

BEFORE THE

U.S. Office of Special Counsel

WASHINGTON, D.C.

Disclosure of Mr. Kent Wilkinson, Senior Appraiser

**U.S. Bureau of Land Management
Federal-State Land Exchange Mismanagement**

Form 12, Part 2

Page 3, No. 6: Details of Disclosure

Background

The State of Utah and the federal government entered into an agreement on June 18, 2002 to exchange certain lands within the State of Utah. The resulting 2002 Federal-Utah State Trust Lands Consolidation Agreement (which can be found at <http://www.tl.state.ut.us>) will be subject to ratification by the Congress of the United States and the Legislature of the State of Utah to exchange 108,000 acres of Utah “school trust land” for 135,000 acres of federal land in the state.

The land being relinquished by the State of Utah includes parcels in Sevier, Emery, Grand and Washington Counties. The acreage received by the State of Utah is in Uintah, Emery, Utah and Washington Counties. The acquired lands include a variety of rights to residential, commercial, oil, gas and mineral development. The Utah Legislature ratified the Agreement on July 9, 2002. Congressional ratification is pending via bill HR 4968 (sponsored by Chris Cannon (R-Utah, 3rd) and Jim Matheson (D-Utah, 2nd)) and now before the U.S. House of Representatives Resources Committee.

Summary

Despite representations that the exchange between the federal government and the Utah Schools & Institutional Trust Lands Administration (SITLA) is “approximately equal in value,” the federal government stands to lose between \$96.7 million and \$116.7 million, according to its own internal estimates. The losses are a result of improper valuation of federal mineral resources and inconsistent treatment of appraisals, See Exhibit 1, *U.S. Bureau of Land Management Matrix*, attached.

The \$96.7 to \$116.7 million loss to the Federal treasury is conservative estimate and may be much higher when additional assessments can be completed. Even if the lower ranges of loss were accepted, the amount is of sufficient size to constitute any reasonable definition of gross waste of funds.

The deviations from accepted and prudent practice by federal negotiators are so extreme (e.g., failure to obtain mineral assessments for federal parcels to be exchanged) as to reasonably constitute gross mismanagement of the basic custodial and fiduciary duties incumbent in managing these federal lands.

Disclosures Detailed

The State of Utah and the Bureau of Land Management (BLM) of the US Department of Interior produced an explanatory “White Paper” to explain the process and rationale by which the exchange evaluations in the agreement were derived. See Exhibit 2, United States and the State of Utah, *A White Paper in Support of the 2002 Federal-Utah State Trust Lands Consolidation Agreement* (Harja, Catlin, et alia)(June 21, 2001), attached. Unfortunately, this White Paper contains several major misstatements of fact and presents a thoroughly misleading picture of an exchange that, in truth, is anything but equivalent.

The problems with the official basis for the claim of equivalent exchange presented in the White Paper fall into two broad categories:

I. Improper Treatment and Valuation of Federal Mineral Resources

There was no credible analysis done (except in the San Rafael Swell) to properly reconcile the mineral values estimated by BLM Minerals Staff with the surface value estimated by the BLM Appraisers. This failure resulted in a gross undervaluing of the federal component of this exchange for the following reasons:

- A. On some blocks of Federal land, mineral values for these resources were disregarded altogether, even those identified in Staff Reports as being of high value or significant. See Exhibit 3, U.S. Department of Interior Mineral Staff, *Comments on A White Paper in Support of the 2002 Federal-Trust Lands Consolidation Agreement* (July 25, 2002)(James F. Kohler, commentor), attached.
- B. The White Paper consistently treated the sharing of receipts from federal mineral payments as lease payments, as if the State of Utah held a vested property right in this interest. This treatment is entirely inconsistent with prior decisions of the Interior Board of Land Appeals and Justice Department interpretations of prior legislated exchanges. The holding of this position allowed the authors of the White Paper to improperly discount value of the federal mineral resources by approximately 50 percent. See Exhibit 4, *Uniform Appraisal Standards for Federal Land Acquisition* § B-2 at 33; Exhibit 5, E-mail, Richard Rawson to Terry Catlin/UTSO/UT/BLM/DOI, Re: Response to Valuation Issues w/ June 21, 2002 White Paper (07/09/02); & Exhibit 6, William J. Collins, Former Chief, Land Acquisition Section Environmental and Natural Resources Division, *Public Interest Value* (United States Attorneys' Bulletin)(February 2002), attached.
- C. The White Paper further compounds the use of improper valuation methodology by treating this income share agreement the same as a market value estimate. Counting "value in use" (or value to a specific buyer or seller) as the equivalent of market value is prohibited in appraisal

practice. See Exhibit 7, *Uniform Appraisal Standard for Federal Land Acquisition* §§ D-10 through D-11 at 95, attached.

- D. The White Paper also mischaracterizes the mineral resource potential of the federal lands and contains information that was altered from the appraisal documents and mineral evaluations performed by BLM Appraisers and Mineral Staff. See Exhibit 3, supra.
- E. Where significant federal mineral values were considered, their contributions to the total value were not properly included in the valuation. Throughout the White Paper, high-value federal mineral interests are treated as an offset or noncontributing resource when combined with the federal surface estate. This is an incorrect appraisal and valuation methodology. See Exhibit 8, *Uniform Appraisal Standard for Federal Land Acquisition* §§ B-12 through B-13 at 53, attached.

II. Inconsistent Treatment of the Valuation Data and Appraisals

There are significant errors and a lack of consistency in the way certified appraisals, valuation data and adjustments to those data are considered and/or reconciled in the White Paper. These inconsistencies result in great benefits to the State of Utah at the expense of the federal treasury:

- A. SITLA valuation of the San Rafael Swell valued land based upon its scenic character. Exclusive reliance on scenic character is an improper criterion for appraised value. See Exhibit 9, *Legal Basis for Appraisal Standards for Federal Land Acquisition* at <http://www.justice.gov/enrd/land-ack/legal.htm>, also attached.
- B. The White Paper used inconsistent methodologies in valuing state and federal lands. Federal lands were valued as a block while certain state tracts were artificially broken up into smaller parcels, thus inflating the relative value of the state parcels. For example, the State Tortoise East lands should have properly been given a lower per-acre value than the BLM Anderson Junction lands, based on the same valuation factors and appraised as a block. By improperly breaking up the state tracts into smaller parcels, the White Paper effectively reverses the comparative values in these two areas. See Exhibit 10, E-mail, Dave Cavanaugh to Ray Brady/WO/BLM/DOI@BLM et al., Re: White Paper in Support of

the 2002 Federal-Utah State Trust Lands Consolidation Agreement (07/15/02), attached.

- C. The White Paper also assigns lesser weight to the BLM appraisals done by BLM Certified Appraisers than to other appraisals. Similarly, the White Paper improperly assigns valuations by non-appraisal staff equal weight with those performed by BLM Certified Appraisers.
- D. Key information contained in BLM Appraisals and appraisal reports was changed or omitted in the White Paper. All of these variations worked to the detriment of the federal treasury. Two examples are:

- 1) North Horn Tracts. BLM appraisals characterize the highest use of the North Horn tracts as follows:

“The North Horn Parcels have been characterized by the Minerals Section as having a high likelihood of significant mineral related demand and/or value because of their proximity and the way in which they are situated in relationship to the North Horn Coal reserves.”

Despite this characterization, the White Paper states:

“The livestock range use and some recreational activity are expected to continue as the most likely use of the property.”
See Exhibit 11, attached.

- 2) UaUb Tracts versus Uintah Basin Blocks. BLM appraisal reports reflect that the federal UaUb lands have paved access, power, telephone and water connections to the middle of the parcel. By contrast, the state Uintah Basin Blocks are miles from utility connections and accessible only by dirt track roads. Despite these differences noted in BLM appraisal reports, the White Paper concludes that there are no demonstrable differences between the two parcels. See Exhibit 12, E-mail, Bill Buge to Richard Rawson/UTSO/UT/BLM/DOI@BLM, Re: White Paper Concerns (07/10/02), attached.

III. Inappropriate Use of Consultant Report

To the extent that the Bureau of Land Management and SITLA negotiators have defended the White Paper conclusions regarding value by citing a report prepared by appraisal consultants Walcott and Vella, such reliance is inappropriate due to (1) the report's misrepresentation of the appraisal consulting agreement's scope and (2) the unreliability of the data analysis completed by the consultants.

Walcott and Vella indicate in their report that no appraisals were performed nor were any technical reviews of appraisals conducted. They also indicate that their assignment and its results were based solely upon the documents and resources made available by BLM and SITLA. See Exhibit 13, Consulting Report, Page 5, attached. Since the White Paper purports to have used a valuation process that? based on statements of BLM Appraisal and Mineral Staffs? was actually *not* employed, the consultant report suffers from the same exclusion of relevant data. See Exhibit 3, Kohler and Wilkinson comments (indecision regarding the methodology employed), attached.

Also, since the consulting assignment and report contains the consultant's certification that the exchange is approximately equal in value, it is also required to meet USPAP Appraisal Reporting and Review Standards (USPAP Rule 5-2). This was not done when the negotiator failed to notify the consultants about any omissions and alterations, and when she failed to allow for corrections. This is a violation of the USPAP Ethics Rule. See Exhibits 14 & 15, attached. Thus, reliance on this report by the Bureau of Land Management would be misplaced and inappropriate.

Conclusion

The matrix filed as Exhibit 1 is prima facie evidence of BLM Headquarters Staff's attempt to assess the potential losses attributable to each of the issues outlined above. The BLM document is the first attempt by the agency to assess the discrepancies contained in the supposedly "equivalent" exchange agreement federal negotiators reached with the State of Utah. The motivation behind the compilation of the document was damage control, but even as the authors of the matrix sought to explain or minimize federal losses, the amounts (while conservatively estimated) are nonetheless significant.

Even though the matrix understates the monetary losses applied to each cause, the document is an internal admission that losses will equal or exceed three times the value of the federal lands exchanged (assessed at approximately \$35 million).

Table of Exhibits

Exhibit 1, U.S. Bureau of Land Management Matrix

United States and the State of Utah, *A White Paper in Support of the 2002 Federal-Utah State Trust Lands Consolidation Agreement* (Harja, Catlin, et alia)(June 21, 2001)

Exhibit 3, U.S. Department of Interior Mineral Staff, *Comments on A White Paper in Support of the 2002 Federal-Trust Lands Consolidation Agreement* (July 25, 2002)(James F. Kohler, commentor)

Exhibit 4, *Uniform Appraisal Standards for Federal Land Acquisition* § B-2 at 33

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Exhibit 9, *Legal Basis for Appraisal Standards for Federal Land Acquisition* at <http://www.justice.gov/enrd/land-ack/legal.htm>

Exhibit 10, E-mail, Dave Cavanaugh to Ray Brady/WO/BLM/DOI@BLM et al., Re: White Paper in Support of the 2002 Federal-Utah State Trust Lands Consolidation Agreement (07/15/02)

Exhibit 11, unidentified.

Exhibit 12, E-mail, Bill Buge to Richard Rawson/UTSO/UT/BLM/DOI@BLM, Re: White Paper Concerns (07/10/02).

Exhibit 13, Consulting Report, Page 5.

Exhibits 14 & 15, USPAP rules, partial.