovery).

Target Date: January 30, 2016

Responsible Official: Edwin Roberson, Assistant Director, Resources and Planning

Recommendation 7: Work with DOI's Office of Solicitor and Office of Policy, Management and Budget to develop a proposal for legislation that clearly establishes concession authority and addresses related revenue-retention parameters.

Response: The BLM concurs with this recommendation. The BLM and Interior have requested clear nationwide concessions authority for BLM-managed lands in formal testimony before Congress, and have begun developing a formal legislative proposal. The BLM will continue to work with SOL and the Office of Policy, Management and Budget to develop a formal legislative proposal for a BLM concession program.

Target Date: December 30, 2016

Responsible Official: Celia Boddington, Assistant Director, Communications

Appendix 3: Status of Recommendations

Recommendation	Status	Action Required
1,2, 6, and 7	Resolved but not implemented	We will refer these recommendations to the Office of Policy, Management and Budget (PMB) to track their implementation.
3, 4, and 5	Unresolved and not implemented	We will refer these recommendations to PMB to track their resolution and implementation.

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