



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

BUREAU OF LAND MANAGEMENT'S MINERAL MATERIALS PROGRAM

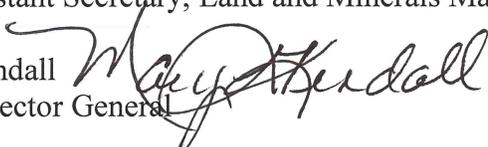


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INSPECTOR GENERAL
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MAR 31 2014

Memorandum

To: Tommy P. Beaudreau
Acting Assistant Secretary, Land and Minerals Management

From: Mary L. Kendall 
Deputy Inspector General

Subject: Final Audit Report – Bureau of Land Management’s Mineral Materials Program
Report No. C-IN-BLM-0002-2012

This report presents the results of our audit of mineral material sales under the direction of the U.S. Department of the Interior’s (DOI) Bureau of Land Management (BLM). BLM’s mineral materials program generates millions of dollars in revenue from public lands each year. Our objective was to determine if BLM obtained market value for those materials.

We found that BLM has little assurance that it obtains market value for mineral materials. We also found that management of the program is hindered by outdated regulations and policies, does not always recover the processing costs for mineral materials contracts or verify production volumes reported for sales. We are also concerned that BLM may not be collecting fees for minerals used on lands that have been sold under the authority of the Southern Nevada Public Land Management Act of 1998, as we found an instance where a private developer used tons of mineral materials without paying for them.

Our report contains 15 recommendations that should enhance BLM’s management of the mineral materials program. We believe that if DOI concurs with and implements our recommendations, the program will become more effective. Based on BLM’s response to the draft report, we modified our final report as appropriate. In its response, BLM concurred with all but 1 of our 15 recommendations (see Appendix 5). We consider 14 recommendations resolved but not implemented and will refer those recommendations to the Assistant Secretary for Policy, Management and Budget for implementation tracking, and we consider 1 recommendation unresolved (see Appendix 6).

We request that BLM reconsider the unresolved recommendation and respond to us, in writing, within 30 days. The response should provide information on actions taken or planned to address the recommendation, as well as target dates and titles of officials responsible for implementation.

Please address your response to:

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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.

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Results in Brief

The Bureau of Land Management (BLM) manages the sale of mineral materials on Federal lands and is responsible for ensuring that the U.S. Government obtains “adequate compensation” for these sales. During our review of BLM’s mineral materials program, we found that BLM has little assurance that it obtains market value for mineral sales, recovers the processing cost for mineral contracts, verifies sales production, and resolves issues of unauthorized mineral use. Specifically, we found that—

- BLM regulations require appraisals for valuing mineral materials, although alternative methodologies may be more efficient;
- BLM guidance for mineral material sales is outdated;
- BLM’s regional market appraisals, used to determine market value of mineral materials commodities, have limited usefulness and enough deficiencies to conclude that the estimated values are not credible;
- BLM did not adjust contract prices, resulting in \$846,117 of lost revenue to the Government;
- BLM does not recover processing costs for exclusive sales in certain areas;
- BLM rarely verifies production volumes, thus providing little assurance that contractors are only removing the mineral quantities for which they contracted; and
- BLM did not collect fees, informally estimated at more than \$1 million, for mineral material removed from split-estate lands.

By updating its program guidance and collaborating with the Office of Valuation Services, BLM has an opportunity to ensure that the mineral materials program operates more efficiently and obtains adequate compensation for mineral materials sold from Federal land.

Introduction

The Bureau of Land Management (BLM) sells mineral materials under the authority of the Materials Act of 1947, as amended.¹ These mineral materials consist of common types of sand and gravel, stone, pumice, or other materials used mainly in construction and landscaping. The United States uses about 2 billion tons of mineral materials annually. In fiscal year 2011, BLM issued about 2,800 contracts and permits to sell mineral materials, including 2,616 sales valued at approximately \$17 million, as well as instances of free use for public purposes such as State and local roadway projects. We reviewed a significant percentage of the mineral materials sales, visiting eight BLM offices in four States. These eight offices had fiscal year 2011 sales valued at over \$14 million—comprising more than 80 percent of the mineral materials program’s total sales that year (see Appendices 1 and 2).

Objective

We reviewed the U.S. Department of the Interior’s (DOI) management of mineral materials sales to determine whether DOI obtained market value for those materials.

Background

BLM may dispose of mineral materials on its lands as provided for by the Materials Act of 1947 and related rules and regulations (43 C.F.R. pt. 3600). Disposal is the common term for the removal of mineral materials by sale or free-use permit. State and local governments, as well as other entities not organized for profit, may be issued permits for free use as long as the materials are not used for commercial or industrial purposes.

BLM sells mineral materials using competitive or noncompetitive contracts. These contracts are classified as either exclusive to individual purchasers in a defined operating area or nonexclusive to multiple users making concurrent purchases in common-use areas and community pits. Common-use areas are generally broad geographic areas of Federal land from which BLM can dispose of mineral materials to many persons with only negligible surface disturbance. Designated community pits also provide mineral materials for many persons, but surface disturbance can be extensive.

Whether selling exclusively to an individual purchaser or nonexclusively to multiple users, the Act currently requires payment of “adequate compensation.” BLM’s regulations require it to sell mineral materials at not less than market value as determined through appraisal. Bureauwide guidance for performing or contracting for these appraisals, however, was last updated in the mid-1980s. The appraisal profession has evolved considerably since then. Appraisers now use a

¹ 30 U.S.C. §§ 601-03.

set of standards called the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, DOI requires its appraisers, whether staff or contractors, to be State licensed.

DOI has established the Office of Valuation Services (OVS) to provide valuation services and related policy oversight for DOI and its bureaus. Within OVS, the Office of Mineral Evaluations (OME) offers mineral evaluation services either through standalone commodity opinions or as part of real property appraisals. Real property appraisers rarely have sufficient minerals expertise to adequately evaluate minerals commodities. OME staff includes mineral economists, geologists, and mining engineers. All of these skills are usually required to render credible mineral opinions.

In addition to collecting revenue from mineral materials sales, BLM also collects fees to recover its costs in certain circumstances. Cost-recovery fees can include the costs of administrative review of permit applications, review of mining and reclamation plans, National Environmental Policy Act (NEPA) reviews, and appraisal services. Further, purchasers of mineral materials, and certain permit holders, may also be responsible for reclamation of lands disturbed by their operations.

Findings

We found that BLM has little assurance that it obtains market value for mineral materials sales. We identified several areas of concern, including whether BLM properly identifies market value and utilizes its authority to adjust prices for existing contracts, recovers its costs for mineral materials contracts, verifies production volumes, and resolves issues that may contribute to cases of mineral trespass.

We identified the following issues that impact the mineral materials program:

- Regulatory language requires use of appraisals, even though other acceptable valuation methodologies exist.
- Bureauwide appraisal guidance is more than 25 years old.
- BLM use of OVS staff, who have expertise specific to valuing mineral materials, is limited.
- OVS found five of BLM’s existing mineral materials appraisals inadequate for valuation purposes and has disapproved them for use.
- BLM did not adjust prices for existing contracts, despite regulatory authority and guidance to do so periodically.
- BLM has made limited efforts to recover exclusive-sale processing costs where the authority exists. Further, a regulatory omission prevents BLM from fully recovering costs related to exclusive sales in community pits and common-use areas.
- BLM provided little evidence that it performs production verification activities to ensure contractors pay for actual volumes of mineral materials removed.
- BLM did not collect fees, informally estimated at more than \$1 million, for mineral materials removed from split-estate lands.

Due to insufficient data, we could not determine the overall impact to the Government, but we found that unadjusted contract prices alone resulted in the loss of more than \$846,000 in potential revenues.

Limited Assurance That BLM Obtains Market Value for Mineral Materials

Regulations Require Unnecessary Appraisals

The Materials Act of 1947, as amended (30 U.S.C. §§ 601-03), authorizes the disposal of mineral materials while requiring the payment of “adequate compensation.” BLM regulations (43 C.F.R. § 3602.13), however, state that “BLM will not sell mineral materials at less than fair market value” and further stipulate that “BLM determines fair market value by appraisal.” Taken together, the regulations and professional standards for appraisal place a significant burden on BLM.

An appraisal requires the application of complex and strict standards that have been developed for determining the value of real property, personal property, and business interests. As standalone commodities, minerals such as sand and gravel do not fit well in these categories. The current BLM regulations require that an appraisal be performed to obtain fair market value, but the underlying statute does not. OVS and BLM officials agreed that less-complex valuation methodologies can and should be used to determine the value for standalone commodities and agreed to seek rule change for a more efficient means.

Recommendation

We recommend that BLM:

- I. Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.

BLM Guidance Is Outdated

BLM's Mineral Material Appraisal Manual² and Mineral Material Appraisal Handbook³ are more than 25 years old. BLM has periodically updated other guidance, but neither of these key reference documents has been updated since the mid-1980s. Since these documents were written, DOI has consolidated appraisal operations and implemented new requirements and standards. Both documents predate Secretarial Order No. 3300, which identified OVS as the authority for valuation services and related policies and procurement. The Order's provisions were included in the Departmental Manual at 112 DM 33, which identifies OVS as "responsible for providing minerals evaluations for the Department's bureaus and offices . . . [and] providing analytical and evaluative support." Yet these changes, among many others, do not appear in BLM guidance. Consequently, those in BLM who are tasked with determining mineral values have utilized inadequate information and methods.

We found that BLM staff generally performed, or relied on, a variety of inadequate price analyses, ranging from outdated price lists to very limited analyses of local market conditions. For example, staff in one office relied on a 2005 price list even though they could not find the appraisal upon which the prices were based, stating that they had a "general sense" that the prices were still valid. In another office, a staff geologist said that he had used mineral materials values from a 2009 Statewide price study as the starting point for determining prices to charge for new contracts. He stated that he then applied unspecified "extraneous factors" to adjust the prices in the study.

² Mineral Material Appraisal Manual 3630.

³ H-3630-1 Mineral Material Appraisal Handbook.

Recommendation

We recommend that BLM:

2. Work with OVS to update the Bureau's Mineral Material Appraisal Manual 3630 and H-3630 - I Mineral Material Appraisal Handbook.

Mineral Materials Valuations Are Not Credible

We reviewed the regional area mineral materials appraisals performed in the four States in which we conducted site visits (see Appendix 3). Based on the deficiencies identified, we concluded that the quality of work performed did not support the valuations arrived at by each appraiser. As these appraisals are the foundation for the prices used in sales contracts, we requested that OVS perform an independent review of the appraisals based on the standards outlined in each document. In each report, the OVS reviewer—a licensed appraiser—identified enough deficiencies to render the estimated commodity values of the minerals not credible. Based on the results of his reviews, the OVS appraiser recommended that each report should be “disapproved for use” by BLM.

Deficiencies that contributed to the inadequate appraisals included—

- contracts for appraisal that had poorly worded statements of work and required that the work follow inappropriate professional standards;
- inadequate content, detail, or analysis, which is required to comply with professional appraisal standards;
- discussion of elements of comparison for evaluating types of materials, such as quantity, quality, and mining and processing, but no support to confirm if, or how, this methodology was applied to the data provided;
- no evidence that field examinations were performed to determine the quality and quantity of the commodity deposits; and
- no consideration given to account for important, site-specific market value considerations, including specific commodity differences like the grade of materials or the transportation costs for delivering commodities to market.

The appraisal skillset and appraisal contracting function no longer reside within BLM, but with OVS, which has been designated by DOI to provide or contract for appraisal services. BLM's use of OVS services has been limited, while BLM staff has acknowledged that they do not have the skills or training necessary to adequately develop market values.

In light of these findings, BLM acknowledged that the procedures and standards used to perform the appraisals did not conform to applicable guidance. We offer a series of recommendations to engage OVS and BLM in improving valuation practices for the mineral materials program. Extensive support from OVS might require implementation of a reimbursable services agreement to ensure OVS is

able to maintain sufficient staff, or for contracts awarded in cooperation with BLM.

Recommendations

We recommend that BLM:

3. Issue guidance to State offices to coordinate with OVS for contracting of mineral materials valuations;
4. Work with OVS to develop statements of work for preparing mineral materials valuations;
5. Develop a process for OVS to review mineral materials valuations performed by or for BLM;
6. Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been “disapproved for use”; and
7. Develop a mechanism through which BLM will reimburse OVS for mineral materials valuation services as needed.

Revenue Is Lost When Contracts Are Not Timely Adjusted

To ensure that the Government receives fair market value for mineral materials, Federal regulations provide BLM with the authority to periodically adjust the value of mineral materials that have not yet been removed. Despite BLM-issued guidance to adjust prices for existing contracts, we identified 16 contracts in which adjustments were not made. Adjustments can be made through reappraisal or by applying the Producer Price Index (PPI). When applying a PPI, we estimated that BLM lost more than \$846,000 in mineral revenues (see Appendix 4).

Regulations at 43 C.F.R. § 3602.13(b) stipulate that BLM may not adjust a contract price during the first 2 years of a contract. BLM policy provides that an adjustment may occur by reappraisal at 2-year intervals thereafter, and the effective life of the initial appraisal may be extended by applying an appropriate PPI. BLM issued an internal memorandum in 2009 that emphasized using a PPI to modify fees. (We note that this guidance has since expired, but the regulatory authority remains in effect.)

We identified 21 (out of 38) multiyear contracts that should have been evaluated using a PPI. Using contractor production documents, we identified the tonnage of minerals produced each year and adjusted the initial contract price by applying the PPI for that period. We then compared revenue received to what could have been

received. In all, we estimated a total monetary loss to the Government of \$846,117 for the 16 contracts that were not adjusted (see Figure 1).

State Office	Contract	Estimated Loss of Revenue
New Mexico	1	\$1,889
	2	26,620
	3	1,904
	4	3,910
	5	18,497
Arizona	6	21,677
	7	18,931
	8	5,701
	9	51,542
	10	146,132
	11	8,688
	12	421,626
Wyoming	13	400
Nevada	14	65,970
	15	17,760
	16	34,870
Total		\$846,117

Figure 1. Estimated loss of revenue to the Federal Government.

BLM staff stated that on occasion, the cost of an appraisal could exceed the benefit of the mineral material sale to small business owners. BLM policy offers State offices guidance to develop an annual ranking of contracts that need to be appraised or reappraised to help prioritize funding for appraisals. None of the four State offices we reviewed, however, had developed a priority list at the time of our site visits.

Recommendations

We recommend that BLM:

8. Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy; and
9. Identify and prioritize contracts that need to be valued and revalued.

BLM Does Not Fully Recover Its Costs

Cost-recovery authority allows BLM to recoup costs related to exclusive mineral sales and subsequent contract renewals. Exclusive-sale contracts or permits may occur on exclusive sites where only one operator has rights to remove materials. Exclusive-sale contracts may also be issued to an operator for removal of materials from a dedicated zone within a broader area otherwise designated as a community pit or a common-use area in which many persons also have that right.

Recovering Costs for Exclusive Sales in Exclusive Sites

Federal regulations at 43 C.F.R. § 3602.11(c) allow BLM to recover processing costs related to exclusive sales of mineral materials from exclusive sites at the time of the original contract and during contract renewal. We found that despite the authority to recover costs, none of the 30 exclusive-sales contracts we reviewed had cost recovery associated. Further, only two of the eight competitive contracts reviewed had some form of cost recovery. We could not develop an estimate of the total costs unrecovered due to incomplete data.

The authority to recover costs not only includes the costs to obtain an appraisal but also staff labor costs incurred when assessing market conditions and establishing and renewing contracts. In fiscal year 2006, BLM issued guidance to all field office officials detailing how this could be accomplished. The memorandum explained tools, such as estimation worksheets, that staff could use to track labor associated with each processing step. This guidance has since expired. Evidence suggests that cost-recovery efforts are lax and unnecessary costs are borne by the Government.

Recommendation

We recommend that BLM:

10. Reissue guidance explaining which costs are recoverable for exclusive-sale contracts and ensure that field offices seek reimbursement for costs incurred.

Regulatory Omission Leads to Loss of Revenue From Exclusive Sales in Community Pits and Common-Use Areas

BLM can issue an exclusive contract for a dedicated zone within a community pit or common-use area. The contractor is granted the sole right to remove minerals within that designated zone. A regulation published in 2005 at 43 C.F.R § 3602.11 was intended to provide BLM with the cost-recovery authority to collect upfront processing fees for these sales. An editorial change in the final rule, however, altered the wording and legal effect of the regulation (see Figure 2). The impact of this change was significant, as BLM cannot collect processing fees for those applications without first canceling the common-use area or community pit designation for the proposal area—a process described by a

BLM official as cumbersome and costly. As a result, rather than an applicant paying the processing costs, the Government bears the burden.

43 C.F.R § 3602.11	
How do I request a sale of mineral materials?	
Current Language	Intended Language
<p>(c) You must pay a processing fee as provided in § 3602.31(a) and § 3602.44(f). If the request is for mineral materials that are from a community pit or common use area this requirement does not apply.</p>	<p>(c) You must pay a processing fee as provided in § 3602.31(a) and § 3602.44(f). If the request is for <u>nonexclusive sales of</u> mineral materials that are from a community pit or common use area this requirement does not apply.</p>

Figure 2. Language used in the current regulations compared to the intended language.

In such cases where the Government bears the burden, the contractor is subject only to the same fees as other users regardless of new costs that BLM incurs. In contrast, on exclusive sales outside of community pits and common-use areas, the purchaser is independently responsible for all processing costs. BLM provides the interested party an initial estimate of costs for administrative review of the application, review of mining and reclamation plans, applicable National Environmental Policy Act reviews, and appraisal services. According to program officials, this arrangement was intended to carry over to exclusive sales within community pits and common-use areas, but the current regulatory language does not support this, and the Government pays these upfront costs.

Recommendation

We recommend that BLM:

- 11. Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost-recovery fees on existing exclusive-sale contracts in community pits and common-use areas.

BLM Does Not Consistently Verify Production

BLM does not consistently verify the volume of mineral materials removed by authorized contractors. BLM policy requires geologists to confirm mineral production by inspecting sites and verifying reported volumes. We identified 33

of 38 contract files that did not have any production verification documentation. Discussions with geologists concerning this matter revealed that many times verification is limited to relying on the individual contractors to submit accurate production reports when they submit their mineral fees.

The frequency of these inspections is based on the size of the contract, with a minimum of one visit per year for small contracts (5,000 cubic yards) or at least two visits per year for large contracts (15,000 cubic yards or greater). Measurement techniques can include navigating the mine site perimeter with GPS equipment, or installing closed-circuit monitoring. This information can then be used to reconcile with operator data, such as weigh-scale tickets or production reports. While geologists did perform the mandatory site visits, there was little evidence that production was verified.

At a large scoria⁴ mine we visited, BLM production verification was limited to checking the math of the contractor's monthly production statement that was submitted with the fee check. In contrast, the contractor had implemented an internal control system using weigh-scale tickets and daily logs to cross-check sales that could be used to verify the accuracy of the reported production.

Production verification ensures accountability by independently monitoring and verifying reported production and payments. Without this verification, BLM cannot ensure that contractors are removing only the quantities of mineral materials contracted for and that the Government is receiving proper compensation.

Recommendation

We recommend that BLM:

12. Reissue policy and guidance on production verification to provide accurate accounting of materials removed, and implement procedures to provide reasonable assurance that field offices comply.

Revenues May Be Lost Due to Unauthorized Use

BLM did not collect fees for mineral materials used on land that it sold to a private developer under the authority of the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Pub. L. No. 105-263, 112 Stat. 2343.

BLM staff informally estimated the value of fees not paid for these materials exceeded \$1 million. We are concerned that this issue could exist on other properties disposed of through SNPLMA.

⁴ Scoria is a dark-colored volcanic rock typically used in landscaping and drainage works.

SNPLMA authorized BLM to sell and exchange Federal lands in Clark County, NV. These disposals created a split-ownership estate, which provided the landowner surface rights for land use and reserved to the Federal Government the rights to subsurface minerals. BLM regulations for landowner use of Federal subsurface mineral materials on split-estate lands are contained in 43 C.F.R. § 3601.71. The regulations specify that absent a mineral materials sale, surface owners may use a “minimal amount” of mineral materials for “personal use.” Any use beyond this level is considered unauthorized. Subsequent discussions between BLM officials identified that confusion existed concerning the interpretation of what constitutes a “minimal amount” and whether use of minerals for construction and landscaping of residential properties could be considered “personal use.”

This confusion resulted in BLM’s Las Vegas Field Office officials approaching the BLM State Office with a request for specific guidance regarding a land disposal under SNPLMA that was developed into a 4,500-acre master-planned community in Henderson, NV. The developer planned to build approximately 15,000 homes on this land. Officials from BLM’s Las Vegas Field Office were certain that mineral materials were being processed and used on the site during construction in the early 2000s. An official from the State Office wanted to issue a trespass notice; we could not determine why the notice was never initiated. We do not believe the volume of material alleged to have been used in this instance would be considered a “minimal amount.” Further, from 1999 through 2011, BLM has sold or exchanged about 40,000 acres of land under SNPLMA, so situations similar to this instance in Henderson could continue to surface and more resources could be lost to unauthorized use due to this lack of clarity concerning definitions.

We issued a Notice of Potential Findings and Recommendations in September 2012 to BLM about unauthorized use and trespass. BLM concurred in part with our recommendations.

Recommendations

We recommend that BLM:

13. Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define “personal use” versus commercial use, in terms of the property on which those uses are restricted and what specific uses constitute allowable personal use in contrast with restricted commercial use;
14. Issue guidance to its State offices to identify and take action to collect the fair market value of the unauthorized removal of mineral materials on split-estate land disposals; and

Recommendations

15. Consult with the Office of the Solicitor to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.

Conclusion and Recommendations

Conclusion

BLM's mineral materials program generates approximately \$17 million in revenue from public lands each year. Management of the program, however, is challenged by outdated regulations and policies that hinder BLM's ability to obtain adequate compensation for its mineral materials sales. Most of the issues can be resolved with regulatory and policy updates. We identified the need for BLM to collaborate with OVS to assist in developing the valuations needed to ensure that it sells its mineral materials at fair market value. In addition, BLM has an opportunity to increase revenue through periodic contract adjustments, by recovering processing costs, and collecting the fees due to the Federal Government. BLM can significantly enhance its management of the mineral materials program by implementing our recommendations.

BLM generally agreed with our findings, concurring with all but one of our recommendations (see Appendix 5). We consider 14 recommendations resolved but not implemented and 1 recommendation unresolved (see Appendix 6).

Recommendations Summary

We recommend that BLM:

1. Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.

BLM Response: BLM will review alternative valuation methodologies and initiate the regulatory process if found appropriate.

Office of Inspector General (OIG) Reply: We consider this recommendation resolved but not implemented. We note that our recommendation is targeted to BLM as the proponent of the regulation cited and suggest—consistent with other recommendations in this report—that BLM consult with OVS as it reviews alternative valuation methodologies. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

2. Work with OVS to update the Bureau's Mineral Material Appraisal Manual 3630 and H-3630 - 1 Mineral Material Appraisal Handbook.

BLM Response: BLM will consult with OVS as it updates the Mineral Appraisal Manual and Handbook.

OIG Reply: We consider this recommendation resolved but not

implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

3. Issue guidance to State offices to coordinate with OVS for contracting of mineral materials valuations.

BLM Response: BLM will coordinate with OVS to identify a revised contracting process for mineral materials valuations.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

4. Work with OVS to develop statements of work for preparing mineral materials valuations.

BLM Response: BLM will work with OVS to develop standardized statements of work for contracts for performing mineral materials valuations.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

5. Develop a process for OVS to review mineral materials valuations performed by or for BLM.

BLM Response: BLM will work with OVS to develop a process that includes the appropriate OVS reviews for the various types of mineral material valuations.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

6. Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been “disapproved for use.”

BLM Response: BLM will consult with OVS to determine a process for its assistance in determining the market values in this situation.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

7. Develop a mechanism through which BLM will reimburse OVS for mineral materials valuation services, as needed.

BLM Response: BLM will work with OVS to determine how to reimburse OVS for work on these services.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

8. Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy.

BLM Response: BLM will issue additional guidance reiterating the mineral materials price adjustment guidance for existing contracts. In addition, BLM will complete periodic reviews on this issue to monitor for compliance.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget.

9. Identify and prioritize contracts that need to be valued and revalued.

BLM Response: BLM will review existing policy and will clarify and update the policy as necessary.

OIG Reply: We consider this recommendation unresolved. In its response, BLM did not explain the objective of its policy review. We infer that such a review might consider approaches other than “annual rankings” (as referred to in current BLM policy and our draft report) to meet the intent of identifying and prioritizing contracts for revaluation. We have modified the wording of the recommendation made in our draft report and will consult with BLM to resolve this recommendation before referring it to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

10. Reissue guidance explaining which costs are recoverable for exclusive-sale contracts and ensure that field offices seek reimbursement for costs incurred.

BLM Response: The BLM has recently identified some possible improvements to the current approaches for recovering costs and will revise its guidance for determining which costs are recoverable and how to collect the costs.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

11. Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost-recovery fees on existing exclusive-sale contracts in community pits and common-use areas.

BLM Response: BLM will work with the Office of the Solicitor to determine if a regulatory revision is necessary or if other administrative options are available to meet this need.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

12. Reissue policy and guidance on production verification to provide accurate accounting of materials removed, and implement procedures to provide reasonable assurance that field offices comply.

BLM Response: BLM will issue new guidance for production verification. In addition, BLM will periodically monitor field offices for compliance with guidance on production verification.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

13. Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define “personal use” versus commercial use, in terms of the property on which those uses are restricted and what specific uses constitute allowable personal use in contrast with restricted commercial use.

BLM Response: BLM will issue supplemental guidance to define personal use of mineral materials under 43 C.F.R. § 3601.71.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

14. Issue guidance to its State offices to identify and take action to collect the fair market value of the unauthorized removal of mineral materials on split-estate land disposals.

BLM Response: BLM will issue supplemental guidance reiterating the requirement to follow existing procedures for recovery of damages for

unauthorized removal of mineral materials from split-estate lands.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

15. Consult with the Office of the Solicitor to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.

BLM Response: BLM will consult with the Office of the Solicitor regarding whether actions can be taken to address similar land disposals.

OIG Reply: We consider this recommendation resolved but not implemented. We will refer the recommendation to the Assistant Secretary for Policy, Management and Budget for implementation tracking.

OIG Analysis of General and Technical Comments

General Comments

BLM's response to the draft report includes general comments that explain the breadth of activities that BLM undertakes for the Mineral Materials Program. We did not incorporate the additional information in the body of the final report because it is beyond of the scope of our audit. The information BLM provided can be read in its entirety within the BLM response (see Appendix 5.)

The general comments acknowledge that legal changes and advancements in professional context have led to a condition that "warrant[s] revisions to the terminology and guidance for the valuations of mineral materials commodities." BLM states that it will consult with OVS and the Office of the Solicitor to address this condition.

BLM also indicated that it "cannot retroactively identify documentation that would support an enforcement action" in response to a specific instance of potential unauthorized use. We acknowledge the difficulty and encourage BLM to examine its position that this "was an isolated incident." We are also pleased to learn that the BLM Las Vegas Field Office has recently identified two potential unauthorized mineral materials removals from SNPLMA tracts and initiated enforcement actions.

Technical Comments

BLM provided technical comments keyed to the pages of our draft report.

Page 2: last paragraph

BLM stated that this paragraph in the draft report intermixed time periods and suggested that the word "currently" be inserted to bring context to the present requirements of the Materials Act of 1947.

OIG Analysis: As suggested, we added the word “currently” into the final report.

Page 3: last two paragraphs

BLM indicated that the draft report did “not accurately capture the distinction between cost-recovery fees and reclamation fees.”

OIG Analysis: We simplified the presentation of background information. BLM’s suggested language is included in Appendix 6.

Page 5

While noting that requirements differ, BLM acknowledged that similarities in terminology for real property appraisals and for valuation of mineral material commodities “are causing confusion for BLM personnel and contractors.” BLM stated that it needs a guidance update to clearly distinguish the two systems.

OIG Analysis: BLM’s technical comments support the underlying issues that we identified. We intended recommendations 1 and 2, in particular, to assist in resolving the confusion.

Page 5: first full paragraph

BLM recommended that OIG include a discussion of other methodologies that would be acceptable for valuating mineral commodities.

OIG Analysis: During our exit conference with OVS and BLM, program officials agreed that less-complex valuation methodologies can and should be used to determine the value for mineral commodities. Specifying valuation methodologies would be beyond the scope and intent of our audit work. Our intent is to encourage BLM to improve the current condition, including circumstances in which (1) the cost of a formal appraisal exceeds the benefit, (2) BLM has not applied the valuation expertise in OVS, and (3) BLM has not exercised the valuation responsibility that lies with OVS.

Page 5: first two sentences of the second full paragraph

BLM reiterated the report’s statement that the BLM’s Mineral Material Appraisal Manual and Handbook had not been updated since the mid-1980s and provided a listing of years when regulations and associated guidance were issued. BLM requested that we include this information in the report.

Page 6

BLM requested that, in our discussion of “regional area” valuation reports, we note BLM’s position that “the procedures and standards used to perform the appraisals were not in compliance with BLM guidance.”

OIG Analysis: We modified our report language to incorporate BLM’s request. Nonconformance exists with respect to both DOI and BLM guidance, and we are encouraged by BLM’s commitment to improve not only the policies that govern

the program, but also the implementation of these policies by its State and field offices.

OIG Analysis: We modified the report slightly to acknowledge that guidance other than the Manual and Handbook has been updated periodically.

Page 9: first and second paragraphs

BLM felt that OIG had misinterpreted the current cost-recovery regulations and included an inaccurate description of the cost-recovery finding.

OIG Analysis: We agree that using the word “administering” was incorrect, and we adjusted the report accordingly. The larger issue, however, seems to apply to the question of cost recovery in community pits. We worked closely with BLM and contacted the Office of the Solicitor when developing our understanding of the applicable cost-recovery regulations and guidance. We agree with BLM that current “regulations . . . do not allow for cost recovery for any disposals located within community pits.” Our finding, however, focuses on exclusive sales, including those circumstances in which BLM staff complete the cumbersome process of modifying the legal description of the community pit’s boundaries in order to set aside what we informally term a “designated zone.” We have modified our wording to indicate that such a zone could be created within a broader area that is managed as a community pit. We are encouraged that BLM has identified possible improvements to its cost-recovery practices.

Page 12

BLM indicated that it could not substantiate the amount of mineral materials used in a reported instance of potential unauthorized use and suggested that we modify our finding to point out that BLM staff did not investigate the incident at the time because they misunderstood the new legal circumstances soon after the enactment of SNPLMA.

OIG Analysis: We modified our language to refrain from identifying a specific volume of material and to characterize the monetary estimate, which we developed with information from BLM field staff, as “informal.” We appreciate BLM’s insight as to causes, but our audit report is focused on the revenue effect, specifically that fees were not collected. The informal estimate provides some context as to the scale of the matter, but we note that this amount is not included in our tally of monetary impact (see Appendix 4).

Appendix I: Scope and Methodology

Scope

We reviewed the Bureau of Land Management's (BLM) mineral materials program to determine if BLM obtained market value for mineral materials removed from Federal land. The mineral materials program staff issue and administer contracts for the sale of minerals used for the construction of roads, foundations, and buildings, as well as commercial and residential landscaping. In fiscal year 2011, BLM issued about 2,800 mineral materials contracts and permits, which included 2,616 sales valuing approximately \$17 million.

The Materials Act of 1947 does not include minerals produced or mined under leases for energy and nonenergy development or hard rock minerals subject to location and claim, such as gold and silver under the Mining Law of 1872. Therefore, our audit did not include a review of contracts or leases related to these types of minerals.

Methodology

To accomplish our objective, we performed fieldwork from February 2012 through January 2013. We interviewed program officials at BLM headquarters, at BLM State and field offices, and at the Office of Valuation Services (OVS). We visited eight BLM offices where we reviewed individual mineral contracts and also visited contractor-operated mineral mining pits. In fiscal year 2011, these offices were responsible for more than \$14 million of the \$17 million in total program sales. After reviewing regional appraisals and concluding that the quality of work performed did not support the valuations, we requested that OVS perform an independent review of the regional appraisals to confirm our concerns.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

Since the primary focus of our audit was to determine if BLM obtained market value of mineral materials removed from Federal land, we did not rely on or obtain computer-generated data. We did, however, rely on data provided by BLM for mineral materials contracts, permits, and program sales.

Prior Audit Coverage

In fiscal year 2010, we initiated a series of revenue enhancement audits to determine if the Bureau of Land Management (BLM) obtained market value for land use of and products sold on Federal land. The first two published reports, "Management of Rights-of-Way (ROW) in the U.S. Department of the Interior,"

and “Bureau of Land Management’s Helium Program,” found that BLM’s rents do not reflect market value. Both reports included recommendations that BLM work with the Office of Valuation Services (OVS) to establish criteria for ensuring that BLM receives market value for services and products acquired on Federal land.

In December 2009, we issued “Evaluation Report on the Department of the Interior’s Appraisal Operations.” We conducted this evaluation because of concerns regarding the efficiency and quality of departmental appraisal operations. We found that BLM repeatedly attempted to regain control of appraisal function from the Appraisal Services Directorate (ASD), and we recommended that complete control over contracting for appraisals be given to ASD. In May 2010, Secretarial Order No. 3300 reorganized ASD into OVS and assigned it sole authority for contracting services.

Appendix 2: Organizations Visited or Contacted

U.S. Department of the Interior
Office of Valuation Services
Lakewood, CO

Bureau of Land Management
Washington Office
Washington, DC

Las Vegas Field Office
Las Vegas, NV

Carson City District Office
Carson City, NV

New Mexico State Office
Santa Fe, NM

Albuquerque District Office
Albuquerque, NM

Carlsbad Field Office
Carlsbad, NM

Rio Puerco Field Office
Rio Puerco, NM

Casper Field Office
Casper, WY

Phoenix District Office
Phoenix, AZ

Appendix 3: Valuation Deficiencies

Wyoming

In 2009, the Bureau of Land Management (BLM) paid \$94,300 for a mineral materials appraisal conducted by a State-licensed appraiser. The appraiser completed the work after his temporary Wyoming license expired, which violated State rules and regulations. The appraiser stated that he valued mineral materials in conformity with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP) to arrive at fair market value. UASFLA requires the appraiser to perform additional processes, requirements, and analysis, in addition to following USPAP, when performing appraisals for Federal land acquisition, but the appraiser did not include the necessary content, detail, or analysis required to comply. Moreover, UASFLA was developed to standardize the appraisal process for the Federal Government to acquire land. Federal land acquisition is neither the intent nor the purpose of the Wyoming Statewide Mineral Material Appraisal. On that basis alone, any reference to UASFLA is inappropriate.

We found that of the 13 USPAP standards required for this appraisal, only 4 items conformed. We found that the report did not provide sufficient information to identify the real estate involved in the appraisal, such as the physical and economic characteristics relevant to the assignment as required by USPAP Standards Rule 2-2(b)(iii). Also, while two pricing zones were reported for sand and gravel, only Statewide prices were reported for all other mineral materials in the report. Although the appraiser mentions elements of comparison weighed by market participants when evaluating sources for these types of materials, such as quantity, quality, and mining and processing, his discussion merely explains the reason why each element is considered, not if or how he made actual adjustments to any of the data. The result is a report that does not accurately reflect market value.

Arizona

In 2009, BLM paid \$61,800 for a mineral materials price study to update a study performed in 2003. The study provided to BLM excluded the specific comparable vendor and price data used to conduct it. According to a BLM official, BLM agreed to allow the contractor to destroy the raw data, such as the names of vendors and royalty prices at specific locations, for specific commodities in each zone used to conduct the study. The data that was not provided, however, is critical for BLM staff to adopt market value information to specific local sites.

The commodity price data included in the report was provided in terms of price range as opposed to market value or appraised value, which BLM requested in the statement of work. In many cases, the commodity value range exceeded 200 percent, which made the exclusion of specific comparable data even more critical. BLM staff told us they permitted the contractor to exclude the comparable data in

order to get private industry to cooperate and voluntarily provide the economic and price data on which the study is predicated.

In addition, the study did not identify whether it was conducted by State-licensed appraisers and was not qualified as an appraisal of specific mineral commodities for specific locations. Moreover, the report contradicts itself by using both terms: “study” and “appraisal.” Lastly, BLM’s statement of work listed several types of rocks, in addition to decorative rock, and requested valuations for each type. The study, however, provided only one category of rock—“Decorative Rock (Landscape)” —rather than information on the individual types as requested in the statement of work.

New Mexico

We visited the Rio Puerco Field Office (Albuquerque District) and Carlsbad Field Office (Pecos District) and reviewed the appraisals performed for these two offices. In 2009 and 2011, appraisals that were performed by State Office geologists for mineral materials commodities sales were approved for use. We found that the authors did not perform field examinations to determine the quality and quantity of the commodity deposits. The geologists failed to account for important, site-specific market value considerations, including specific commodity value differences like its quality and the transportation costs for getting commodities to market. The report does not provide any real indication of market value or appraised value for any of the commodities studied. In addition, staff at one field office noted that the appraisal did not include scoria, even though it is an important commodity in that district.

Regarding unique deficiencies, the author of the Albuquerque District report stated that she performed the appraisal in conformity with USPAP standards. We found, however, that the report contained enough deficiencies and omitted standards to conclude that it did not conform to USPAP. One of these deficiencies involved a USPAP requirement that the report contain a signed certification that is similar in content to a list of nine detailed and specific statements. The author used only two similar statements, included a third statement that missed a key clause, and did not include six other statements. Such a certification deviates enough from the one found in USPAP that it seems to be a likely violation of the requirement that the certification be similar to the standard.

The author of the Pecos District appraisal stated that the report was an appraisal but did not identify any other standards he used to perform it. Moreover, the report stated prices for some of the materials and price ranges for other materials, but the selection of the market value from a list of prices for each category of material was not supported. No qualitative or quantitative adjustments were made to any of the data. The result of this analysis was a conclusion of prices, rather than an accurate reflection of market value.

Nevada

The State office received a mineral materials price study in 2002 from a contract appraiser. The Winnemucca district office currently uses this study to value mineral materials. We found that some of the data used in this study dated back to the “1995 U.S. Bureau of Mines Analysis of Comparable Royalty Rates of Mineral Materials.” Moreover, some of the sites from the 1995 analysis were described as now inactive operations in the 2002 report. The credibility of the 2002 report can reasonably be questioned by relying on at least some data from now inactive operations. In addition, the report is labeled as a price study on the title page and as both a price study and an appraisal in the body of the report, which is inconsistent and potentially misleading to the user.

The State office obligated \$96,000 for an appraisal in 2007 to obtain fair market value for eight mineral materials. When the contractor delivered the final report, however, BLM determined the appraisal did not provide fair market value for the specified mineral materials, so BLM denied the outstanding balance due of about \$56,000. The contractor appealed to the agency board of contract appeals, and the two parties agreed that BLM failed to provide the contractor with adequate performance objectives in the statement of work. Thus, a poorly worded statement of work resulted in unusable values for BLM. The appeal was settled when BLM paid \$35,000 of the \$56,000 remaining balance.

We found additional problems in local Nevada BLM offices regarding mineral materials values. At one field office, staff charged the prices for sand and gravel listed on a form that stated the values became effective on April 1, 2005. Staff stated that they were told the prices were based on an appraisal conducted in 2003, but they did not have a copy of the appraisal and no one there had ever read it. The values for sand and gravel had not been updated since the effective date in 2005. Staff in another field office stated that they use a price that has been used in the past for similar materials in a similar area (or same pit) and use the Bureau of Labor and Statistics website to determine what the increase should be depending on when the last sale was completed. They do not rely on values established through a formal valuation process.

Appendix 4: Schedule of Monetary Impact

Issue	Monetary Impact
Potential lost revenue from lack of contract price adjustment utilizing the Producer Price Index.	\$846,117

Appendix 5: Bureau of Land Management Response

The Bureau of Land Management's response follows on page 29.



United States Department of the Interior

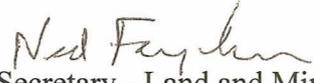
BUREAU OF LAND MANAGEMENT
Washington, DC 20240
<http://www.blm.gov>

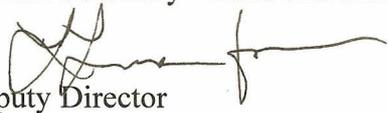
FEB 10 2014

In Reply Refer To:
1245/3600 (320/830)

Memorandum

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

Through: Ned Farquhar 
Deputy Assistant Secretary - Land and Minerals Management

From: Neil Kornze 
Principal Deputy Director

Subject: Office of the Inspector General Draft Audit Report, Department of the Interior's Mineral Materials Program (C-IN-BLM-0002-2012)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report, titled "Department of the Interior's Mineral Materials Program" (C-IN-BLM-0002-2012).

The Bureau of Land Management (BLM) appreciates the continued interest of the OIG in the administration of the Federal mineral materials program. The BLM generally agrees with the findings and concurs with the recommendations.

The mineral materials program has historically had limited funding and resources to address the expanding magnitude and scope of workloads. As a result, the BLM's capacity to absorb further workloads is limited. The situation was exacerbated in the 1990's and 2000's as demand for materials and technical requirements increased at the same time that staffing and funding resources contracted.

Over the past year, the BLM has been working to address some of the issues noted in the draft report such as providing more effective guidance and oversight. In addition, the BLM is developing a new online mineral materials production verification training program for mineral materials specialists, expected to be available in Fiscal Year (FY) 2014. Furthermore, the initial amendments to the Mineral Materials Disposal Handbook (H-3600-1) are in the final stage of processing for issuance. The amendments will include (1) templates for surety and personal bonds; (2) instructions for certification of scales; (3) additional guidance on free use permits for BLM operations; (4) instructions for reporting reclamation acreage; and (5) a listing of prohibited BLM transactions. The BLM plans to issue additional guidance covering issues such

as reclamation fees and production verification during FY 2014. We believe these ongoing efforts, combined with the implementation of the recommendations made in this report will help to improve the management of BLM's mineral materials program.

In addition to addressing each of the recommendations, the BLM has provided general and technical comments based on its review of the contents of the report. Attachment 1 provides general comments. Attachment 2 provides technical comments and recommended edits to the report. Attachment 3 provides specific responses to each of the recommendations, including a summary of the actions taken or planned by the BLM to implement the recommendation as well as the name of the responsible official and the target dates of implementation.

If you have any questions about this response, please contact Mitchell Leverette, Chief, Division of Solid Minerals Management, at 202-912-7113, or LaVanna Stevenson, BLM Audit Liaison Officer, at 202-912-7077.

Attachments

General Comments:

The following comments contain additional information that the BLM produced after having an opportunity to review a draft copy of the report. The OIG may use this information to further enhance the quality of the report. These comments are not meant to identify specific errors or recommend specific edits.

The Bureau of Land Management (BLM) suggests that the following information regarding the breadth of activities the BLM undertakes in carrying out its responsibilities of the mineral materials program be included in the Background section on page two of the report:

The BLM's Mineral Materials Program is responsible for:

- Processing exploration permits and mining authorizations.
- Performing NEPA analyses of disposal applications.
- Performing commodity valuations to determine the value of disposals.
- Issuing sales contracts for disposals to private entities.
- Administering existing contracts and collecting revenue.
- Processing permits for free use of mineral materials by State and local governments and non-profit organizations.
- Inspecting authorized sites for compliance with contract and permit requirements.
- Inspecting and enforcing contracts and permits to verify the accuracy of payments and reported production.
- Taking enforcement actions to ensure compliance with terms and conditions of contracts and authorizations.
- Investigating and taking enforcement actions on unauthorized removal of mineral materials from Federal mineral estate.

The draft report discusses Federal mineral materials regulations and policies, recovery of processing costs, verification of production volumes reported for sales, and collecting fees for minerals used on land that have been sold under the authority of the Southern Nevada Public Land Management Act of 1998.

Limited Assurance that BLM Obtain Market Value for Mineral Materials

OIG's first and second findings on page 4 state that "Bureauwide appraisal guidance is more than 25 years old", and "regulatory language requires use of appraisals, even though other acceptable valuation methodologies exist."

The BLM guidance for valuations of mineral material commodities is indeed older, but the finding itself without any context suggests that the procedures and methodologies contained in the guidance are outdated and no longer appropriate. Please note that the guidance has been reviewed several times and the basic concepts are still relevant to commodity valuations. The guidance was originally developed as an alternative valuation methodology, patterned after real property appraisals, due to the general absence of formal guidance for commodity valuations.

Although some terminology used for valuations of mineral material commodities is similar to terminology used in real estate valuations, the mineral material commodity terms are redefined in the Mineral Materials Appraisal Handbook to identify distinctions from realty appraisals. Due to the continued relevance of the BLM's guidance, we do not believe the age of the guidance is an issue; however, we will provide instructions to the BLM field offices to ensure they adhere to and properly cite the BLM guidance instead of other procedures.

Advancements and legal changes in the requirements for performing real property appraisals warrant revisions to the terminology and guidance for the valuations of mineral materials commodities to ensure that BLM personnel and contractors do not confuse these two different types of analyses. The Materials Act of 1947 originally required valuation of materials by appraisal, but subsequent amendments in 1980 removed that requirement. Until 1980, section 2(b) of the Act required BLM to provide Congress with semiannual reports summarizing the details of BLM contracts for the disposal of mineral materials and including in the report the "appraised value of the material involved" under each contract. *See* Pub. L. No. 87-689, 76 Stat. 587 (1962). The Congressional Reports Elimination Act of 1980 repealed section 2(b), thereby removing the only reference to appraisals in the Materials Act. *See* Pub. L. No. 96-470, § 102, 94 Stat. 2237 (1980). The change removing the appraisal requirement of the Materials Act was apparently not identified when BLM developed regulations requiring valuations by "appraisal." However, in order to determine "adequate compensation" for mineral materials commodities, the BLM developed alternative valuation methodologies that emulated real estate appraisal methods.

The professional context and usage of "appraisal" has evolved to more specific applications for real property since 1986. Although the word "appraisal" remains in the 43 CFR § 3602.13 regulations, the regulations have always involved commodity valuations for mineral materials disposals, and not valuations of the mineral estate of a tract. The BLM will consult with the Office of Valuation Services (OVS) and the Solicitor's Office to identify an appropriate resolution for this situation. In addition, although the OIG and OVS acknowledge that a real property appraisal is not required for mineral material commodity valuations, neither office has provided information as to what other alternative methodologies they consider to be acceptable.

OVS Assistance

The BLM agrees with the OIG's multiple recommendations to work with OVS to explore potential improvements to BLM's procedures and guidance relating to valuations of mineral materials commodities. The BLM plans to discuss with OVS how it might be able to assist the BLM in the revisions to manuals and handbooks, and how OVS can assist with developing statements of work and review of select mineral materials commodity valuation reports completed by the BLM and contractors. The BLM recognizes that OVS may be able to offer their assistance to the BLM.

Revenues May Be Lost Due to Unauthorized Use

On page 12, the OIG reported that the "BLM did not collect fees for millions of tons of mineral materials used on land that it sold to a private developer under the authority of

the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Pub. L. No. 105-263, 112 Stat. 2343. The BLM estimated the value of fees not paid for these materials exceeded \$1 million.”

The Del Webb/Anthem development identified by the OIG was an isolated incident that involved a completed development on a tract that was transferred through the authority of the SNPLMA. The BLM Las Vegas Office was unable to identify records that could corroborate the OIG’s statement about the quantity and value of the unauthorized removal of mineral materials for the Del Webb/Anthem housing development. Although this incident involved a large residential construction development with substantial reconfiguration of mineral materials, the BLM cannot retroactively identify documentation that would support an enforcement action. However, the BLM Las Vegas Office recently identified two potential unauthorized mineral materials removals from other SNPLMA tracts and initiated enforcement actions in 2013.

Technical Comments

Page 2, last paragraph. The paragraph intermixes time periods, and omits the word “currently” when describing the Materials Act of 1947. The last clause of the first sentence should state “the Act currently requires payment of ‘adequate compensation’.” When the BLM issued the Bureau-wide appraisal guidance in the mid-1980’s, the Act and the regulations required determining the market value of mineral materials commodities through appraisal. At that time, there was no clear guidance for performing appraisals or how to determine adequate compensation for mineral materials commodities, so the BLM developed alternative methodologies to perform commodities valuations, patterned after real property appraisals. Commodity valuation report formats that BLM developed emulated the 1973 format from the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), and adopted its definition of market value. The BLM also referenced some appraisal terminology from the UASFLA but revised the definitions to describe commodities instead of real estate (such as a definition of the highest and best use of the commodity, rather than of the site). As a result, the BLM guidance and real property appraisals use some of the same words but the meanings are different.

Page 3, last two paragraphs. The description does not accurately capture the distinction between cost recovery fees and reclamation fees. The BLM suggests replacing these two paragraphs with the following:

Generally, both purchasers and permittees are responsible for reclamation of lands disturbed through exclusive disposals outside of community pits and common use areas. Purchasers, but not permittees, are responsible for cost recovery fees that are paid in advance. The cost recovery fees can include the costs of the BLM’s administrative review of permit applications, review of mining and reclamation plans, National Environmental Policy Act (NEPA) reviews, and appraisal services.

In designated community pits and common use areas, the BLM does not charge cost recovery fees, but purchasers pay reclamation fees that have a component to recoup, over time, the original processing costs for site designation and preparation, preparation of BLM mining and reclamation plans, NEPA reviews, and reclamation-related life-of-mine administration costs. When an exclusive sale occurs in a community pit or common use area and requires a supplemental mining and reclamation plan and NEPA, current regulations do not allow the BLM to charge processing fees in advance so these costs must be recovered incrementally through reclamation fees over the life of the contracts. Permittees usually perform an equivalent amount of reclamation work in lieu of a reclamation fee.

Page 5. When the BLM Appraisal Manual and Handbook guidance was developed, amendments to the Act had removed the requirement for appraisal, but this was not identified then or when the BLM revised the regulations in 2001, and the wording for the appraisal requirement in the regulations was not changed. As OIG notes, the appraisal profession and legal requirements for real property appraisals have diverged substantially from the valuation requirements for mineral materials commodities. Although the requirements for commodities are different from those for

real estate, the terminology similarities are causing confusion for BLM personnel and contractors. A guidance update is needed to clearly distinguish the two systems.

Page 5, first full paragraph. The report does not provide additional details regarding what other acceptable valuation methodologies exist. The BLM recommends that the OIG include a discussion in the report of other methodologies that OIG considers to be acceptable.

Page 5, first two sentences of second full paragraph. The report states that the BLM's Mineral Material Appraisal Manual and Handbook has not been updated since the mid-1980s. Regulations for mineral materials sales were amended in 2001, 2005, and 2008. The associated guidance for sales of these materials was issued in 2002, followed by supplemental guidance in 2003, 2006, 2007, 2009, and 2010, with more in progress currently. The BLM recommends that this information be included in this paragraph.

Page 9, first paragraph. The BLM believes that the OIG has misinterpreted the current cost recovery regulations for exclusive sales located outside of community pits and common use areas. The cost recovery regulations currently only cover recovery of costs for processing applications to the point of issuance of the disposal. Thereafter, there is no recovery of costs for administering the contracts. The BLM recommends deleting the last sentence in the paragraph.

Page 9, second paragraph. The second sentence appears to contain an inaccurate description of a finding in the sentence "*We found, despite the authority to recover costs, none of the 30 exclusive sales contracts we reviewed included cost recovery associated with administering the contracts.*" Current regulations only allow recovery of costs for processing applications to the point of issuing contracts for applications located outside of community pits, but do not allow for cost recovery for any disposals located within community pits. The 2005 regulations also do not allow recovery of the costs of administering authorized contracts at any location after processing of the application is completed and the sale is authorized. If OIG's finding pertained to applications, not to contracts, the finding should be rephrased to state that "*We found that none of the 30 exclusive sale contracts we reviewed included cost recovery associated with processing the purchase applications.*" We also recommend stating how many of the 30 contracts involved disposals from within community pits.

Page 12. "*BLM did not collect fees for millions of tons of mineral material used on land that it sold to a private developer under the authority of the Southern Nevada Public Land Management Act of 1988 (SNPLMA).*" The BLM cannot substantiate the amount of mineral materials were used. This situation involved an isolated incident that apparently involved misunderstanding of a mineral reservation soon after SNPLMA was enacted. This resulted in BLM not investigating and documenting the extent of use of reserved minerals by the surface owner in developing a tract. A more accurate wording for the bullet would be "*BLM did not investigate a potentially unauthorized use of mineral materials or consult the Office of the Solicitor for a legal interpretation of a mineral reservation.*"

Pages 6, the first full paragraph discusses deficiencies in mineral materials appraisals performed in four States where the OIG conducted site visits. The paragraph goes on to reference Appendix 1 (page 16 to 18 of the report), which elaborates on the deficiencies in the valuations performed

in those four States – Wyoming, Arizona, New Mexico and Nevada. Please note that the valuations discussed in these sections did not conform to BLM guidance. We recommend inserting a statement at the end of the first full paragraph on page 6 that says “*During the preparation of this report, the BLM notified the OIG that in addition to what was identified by the investigators, the procedures and standards used to perform the appraisals were not in compliance with BLM guidance.*”

**Response to the Recommendations included in the Office of the Inspector General Report
Bureau of Land Management's Mineral Materials Program
(C-IN-BLM-0002-2012)**

Recommendation 1: Modify 43 C.F.R. § 3602.13 to allow for the use of all appropriate valuation methodologies.

Response: The BLM will review alternative valuation methodologies, and initiate the regulatory process if that is found appropriate.

Target Date: December 31, 2016 (Date for initiation of the rulemaking process, if it is determined a rule is necessary)

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 2: Work with Office of Valuation Services (OVS) to update the Bureau's Mineral Material Appraisal Manual 3630 and H-3630-1 Mineral Material Appraisal Handbook.

Response: The BLM will consult with OVS as it updates the Mineral Appraisal Manual and Handbook.

Target Date: December 31, 2015

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 3: Issue guidance to State offices to coordinate with OVS for contracting of mineral materials valuations.

Response: The BLM will coordinate with OVS to identify a revised contracting process for mineral materials valuations.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 4: Work with OVS to develop statements of work for preparing mineral materials valuations.

Response: The BLM will work with OVS to develop standardized statements of work for contracts for performing mineral materials valuations.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 5: Develop a process for OVS to review mineral materials valuations performed by or for BLM.

Response: The BLM will work with OVS to develop a process that includes the appropriate OVS reviews for the various types of mineral material valuations.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 6: Work with OVS to determine the market values of the mineral materials covered by the appraisal reports that have been "disapproved for use".

Response: BLM will consult with OVS to determine a process for their assistance in determining the market values in this situation.

Target Date: June 30, 2015

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 7: Develop a mechanism for which BLM will reimburse OVS for mineral materials valuation services as needed.

Response: The BLM will work with OVS to determine how OVS could be reimbursed for work on these services.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 8: Ensure that field offices adjust prices in existing mineral materials contracts as authorized by Federal regulations and required by BLM policy.

Response: The BLM will issue additional guidance to supplement its H-3600-1 Mineral Material Disposal Handbook reiterating the mineral materials price adjustment guidance requirement for existing contracts. Additionally, the BLM will complete periodic reviews on this issue to monitor for compliance.

Target Date: December, 2014 for additional guidance.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 9: Develop annual rankings of contracts that need to be valued and revalued.

Response: The BLM will review existing ranking policy in the H-3600-1 Mineral Material Disposal Handbook and will clarify and update the policy as necessary.

Target Date: December 31, 2014.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 10: Reissue guidance explaining which costs are recoverable for exclusive sale contracts and ensure that field offices seek reimbursement for costs incurred.

Response: The BLM has recently identified some possible improvements to the current approaches for recovering costs and will revise its guidance for determining which costs are recoverable and how to collect the costs.

Target Date: June 30, 2015.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 11: Work with the Office of the Solicitor to revise 43 C.F.R. § 3602.11 to collect cost recovery fees on existing exclusive-sale contracts in community pits and common-use areas.

Response: BLM will work with the Office of the Solicitor to determine if a regulatory revision is necessary or if other administrative options are available to meet this need.

Target Date: December 31, 2016 to initiate a regulatory process, if found appropriate.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 12: Reissue policy and guidance on production verification to provide accurate accounting of materials removed, and implement procedures to provide reasonable assurance that field offices comply.

Response: The BLM will issue new guidance for production verification. Additionally, the BLM will periodically monitor for compliance.

Target Date: December 31, 2014 for issuance of new guidance.

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 13: Issue guidance to clarify regulations in 43 C.F.R. § 3601.71 to define "personal use" versus commercial use, in terms of the property on which those uses are restricted and what specific uses constitute allowable personal use in contrast with restricted commercial use.

Response: The BLM will issue supplemental guidance to define personal use of mineral materials under 43 C.F.R. § 3601.71.

Target Date: December 30, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 14: Issue guidance to its State offices to identify and take action to collect the fair market value of the unauthorized removal of mineral materials on split-estate land disposals.

Response: The BLM will issue supplemental guidance reiterating the requirement to follow existing procedures for recovery of damages for unauthorized removal of mineral materials from split-estate lands.

Target Date: December 31, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Recommendation 15: Consult with the Office of the Solicitor regarding this and similar land disposals to determine whether action should be taken to collect the fair market value of the unauthorized removal of mineral materials on past land disposals.

Response: The BLM will consult with the SOL regarding whether actions can be taken to address the land disposal described in this report and similar land disposals.

Target Date: June 30, 2014

Responsible Official: Michael D. Nedd, Assistant Director, Energy, Minerals and Realty Management

Appendix 6: Status of Recommendations

The Bureau of Land Management (BLM) concurred with all but 1 of our 15 recommendations.

Recommendations	Status	Action Required
1 through 8 and 10 through 15	Resolved but not implemented.	We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget for implementation tracking
9	Unresolved.	Based on BLM's response, we modified our recommendation. We request that BLM reconsider the recommendation and respond to us, in writing, within 30 days with information on actions taken or planned to address the recommendation, as well as target dates and titles of officials responsible for implementation.

