FOREST SERVICE
HUMBOLDT-TOIYABE NATIONAL FOREST
LAND ADJUSTMENT PROGRAM
FISCAL YEARS 1990 TO 1997
SPARKS, NEVADA
AUDIT REPORT NO. 08003-02-SF

AUGUST 1998

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL - AUDIT
WESTERN REGION
600 HARRISON STREET, SUITE 225
SAN FRANCISCO, CA 94107

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250

DATE: September 11, 1998

REPLY TO
ATTN OF: 08003-02-SF

SUBJECT: Humboldt-Toiyabe National Forest Land Adjustment Program

TO: Mike Dombeck
Chief
Forest Service

This report presents the results of our audit of the land adjustment program on the Humboldt-Toiyabe National Forest. The audit stresses the need for greater accountability in all phases of the lands program area. We appreciate the high level of support from both the Department and Forest Service management in quickly initiating corrective actions to address the conditions noted in this report.

We previously released this report on August 5, 1998, in redacted form because of a pending law enforcement proceeding. Release of this audit report will no longer interfere with the pending law enforcement proceeding. Therefore, we are providing you copies of the report in its entirety, including the previously withheld information.

Your written response to the draft report is included in its entirety as exhibit D. Based on your response, we have reached management decision for 33 of the 37 audit recommendations. Management decision has not been reached on Recommendations Nos. 1a, 8f, 9b, and 9c. In order to reach management decision on these recommendations, please provide the information identified in the Office of Inspector General position section of the report.

In accordance with Departmental Regulations 1720-1, please furnish a reply by October 5, 1998, describing the corrective action taken or planned, and the timeframes for implementation for those recommendations for which a management decision has not been reached. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from the date of report issuance.

The Office of the Chief Financial Officer (OCFO), U.S. Department of Agriculture, has the responsibility for monitoring and tracking final action for the findings and recommendations. Please note that final action on the findings and recommendations should be completed within 1 year to preclude listing in the Semiannual Report to Congress. Please follow your agency's internal procedures for forwarding final action correspondence to the OCFO.

ROGER C. VIADERO
Inspector General

Enclosure

EXECUTIVE SUMMARY

FOREST SERVICE
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LAND ADJUSTMENT PROGRAM
FISCAL YEARS 1990 TO 1997
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PURPOSE

This report presents the results of our audit of the land adjustment program of the Humboldt-Toiyabe National Forest located in the State of Nevada. The audit was performed as a result of a whistleblower complaint alleging impropriety by Forest Service (FS) employees in a land exchange transaction with a third party who assisted the exchange. We coordinated our audit with the Department of the Interior, which was concurrently performing an audit of land exchange activities involving the Bureau of Land Management (BLM) in the State of Nevada.

Under the land adjustment program, the FS acquires land for the National Forest System by exchanging public land for private land it regards as more desirable. A basic requirement for any exchange is that the values of the FS and private lands be equal, as determined by an FS-approved appraisal. Although the FS normally deals with private landowners to effect an exchange, some exchanges are negotiated through third parties who act as facilitators.

RESULTS IN BRIEF

We identified a serious breakdown of controls in all phases of the Humboldt-Toiyabe National Forest land adjustment program. Management allowed private parties (landowners and third-party facilitators) to exert undue influence over the direction and outcome of almost all large-value land exchanges in the forest. We questioned accomplished and proposed land exchange transactions for 7,029 acres of Federal and non-Federal lands, valued at $27.9 million, that were conducted without proper authorization or without adequate protection of the Government's interest.

Controls were notably absent in the FS bargaining and dealings with private parties, and in the forest's planning of land acquisitions.

- The FS bargaining team disregarded the Forest Service Washington Office's (FSWO) guidelines and Office of the General Counsel's advice during their bargaining process with private parties. The FS bargaining team allowed the private parties to control the bargaining process. The team excluded the participation of Federal appraisers and

accepted uncorroborated valuations by an appraiser recommended by the private party. The valuations resulted in a loss of $5.9 million to the Government. None of the bargaining team members could adequately explain why they had disregarded the guidelines and advice.

- The forest entered into an improper agreement that gave a private party exclusive marketing rights to 850 acres of forest lands near Reno, Nevada, valued at $6.5 million, but did not require the private party to identify any private lands that would be offered in exchange.

- Rather than institute a plan to prioritize land exchange proposals from private parties, the FS allowed the private parties to control the selection of lands the forest would take. Our audit questioned three proposed exchanges that were initiated by private parties and were taken under consideration by the FS even though the land, 1,065 acres valued at $10.5 million, was of little or no discernable use to the FS.

Controls were also absent in the appraisal process. FS lands staff let private parties override the safeguards against excessive valuations.

- The FS acquired private lands whose appraised values were not based on credible evidence. We questioned the FS' acceptance of three land appraisals that were based on speculative assumptions that overvalued non-Federal land by $8.8 million.

- FS regional and forest lands staff compromised the independence of FS appraisers by allowing private parties to repeatedly challenge their valuations and by criticizing the appraisers' work.

Our audit also questioned the integrity of FS lands staff in dealing with private parties. We identified the improper conduct of one FS management employee who received gifts, gratuities, and entertainment from private parties doing business with the FS. We also noted that the region did not track the outside interests of key FS lands personnel involved in approving multimillion-dollar exchanges.

Controls over the coordination of land transactions with BLM were generally weak. Our review of one land exchange disclosed that the forest acquired $2.1 million in water rights that it may lose because it either has no plans to use the water or cannot use it in accordance with State law. In this exchange, BLM accepted title to $19.8 million worth of land on behalf of the forest but did not notify the forest of its actions. The land was not properly cleared of encumbrances, and the forest was not provided with ownership documentation until 3 years later.

During the audit, we notified the FS of deficiencies we felt needed immediate corrective action. These deficiencies pertained to the improper agreement with a private party, the questioned appraisal used in a bargaining agreement, the improper conduct of an FS management employee, and the potential loss of water rights. In response, regional management has taken the corrective actions we recommended.

In May 1997, the FSWO assembled an internal review team to review the forest lands program. Our audit results confirmed most of the weaknesses cited in that internal review and identified additional areas that needed corrective action.

KEY RECOMMENDATIONS

We recommend that the FSWO (1) provide additional direction for the bargaining process and for dealing with third-party facilitators; (2) ensure that exchanges proposed by private parties include data that is credible; (3) protect the independence of FS appraisers; (4) consider conducting competitive land exchanges to maximize the value obtained for Federal lands; (5) develop a system to track the status of acquired water rights; (6) improve the planning process to ensure that land exchanges are in the best interest of the Government; (7) improve coordination with BLM; and (8) ensure that financial disclosure statements are submitted by the required FS personnel.

AGENCY POSITION

In its written response, the FS states that it believes that the audit was beneficial and concurs with the vast majority of the recommendations. The response further states that the audit highlights the need for increased accountability in the Lands Program area to ensure that the landownership adjustment activities are focused to support and enhance forest plan resource management objectives while meeting the obligation to ensure that the American public gets full value for the Federal assets involved in these transactions. The complete text of the FS response is shown in exhibit D.

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ACRONYMS

BLM	Bureau of Land Management
FLEFA	Federal Land Exchange Facilitation Act
FS	Forest Service
FSH	Forest Service Handbook
FSM	Forest Service Manual
FSWO	Forest Service Washington Office
OGC	Office of the General Counsel
OIG	Office of Inspector General
SMNRA	Spring Mountain National Recreation Area
UASFLA	Uniform Appraisal Standards for Federal Land Acquisition
WO	Washington Office

GLOSSARY OF TERMS

APPRAISAL STANDARDS - Also known as uniform appraisal standards for Federal land acquisitions. These standards promote uniformity in the appraisal of real property among the agencies acquiring property on behalf of the United States.

COMPETITIVE LAND EXCHANGE - The Prospectus method of land exchange in which a Federal agency solicits bids for the Federal lands offered. Bids would be in the form of non-Federal lands and would be evaluated based on criteria established by the Federal agency.

FEE APPRAISER - A private appraiser hired to appraise either the Federal or non-Federal lands for a fee.

INHOLDING - Private land parcel surrounded by Federal lands such as national forests.

OPTION - A bilateral contract in which one party (for example, a third-party facilitator in Federal land exchanges) is given the right to buy the property within a period of time for a consideration paid to the seller.

POOLING AGREEMENT - An assembled land exchange agreement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing more than one exchange transaction over a period of time.

PROPONENT - As used in Federal land exchanges, this term usually refers to a non-Federal party, a landowner or third-party facilitator, who is offering land in a Federal land exchange.

THIRD-PARTY FACILITATOR - An organization (profit or not-for-profit entity) that is working as a representative of the non-Federal landowner in a land transaction with a Federal agency. The not-for-profit organizations typically enter into an option to purchase the land with the intent of acquiring the land for public ownership and preservation. Occasionally the organization purchases the land and therefore becomes the proponent in the exchange.

INTRODUCTION

BACKGROUND

Land exchanges between the national forests and other landowners are needed to protect key resources, eliminate conflicting uses, and improve management efficiency. The Forest Service (FS) land adjustment program emphasizes the acquisition of the highest priority lands based on FS plans that consider the threat of development, recreation opportunity, resource values, and management efficiency. In fiscal year 1995, land area approved for exchange totaled 98,407 acres. The FS exchanged 92,000 acres of National Forest System land for 83,000 acres of non-Federal land in fiscal year 1995.

An underlying requirement for any exchange involving Federal land is that the values for the Federal and private lands be equal, as determined by a Government-approved appraisal. In some cases, small cash payments can be made to equalize individual transactions. The appraisal is a key requirement in the exchange process since it establishes values for the properties being exchanged. The appraisal ensures that the Government obtains fair market value for the land it exchanges. Private parties and/or the FS may use fee appraisers to conduct the appraisal; however, each appraisal has to be reviewed and approved by a qualified review appraiser to ensure that it meets Federal appraisal standards. Only when a value is approved by a qualified review appraiser does it become an agency-approved value. This value is then used as a basis for the exchange.

Land exchanges can be initiated by a private landowner, a non-Federal public agency, or the FS. Usually a private landowner or a non-Federal public agency, called a proponent, makes a proposal directly to the district ranger where the land is located. Once the district ranger is notified, the forest lands staff are contacted and the proposal is prioritized and scheduled for processing.

In some land exchanges, third-party facilitators play a key role in the exchanges. The third-party facilitator can be an individual or a company that is not necessarily the owner of the private land but serves as an intermediary between the private landowner (proponent) and the Federal agency. In some instances, the third-party may purchase the land, therefore becoming the proponent in the exchange. These facilitators handle many of the administrative functions, such as promptly clearing all encumbrances on the non-Federal land and paying for the appraisal of the land. They can also assemble several parcels of private property for a specific exchange by obtaining options on the property and obtaining an agreement with several parties to exchange their lands for specified Federal lands or payments.

Currently there are a large number of third-party facilitators who are involved in brokering exchanges with Federal land

agencies such as the Bureau of Land Management (BLM), Fish and Wildlife Service, Corps of Engineers, and the FS. While these facilitators serve as a valuable resource for land exchanges, it is critical that the FS maintain control of its land adjustment program to ensure that exchanges are accomplished in the best interest of the Government and meet FS priorities.

HUMBOLDT-TOIYABE NATIONAL FOREST LANDS PROGRAM

The Humboldt-Toiyabe National Forest, located on the FS Intermountain Region (Region 4), administers all national forest lands in the State of Nevada, except those that are in the Lake Tahoe Basin Management Unit. Both BLM and the Humboldt-Toiyabe NF have been cooperating since early 1980 to acquire lands in the State of Nevada. An informal agreement between BLM and the FS was established on September 9, 1993, to govern exchanges where the FS is the benefitting agency. The agreement delegated to Region 4's regional appraiser the authority to approve the appraisal of non-Federal lands that would be involved. Until a case is turned over to the FS, BLM is in control of the exchange, and any appraisals that are prepared are approved by BLM's Chief State Appraiser. Prior to our audit, appraisals approved by either agency were recognized as agency-approved values that could be used by both agencies.

DEMAND FOR BLM LANDS IN LAS VEGAS SPURS LAND EXCHANGES AT THE FOREST

The U.S. Bureau of Census has identified the Las Vegas Valley of Southern Nevada as the fastest growing metropolitan area of the United States in recent years. The rapid growth has resulted in an intense demand by developers to acquire Federal lands in the Las Vegas Valley area. BLM has identified about 70,000 acres of Federal land for disposal in the Las Vegas area. With certain exceptions provided by specific statutes[1], BLM is not authorized by Congress to competitively sell the Federal lands in the open market. The only way private parties can acquire these lands is to offer for exchange private lands of equal value in the State of Nevada. In August 1993, the Spring Mountain National Recreation Area (SMNRA) was created by Congress to provide recreation areas close to Las Vegas. Since that time Congress has targeted SMNRA as an area for Federal agencies to acquire and preserve. This has created a sellers market for landowners in these areas, especially those with "inholdings," or private lands surrounded by FS or BLM lands. Third-party facilitators who wish to acquire Federal lands in Las Vegas have bid up the prices of large parcel inholdings in those targeted areas.

According to an appraisal report, prices on "inholdings" have escalated well beyond values that are financially feasible for development. Third-party facilitators are willing to pay the higher values because profits made on the resale of Federal land in Las Vegas Valley more than offset the cost of acquiring "inholdings." The report showed examples of a property in the Spring Mountains with no water rights, limited or no access, and minimal development potential being optioned by third-party facilitators at over 765 percent of the

[1] Santini-Burton Act (PL 96-586)

original purchase price simply because the land would be conveyed to the FS in exchange for Las Vegas lands acquired from BLM.

The Humboldt-Toiyabe National Forest has been a significant beneficiary of non-Federal lands acquired from third-party facilitators completing Las Vegas land exchanges with BLM.

On May 10, 1996, the Office of Inspector General (OIG) received an anonymous whistleblower complaint concerning improprieties by FS staff concerning a land exchange transaction with a third-party facilitator. On December 9, 1996, OIG notified the FS concerning the issues identified in the whistleblower complaint.

FS WASHINGTON OFFICE REVIEW OF FOREST OPERATIONS

During our audit, the Forest Service Washington Office (FSWO) assembled an internal review team in May 1997 to perform a quick review of ongoing land transactions at the forest and to provide regional management with recommendations to improve their lands program. The review found deficiencies relating to coordination with BLM, land acquisition priorities, land appraisals, and lands staffing and training. The review recommended that as an interim measure, the region suspend the lands approval authority at the forest until the expertise level at the forest is improved. OIG auditors participated as observers with the review team. Our audit not only confirmed the deficiencies noted in the FSWO internal review, but identified additional issues and findings which require corrective action by the FS.

OBJECTIVES

Our audit objective was to determine whether the land exchange program on the Humboldt-Toiyabe National Forest ensured that land exchange transactions met the priority requirements established by the forest plan and that the transactions were in the best interest of the Government. Specifically, our objectives were to determine whether the forest ensured that (1) land exchanges were processed in accordance with applicable laws, regulations, and agency policies; (2) appraisals of both Federal and non-Federal lands were reviewed and approved by the appropriate FS employee; (3) the public had adequate notice of the exchange; and (4) the Government received acceptable title to the non-Federal lands.

SCOPE

Our audit covered the land adjustment program on the Humboldt-Toiyabe National Forest for fiscal years 1990 to 1997. The forest has the largest lands program in the Intermountain Region. We reviewed 37 land transactions which had been completed or were currently being processed at the forest (see exhibit C). Figure 1 shows the locations of key land transactions discussed in this report.

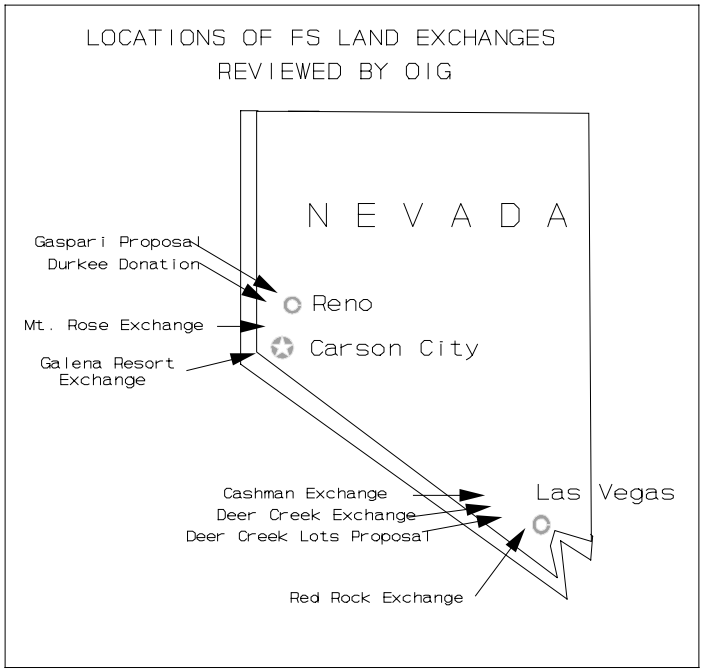

Figure 1

Audit work was performed at the FSWO; the Regional Office in Ogden, Utah; the Forest Supervisor's Office in Sparks, Nevada; and other locations determined by the audit (see exhibit B).

The audit was conducted in accordance with generally accepted Government auditing standards.

METHODOLOGY

To accomplish our audit objectives and support our findings, we performed the following steps and procedures.

- At the Washington Office (WO), we interviewed staff in the Lands section to determine their concerns about the land exchange program on the Humboldt-Toiyabe National Forest. We identified and reviewed the WO directives, policy, and guidance that had been provided to the region and forest, and determined its adequacy. In addition, we obtained and analyzed reviews performed on the land exchange program on Region 4 and the Humboldt-Toiyabe National Forest to identify problems found by the WO.

- At the FS Regional Office, we interviewed lands staff members to discuss: 1) the procedures for processing land exchanges; 2) interaction with third-party facilitators; 3) development of the forest and landownership adjustment plan; and 4) ongoing and planned reviews of the forest. These discussions were used to identify concerns FS staff had about the land exchange program on the forest. In addition, we identified the completed and ongoing land exchange cases for fiscal years 1990 to 1997. For each of

the land exchanges identified, we reviewed the exchange case files, discussed the exchange with lands staff, and obtained copies of the appraisals. This information was used in the preparation of a proforma worksheet used to analyze the processing of each exchange case.

- At the forest supervisor's office, we met with forest staff to discuss: 1) general issues regarding the land adjustment program and any concerns they had regarding the program; 2) development of the forest plan and the process used to prioritize lands for acquisitions; and 3) interaction with third-party facilitators. For each of our identified land exchanges, we reviewed the exchange case files and discussed the exchange with lands staff. With this information, we completed preparation of the proforma worksheets, analyzed the processing of each exchange case, and determined whether the land exchange complied with policies and procedures and was in the best interest of the Government.

- We met with regional and Washington staff attorneys from the Office of the General Counsel (OGC) to discuss legal issues identified during the audit. In one instance, we requested a formal legal opinion on an issue involving a completed land exchange transaction.

- We met with a fee appraiser who had appraised several parcels of land involved in FS exchanges. The purpose of this meeting was to discuss general appraisal issues and to obtain information on specific appraisals.

- We interviewed selected proponents and third-party facilitators involved in land exchanges with the FS to obtain their comments regarding the FS land exchange process.

- We interviewed BLM lands staff concerning their work involving land exchanges with the FS. We also reviewed land exchange case files at the BLM Nevada State Office concerning land exchange transactions involving the FS.

- We interviewed auditors at the Office of Inspector General, Department of the Interior, concerning their current and prior work involving Nevada land exchange activities by the BLM Nevada State Office.

FINDINGS AND RECOMMENDATIONS

I. CONTROLS NEEDED FOR BARGAINING AND DEALING WITH PROPONENTS AND THIRD-PARTY FACILITATORS ON LAND TRANSACTIONS

In the only instance in which the FS initiated bargaining with a proponent and third-party facilitator, the regional bargaining team violated the guidelines and legal advice of both the FSWO and OGC. The team let the facilitator control the bargaining session and approved an uncorroborated value that was $5.9 million over the agency-approved value. In this case, when lands staff dealt with a proponent and a facilitator, controls were either not followed or were nonexistent. OGC concluded that the region's bargaining process failed to comply with the governing statute.

Our audit also noted that there were no guidelines on evaluating exchanges proposed by third-party facilitators. The forest formed an accommodating relationship with one facilitator, whose proposed exchanges rose in priority with the forest when the facilitator obtained options to buy the proposed land. This facilitator was given information the forest did not share with other facilitators, and participated in the exchange of more land (83 percent of all acreage from 1993 to 1996) than was involved in any transactions with other facilitators. Developers seeking an exchange with the forest were referred to the facilitator, even though FS policy prefers direct dealings with landowners.

FINDING NO. 1

IMPROPER BARGAINING WITH PROPONENT AND THIRD-PARTY FACILITATOR RESULTED IN A LOSS OF $5.9 MILLION

Regional office lands staff violated legal requirements and guidelines by engaging in a bargaining process in which it approved and accepted uncorroborated land values in a Federal land exchange transaction. By accepting these values, the Government relinquished $5.9 million more in Federal lands than should have been legally provided to the exchange proponents.

The Federal Land Policy and Management Act of 1976 provides the authority to dispose, by exchange, any tract of Federal land where the land managing agency determines that the public interest will be well served by making an exchange[2]. In exercising the exchange authority, Federal agencies may transfer land out of Federal ownership and accept title to non-Federal lands of equal value. The exchange of lands is based on fair market value determined by appraisals meeting

[2] 43 USC § 1716 (a)

Federal appraisal standards. The Federal Land Exchange Facilitation Act (FLEFA) of 1988 also provides for a process of bargaining as a means to settle disputes over the values of properties in the exchange process[3].

In August 1992, a real estate investment group purchased a 524-acre parcel in the SMNRA for $2 million. The property, known as Deer Creek, was steep, mountainous terrain, ranging from 8,500 to 10,500 feet in elevation. It had no municipal water, sewer service, electricity, or gas utilities. There was a single unimproved dirt road into the property that allowed only seasonal access due to heavy winter snow. The investment group converted water rights from seasonal to full-year use, subdivided about 25 percent of the property, and sold a small number of lots to private individuals.

In the fall of 1993, the investment group became an exchange proponent when they began working with a third-party facilitator who proposed exchanging 459 acres of Deer Creek land to the FS for BLM properties in Las Vegas. The Deer Creek exchange was part of a larger pooling agreement between the facilitator and BLM. In the agreement, BLM conveyed $46 million of Las Vegas land to the facilitator in exchange for non-Federal land of equal value. The pooling agreement required the facilitator to locate and transfer non-Federal land totalling $46 million to BLM, the FS, or other Federal agencies by March 1996, or pay BLM the outstanding difference in cash. When the Deer Creek exchange was being processed, the facilitator still owed BLM about $8.5 million. The facilitator offered the Deer Creek land to the FS as a means of settling their outstanding BLM debt.

The first appraiser, hired by the facilitator, appraised the Deer Creek lands at $12.5 million on August 2, 1994--a 614-percent increase over the original purchase price. However, when FS appraisers reviewed the appraisal, they rejected it because it did not meet Federal appraisal standards. Over the next year, four additional valuations were performed in an effort to find a market value acceptable to the proponent, the facilitator, and the FS.

In order to resolve the impasse over the Deer Creek values, the regional lands staff implemented a bargaining process referred to in FLEFA. The process was recommended by the FSWO. The region formed a bargaining team, consisting of two regional lands personnel and an assistant forest supervisor, to negotiate with the Deer Creek exchange proponents, consisting of representatives from the investment group and the third-party facilitator. Since the FS had not used bargaining before, the FSWO and a regional member of the FS bargaining team worked together and developed the following bargaining guidelines:

1) Bargaining had to begin from the agency-approved value (for Deer Creek, the agency-approved value was $4.6 million).

[3] 43 USC § 1716 (d)

2) Any new information presented by the proponents had to be reviewed by the regional appraiser to ensure it was applicable to the bargaining.

3) Divergent values had to be reconciled by the regional appraiser.

4) Any bargaining decision that changed the agency-approved value had to be discussed with the regional appraiser before the new value was finalized.

The FS also solicited legal advice from OGC. In an opinion dated March 13, 1996, OGC reviewed FLEFA and identified the following legal requirements for the bargaining process in a Federal land exchange:

- The FS must obtain lands of equal value in an exchange.
- Land values must be determined by appraisals meeting Federal appraisal standards.
- If the FS has appraisals for each exchange parcel that have been reviewed and meet Federal appraisal standards, they can use bargaining to reconcile conflicting appraisals.
- Bargaining may only be used to objectively reconcile differences in appraisal reports which meet Federal appraisal standards.

On March 13, 1996, the FS bargaining team and the exchange proponents signed the Deer Creek bargaining agreement. The agreement assigned a value of $10.5 million to the Deer Creek property--$5.9 million more than the agency-approved value.

Our audit found that the FS bargaining team violated the bargaining guidelines and legal requirements by using invalid appraisals, letting the proponent and third-party facilitator control the bargaining process, failing to reconcile the differences in the appraisals, and excluding the participation of qualified Federal appraisers to review the new valuation for Deer Creek. As a result, based on a review by the FS Chief Appraiser, the FS bargaining team accepted an appraisal that did not meet Federal appraisal standards and should never have been relied upon in any Federal land transaction. In addition, we obtained an OGC opinion that concluded that the process instituted by the FS bargaining team did not comply with the legal requirements of FLEFA.

FS Bargaining Team Used Invalid Appraisals

By the time the region initiated the Deer Creek bargaining process in December 1995, only one of the previous five valuations still met Federal appraisal standards--the $4.6-million value determined by a team of BLM and FS appraisers one month earlier. All of the other values, ranging from $12.5 million to $4.7 million, had either been previously reviewed and rejected by Federal appraisers as not meeting the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), were outdated, and/or had become void and unusable because the values were based on a proposed zoning change that had subsequently been denied by

the Board of County Commissioners (the District Court upheld the denial).

Federal regulations allow bargaining to be used only when there are conflicts between appraisals meeting Federal appraisal standards. Each appraisal that is used in the bargaining process must meet Federal appraisal standards and must be current and approved by a qualified review appraiser. The FS bargaining team ignored these legal requirements and initiated bargaining using three appraisals that did not meet Federal appraisal standards. These included a $12.5-million appraisal paid for by the facilitator that had been rejected by Federal appraisers and was void and outdated; a $7.4-million appraisal paid for by BLM that had not been reviewed by Federal review appraisers, and was also void and outdated; and a $4.7-million appraisal that had been paid for by the FS and was also void and outdated. Disregarding the FSWO bargaining guidelines, the senior member of the FS bargaining team approved the use of these invalid appraisals without consulting the regional appraiser.

In addition, the FS bargaining team did not comply with the FSWO bargaining guidelines that directed them to begin bargaining from the agency-approved appraisal of $4.6 million. This was the only appraisal that remained valid and met Federal appraisal standards at the time of the bargaining. However, the FS bargaining team excluded the only valid appraisal from the bargaining process without justification.

FS Bargaining Team Improperly Allowed the Exchange Proponents to Control the Bargaining Process

FS bargaining team members told us that they did not prepare for the bargaining before they met with the proponent and the facilitator for the 1-day bargaining session. The FS team brought no documentation to the meeting and had not discussed bargaining strategy amongst themselves. The senior member of the FS bargaining team told us that he had glanced through the previous appraisals and had only a vague understanding of the appraisal issues. The other two team members did not read any of the appraisals or reviews. FS team members did not consult with Federal appraisers to obtain their perspective on the Deer Creek valuations or to increase their understanding of the Deer Creek appraisal process and issues before bargaining.

In the bargaining meeting conducted on December 6, 1995, the exchange proponents claimed that the previous Federal appraisals had undervalued the Deer Creek property because the appraisers had used inappropriate financial data. The proponents told the FS bargaining team that the non-Federal property was worth much more than the Federal appraisers had estimated and spent the day showing the FS team how changing various appraisal assumptions would significantly increase the value of the Deer Creek land.

None of the FS bargaining team members had any knowledge or training on appraisal valuation methods and were not familiar with the financial terms being discussed by the

proponents. However, they ignored the FSWO bargaining guidelines and did not present the proponent's financial data to the regional appraiser for review. The FS team also did not seek advice from any Federal appraisers to determine if the proponent's assertions were valid. Instead, they simply accepted the proponent's claims that qualified Federal appraisers from both the FS and BLM had undervalued the Deer Creek land.

During the bargaining session, both the FS bargaining team and the proponents agreed to hire a private fee appraiser to review the proponent's data and to determine a new value for the Deer Creek land. The FS bargaining team wanted to use an appraiser who had no previous knowledge of the Deer Creek property and would give them an objective opinion of value. However, the FS team agreed to hire an appraiser specifically recommended by the proponent, even though the FS bargaining team members had not heard of the appraiser and were not familiar with the quality of his work. Our review of FS documentation revealed that the proponent had contacted the same appraiser a few months before the bargaining session, to determine his opinion on Deer Creek's values and therefore knew in advance how the appraiser would value the Deer Creek lands, unbeknownst to the FS bargaining team members. The FS team and the proponents met with the appraiser the next day, December 7, 1995.

The FS team prepared written instructions to the appraiser directing him to review documents provided by the proponent and to determine a new value for the Deer Creek land. The FS team allowed the proponent to provide the appraiser with all of the documentation and financial analysis that would be used in his valuation. The FS bargaining team did not provide any input to the appraiser. The data was provided by the proponent to the appraiser in a cardboard box. The FS bargaining team members did not review the contents of the box nor did they ask the proponent what documents were provided to the appraiser. The FS team told us that they assumed the proponent provided the appraiser with all applicable data, including all prior FS/BLM appraisal reviews and the agency-approved appraisal of $4.6 million. They did not ask the proponent or the appraiser if all the appraisals had been provided. Our audit later found that the proponent did **not** give the appraiser the only valid Federal appraisal of the Deer Creek lands, which valued the lands at $4.6 million.

Bargaining Team Did Not Reconcile Differences in Appraisals Meeting Federal Standards

Federal regulations specify that bargaining can only be used to objectively reconcile differences in appraisal reports which meet Federal appraisal standards. Conflicting appraisals that meet standards establish the upper and lower limits for the bargained value. Additionally, the FSWO bargaining guidelines required bargaining to begin from the agency-approved value of $4.6 million. The FS bargaining team violated both of these requirements when they hired the fee appraiser to determine a bargained value for Deer Creek.

The fee appraiser, hired by the FS bargaining team, was provided with the proponent's financial information and three appraisals that did not meet Federal appraisal standards: the $12.5-million value that had been rejected by Federal appraisers was void and outdated; the $7.4-million appraisal that had not been reviewed by Federal appraisers was void and outdated; and the $4.7-million appraisal that was void and outdated. The fee appraiser was not provided with a copy of the agency-approved value of $4.6 million, which was also the only appraisal that still met UASFLA. Using the invalid appraisals and information supplied by the proponent and third-party facilitator, the appraiser calculated a new value of $10,520,000 for the Deer Creek lands, with an effective date of December 8, 1995. This process did not comply with Federal regulations because it was not a reconciliation of appraisals meeting Federal appraisal standards.

The FS bargaining team received copies of the appraisers' valuation reports approximately 2 weeks after the bargaining meeting. The reports clearly indicated that the new value did not incorporate any data from the agency-approved appraisal, but was based solely on the proponents financial data, information from void and/or rejected appraisals, and new assumptions made by the fee appraiser. Each member of the FS bargaining team read the reports and accepted this new value even though they knew it was based on appraisals that did not comply with Federal appraisal standards and did not include the agency-approved value of $4.6 million.

FS Bargaining Team Improperly Excluded Qualified Federal Appraisers From Reviewing the Deer Creek Valuation

The new $10.5-million value exceeded the agency-approved value by about $5.9 million. At the request of the FS bargaining team, the fee appraisers wrote a letter stating that his valuation work had been an appraisal "review." However, the scope and methodology of his work met the criteria of an appraisal, as defined by UASFLA and FS directives. Under Federal regulations[4], all appraisals used in a land exchange must be reviewed by a qualified review appraiser to determine whether they comply with Federal appraisal standards and can be relied upon in a Federal land transaction. The guidelines established by the FSWO also required the FS bargaining team to submit **any** new values to the regional appraiser for his review and approval.

In January 1996, the FS bargaining team provided the FSWO and BLM with a description of the bargaining process and the basis of the new value. The WO lands staff told the FS bargaining team members that the bargaining process they described was seriously flawed. They told the senior member of the FS bargaining team that the bargaining process did not comply with FS regulations and WO instructions and that there was no evidence of bargaining by the FS members. The FS Chief Appraiser told regional

[4] 36 CFR 254.9 (a)

staff that the new $10.5-million value met the criteria of an appraisal and that it had to be reviewed for compliance with Federal appraisal standards. WO staff told the region they wanted to be advised of all regional actions prior to signing the agreement. The WO directions were disregarded by the FS bargaining team members when they signed the bargaining agreement.

The FS bargaining team, with no training in appraisal standards, refuted the opinion of the FS Chief Appraiser and insisted that the new value was not an appraisal and that it did not have to be reviewed for compliance with UASFLA. One of the FS bargaining team members told us that she had concerns about the values determined by the appraiser but her concerns were overruled by the senior member of the FS bargaining team. The senior member told us that he did not think it was necessary to submit the new value to a qualified Federal appraiser for review. He maintained that the bargaining process was outside the normal scope of FS activities and, consequently, FS policies and procedures did not apply to the bargained value.

The BLM Nevada Deputy State Director also expressed concerns about the new value and told the senior member of the FS bargaining team that BLM wanted the $10.5-million value reviewed by a qualified Federal appraiser before it was accepted by the bargaining team. Even though BLM was officially in charge of the Deer Creek exchange, the senior team member dismissed the BLM State Director's concerns and did not submit the new value to a Federal appraiser for review and approval.

The FS bargaining team signed the agreement on March 13, 1996, and officially accepted the $10.5-million value without subjecting it to a Federal review. The FS team members signed the document at the Regional Office in Ogden, Utah, and then sent it via overnight mail to the exchange proponents for their original signatures. This process took a couple of days, because the proponents and facilitator were located in Las Vegas and San Francisco.

We reviewed electronic mail messages in the Deer Creek file and noted that the FS Chief Appraiser communicated with one of the FS bargaining team members several times on March 13 and 14 to discuss the upcoming Federal review of the bargained value. Yet she did not tell the Chief Appraiser that the FS bargaining team had already signed the agreement and was in the process of having the bargaining agreement signed by the proponent and third-party facilitator. She also failed to tell the FS Chief Appraiser that the FS bargaining team had already decided that there would be no Federal appraisal review of the new Deer Creek valuation. The FSWO was not notified of the signed bargaining agreement until March 15, 1996, after all of the required signatures had been obtained and the agreement finalized.

Members of the FS bargaining team told us that they did not think it was necessary to tell the FSWO that they had signed the bargaining agreement on March 13, 1996. They claimed that the regional OGC counsel and the Acting WO

Director of Lands had already been notified and had given them approval to proceed with the agreement during their meeting at the regional office on March 13. However, our audit found that the OGC counsel and the Acting WO Director of Lands had emphatically denied giving the FS bargaining team the approval to proceed with the bargaining and were unaware of the FS bargaining team's intention to sign the bargaining agreement that same day. Both the OGC counsel and the Acting WO Director of Lands left the regional office on March 13 under the impression that the FS team was **not** going to sign the bargaining agreement until they had provided additional evidence that the legal requirements provided by OGC had been met.

Final Deer Creek Appraisal Did Not Meet Federal Standards

We formally requested that the FS Chief Appraiser conduct a peer review of the $10.5-million Deer Creek valuation. He determined that it was indeed a new appraisal and not a review as represented by the private fee appraiser. He then reviewed the new appraisal and pronounced it unusable. He determined that the appraisal did not meet Federal appraisal standards and stated that the report's value should never have been relied upon in a Federal land exchange. The Chief Appraiser commented that the fee appraiser hired by the FS bargaining team appeared to have knowingly provided a report that did not comply with Federal appraisal standards. It was his professional opinion that the FS bargaining team had overvalued the Deer Creek land by at least $5 million.

OGC Confirms Bargaining Did Not Meet Legal Requirements

On August 25, 1997, we requested a legal opinion from OGC concerning the propriety of the bargaining agreement entered into by the FS bargaining team and the exchange proponents. We also requested their opinion on whether the FS bargaining team had complied with the legal criteria provided by OGC on March 13, 1996, to ensure that the bargaining process complied with Federal regulations.

OGC reviewed the facts surrounding the FS bargaining process that we presented and, in an opinion dated November 14, 1997, confirmed that the FS regional staff did not comply with the legal criteria OGC had presented to them on March 13, 1996. OGC counsel told us that the legal requirements of bargaining had been clearly explained and should not have been subject to interpretation. Even though the facts indicated that the FS bargaining team had agreed to a land exchange of unequal value, OGC counsel did not believe the Federal Government would be able to reclaim the lost property or receive a cash equalization payment from the proponents. They said that the FS had a management issue rather than a legal issue to address.

The FS bargaining team did not act prudently or in the Government's best interest when they signed the Deer Creek bargaining agreement. Although they were provided with ample guidance before and during the Deer Creek bargaining process, they chose to ignore it, without any reasonable justification for their actions. They did not comply with the FLEFA regulations identified by OGC, the FSWO bargaining guidelines,

or existing Forest Service Manual (FSM) and Forest Service Handbook (FSH) directives. They ignored valid concerns expressed by the FSWO and the BLM State Office and refused to have the bargained value reviewed by a Federal appraiser as required by regulations. The bargaining team then rushed to finalize the Deer Creek bargaining agreement without advising the FSWO of their intended actions. None of the bargaining team members could adequately explain why they had disregarded the guidelines and advice expressed by OGC and FS and BLM lands management.

As a result of the FS bargaining team's actions, the Deer Creek property was overvalued by $5.9 million and the Federal Government exchanged public resources which were more valuable than those they received in return. In addition, the improper exchange allowed the third-party facilitator to extinguish an $8.5 million debt to BLM and resulted in the Federal Government owing the third-party facilitator an additional $2 million for future Federal land exchanges. Finally, the excessive values derived in the Deer Creek exchange may be used by proponents and third-party facilitators to inflate values of similar properties in future Federal land exchange transactions with the FS and BLM.

RECOMMENDATION NO. 1a

Refer the improper actions of the FS employees involved in the Deer Creek bargaining agreement to the Human Resources Management Division for the appropriate action. (Hold personnel action pending completion of investigation and notification from OIG to proceed.) Ensure that these employees do not participate in future negotiations with proponents and third-party facilitators involving land exchanges including bargaining sessions. (See also Recommendation No. 12.)

FS Response

The FS concurs with the first part of the recommendation. Taking action on the first portion of the recommendation will be delayed until it is given the go-ahead from OIG and provided access to the complete investigatory information. Regarding ensuring that "these employees do not participate in future negotiations with proponents and third-party facilitators involving land exchanges including bargaining sessions," the FS understands that the intent of this recommendation was to preclude participation in all land exchanges whether or not bargaining was involved. Pending review of the complete investigatory file, the FS has taken steps to ensure that the employees involved in the Deer Creek bargaining agreement are not involved in further land exchange activities and have been detailed to other duties. If, after review of the complete information, it is determined that personnel actions are warranted, the FS will consider various options including disciplinary actions, reassignments, training, a period of increased oversight, and/or supplemented staff expertise.

Regarding the use of bargaining in land exchange, the FS has already taken action to ensure oversight on future use of bargaining in land exchanges. Interim Directive No. 5400-96-2 issued in 1996 in the FSM and reissued in Interim Directive No. 5400-98-1, provides for WO oversight relative to use of bargaining or arbitration in land exchanges prior to finalization of an exchange agreement, decision notice, or consummation of the exchange.

OIG Position

In order to reach management decision, the FS needs to provide the timeframe for completing the recommended action subject to clearance with OIG Investigations.

RECOMMENDATION NO. 1b

Permanently incorporate the Interim Directive on Bargaining into the FS Manual System. Provide additional direction in the FSM and FSH relating to the bargaining process by incorporating OGC's nine legal criteria and FSWO guidelines.

FS Response

The FS generally concurs. Interim Directive No. 5400-98-1 to FSM 5400 zero code, which addresses responsibility and approval for bargaining proceedings in land exchanges, expires on August 26, 1999. Prior to the expiration date, this direction will be permanently incorporated into the FSM.

On December 4, 1996, then Deputy Chief, National Forest System, Gray Reynolds issued a policy letter which provides interim guidelines and policy on the use of bargaining and arbitration. This policy letter is consistent with FSWO guidelines and OGC criteria, which were developed specifically for the Deer Creek transaction. The direction contained in the December 4, 1996, policy letter will remain in effect until incorporated into the FS Land Acquisition Handbook, which is scheduled for revision in fiscal years 1998 and 1999.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 1c

Require the region to submit, for WO Chief Appraiser review, any land exchanges involving conflicting appraisals of over $1 million or appraisals using methods other than comparable sales approach, or establish alternative controls to ensure that appraisals of large land transactions meet Federal appraisal standards.

FS Response

The FS does not concur with the first approach in this recommendation. Full review and approval authority in FSM 5410 has been delegated to only fully-qualified appraisers as defined in FSM 5410.6. As such, regional appraisers are certified and licensed to make such determinations in their professional capacity. The WO Chief Appraiser will continue to do oversight and compliance reviews, as required in FSM 5410.41b, to insure qualifications and competency of FS appraisers as well as compliance with standards of professional practice as prescribed in FSM 5410.3. These reviews will focus on both technical and managerial competencies associated with this function.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 1d

Instruct FS lands and appraisal staff not to rely on values of the Deer Creek exchange in future Federal land exchanges.

FS Response

Current FS appraisal instructions and Uniform Appraisal Standards do not allow use of agency transactions in determining indications of value for other properties. All evidence must be "arms length" market transactions from the private sector as reflected in UASFLA, Section A4. The FS appraisers working in Nevada are aware of this matter and the appraisal standard which prohibits the use of this transaction as market evidence in future agency appraisals.

OIG Position

We accept management decision on this recommendation.

FINDING NO. 2

GUIDELINES NEEDED IN DEALINGS WITH THIRD-PARTY FACILITATORS

Over 83 percent of all acreage acquired in land exchanges by the forest, valued at over $30 million, was negotiated with a single third-party facilitator during fiscal years 1993 to 1996. There are no guidelines on how third parties are selected to process land exchange transactions and how to evaluate the benefits of third-party-initiated land transactions. By dealing almost exclusively with a single third-party facilitator on land exchange transactions at the forest, the forest had no assurances that the Government’s interests were protected in the processing of land exchange transactions.

FSH 5409.13, Section 31.8, states that if possible, the FS should work directly with the landowner to negotiate for lands suitable for acquisition. Third-party facilitators should be

used when a direct exchange with the landowner is not possible. The guidelines do not cover how to select a third-party facilitator to negotiate with the landowner or how to evaluate the benefits of transactions initiated by third-party facilitators.

Our interviews with forest staff disclosed that individuals wishing to exchange lands directly with the forest were referred to a third-party facilitator contrary to the above guidelines. We also noted that this third-party facilitator frequently proposed land transactions to the forest before the lands had been identified as suitable to the forest. Forest and regional staff told us that lands proposed by this particular third-party facilitator were elevated in the priority listing to ensure that processing of the transactions was expedited. Our review of the actual land transactions at the forest showed that land exchange proposals by this third-party facilitator were elevated in the priority lists because the facilitator had obtained options on the private lands for exchanges. Six of the top seven exchanges on the priority list are with this facilitator (see Finding No. 8). We also noted that forest and regional staff improperly accommodated this third-party facilitator by spending staff time and effort in pursuing land transactions that had been previously determined to have no benefit to the FS (see Finding No. 6).

Our interview with the representative of the third-party facilitator also disclosed that the third-party facilitator would get direct contacts from forest staff wishing to acquire particular parcels of private land for the forest without contacting the landowners directly concerning their interest in an exchange.

Dealing with third-party facilitators provides advantages to the FS since third parties are usually knowledgeable of the process involved in Federal land exchanges and have the financial resources to weather the time-consuming process of completing land exchange transactions with the FS.

The extremely high demand for Federal lands owned by BLM in the Las Vegas Valley area has motivated third-party facilitators to aggressively exchange non-Federal lands in Nevada to the FS for Las Vegas lands managed by BLM. It is therefore important for the FS to maintain an impartial and businesslike relationship with facilitators involved in these exchanges. Developing specific guidelines on dealing with these facilitators and instructing FS lands staff about the guidelines is a key step in ensuring that land transactions are carried out in an impartial and consistent manner.

RECOMMENDATION NO. 2a

Develop guidelines on land transactions that limit the authority of FS staff dealing with third-party facilitators to key personnel with the expertise and training in FS policies and procedures on land acquisitions, and that ensure FS land staffs: 1) deal primarily with landowners directly for land exchange transactions, when appropriate; 2) document when

direct exchanges are not possible, and institute a referral process to ensure that all potentially interested third-party facilitators are contacted; and 3) accept or reject land transactions proposed by third-party facilitators according to the FS priority list of land exchanges, and document all decisions relating to these transactions in writing to the third-party facilitator.

FS Response

The FS concurs with the need for formal guidelines on the use of third-party facilitators in land transactions and has already taken action to respond to this recommendation. In a letter dated May 21, 1998, Under Secretary James Lyons directed the FS to immediately address this matter and clearly define the appropriate use of third-party facilitators. To accomplish this a taskforce has been formed that will, in the next 60 days (on or before October 1, 1998) develop draft guidelines which will define the procedures and appropriate roles of FS officials and third parties in land transaction. The FS will provide an opportunity for key third-party facilitators to review and comment on these guidelines as part of this effort. In addition, the FS will also hold joint workshops with FS land adjustment personnel and third-party facilitators to develop common understanding of use of these guidelines. When finalized, which is anticipated this calendar year, they will be incorporated into the FS directive system.

Currently, delegations for most activities associated with land purchases and exchanges, including dealing with third-party transactions (FSM 5404.14), are delegated to regional foresters, deputy regional foresters, or directors of lands. As a general rule, each regional office has experienced staff to provide technical support at this level. These responsibilities can only be delegated further by the regional forester to the forest supervisors if the forest has staff with sufficient skills, knowledge, and training to perform the required landownership adjustment duties. This level of delegation has been appropriate for many years, and the FS still believes it is applicable. However, with recent downsizing, as many highly-skilled and experienced individuals in the regions and at the forest level have retired, the FS recognizes the need to develop new lands specialists in most regions. To ensure that they have qualified people in the various lands jobs, the WO lands staff is developing competency standards which will identify the training and experience needed for all positions involved with FS lands program work. Completion is anticipated in calendar year 1999. These standards will be the basis for future delegations and position requirements.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 2b

Instruct all FS lands staff members on the developed guidelines.

FS Response

The FS concurs. Once the third-party transaction guidelines are finalized, in addition to the workshops noted above, they will be incorporated into lands training opportunities and in the FS directive system.

OIG Position

We accept management decision on this recommendation.

II. CONTROLS OVER THE APPRAISAL PROCESS WERE NOT ADEQUATE TO ENSURE THAT THE GOVERNMENT OBTAINED FAIR VALUE IN LAND EXCHANGES

Controls over the Federal appraisal process were not adequate to ensure that the Government was obtaining fair value on land exchange transactions with proponents and third-party facilitators. FS appraisers accepted appraisals of non-Federal land that were based on potential events and circumstances, such as local approval for development, whose probability of occurring as planned was highly speculative. As a result, we determined that on three appraisals, the FS accepted appraisal values that were potentially overstated by $8.9 million because the values were not based on credible evidence.

We also identified instances in which regional and lands staff compromised the integrity and independence of FS appraisers when dealing with proponents and third-party facilitators on land exchanges. The region placed the appraisers in a subordinate position to the lands staff, who openly criticized the appraisers in front of the proponents and facilitators. By compromising the integrity and independence of Federal appraisers, the FS weakened a primary control in ensuring that the Government was obtaining fair value on land exchange transactions with proponents and third-party facilitators.

FINDING NO. 3

VALUATIONS OF NON-FEDERAL LAND WERE NOT BASED ON CREDIBLE EVIDENCE

FS appraisers and lands staff accepted appraisals of non-Federal land used in land exchanges based on events and circumstances that were not supported by credible evidence. As a result, exchange proponents and third-party facilitators received excessive values for their land and the Government relinquished more Federal lands in Las Vegas than was necessary. Our review of three land exchange appraisals disclosed that the FS accepted appraisal values that were potentially overstated by $8.8 million. Appraisers reporting the higher values did not document the reasons for the difference or supply credible evidence in support of it.

UASFLAs were prepared to promote uniformity in the appraisal of real property acquired by the United States. Appraisers must comply with these standards when valuing lands involved in a Federal land exchange. UASFLA allows the landowner fair market value for his property but states that the value cannot be based on potential uses that are speculative and conjectural. The Supreme Court has said that if a land's value depends on conditions that are possible, but not shown to be reasonably probable, those elements should be excluded from consideration, for that would allow speculation and conjecture to become a guide for the determination of value.

The Spring Mountain National Recreation Area (SMNRA), a portion of which consists of a congressionally-designated wilderness, was established in August 1993. Since that time, Congress has targeted SMNRA as an area for Federal agencies to acquire and preserve. There is currently intense pressure to acquire "inholdings," or a private parcel surrounded by public land, and transfer them to public ownership. Nearly all of the private inholdings within the forest boundaries have been investigated for possible acquisition and/or exchange. The remaining privately owned parcels in SMNRA bring a premium price, due in part to BLM's policy that Federal lands in Las Vegas can only be acquired by developers in the form of a land exchange. One appraisal report concluded that "there is now too much money chasing too few properties."

The typical method of obtaining the rights to the private property without purchasing the property is through the use of options, where a proponent or a third-party facilitator enters into an agreement with the landowner to buy the property at a certain price within a specific period of time for a fee. If the proponent or third-party facilitator does not exercise the option to purchase by the expiration date, then the option expires and the rights to the property revert to the landowner. The only loss to the proponent or third-party facilitator is the option fee. By using options, real estate speculators can obtain the rights to millions of dollars in real estate with little capital and minimum risk should market prices decline.

Private landowners, exchange proponents, and third-party facilitators are strongly motivated to increase the appraised value of private lands because the higher the value, the more Federal lands in Las Vegas they can obtain in the exchange. We reviewed the land exchange transactions involving the exchange of non-Federal land in the Mt. Charleston area, located in the SMNRA, for Federal land in Las Vegas administered by BLM. We found that the following appraisals of non-Federal land were improperly based on speculative events and circumstances and not on credible evidence:

Cashman Exchange Appraisal

On June 14, 1993, a proponent optioned a 1,300-acre parcel of land in the Mt. Charleston area known as the Cashman property for $8.9 million. Fourteen days later, the same proponent approached BLM with an exchange proposal to give the Cashman property to the FS in exchange for 2,705 acres of BLM land in Las Vegas. On August 23, 1993, the proponent agreed to reduce the Federal Las Vegas acreage to 1,615 acres. On September 9, 1993, the FS wrote to the proponent stating that the exchange proposal was not feasible since there was a wide discrepancy between the values of the BLM Las Vegas properties and the values of the Cashman property. Two weeks later, a third-party facilitator representing the proponent warned the FS that if the Las Vegas exchange was not consummated, the proponent would sell the property to developers for a 650-unit residential subdivision, contrary to public interest and congressional intent on preserving the lands for public recreation. In early December 1993, the BLM Nevada State Director formally agreed to accommodate the proponent in proceeding with the Cashman exchange.

Questions soon arose over the fair market value of the Cashman property. On August 5, 1994, the FS appraisal determined the value of the Cashman property to be $4 million. The proponent hired his own appraiser, who issued a appraisal value of $9.7 million on August 24, 1994. On February 13, 1995, FS and BLM lands staff and the proponent agreed to jointly hire another appraiser to come up with a value acceptable to all parties. However, the proponent gave this appraiser specific instructions without the FS' knowledge or concurrence. The proponent directed the appraiser to make the following questionable assumptions about the Cashman property that were not supported by credible evidence and greatly increased the land's value.

- The new appraisal assumed that approvals were in place for a 650-lot Planned Unit Development; however, this assumption was highly speculative and not based on the evidence. The proponent had not requested approval from the county, which had already denied a similar proposed development on an adjacent private parcel due to concerns about firefighting access and water availability. Moreover, in spite of a zoning restriction of 1 dwelling per 2 acres, the proponent designed all 650 units to be clustered in a small portion of the total acreage because 75 percent of the Cashman property was considered too steep to be developed. Local residents strongly opposed this type of development in the area.

- The proposed Cashman development was to be located on a portion of the property where the existing slope of the land was far in excess of county requirements. Development of the units required changing the entire shape of the area being developed and resulted in massive cuts and fills. The proponent's engineering firm originally estimated that site development would involve moving 9.6 million cubic yards of earth at an estimated cost of $5 million. However, when the FS engineer reviewed the firm's development figures, he estimated the

cost at $23 million, making the project unfeasible. The engineering firm then claimed that the cubic yard requirements were incorrect, that only 1.3 million cubic yards of earthwork would be required to develop the subject property and that the cost of $5 million was accurate. This explanation was accepted and the $5-million cost was used in the appraisal report. FS staff did not obtain documentation from the engineering firm to support this 80-percent reduction in the development figures or analyze whether the project was feasible given the drastic change in the proposed development.

- The appraisal assumed that there was water available for 650 homes. However, the Cashman property had no legal water rights at the time of the appraisal and had not filed for water rights with the county. The appraiser did not calculate the cost of obtaining water or the effect that not having water would have on the sale of the 650 lots.

- The appraisal assumed that prospective buyers of the 650 lots would pay for the cost of individual septic systems. However, documentation from the State of Nevada, sent to the FS appraiser, stated that the Cashman site was unsuitable for individual sewage disposal systems. The only legal alternative was a community sewage system. The cost of installing an expensive sewage system was not part of the appraiser's analysis.

Using these and other assumptions, the appraiser concluded a fair market value of $8.5 million for the Cashman property on April 27, 1995. Coincidentally, several weeks earlier, BLM issued an appraisal dated April 3, 1995, which valued the Federal Las Vegas properties selected by the proponent for the Cashman exchange at exactly $8.5 million. The appraisers stated in their Cashman appraisal report that essentially the [Cashman] Mt. Charleston property is the "trading stock or currency" necessary to acquire developable lands adjacent to Las Vegas administered by BLM.

FS and BLM appraisers initially rejected the Cashman property appraisal as too speculative and not based on documented, credible evidence. They revalued the Cashman property using evidence they considered reasonably probable and concluded a reduced value of $6 million in September 1995. However, the proponent would not accept the lower value. The Federal appraisers deliberated over the risks associated with allowing the proponent to proceed with the development of the Cashman property and in November 1995 reversed their position and approved the $8.5 million value. By relying on the speculative assumptions instead of credible evidence, we determined that the Cashman exchange was overvalued by at least $2.5 million.

Deer Creek Exchange Appraisal (See Finding No. 1)

In August 1992 a realty corporation purchased a 524-acre property in the Mt. Charleston area, known as Deer Creek, for $2 million. The majority of the property's terrain was

steep and mountainous. The property was located within SMNRA, which is one of the areas targeted by the FS and BLM for land acquisition. The corporation began negotiations with a third-party facilitator who optioned the Deer Creek property for 95 percent of a fair market value appraisal. The corporation and the facilitator then approached the FS and proposed exchanging the Deer Creek land for BLM land in Las Vegas.

Six separate valuations were performed for the Deer Creek exchange, ranging from $4.6 million, determined by FS and BLM appraisers, to $12.5 million, concluded by the proponent's appraiser. The excessive range in values was due to the use of an appraisal method that is regarded as highly speculative and prone to error. Known as the "developmental method," this type of appraisal is allowed by UASFLA but is considered so subjective that UASFLA urges that in the absence of credible evidence, the method not be relied upon in any Federal land exchange transaction.

The sixth appraisal valued the Deer Creek land at $10.5 million and was used to finalize the land exchange. We reviewed this appraisal and noted assertions that were speculative and lacked credible evidence:

- The appraiser determined that the property's highest and best use was a 197-unit subdivision. Although the Deer Creek land was in extremely steep, mountainous terrain, the appraiser estimated the number of buildable lots by simply dividing the total acreage into 2-acre parcels. He did not include any site evaluation or engineering studies to support his claim. One of the previous appraisals had noted the steep terrain and the presence of avalanche chutes and estimated only 159 buildable lots. Figure 2 shows a picture of the Deer Creek property with avalanche chutes on the slopes of the property.

Figure 2

Another previous appraisal noted that selling 2-acre lots was completely unfeasible because the costs associated

with water, sewer, power, slope, and access to the lots would make the project too expensive.

- The appraiser assumed that the property had sufficient water for 197 homesites. The available evidence showed that the property had enough water for only 167 homes. Although the corporation had filed for additional water rights, the FS already owned the water rights and had filed protests with the State of Nevada. A State water engineer told us that he had seen many developers involved in Federal land exchanges apply for water permits so that they could claim their land was developable and would command higher appraisal values.

- The appraiser used urban view lots in other parts of Nevada to determine a value for the remote Deer Creek lots. The "comparable" urban lots used in the appraisal were served by year-round paved streets and full utility services, including electricity, water, sewer, and natural gas. Conversely, the Deer Creek lots had no access roads, no water, no power, no sewer, and could only be accessed part of the year due to heavy snow. The appraiser did not provide any evidence to justify why he used the urban lots as comparable sales to appraise the undeveloped Deer Creek lots.

FS lands staff, who were not qualified appraisers, did not question any of the assumptions made by the contracted appraiser and improperly approved the $10.5-million value without having it reviewed by Federal appraisers for compliance with appraisal standards. We asked the FS Chief Appraiser to review the appraisal, and he subsequently determined that the appraisal failed to meet UASFLA standards and should not have been relied upon in any Federal land exchange transaction. The unacceptable appraisal overstated the value of the Deer Creek land by $5.9 million.

Red Rock II Exchange Appraisal

This FS/BLM exchange included a 160-acre parcel in upper Lovell Canyon within SMNRA. The property, known as the Becker property, had no water rights, no access, and minimal development potential. The property had been initially purchased for potential development in February 1987 for $185,000, or $1,156 per acre. Due to the physical conditions of the property, it was not developed as planned. In March 1994, the property was purchased at a price of $10,000 per acre by a third-party facilitator for the primary purpose of exchanging the property for Federal land in Las Vegas.

The parcel was appraised by the FS in June 1994. The appraiser determined the property’s highest and best use was as a speculative investment. He noted that there was no legal access to the property and that the water right applications had been previously denied by the State engineer. The appraiser did not discuss the financial consequences of buying a landlocked parcel or show evidence how a prospective buyer could get legal access to the property. He also did not discuss the status of the denied water applications or the amount of water that was

potentially available to the property, nor did he project any costs for obtaining water for future development. The FS appraiser concluded a value of $2 million, or $12,500 per acre. To obtain this value, the appraiser used a "comparable" property that had superior access with a paved road to its boundary, a developed water system, utilities located on site, and an installed microwave telephone system. The appraiser deducted only 9 percent from the comparable's value of $13,750 per acre since the subject property had no access, no water, no utilities, and no telephone lines.

The FS appraisal showed a $400,000 increase over the purchase price paid by the third-party facilitator just 3 months earlier and a 981-percent increase over the property's original value, even though the parcel had not been improved since its original purchase 6 years earlier.

Federal appraisal standards state that prior sales of the same property, reasonably recent and not forced, are extremely probative evidence of market value and that the prior sale of the land under appraisement could very well be the most "comparable" of all the comparable sales. Even though the property had recently been purchased for $1.6 million, the FS appraiser did not include that sale in his analysis or his reconciliation and final value estimate. Instead, he used a comparable sale he described as "significantly superior" to the property being appraised to justify his $2-million value. We determined that the FS appraiser potentially overstated the Becker property value by at least $400,000 because he did not use the most comparable sale and did not provide any justification for increasing the property's appraised value 25 percent over the recent purchase price of $1.6 million.

The availability of Federal lands in Las Vegas has created an unprecedented demand for non-Federal exchange properties, resulting in exorbitantly high appraisal values. It is important that FS lands staff and Federal appraisers be especially vigilant and ensure that the values assigned to non-Federal properties are based on actual and credible evidence. Appraisers should rely solely on the physical and legal conditions of the property at the time of the appraisal rather than on speculative and conjectural uses proposed by proponents and third-party facilitators. Appraisal assumptions must be based solely on credible evidence and, if used, must be shown to be reasonably probable.

RECOMMENDATION NO. 3a

Ensure that conceptual developments include data that accurately supports the costs and feasibility of the project. This data should be prepared by various experts in their fields, such as engineers and geologists. Detailed information, supporting all of the proposed costs, should be included in the appraisal or in a supplemental report. Any changes in the proposed development, such as the amount of anticipated road work, septic designs, water sources, etc.,

must also be fully supported. If disputes arise over the feasibility of a project, an objective outside expert should be consulted.

FS Response

The FS concurs. Undocumented development proposals take the form of speculative evidence and fail to conform with the requirements of UASFLA, Section A9. All appraisals prepared and/or submitted for agency use must conform to the requirements reflected in UASFLA. Periodic compliance and oversight reviews of regional appraisal activity by the FS Chief Appraiser shall focus on this type of unsupported supposition. At the annual review of FS appraisal policy, practices, and procedures, we will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in Recommendation No. 3a above.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 3b

Ensure that presumed zoning changes are supported by 1) evidence that the landowner has filed the appropriate applications; 2) documentation from the approving State or county agency supporting the proposed change; and 3) an analysis of the local environment, including resident attitudes, recent zoning changes, etc., to support the appraiser's assumption that the change is reasonably probable, not just possible.

FS Response

The FS concurs. Undocumented reflections of potential zone changes are unacceptable as they are speculative and conjectural in character, and fail to meet the requirements as defined in UASFLA, Section A9. Periodic compliance and oversight reviews of regional appraisal activity by the FS Chief Appraiser shall focus on the potential for type of unsupported supposition. If repeated deficiencies are noted, the delegated appraisal approval authority can be rescinded. That would result in WO approval requirements for all appraisals prepared in the region. As part of the annual review of FS appraisal policy, practices, and procedures, the FS will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in Recommendation No. 3b above.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 3c

Ensure that appraisal claims about water rights, access, septic designs, etc., are supported by documentation from the approving State or county agency. Special attention should be given to the status of water applications and whether they have been protested. If no documentation is available, the assertions should be considered speculative and excluded from consideration.

FS Response

The FS concurs. Undocumented assertions concerning water rights, access, septic designs, etc., are unacceptable as they are speculative and conjectural in character, and fail to meet the requirements as defined in UASFLA, Section A9 and, further, fail to properly support the requirements associated with a properly documented highest and best use analysis as reflected in UASFLA, Section A3. Periodic compliance and oversight reviews of regional appraisal activity by the FS Chief Appraiser shall focus on the potential for this type of unsupported supposition. At the annual review of FS appraisal policy, practices, and procedures, the FS will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in Recommendation No. 3c above.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 3d

Require that all appraisals and valuations of non-Federal land be reviewed and evaluated by qualified FS review appraisers.

FS Response

The FS generally concurs. All appraisals prepared for FS lands activities are required by law and regulation to be reviewed by a qualified agency review appraiser as prerequisite to their acceptance for agency use. The only situation where this standard does not apply is if the land in question consist of small parcels, low-value properties, where the cost of appraisal and review approaches or exceeds the value of the property under consideration. This exception may only be applied where the case is non-controversial and simple in character. Periodic compliance and oversight reviews of regional appraisal activity by the FS Chief Appraiser shall focus on this compliance, and program managers will be held accountable if this situation is found to occur.

OIG Position

We accept management decision on this recommendation.

FINDING NO. 4

INTEGRITY AND INDEPENDENCE OF FEDERAL APPRAISERS COMPROMISED IN LAND TRANSACTIONS

Our audit found several conditions which undermined the integrity and independence of the Federal appraisal process. FS regional lands staff allowed exchange proponents to repeatedly challenge Federal appraisals until they obtained the values they desired for their properties. In some cases, FS appraisers did not approve their own appraisals because they knew their appraisals would be rejected by the proponent. Finally, FS regional management reorganized their appraisers to have them report directly to the regional realty officer, even though she had no training in or knowledge of Federal appraisal standards and was primarily motivated to complete land exchanges with proponents and third-party facilitators. Undermining the independence and integrity of appraisers weakens the only control to ensure that the Government obtains fair value in land exchange transactions with proponents and third-party facilitators.

FSH 5409.12, effective August 3, 1992, states that the FS appraisal review is designed to protect the appraiser, the line officer, and the public by providing an independent, technical analysis of the adequacy of the value conclusions. The appraisal review system is designed to approve reasonable and accurate value estimates supported by facts and analyses for use in land exchanges and acquisitions. The appraisal review maintains the desired quality of appraisal reports by ensuring that the appraisal process follows recognized appraisal practices and standards and complies with Federal law, Departmental regulations, and FS directives.

As the real property valuation expert for all FS administrative levels, the review appraiser provides technical leadership in the interpretation of applicable law and policy and in the sound and consistent application of appraisal concepts, principles, procedures, and techniques. The review appraiser must provide an independent, unbiased, professional opinion of the technical adequacy of the appraisal report and the value estimate. Title 36 CFR 254.9(d) states that the authority to review appraisals is specifically delegated by the Secretary to the Chief Appraiser, instead of to the authorized officer, to maintain the independence of the valuation process from the exchange negotiation process.

During our review we found several conditions that have undermined the integrity and independence of the appraisal process in the region. Forest and regional management allowed exchange proponents and third-party facilitators to repeatedly challenge the accuracy of Federally-approved appraisals. In some cases FS appraisers did not approve their own appraisals because they knew the proponents and third-party facilitators would not approve their appraised values. In addition, regional and forest lands staff did not support their appraisers when the appraisers approved values that were lower than the values estimated by the proponent and the third-party

facilitator. They openly questioned the objectivity and competence of their appraisers in front of the proponent and third-party facilitators. Finally regional management reorganized their appraisers under the direct control of the regional realty officer to ensure that their work would not hinder the processing of land exchange transactions with proponents and third-party facilitators.

Appraiser Reorganization Reduced Independence

When the deputy regional forester began working at the regional office he noticed problems between FS appraisers and the lands staff. In two high-profile land exchanges, FS appraisers and exchange proponents could not agree on values for the non-Federal land. Regional lands staff thought FS appraisers were biased against exchange proponents and uncooperative in land exchanges. In consultation with the FSWO, the deputy regional forester asked a former regional director of lands, since retired, to do an informal, undocumented review of the two exchange cases to determine the source of the impasse.

The retired employee interviewed the exchange proponents and FS staff, then verbally presented the results of his review to the deputy regional forester and regional lands staff. He noted that while lands staff were obliged to meet land acquisition targets, FS appraisers were not. He told lands staff that the appraisers "worked for them" and suggested reorganizing the appraisers so that they were directly supervised and evaluated by lands staff, rather than the regional appraiser. He thought this change would put more pressure on FS appraisers to approve exchange values in a timely manner. The deputy regional forester proceeded with the reorganization even though the regional realty officer, who supervised and evaluated the appraisers, did not have the qualifications, training, and experience in Federal appraisals.

This reorganization created an impediment to the appraisers' independence and objectivity because the quality of their work was evaluated by lands staff unfamiliar with appraisal work and motivated by land acquisition targets. Regional lands management told us that they had not considered the reorganization's effect on the appraiser's autonomy. They maintained that the reorganization occurred because the regional appraiser was arrogant and a barrier to completing land exchanges.

During our audit, regional management reversed the questionable reorganization. Currently, FS appraisers are supervised and evaluated by the regional appraiser who reports to the regional director of lands.

FS Lands Staff Allowed Proponents to Repeatedly Challenge Federal Appraisals

FS management allowed exchange proponents to repeatedly challenge the Federal appraisal process. For example, in the Deer Creek exchange, the FS and BLM appraisers had performed four separate appraisals of the same property in about a year, all of which were rejected by the proponent as follows:

CHRONOLOGY OF DEER CREEK APPRAISALS

Date	Valuation	Event
August 1992	$ 2 million	Proponent purchases land.
August 1994	$12.5 million	Proponent values land to exchange to FS. FS appraisers reject appraisal as too speculative.
October 1994	$ 4.7 million	FS contracted appraisal value. Rejected by proponent.
June 1995	$ 7.4 million	BLM contracted appraisal value. Rejected by proponent.
September 1995	$ 6.7 million	FS/BLM appraisal value. Rejected by proponent.
November 1995	$ 4.6 million	FS/BLM appraisal value after county planning commission denied proponent's residential development plans for the land. Previous appraisals had valued the land based on the potential development of the property. Rejected by proponent.
March 1996	$10.5 million	FS improperly bargains with proponent based on value determined by appraiser recommended by proponent.

In the Cashman exchange, there were five different valuations done of the same property over the course of a year due to disagreements by the proponent over the valuations. The final value was accepted by the FS and BLM after the proponent threatened to develop the property if the exchange was not consummated:

CHRONOLOGY OF CASHMAN APPRAISALS

Date	Valuation	Event
August 1994	$9.8 million	Proponent appraised optioned property to be exchanged to the FS for Federal Las Vegas properties. FS rejected appraisal as speculative.
August 1994	$4 million	FS appraisal of property. Rejected by proponent.
April 1995	$8.5 million	Contracted appraisal performed by appraiser instructed by proponent. Value exactly equalled the appraised value of Federal Las Vegas properties desired by the proponent. FS and BLM appraisers reject appraisal as speculative.
September 1995	$6 million	FS and BLM appraisal value of property. Rejected by proponent.
November 1995	$8.5 million	FS and BLM appraised value after proponent threatened to develop the property if the exchange was not consummated.

Continuing to reappraise properties due to objections by proponents and third-party facilitators creates the appearance that Federal appraisers and their appraisals can be manipulated by proponents and third-party facilitators.

FS Lands Staff Questioned Professionalism of FS Appraisers

Regional and forest lands staff openly questioned the professionalism of Federal appraisers when they would not approve the values desired by proponents and third-party facilitators. In one exchange, a proponent instructed his appraiser to use speculative assumptions in order to increase the appraised value of his non-Federal land. The FS review appraiser properly concluded that the valuation was too speculative and would not approve the high value. The forest supervisor, who had no appraisal background or training, described the appraiser's concerns as "embarrassing" and said the appraiser did not understand complicated real estate valuations. Under time pressure from the regional director of lands, the review appraiser eventually approved the value.

In another exchange, the proponents claimed that four separate Federal appraisals had all undervalued their properties. They told regional lands staff that the Federal appraisers had ignored or misinterpreted critical market information. The appraisers, in question, included the FS regional appraiser and two chief appraisers from BLM. Each of these individuals was a senior Federal appraiser with unlimited approval authority. The regional director of lands, who had no appraisal experience and only a limited knowledge of the properties being appraised, agreed that the proponents' complaints were valid. He characterized the Federal appraisers as "roadblocks in the

way" and "people kicking over every stone." He told the proponents that regional management had done an internal review and put things in order (referring to the reorganization of appraisers). The same person was appointed by regional management as senior member of the FS bargaining team and "bargained" a value with the proponents and third-party facilitator that exceeded the Federally-approved values by $5.9 million (See Finding No. 1).

By openly criticizing the work of their own appraisers, regional and forest land staff has raised significant doubts about the integrity of their Federal appraisers with proponents and third-party facilitators.

Appraisals Unacceptable to Proponents Were Not Approved

We noted two cases in which appraisals acceptable to the FS and meeting Federal appraisal standards were not approved by FS appraisers because the values did not meet proponent expectations. In the first case, a FS appraiser completed a full appraisal of non-Federal property being offered by an exchange proponent. The work was reviewed by the regional appraiser and determined to be acceptable. However, the FS appraisers decided not to sign the appraisal. If the appraisal had been signed and approved, it would have established the agency-approved value at $4 million, which was less than half the price desired by the proponent. In order to avoid a controversy over the non-Federal land's value, the FS appraisers decided to leave the FS appraisal unsigned and unapproved and let a fee appraiser value the land.

In the second case, a fee appraiser hired by the FS completed an appraisal of non-Federal land identified for exchange. This appraisal was reviewed by a qualified FS appraiser who determined that it met Federal appraisal standards and recommended it's approval for agency use. However, the final approval was withheld at the request of the third-party facilitator. The facilitator thought the appraised value was too low and had specific questions she wanted the appraiser to answer before the FS approved the value. FS appraisers complied with this request and did not formally approve the appraisal. Even though the fee appraiser subsequently addressed all of the facilitator's questions, the appraisal was never approved. The WO Chief Appraiser told us that the regional appraiser committed a procedural error by not formally accepting the appraised value. As a result, the FS did not have a value approved for agency use and the facilitator was allowed to pursue other valuations of the non-Federal land.

The conditions noted above seriously compromised the effectiveness of the Federal appraisal function in the region. The independence and objectivity of FS appraisers is essential in establishing values that are fair to both the landowner whose property is being acquired and to the public who pays for it. Without an effective appraisal function, the integrity of the entire land exchange program is compromised, and the interests of the public are not protected.

RECOMMENDATION NO. 4a

Discontinue the practice of conducting another Federal appraisal if the proponent or third-party facilitator objects to the Federal appraisal on hand. If another appraisal is warranted, it should be at the expense of the proponent and/or third-party facilitator but under the direction of a Federal appraiser, and the final appraisal should be reviewed for adherence to Federal appraisal standards.

FS Response

The FS concurs. There may only be one agency-approved appraisal on any given property at any time. Any proponent may submit an appraisal prepared at their own expense for consideration on any pending agency action to which they are a participant. All such submissions must be reviewed by a qualified agency review appraiser for compliance with UASFLA. If the submission by the proponent meets UASFLA standards, it is considered in context with any existing current appraisal that has been approved for agency use. "Appraisal shopping" is inappropriate. At the annual review of FS appraisal policy, practices, and procedures, the FS will review current policy and direction and incorporate appropriate policy and procedures to address this situation.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 4b

Elevate any allegations relating to the competence of FS appraisers to the WO Chief Appraiser, who can review the proponents allegations and determine whether valid concerns relating to the appraiser exist.

FS Response

The FS generally concurs. A formal process is in place for such reviews and is reflected in FSH 5409.12, 7.35 and 7.4. Annually, all FS appraisers' credentials and production are reviewed as a portion of the ongoing quality control and annual re-delegation of appraisal/review authority carried out by the regional appraiser (FSM 5410.6). Further, periodic reviews of regional appraisal activity carried out by the FS Chief Appraiser already focuses on this issue. FSM 5410.42c requires the regional appraiser to manage the appraisal function within the region and to notify the Chief Appraiser of any valuation problem that might attract congressional or media attention.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 4c

Ensure that the technical performance of the regional appraiser is prepared by the WO Chief Appraiser and is given greater consideration in the evaluation prepared by the regional director of lands.

FS Response

The FS concurs with this recommendation. The delegation of appraisal responsibility to the regional appraiser is a name delegation from the Chief Appraiser to a well-qualified named incumbent. Periodic compliance reviews by the Chief Appraiser provides oversight as to the function and performance of the regional appraiser and regional appraisal capability. If repeated deficiencies are found, the delegated appraisal approval authority can be rescinded. The Chief Appraiser currently provides input on the performance of regional appraisers to the regional director of lands through compliance reviews. Continued use of the periodic compliance reviews with emphasis on regulatory and statutory requirements will provide ample oversight.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 4d

Approve each appraisal as soon as it is determined that the appraisal meets Federal appraisal standards.

FS Response

The FS concurs. A timely and prompt closure on all appraisals submitted for agency consideration is a requirement of good professional practice. Currently, there is no specified timeframe, as each appraisal is considered on its own merit. Due to the maximum age-life of one year from the date of value, prompt closure of the appraisal process is essential to timely closure of the case. At the annual review of FS appraisal policy, practices, and procedures, the FS will review current policy and direction and incorporate appropriate policy and procedures to properly address the situation.

OIG Position

We accept management decision on this recommendation.

III. PROCESSING OF LAND TRANSACTIONS DID NOT COMPLY WITH REGULATIONS AND COULD RESULT IN POTENTIAL LOSSES

FS regional and forest lands staff processed land transactions with third-party facilitators that did not comply with regulations and could have exposed the FS to potential losses. In one instance, the forest entered into an improper agreement with a third-party facilitator which gave the facilitator exclusive marketing rights to over 850 acres of forest lands valued at over $6.5 million, without requiring the facilitator to identify non-Federal lands to give to the forest in exchange. The same transaction allowed the third-party facilitator to incur costs on the forest lands. The potential liability for these costs could have reached $1.9 million.

In another case the forest supervisor improperly signed a legal document which allowed a facilitator to transfer a parcel of land to the FS without its knowledge and consent. This resulted in the FS having title to the land for nearly 2 years without realizing that the FS was liable for any injuries or claims against the land.

Finally, we found that water rights on a non-Federal property purchased by the FS in a land exchange were not adequately accounted for and protected by FS lands staff. Our review of the completed exchange disclosed that the FS could potentially lose over $2 million in surface and ground water rights unless immediate action is taken to secure the rights.

FINDING NO. 5

IMPROPER LAND AGREEMENT WITH THIRD-PARTY FACILITATOR COULD RESULT IN POTENTIAL LOSS

Forest lands staff entered into an invalid statement of intent with a third-party facilitator to exchange specific FS lands, known as Mt. Rose, for unspecified private land. The statement also gave the appearance of a pooling agreement, which is not allowed under FS regulations. The forest initiated the improper exchange agreement because the forest wanted to dispose of the Mt. Rose lands but did not have the funding necessary to clear the archeological sites on the land. The forest originated a plan to have the third-party facilitator clear the archeological sites from Mt. Rose and, in return, the forest would exchange the lands to the third-party facilitator. Essentially the forest abrogated its responsibility for management of forest lands to the third-party facilitator. This exposed the Government to potential liability for the cost of clearing the archeological sites. It also gave the third-party facilitator the exclusive marketing rights to valuable forest lands with archeological sites valued at about $ 6.5 million without having to identify non-Federal land of equal value for exchange. The forest was in the position of having to take whatever non-Federal lands the third-party facilitator offered later in the exchange process, regardless of their resource value.

The forest had identified the Mt. Rose lands for disposal because they were isolated parcels surrounded by private lands and developed subdivisions. However, these parcels were found to contain archeological sites and the forest could not dispose of them without first clearing artifacts from the sites. The forest began working on the archeological sites but soon realized that it did not have the funding necessary to clear them. The forest contacted a third-party facilitator and asked it to clear the archeological sites at the third party's expense.

FS regional lands staff were aware of the arrangement and endorsed it. The regional staff wanted an official agreement and instructed the forest to sign a statement of intent with the third-party facilitator. The agreement, signed on July 14, 1993, called for the forest to give about 850 acres of Mt. Rose forest lands to the third-party facilitator in exchange for unspecified private lands.

We determined that the statement of intent was invalid because the third party had not secured any non-Federal lands to exchange to the FS. FSH 5409.13 states that the third party does not sign the letter of intent until the non-Federal land is secured for conveyance. This provision had clearly not been met because the private lands to be conveyed to the FS in this exchange had not been identified by the third-party facilitator 3 years after the agreement had been signed. In addition, the statement of intent was signed by a forest employee who did not have the delegated authority to sign the agreement. The FS forest supervisor was not aware that the employee did not have the delegated authority to sign the agreement.

In addition to being invalid, the statement of intent gave the appearance of being a pooling agreement, which is not allowed under FS regulations. An OGC attorney agreed that this agreement had the appearance of being close to a pooling agreement. Pooling agreements allow title to Federal lands to be transferred to a third-party facilitator without receiving non-Federal lands of equal value in exchange. The third-party facilitator can then sell the Federal land and use the proceeds to acquire non-Federal lands for transfer to the Federal Government at a later date. Such an agreement exposes the Federal Government to a loss if the third party does not perform under the agreement. At the time of our audit, title to the Mt. Rose lands had not been transferred to the third-party facilitator; however, the third-party facilitator had asked the forest to allow it to pre-sell some of the parcels in order to offset costs incurred in the process of clearing the archeological sites.

Our audit also found the following conditions related to the Mt. Rose land exchange transaction:

- Assembling the numerous FS-owned Mt. Rose parcels into one transaction reduced the land's total value because it allows a discount. An appraisal paid for by the third-party facilitator, without the knowledge and consent of the FS, showed the value of the FS lands at approximately $6.5 million when appraised as separate parcels. However, by assembling these parcels as one transaction, the value was discounted to $3.2 million. The appraisal had not been

reviewed or approved by FS appraisers and therefore is not official. However, it does give an indication of the reduced value, called a "bulk discount" ($3.3 million), that could occur if Mt. Rose lands are grouped as one transaction. It is clearly in the best interest of the Government to repackage these lands to maximize their value.

- The Mt. Rose statement of intent gives the third-party facilitator the privilege of dealing with private parties concerning the FS-owned lands, even though the facilitator had not provided due consideration to the FS. The lands in question are located in a highly desirable area, on or near developed housing subdivisions and a proposed country club. Our review of the files disclosed numerous inquiries from private individuals and developers who had expressed interest in owning the lands. Because of the statement of intent, the FS had been referring all inquiries about the FS-owned lands to the third-party facilitator.

  In the only completed exchange of Mt. Rose land, a real estate developer wanted a 20-acre easement on FS-owned land and was told by FS staff to deal with the third-party facilitator before any formal exchange could be processed. The third-party facilitator then coordinated the exchange between the developer, Washoe County, and the FS. Our review of the closing documents for the transaction showed the developer paid $2,805 to cover closing costs plus an additional $42,000 to the facilitator for undisclosed reasons.

- The forest allowed the third-party facilitator to incur expenses on FS-owned lands without restrictions, putting the FS at potential risk for a claim of unspecified future liabilities to the third party. To date, the third party has claimed expenses between $100,000 and $200,000 for an archeological report, yet has not provided the FS with an accounting of the actual expenditures or documents to support the claimed costs. The total cost of clearing the archeological resources on the Mt. Rose lands has been estimated by the facilitator at $1,552,419.

The statement of intent clearly allows either the third-party facilitator or the FS to withdraw from the agreement at any time before a formal exchange agreement is completed. It states, "It is understood that prior to the exchange agreement, or issuance of a patent or deed by the United States, no action shall create or establish a contractual or other obligation against [the third party] or the United States. Either [the third-party facilitator] or the FS may withdraw from the exchange at any time prior to the agreement or conveyance from the United States."

To ensure that the Government maximizes the value of the Mt. Rose lands and minimizes future liabilities to the third-party facilitator, the FS must immediately withdraw from the Mt. Rose statement of intent. Due to the high marketability of these FS-owned lands, the FS should repackage the Federal land to maximize its value and consider marketing the property through a competitive land exchange. By competitively exchanging individual parcels, the FS should be able to obtain the best value for these lands. This would also mean that to

complete the exchange the private party must come up with land of equivalently higher value to the FS to complete the exchange. Finally, the FS should advise the third-party facilitator to terminate any further work on FS-owned lands and request an OGC opinion on the FS liability to the third party for any work that has been completed so far.

This finding was referred to the Chief of the FS on April 17, 1997. The FS response was submitted to OIG in a letter dated April 25, 1997. Following are the recommendations made to the FS and their response.

RECOMMENDATION NO. 5a

Withdraw from the Mt. Rose Statement of Intent. Ensure that future agreements with third parties provide for mutual identification of lands that are proposed to be exchanged and a reasonable timeframe for completing the exchange.

FS Response

The FS has taken appropriate action on this matter. By a letter dated April 15, 1997, the regional forester directed the Humboldt and Toiyabe Forest Supervisor to withdraw from both the Mt. Rose and Hunter land exchanges due primarily to deficiencies noted in the statements of intent. On April 17, 1997, a certified letter was sent by the forest supervisor to the third-party facilitator, advising it that the FS was withdrawing from these two land exchange proposals.

Additionally, the regional forester suspended all delegations in lands and landownership adjustment cases of the Humboldt and Toiyabe Forest Supervisor. The regional forester agreed that any subsequent Agreement to Initiate involving the Humboldt and Toiyabe National Forest would comply with 36 CFR Part 254.4, and identify a reasonable timeframe for completing the proposed exchange.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 5b

Repackage the Federal lands in the Mt. Rose exchange to maximize their value and consider conducting competitive land exchanges for these lands.

FS Response

As noted in Recommendation No. 5a, the FS has withdrawn from the Mt. Rose exchange. Prior to entering into any subsequent exchange proposal involving these lands, the regional forester will review various assembled packages and consider the possibility of offering all or a portion of these lands under a competitive proposal.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 5c

Advise the third-party facilitator to cease any further work on FS-owned lands in the Mt. Rose exchange and obtain legal advice from OGC on liabilities that may arise from expenses already incurred by the third party.

FS Response

The FS has already taken the recommended action on this matter. The Humboldt and Toiyabe Forest Supervisor's April 17, 1997, letter advised the third-party facilitator that as a result of the withdrawal, the third-party facilitator was not to take any further action that would involve the Federal properties.

In addition, the regional forester has requested an opinion from OGC as to potential FS liability for any expenses already incurred by the third party on the Mt. Rose exchange case.

An opinion was obtained from OGC which determined that the FS was not liable for the expenses incurred by the third party.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 5d

Minimize future liabilities and maintain adequate controls over land exchange activities to ensure that any future agreement to initiate an exchange clearly documents the responsibilities and cost to be incurred for each party in the exchange.

FS Response

All land adjustment activities on the Humboldt-Toiyabe National Forest are being handled by the Ogden Regional Office. This authority will not be re-delegated to the forest until they have a qualified individual on staff to manage the lands program. The region will be filling this position in the near future. Until this occurs, the regional forester

will ensure that any subsequent Agreement to Initiate on the Humboldt-Toiyabe will comply with 36 CFR 254.4 and contain an assignment of responsibility for the performance of required functions and costs associated with processing the exchange.

OIG Position

We accept management decision on this recommendation

FINDING NO. 6

LAND DONATION DID NOT COMPLY WITH FS REGULATIONS

The forest supervisor improperly signed the warranty deed on a third-party facilitator's donation of land, called the Durkee Donation, without the delegated authority to do so, and without informing FS regional and lands personnel. By signing the exclusive jurisdiction clause on the warranty deed, the title company then recorded the transfer of title at the Washoe County Courthouse. This occurred because the third-party facilitator had a deadline for making the donation, and the forest supervisor believed he had the authority to sign the documents. As a result, title to the Durkee land had been transferred to the FS without the knowledge and consent of the appropriate FS lands staff and without the required review and approval procedures. Although the property, valued at $375,000, was conveyed to the FS in December 1995, the regional and forest lands staffs were unaware of the transfer until we discovered the conveyance during our audit fieldwork in December 1997. As a result of the donation, the FS is liable for additional administrative costs for accessing and maintaining the property and ensuring that all title encumbrances to the property are cleared. In addition, it is liable for any injuries and claims on the lands.

When the Durkee Donation documentation was originally submitted to the regional office, the regional lands staff questioned the forest to determine if they really wanted the land. The regional lands staff told the forest supervisor they might never be able to clear up all the unacceptable restrictions and easements to the land title in order to make it acceptable for the FS. There were also concerns about the property's limited access and its impact on increasing FS land boundaries and management costs. The district ranger thought that the FS should accept the donation because he had promised the facilitator that the FS would accept it. Even though the regional office told the forest not to accept the land, the district ranger said that the FS should take it. The forest supervisor agreed with the district ranger and instructed the forest lands staff to accept the donation.

We determined that the forest supervisor signed the warranty deed on January 1996, which the title company used to record the title transfer to the U.S. Government for approximately 32 acres of private land adjoining a private subdivision near Reno, Nevada. The Durkee land was conveyed by a third-party facilitator as part of its agreement with the original landowner. The facilitator signed an agreement with the landowner to convey the property to the U.S. Government for a commission of $5,000. The facilitator had to consummate the donation by December 1995, because the landowner, which was a

development corporation, was terminating operations and dissolving the corporation at the end of 1995. The FS supervisor signed the warranty deed to the property even though the property had not been inspected and the title documents had not been reviewed by FS lands staff and OGC for legal acceptability. In fact, both regional and forest staff were completely unaware of the title conveyance until our audit discovered the transaction while reviewing the third-party facilitator's 1996 report of land transactions with the State of California Attorney General.

We immediately questioned regional office management concerning the propriety of the donation since they had not approved the donation and had previously questioned the benefits of the donation. From our review of the maps and documents relating to the donation, we believe the donation may increase administrative costs and potential risks and liabilities as follows:

- The property would increase FS boundaries resulting in additional costs to mark and maintain the enlarged boundaries. One side of property directly borders a private housing subdivision and the other side fronts other developed properties. An industrial park is located nearby. The picture in Figure 3 shows the steep slope of the Durkee property adjacent to houses in the Juniper Ridge subdivision.

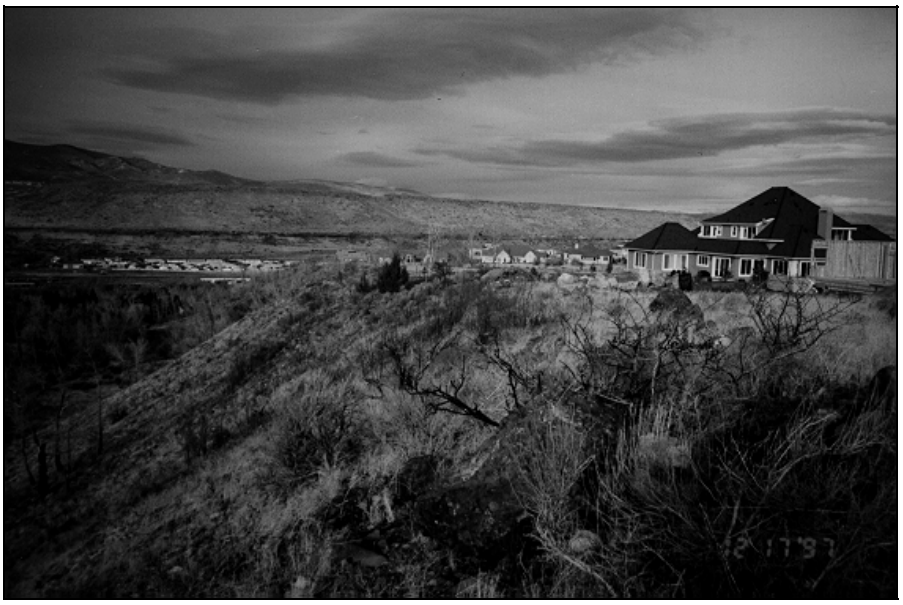

Figure 3

- Access to the property is severely limited. The only access to the property is an easement 15 feet wide and about 590 feet long on private property owned by the Juniper Ridge Homeowners Association. Over 40 feet of this easement trespasses another easement called the Last Chance Ditch. It is unclear if the owner of the Last Chance Ditch easement was consulted, but the grant of easement specifies that the grantee of the easement must not, in any manner, block, interfere, damage, or affect the Last Chance Ditch easement. There is also no documentation that the access easement has been recorded with the county. Because there is no record of a grant, and because the original landowner, a development company, was dissolved in 1995, the right to use the easement rests with the Juniper Ridge Homeowners Association.

- The easement is steep in some locations and is described as undeveloped and unimproved. It may be difficult to improve the easement with trails or footpaths. The grant of easement limits access to pedestrian traffic only, specifically excluding motorized vehicles of every type or description.

- The grant of easement states that the grantee of the easement (potentially the FS) would be responsible to repair and maintain the easement in a proper, substantial, and workmanlike manner at the grantee's sole cost and expense. It also requires the grantee to assume responsibility for personal injury and property damage which may arise from the use, improvement, maintenance, or repair of the easement on private property.

- There are protective covenants of the Juniper Ridge Homeowners Association which would restrict the use of the land donated to the FS. In addition there are easements

and rights-of-way that further restrict the use of the property. FSM 5404.14 states that a donation subject to outstanding rights or reservations that could preclude public use of the land for a period of time must be sent to the WO Director of Lands for review and concurrence. These items must be resolved for the FS to manage the lands efficiently.

The FS determined that the subject property did not benefit the National Forest System. On December 16, 1997, the regional forester signed a document which disclaims all rights, title, or interest to the land described in the warranty deed from the third-party facilitator. Despite the regional office's rejection of the land donation, the third-party facilitator has continued efforts to convey the property to the FS, claiming that the donation provides needed recreation and fire access to forest lands and contains archaeological and historical sites. We found no documentation to substantiate the facilitator's claims of archeological or historical significance. Given the severely limited access to the property, we are also questioning the facilitator's claims of recreation and firefighting accessibility. We determined that there are two parcels providing better access which have been proposed for exchange.

The third-party facilitator convened a meeting on January 28, 1998, at the regional office involving FS regional and forest lands staff to discuss the Durkee donation. As a result of this meeting, the FS lands staff has allowed the third-party facilitator to again provide additional information relating to property access, even though the FS had informed the facilitator numerous times that this land did not provide any benefits to the FS.

Since the FS has already determined that the land does not provide a benefit, it should formally reject the donation. If the FS reconsiders the donation and decides to accept it, the decision should be documented to show that the actual benefits outweigh the liabilities and costs of accepting it. Acceptance of the land would also require the FS to comply with the required procedures in the processing of the donation. Because of the problems associated with this donation, we believe that it would be beneficial to have it reviewed and approved by OGC and the FSWO.

RECOMMENDATION NO. 6a

Formally reject the Durkee donation unless the third-party facilitator can provide verification of the actual benefits and the region determines that the benefits outweigh the costs and liabilities associated with the donation.

FS Response

This action has been taken. The proposed Durkee donation has been reviewed by a team of FS specialists and it was determined that the acquisition of this parcel was not in the best interest of the National Forest System. By a letter

dated June 10, 1998, the regional forester advised the third-party facilitator of this finding and rejected the proposal.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 6b

If the region accepts the donation, ensure that all required steps of a donation are completed prior to acceptance, including the review and prior approval by OGC and the FSWO of the terms of the donation.

FS Response

The regional forester rejected the donation. See the response to Recommendation No. 6a.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 6c

Ensure that all lands staff are aware of the delegations of authority relating to land donations and the procedures required to be met prior to the acceptance of a donation.

FS Response

The FS concurs. The regional forester will be directed to formally remind Region 4 forest supervisors of the delegations of authority and proper procedures (FSM 5404.14) when considering donations. These procedures will also be incorporated into annual FS national training for line officers and program managers.

OIG Position

We accept management decision on this recommendation.

FINDING NO. 7

WATER RIGHTS ACQUIRED IN A LAND EXCHANGE WERE NOT PROTECTED FROM POTENTIAL LOSS

The FS paid $2.1 million for water rights in a land exchange without first determining if the water rights could be used by the FS. This occurred because the FS did not have guidelines relating to the acquisition of water rights and staff did not consult with an FS hydrologist to determine the water's utility to the FS. Consequently, the FS could lose about $345,000 in ground water rights and another $1.8 million in surface water rights to the State of Nevada unless the water rights are put to the permitted use or exchanged to another user for something of value to the FS.

The FS does not have guidelines relating to the acquisition and disposition of water rights in Federal land exchanges. Once these rights are in Federal ownership, the FS does not have a system with which to track the amount, type, and status of them. In addition, an OGC regional attorney told us that water rights acquired by the Federal Government are considered an interest in real property and cannot be sold. The only way to dispose of water rights that have no FS utility is to exchange them for other real property of equivalent value.

In a 1978 court case, the U.S. Supreme Court has affirmed Congress' longstanding policy that defers the administration of water rights to States. This ruling means that the Federal Government must comply with the water use requirements of the States in which the water resides. If the FS does not meet specific State agency requirements, the State can revoke the water rights and allow another party to claim them.

In 1991, the Federal Government began negotiations with landowners and third-party facilitators to acquire a 3,864-acre parcel of land known as the "Galena Resort." The owners of the property had planned to build a destination resort with ski lifts, golf courses, restaurants, hotels, and condominiums. They had already applied for and received county approvals and permits, including significant water rights. In order to prevent this development, FS and BLM lands staffs pursued the acquisition of the Galena property in a land exchange deal. In August 1994, the Galena property was acquired by the FS at an exchange value of $19.8 million, which included about $2.1 million in surface and ground water rights.

FS staff processing the Galena exchange knew little about the nature of the water rights or even if the FS could put the water to use after it was acquired by the FS. They did not analyze potential FS or other Federal uses or contact the FS hydrologist for input during the exchange negotiations. There are currently no FS directives or policy requiring any type of justification or rationale for the acquisition of water rights in a land exchange transaction. Our discussion with the OGC regional attorney also disclosed that the FS has lost water rights in the past and needs to develop a system to account for these rights in any land exchange transaction.

The water permits originally issued to the Galena Resort specified certain uses for the surface and ground water and a

period of time to prove the water was being put to beneficial use. Although the FS acquired the Galena property before the State's conditions had been met, FS lands staff took no action to meet the permit requirements and did not contact the Nevada State Division of Water Resources to extend the deadline. On January 12, 1996, the State agency cancelled the water rights for the ground water because the FS had not proven beneficial use by the deadline date and had not filed for an extension.

The FS did not realize they had lost the ground water rights until a water attorney contacted the forest supervisor on January 17, 1996, and told him that the FS no longer owned the water rights previously owned by the Galena landowner. The FS hydrologist quickly petitioned the State agency for a review of the cancelled permits and an extension of time for the FS to put the water to beneficial use. The State agency reinstated the permits and allowed the FS one year (until May 1998) to identify a way to use the water and prove beneficial use.

In November 1997, we contacted the FS hydrologist to determine the status of the ground water rights. He stated that the FS still had found no use for the ground water rights, valued at about $345,000, and would probably lose them by the May 1998 deadline. He noted that private interest in obtaining the water rights in Galena, which is situated in the Lake Tahoe area, was strong and that the FS could potentially exchange the ground water for real property of equivalent value.

The FS also had not identified a use for the $1.8 million in surface water rights. At the recommendation of the State water engineers, the FS hydrologist allowed the surface water permit to revert back to its original use of irrigating land outside FS boundaries. This allowed the FS to retain ownership of the water rights even though they were not using it. FS staff are considering converting the surface water to an "in-stream flow" which allows the waters to remain unused in the Galena Creek outside the FS boundary. FS staff informed us that these water rights may be subject to abandonment proceedings in the future if a request for change is not made with the State. Although the FS will retain ownership of the surface water, we questioned the benefits of paying $1.8 million for water that would only irrigate private farmlands or be available for other private uses beyond the forest boundaries.

FS staff told us that the FS bought a "pig in a poke" in the exchange for the Galena water rights. The hydrologist concluded that FS lands staff and appraisers did not understand the type of water they were acquiring in the Galena land exchange. He told us that he was never consulted by FS lands staff about the Galena water's potential utility during the negotiation for Galena's properties, and thought it did not make sense for the FS to pay for water they had no plans to use.

If no beneficial uses are found for Galena's waters, the FS should immediately seek to exchange the Galena water rights to another user for real property of equivalent value. Any proposed exchange should determine how to achieve maximum value for the water right (e.g., attaching it to a parcel of

land or valuing it as a unique property). Given the short time period until the ground water rights are lost, the FS hydrologist should petition the State agency for another extension of the ground water rights.

In future exchanges, FS lands staff and appraisers must evaluate the types of water rights that may be included with the non-Federal land being exchanged to the FS to ensure that the water rights will be used by the FS or another Federal land agency. If the utility of a water right is in question, appraisers of the non-Federal land should explore all options regarding the Federal use of the water, including contacting FS staff such as hydrologists, as well as staffs from BLM and the Fish and Wildlife Service. If the FS determines that no potential Federal use of the water exists, it should separate the value attributable to the water rights from the appraised value of the non-Federal lands and require the landowner to dispose of the rights as part of the land exchange process.

The FS should also develop a system to account for acquired water rights. The status of all water rights should be recorded and updated periodically. If certain actions are necessary to retain the water rights, such as proof of beneficial use or completion, those pertinent dates should be noted and the appropriate action completed before the revocation date.

We notified the FS on February 24, 1998, of the potential loss of the water rights and recommended that actions be taken to protect the value of the Galena water rights estimated at about $2.1 million. The response by the FS is indicated below (see Recommendation No. 7a).

RECOMMENDATION NO. 7a

Explore all options to use the water rights in the public interest or, if it is determined that these rights are excess to public needs, exchange the water rights for properties or services that would be of equal value to the FS.

FS Response

Surface Water Rights: The FS was unable the meet the water rights change-of-use permit conditions which prior to Federal acquisition were tied to the proposed private development. Therefore, a request was made to the State engineer to withdraw the appropriate applications for the rights to revert to their initial decreed status. Unlike non-decreed water rights, failure to meet conditions of these permits simply causes the point of diversion, manner, and use to revert to the base rights adjudicated in the 1944 Ore Ditch Decree. These water rights remain in Federal ownership and are not in any current jeopardy. It is anticipated that "use" of the water for national forest management purposes can be best met by changing the purpose to non-consumptive "in situ" use for protection of instream flows and streamside vegetation of Galena Creek. The FS will take appropriate action by requesting a change of use, which is permitted under State

law. The change of use will be accomplished as soon as all possible options have been evaluated.

Ground Water Rights: The FS does not desire to develop the permitted use. Due to deed transfer delays and failure to file Proofs of Completion of Work and Beneficial Use, these permits were cancelled on January 12, 1996. The FS did petition the State for review of the cancellation and then applied for a time extension. The State granted a 1-year extension which expires May 20, 1998.

The forest is attempting to develop a land exchange proposal that will involve land and the 190-acre feet of undeveloped ground water. By including these rights in a land exchange the United States would receive equal value in the form of land or interest in land. A meeting was held with the State engineer on April 8, 1998, to discuss the proposal and to request a further extension of time to pursue the land exchange. The State engineer indicated that an extension could be granted to complete the exchange. An extension request was file with the State engineer on May 19, 1998. The forest is continuing to work on the exchange proposal while waiting for the formal response from the State engineer.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 7b

Review the utility of water rights attached to non-Federal lands proposed for exchange. Determine if the water has potential Federal uses by consulting the FS hydrologist or interested staffs from other Federal agencies. If no uses are determined, separate the value attributable to the rights and have the landowner dispose of those rights prior to the land exchange.

FS Response

The FS concurs. The regional forester will insure that an analysis of water rights will be completed on the non-Federal land in considering future exchange or purchase transactions. This analysis will address:

1. Contributory value of the water to the property to be acquired.

2. Necessary actions for use of the water after acquisition, i.e., change of use, change of diversion point, issuance of special use permit, reconveyance, etc.

3. Identify cost, funding source, and program responsibility to accomplish actions in No. 2 above.

4. Effects on highest and best use and value of the land if the water is severed from the estate it serves.

In some cases, acquisition of water rights will have no effect on the appraised value of the land. In other cases, severance of water rights can reduce the value of the land to a much greater degree than the value of the severed rights. It is also difficult for some entities, such as local governments or State agencies, to sever water rights and convey them in separate transactions. Thus, it is not always appropriate or in national forest interest to take the recommended course of action. However, we agree that a short-term or intermediate use of the water, such as authorizing the use of the water under a special use permit or reconveyance, should be identified when long-term utility is unknown.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 7c

Develop a system to account for water rights in order to track the status of acquired water and the actions necessary to protect water rights from loss.

FS Response

The FS concurs and is currently developing an integrated data base (Water Uses Tracking System) for water rights. The data base will store basic water rights data and will integrate State-by-State data needs as the system is completed. A prototype of this system will be available in November 1998. In the meantime, water rights data bases are being obtained from Utah, Nevada, California, Colorado, Wyoming, and Idaho. These data bases will contain water rights data such as location of water source, ownership, point of diversion, quantity of water, and other relevant information dealing with the status of these water rights. We anticipate that this data will be in place in Region 4 by September 1998. Acquired water rights obtained through land exchange or purchase will be added to the data base as soon as the transaction has been finalized.

OIG Position

We accept management decision on this recommendation.

IV. INADEQUATE LAND ACQUISITION PLANNING AND PRIORITIZATION HAVE LED TO QUESTIONABLE LAND TRANSACTION PROPOSALS

FINDING NO. 8

The forest did not have a landownership adjustment plan, which is essential in determining whether land transactions proposed by third-party facilitators are acceptable and meet forest management needs and objectives. The regional office allowed the forest to operate without an approved plan. In the absence of a plan, the forest supervisor had instructed forest lands personnel to refer proponents to third-party facilitators and to prioritize those projects proposed by third-party facilitators as top priority. Without a formal plan, the forest lands staff is vulnerable to considering and accepting all land transactions proposed by third-party facilitators, even those that have no benefit to the FS and may increase FS administrative costs. Our audit questioned three land transaction proposals with an estimated value of $10.5 million, which provided little or no discernable benefit to the FS.

FSM 5407.1 states that each national forest shall prepare a landownership adjustment plan for incorporation into the forest plan. The landownership adjustment plan establishes the criteria for acquisition of non-Federal lands. Consequently, without a landownership adjustment plan there was no specific criteria with which to objectively evaluate the merits of land transactions proposed by third-party facilitators.

During our audit we found that although a landownership adjustment plan had been prepared for the Humboldt National Forest and submitted to the regional office, it had not been reviewed and approved by the regional forester, which is required by FS policy. The forest supervisor did not prepare a landownership adjustment plan for the Toiyabe National Forest because he did not want to identify lands for acquisition. He believed that if the forest identified lands on the Toiyabe they wanted to acquire, it would result in higher prices for the targeted lands.

The forest has become involved in numerous land exchanges involving BLM (see Background section). In these exchanges, BLM gives up Federal lands in exchange for non-Federal lands, which are placed under the administration of either BLM or the FS. In order to improve coordination of these joint agency exchanges, BLM requested that the FS provide them with a list of lands that were a priority for acquisition. The first priority listing was completed in March 1996.

The priority listing was actually four separate listings, one for each of the ecounits in Nevada. The four ecounits were the Sierra, Central Nevada, Northeast Nevada, and Spring Mountains National Recreation Area (SMNRA). According to the

deputy forest supervisor, among the four lists, SMNRA had top priority for acquisitions.

Based on discussions with FS personnel, there were no clear instructions on how to use the priority list and how to prioritize the land. After the original priority list was completed, FS staff revised the list several times. Parcels proposed for exchange were moved from lower priority to higher priority, and new parcels were placed on the list. The priorities changed because the forest supervisor directed forest employees to refer proponents to third-party facilitators (see Finding No. 2); when the facilitators brought proposed exchanges to the FS, almost all proposals were accepted and elevated to top priority. Because the forest had no planning documents and no procedure for effectively prioritizing their desired acquisitions, facilitators were able to propose any inholding or land adjacent to the forest as a land exchange and have the exchange proceed. We found that the seven highest-ranked properties on the priority listing were those exchanges with third-party facilitators.

We reviewed high-priority acquisitions and found that several had questionable resource value to the FS. Following are three pending forest land transaction proposals that illustrate the problems that can arise in the absence of a proper landownership adjustment plan and an effective priority list.

GASPARI RANCH EXCHANGE PROPOSAL

The Gaspari was a 1000-acre ranch that included a house and a barn. Located on the outskirts of Reno, this ranch had three sides adjacent to development, including a gated housing community, and fronted on a major boulevard. Originally listed as 24th in priority by the Sierra ecounit group responsible for the area, Gaspari moved to 7th position because it had been optioned by a third-party facilitator. An appraisal, hired and paid for by the third-party facilitator, determined that the best use for the land was residential development and valued it at $8.5 million.

The assistant forest supervisor, who was responsible for prioritizing the area, did not know why the Gaspari Ranch was listed at all as a forest priority since it did not have any discernable benefits to the FS. The forest supervisor wanted to acquire the property for use as an FS horse pasture, even though we were told by forest staff that their horses were used on the other side of the district. The district office is located about 30 miles from the ranch. Our review of the property description disclosed that the property does not meet FS objectives and is more likely a candidate for disposal rather than acquisition by the FS since such a property would increase FS administrative costs. We also questioned the reasonableness of maintaining an FS horse pasture on property which has been determined by the appraiser to be better suited as a residential development.

DURKEE DONATION PROPOSAL

The 32-acre Durkee parcel abutted a housing subdivision on one side and another residential development on another. This parcel of land was valued at $375,000. Numerous FS personnel questioned the acceptance of this land because of the location and lack of access. The forest supervisor felt that the FS should accept the land because an FS employee had promised that the FS would take it. The FS had repeatedly informed the proponent that they did not believe the land provided any benefits to the FS. However, they are allowing the proponent to provide additional information in an attempt to justify FS acceptance of the land. One justification put forth by the proponent is that the Durkee land would provide fire and recreation access to the forest. We questioned the propriety of accepting the donation (see Finding No. 6).

DEER CREEK LOTS EXCHANGE PROPOSAL

The FS created a checkerboard pattern of ownership when it acquired 17 of 32 lots in the Deer Creek subdivision. This acquisition conflicted with the land disposal and acquisition objectives identified by the regional office in the FSM. These objectives would normally be incorporated into the forest's Landownership Adjustment Plan but, as mentioned earlier, the forest did not have such a plan. One of the objectives was to reduce the miles of property lines shared by the FS and private landowners. This would reduce the property lines that needed to be surveyed, posted, and maintained. Acquiring the Deer Creek lots increased shared property lines with private landowners, resulted in additional administrative costs to the FS, and increased the chances of encroachment by the adjacent landowners.

The FS accepted the lots in the subdivision because the third-party facilitator told the FS land staff that she might be able to obtain the rest of the lots over time. However, 13 of the 15 remaining private lots were subsequently subdivided, resulting in 28 additional privately owned lots. Many of the private landowners who subdivided their lots are now willing to give up only one of their two lots for exchange to the FS. The third-party facilitator has been able to obtain options on only 13 of the 28 remaining lots. These 13 lots were initially appraised by the third-party facilitator at $1.8 million on August 6, 1996, but the appraisal was rejected by the FS review appraiser for not meeting standards. A second appraisal was performed on March 6, 1997, which valued the lots at $1.6 million, but the appraisal had not been reviewed because the exchange proposal was held up pending FSWO review.

On June 25, 1997, the FSWO review team questioned the propriety of acquiring the Deer Creek lots for a land exchange and recommended that the forest withdraw from the exchange proposal citing that the exchange proposal was not on the forest priority list for land acquisitions. The FSWO told the forest to concentrate its efforts on completing current land exchange transactions and other exchange proposals that have a higher priority. However, as of February 11, 1998, the

forest had not officially notified the third-party facilitator of the withdrawal. We were informed as late as December 1997 that the third-party facilitator was still meeting with forest staff in trying to exchange the Deer Creek lots.

We recommend that the forest officially withdraw from the proposal and notify the third-party facilitator of this decision, as recommended by the FSWO. Unless all the private lots within the Deer Creek subdivision area are optioned by the third-party facilitator for exchange, doing piecemeal exchanges of scattered private lots only adds to the FS administrative burden and does not provide any substantial benefits to the FS.

The absence of a landownership adjustment plan and an ineffective priority list resulted in a forest land adjustment program that was driven by proponents and third-party facilitators. Forest staff considered any optioned lands that were presented by the proponents and third-party facilitators; there was no criteria by which forest staff could determine the resource value or benefits of the optioned land and other potential less costly alternatives to it. The forest needs to prepare a landownership adjustment plan and establish clear criteria to identify and prioritize lands to be acquired. This will ensure that the FS controls the process by determining which lands are acceptable and meet FS objectives, rather than relegating this function to proponents and third-party facilitators. The forest should prioritize land based on an analysis of resource values or access needs, rather than on what is offered to them by third-party facilitators. This will result in the forest concentrating its limited resources on land exchange transactions that truly meet FS land management objectives.

RECOMMENDATION NO. 8a

Ensure that a landownership adjustment plan is prepared and approved for both the Humboldt and Toiyabe National Forests.

FS Response

The FS concurs and the forest supervisor has been directed to complete a landownership adjustment plan. In May 1997, a review team which included WO and regional office representatives met with forest officials to review their land adjustment program. The team made several recommendations that were presented to the regional forester. As a result, an action plan was developed that included an action item to prepare a landownership adjustment plan that would be incorporated into the revised forest plan. The forest was advised to utilize the direction in Region 4 Supplement No. 5400-92-2 as a guide in this effort. The regional forester will ensure that the landownership adjustment plan is completed by September 1, 1998. In the interim, the forest has to prioritize lands for acquisition based on their associated contribution toward meeting forest plan resource management objectives.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8b

Improve the procedures used to identify and prioritize lands for acquisition. These procedures should correspond to the landownership adjustment plan.

FS Response

The FS concurs (see Recommendations Nos. 8a and 8c).

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8c

Direct FS staff at the forest level to initiate land exchanges involving private property targeted on priority listings.

FS Response

This action has already been taken. As a result of the May 1997 review, the Humboldt-Toiyabe National Forest Supervisor was directed to and has developed a priority listing of available non-Federal lands that would be desirable for acquisition. These lands were ranked based on their contribution to meeting and enhancing the forest plan resource management objectives. This priority ranking is being utilized as the basis in developing the Forests Landownership Adjustment Program.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8d

Reject any land exchange proposals that do not correspond to the forest priority list.

FS Response

The FS generally concurs. As noted in Recommendation No. 8c, the priority ranking on non-Federal lands will be the basis to guide the development and processing of future landownership adjustment transactions. The ranking of specific parcels will need to be re-evaluated as new proposals or opportunities are made available as noted in Recommendation No. 8e. The forest will take action on proposals based on priority and availability basis. Parcels that do not make the prioritized list will be rejected and the proponent notified in writing.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8e

If land is offered that has not been identified as a high priority, determine that the lands provide a benefit in compliance with the landownership adjustment plan and the goals and objectives of the forest plan.

FS Response

The FS concurs. The forest land adjustment program needs to have flexibility to be able to react to new proposals that were not previously available or considered in the prioritized ranking. If the offered non-Federal lands are not on the prioritized list, then the parcels will be evaluated based on overall contributory value in meeting and enhancing resource management objectives of the forest plan. If appropriate, the parcels will be added to the prioritized list based on contributing benefits, or formally rejected.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8f

Officially notify the facilitator that the Gaspari Ranch is not acceptable for exchange because it does not provide any benefit to the FS.

FS Response

The FS concurs. The Gaspari Ranch was evaluated based on its public benefit and is not on the current prioritized acquisition list. The third party who proposed this acquisition has been verbally apprised of its status; however, the FS agrees that this determination needs to be formally documented. Accordingly, the forest supervisor will be directed to advise the third-party facilitator in writing as to the FS' interest in this property.

OIG Position

In order to reach management decision please provide the date when the written determination will be sent to the third-party facilitator.

RECOMMENDATION NO. 8g

Officially notify the third-party facilitator of the FS' decision to withdraw from the Deer Creek lots exchange, as it is currently configured by the third-party facilitator.

FS Response

This action has already been taken. The third-party facilitator had configured an exchange proposal known as the Hunter case, which contained some of the Deer Creek lots. In a letter dated April 17, 1997, the Humboldt-Toiyabe Forest Supervisor advised the third-party facilitator of our withdrawal from this exchange proposal. Since this action, the facilitator has been advised verbally by the regional forester that the FS is not interested in the acquisition of these properties due to their low priority and public benefit.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 8h

If the Deer Creek lots are determined to provide benefit and are placed on the priority list, officially notify the third-party facilitator of the position of the lots on the list and establish a possible timeframe for accepting proposals relating to the lots.

FS Response

See response for Recommendation No. 8g.

OIG Position

We accept management decision on this recommendation.

V. LACK OF COORDINATION WITH BLM HAS RESULTED IN QUESTIONABLE LAND EXCHANGES

FINDING NO. 9

FS regional lands staff did not coordinate the processing of several BLM-related land exchange transactions with BLM lands personnel. Although there is an informal agreement with BLM on appraisal responsibility for Federal lands owned by the two agencies, there is no formal agreement on the responsibility for the other critical aspects of processing land exchange transactions involving the two Federal land agencies. The lack of coordination has resulted in the processing of questionable land exchange transactions involving the two agencies.

As noted in the Background section, there is a considerable demand for acquiring BLM-owned lands in the Las Vegas Valley area of Nevada. The Federal Land Policy and Management Act of 1976 (Public Law 94-579) authorizes the Secretary of the Interior to dispose of the BLM-owned lands by exchange. BLM has identified about 70,000 acres of Federal land for disposal in the Las Vegas area. One of the primary beneficiaries of the BLM exchanges has been the FS, which has acquired over 18,000 acres of private lands from proponents that have entered into exchange agreements with BLM.

The Act requires that values of the lands exchanged must be equal or, if not equal, must be equalized by a cash payment by either party. In addition, both the FS and BLM have agency-specific regulations pertaining to the processing of land exchange transactions with proponents.

To ensure that interagency land exchange transactions meet both Federal and agency regulations, it is important that the agencies coordinate their efforts in dealing with proponents. Our audit has identified the following areas where the lack of coordination has resulted in questionable transactions:

LACK OF COORDINATION ON THE ACCEPTANCE OF NON-FEDERAL LANDS FOR EXCHANGES

Questionable land exchange proposals rejected by one Federal agency were resubmitted by the proponent to the other Federal agency for acceptance. For example, in the Cashman exchange, it was proposed that 1,300 acres of private lands in the Mt. Charleston area would be given to the FS in exchange for 1,615 acres of BLM lands near Las Vegas. The proposal was rejected by the FS and BLM on September 9, 1993, because of two concerns. The first concern related to the amount of BLM land the proponent was asking for in the exchange proposal. The proponent had requested 1,615 acres, but the FS believed that 600 acres of Las Vegas land was more reasonable. The second concern was related to the value of the offered Cashman lands. They were concerned that comparable sale information did not support the optioned price of the Cashman lands.

The proponent met with FS and BLM staff on November 5, 1993, to again discuss the proposed land exchange. Once again, FS and BLM officials rejected the proposal citing that the FS and BLM could not justify the value of $9 million for which the proponent had optioned the non-Federal property. Therefore, they believed that an exchange at that value would not be in the public's best interest.

Subsequent to the November 5, 1993, meeting, the proponent met with BLM State Office officials, and they agreed to proceed with a proposed exchange of about 850 acres of BLM land for the 1,300 acres of Cashman land. Although this agreement shows that the amount of BLM land to be included in the exchange was reduced, which resolved the first concern, there was no documentation on file showing how the second concern of the value of the Cashman land was resolved. It would appear that BLM ultimately allowed the optioned price to be used as the estimated value in order to allow the proposed exchange to proceed. There also was no documentation to show that the FS had been consulted by BLM on the decision to proceed with the exchange.

LACK OF COORDINATION IN ACCEPTING AND REVIEWING LAND VALUATIONS

In the Deer Creek exchange, the FS bargaining team signed legal documents for acceptance of uncorroborated land values without the concurrence of the BLM Nevada State Office Director, who had personally requested that the values be reviewed for adherence to Federal appraisal standards. In addition, the BLM Nevada State Office was not consulted on the final acceptance of valuation, even though the exchange transaction resulted in BLM owing the third party about $2 million in Federal lands. In the Cashman Exchange, the BLM Chief Appraiser approved the land valuation based on the incorrect assumption that the FS engineer had reviewed the feasibility of the project, whereas he had not.

We noted that there is no quality control system in place to identify private appraisers performing substandard work and to debar these appraisers from performing appraisals on Federal land transactions. In discussions with FS and BLM appraisers, we found that both the FS and BLM did not have a system to track the quality of work performed by fee appraisers. They also were not sharing information about appraisers with each other.

LACK OF COORDINATION ON TITLE CLEARANCE AND PROPERTY CONDITION ON ACQUIRED LANDS

In the Galena Resort exchange, the FS inspection of the private lands on August 3, 1994, noted abandoned concrete structures and debris that needed to be removed from the site before the property was conveyed to the FS. Also during its preliminary title review, FS lands staff noted numerous title documentation deficiencies, such as tracts without appraisals and erroneous acreages, in the property documents. These deficiencies were reported to the BLM Nevada State Office on August 9, 1994. BLM, however, had already accepted the title to the lands on behalf of the FS

on August 8, 1994, without consulting the FS. BLM did not convey the pertinent property documents and title information to the FS until almost 3 years later on May 20, 1997. This information was obtained by the FS when OIG asked to review it as part of our audit.

As of February 5, 1998, the FS is still reworking the warranty deeds to the properties due to the same deficiencies it reported to BLM over 3 years ago. According to FS regulations, it is the responsibility of the third party to ensure that the condition of the private property conveyed to the FS is acceptable to the FS and that the title to the property is clear of all objectionable encumbrances.

As noted above, third parties have taken advantage of the lack of coordination between the two agencies in consummating questionable land exchange transactions with the FS and BLM. This weakness was also identified by the FSWO during their review of the region's lands program on May 20, 1997. At that time the FSWO recommended that the region sign a Memorandum of Understanding with BLM which will define how each operates in exchange proposals. We agree that developing a formal agreement with BLM on the above areas should strengthen controls to ensure that acquired lands are properly valued, have clear title, and meet FS and BLM lands management objectives.

RECOMMENDATION NO. 9a

Develop and sign a Memorandum of Understanding with BLM on the areas relating to a) mutual decisions on the acceptance of non-Federal lands; b) review and approval of land valuations; and c) responsibilities relating to title acceptance, including the performance of property inspections and clearance of title.

FS Response

The FS concurs and the region has initiated action to finalize a Memorandum of Understanding. A draft Memorandum of Understanding has been prepared and is currently being reviewed by both the region and the BLM Nevada State Office. The draft specifically includes items a, b, and c above, as well as defines responsibility for other procedures and requirements associated with BLM/FS land exchanges. We anticipate executing the Memorandum of Understanding by October 1, 1998. In the interim, both BLM and Region 4 have been operating under the provisions of the draft Memorandum of Understanding.

OIG Position

We accept management decision on this recommendation.

RECOMMENDATION NO. 9b

In coordination with BLM, establish a system of tracking the quality of appraisals performed by private appraisers on Federal land exchanges, referring substandard appraisals to the State Board and the Appraisal Institute, and debarring appraisers who continually provide substandard appraisals from performing appraisals on Federal land exchanges.

FS Response

The FS does not concur. The FS currently tracks successful sources of appraisal services, and will respond to other agency requests with a positive list of historically successful appraisal firms. The FS does not formally track appraisers who have not provided successful appraisal products as to do so can result in potential litigations involving allegations of defamation of character, slander, and possibility restraint of trade. Appraisers submitting reports that are in obvious violation of the Uniform Standards of Professional Appraisal Practice and or the code of ethics of any professional appraisal organization to which they claim affiliation are submitted to the appropriate agency/organization for review of their professional practices. It is inappropriate for a Federal agency to debar or "blackball" private appraisers, due to the potential for litigation referred to above. It is the responsibility of State licensing authorities and professional appraisal organizations to police their licensee's and designee's. The FS will continue to evaluate potential contract appraisers based upon their demonstrated success with the agency and other public agencies used as references.

OIG Position

We recognize that it is the responsibility of professional appraisal organizations and State boards to review allegations of substandard appraisal products and professional practice, and not the Federal agency. However, it is the Federal agency's responsibility to refer appraisers providing substandard work to the regulatory agency so the matter can be investigated and the appropriate corrective action taken. Similar systems for referring and debarring persons providing professional services, such as certified public accountants, are already in place in other Federal agencies. Debarment occurs only after a complete investigation is performed by the regulatory agency and official determination is rendered. In order to reach management decision, we recommend that the FS confer with OGC on what legal steps are needed to enforce appraisal standards on contracts and to debar appraisers found by regulatory agencies to have provided substandard work.

RECOMMENDATION NO. 9c

Suspend all current and future land exchange transactions with the third-party facilitator on the Galena Resort exchange until the FS lands staff have reworked all the warranty deeds to the properties.

FS Response

The FS does not think that suspension of all current and future land exchange transactions with the third-party facilitator involved with the Galena Resort exchange is appropriate. The FS acquired the Galena Resort property through a BLM land exchange. Some of the title issues with the property were not the result of or within the control of the third-party facilitator. BLM, the FS, and the third-party facilitator are working to resolve these title issues and to date the third-party facilitator has been cooperative and responsive in this effort. Should this situation change in the future, the FS will then consider appropriate actions.

OIG Position

In order to reach management decision, please provide us with the timeframe for resolving the title issues relating to the Galena Resort exchange.

VI. IMPROVEMENTS NEEDED IN ENSURING THE INTEGRITY OF LANDS STAFF AND ASSESSING THE IMPACT OF STAFF REDUCTIONS ON CURRENT WORKLOAD

Integrity of staffing in the land exchange program is important to ensure that the program is operated in an objective and efficient manner. Our review found that an FS management employee received gifts, gratuities, and entertainment from a third-party facilitator. As a result of the gifts and gratuities, a conflict of interest existed. We also found that two key FS management employees in the lands section had not filed financial disclosure statements for the last 3 years. Financial disclosure statements are an important control in ensuring the integrity of the FS land exchange program.

In addition, we found that because of attrition and a hiring freeze, the regional lands section is experiencing a backlog of work relating to land exchange transactions which could delay the processing of transactions. In one case, regional lands staff are still clearing title to properties conveyed to the FS over 3 years ago due to an administrative error by BLM.

FINDING NO. 10

IMPROPER CONDUCT BY FS MANAGEMENT EMPLOYEE WITH PROPONENTS AND THIRD-PARTY FACILITATORS

During our audit, allegations surfaced regarding the improper conduct of an FS management employee in his dealings with third-party facilitators involved in land transactions at the forest. The employee provided a signed, sworn statement to the auditors admitting the receipt of gifts, gratuities, and entertainment from third-party facilitators. A review of the records at the forest revealed that the same third-party facilitators were involved in land transactions amounting to at least $45 million.

The Standards of Ethical Conduct for Federal Employees of the Executive Branch (5 CFR 2635.201) prohibits an employee from soliciting or accepting any gift from a prohibited source. A gift includes any gratuity, favor, discount, entertainment, hospitality, or other item having monetary value. It includes services, as well as training, transportation, local travel, lodging, and meals. Prohibited sources means any person and/or organization that does business or seeks to do business with the employee's agency.

Representatives from third-party facilitators confirmed that they had provided the employee with gifts and gratuities. On November 18, 1997, the FS employee provided a signed, sworn statement to OIG acknowledging the acceptance of gifts, gratuities, and entertainment from third-party facilitators as follows:

- The employee and members of his family went pheasant hunting at the private property of a consultant employed by the third-party facilitator. During the hunting trips, the employee stayed at a private trailer owned by the consultant.

- The employee and his wife spent 2 days in the San Francisco Bay Area as houseguests of the president of a third-party facilitator. The employee and his wife spent 4 to 5 hours sailing on the president's private sailboat in San Francisco bay.

- The employee went fishing in Canada on the private yacht owned by a land exchange proponent. He was flown to the site in the proponent's private plane.

- The employee used the private Squaw Valley Condominium owned by a consultant of a third-party facilitator for 3 to 4 days during his Christmas vacation.

- The employee received wedding gifts from the consultant and the president of a third-party facilitator.

We notified the FS on January 15, 1998, of these conditions and recommended that the employee be reassigned to another position that does not involve transactions with third-party facilitators. The employee decided to retire from his position effective April 30, 1998.

OIG is continuing its investigation of this matter in coordination with the Department of Justice.

FINDING NO. 11

LANDS STAFF DID NOT COMPLY WITH REPORTING REQUIREMENTS FOR FINANCIAL DISCLOSURE AND OUTSIDE INTERESTS

FS personnel involved in decisions regarding land exchange transactions did not file financial disclosure statements as required by regulations. The region has a listing of who should be filing financial disclosure statements, but it has no tracking system to ensure that the statements are actually submitted and reviewed for potential conflicts of interest. Our audit found that two key FS management personnel involved in land management decisions at both the forest and the regional office had not submitted financial disclosure statements for the past 3 years. As a result, potential conflicts of interests by key lands personnel cannot be detected by regional management for resolution.

Federal regulations (5 CFR 2634.904) provide that the agency determine who should file financial disclosure statements based on the duties and responsibilities of an employee's position. Sensitive positions are those which require an employee to participate personally and substantially, through decision or the exercise of significant judgment, in a Government action in which the final decision or action will have a direct and substantial effect on the interest of the non-Federal entity.

The region has a listing of personnel designating which members of the staff, by name, position, and grade, are required to file financial disclosure statements. The listing includes all FS line management personnel up to the district ranger level, as well as regional land appraisers and key lands personnel.

During our audit, we noted that the forest supervisor at the Humboldt and Toiyabe National Forest and the regional director of lands had not submitted financial disclosure statements for the past 3 years. These are the two key positions responsible for administering the land exchange and acquisition program in the region. At our request, the FS obtained retroactive financial disclosure statements from these employees.

The region needs to have a tracking system in place to ensure that those required to submit financial disclosure statements have actually submitted their statements for review for potential conflicts of interest.

RECOMMENDATION NO. 11

Develop a tracking system at the region to ensure that financial disclosure statements are submitted by the required FS personnel.

FS Response

The FS concurs but would like to broaden the recommendation to include all regions. Under current procedures, each region is required to track and submit compliance reports to the WO on the numbers of occupied positions whose incumbents are designated to complete Confidential Financial Disclosure Reports and whose reports have been received. They must submit updated reports on a monthly basis until all documents are received. During the next reporting cycle, which begins October 1998, the WO will ask that all compliance reports be signed by someone who attests to their accuracy. FS regional and station ethics officials received training from the Office of Government Ethics in tracking and reviewing financial disclosure documents on April 16, 1998. Also, in letter dated June 5, 1998, the Acting Director of Human Resources Management sent letters to all regional foresters, station directors, International Institute of Tropical Forestry directors, and WO staff to reinforce the understanding about the requirement for filing the Confidential Financial Disclosure Report, with emphasis on positions involved in lands activities. In addition, during periodic reviews of regions and stations, confidential financial disclosure files are reviewed by the WO Human Resources Management staff.

OIG Position

We accept management decision on this recommendation.

FINDING NO. 12

MANAGEMENT NEEDS TO ASSESS THE REGIONAL LAND STAFF'S WORKLOAD AND COMPETENCE

As a result of recommendations from the FSWO internal review team, processing of land transactions by the Humboldt-Toiyabe forest lands staff was taken over by regional lands staff personnel, not all of whom have exhibited the necessary skills. Regional lands staff attrition and a hiring freeze has also resulted in a backlog of work for the remaining lands staff. In one case, regional lands staff are still clearing title to properties conveyed to the FS over 3 years ago due to an administrative error by BLM.

During our audit, we found that the number of appraisers in the region had decreased from four to one. As a result, the one remaining appraiser could not keep up with the workload and began to contract most of the appraisal work to fee appraisers. Even though contracting did help, there is still a backlog of appraisal work and an additional need for appraisal reviews. The regional appraiser estimated that the current backlog and workload could be handled by three full-time appraisers. The region has four full-time-equivalent positions identified for appraisers, which would allow them to hire a fourth appraiser if needed. The region has recently hired a second appraiser; however, a hiring freeze has delayed hiring a third appraiser and would most likely delay indefinitely the hiring of a fourth appraiser.

We also found a similar situation in the regional lands staff section. The region normally has three realty specialists working on exchange case processing; however it is currently operating with only two specialists. The lands staff has tried to hire a third specialist, but the hiring freeze has prevented them from doing so. The two realty specialists are currently working on 87 exchange transactions, which are in different stages of processing. A realty specialist stated that at the current level of transactions, they have not been able to reduce the backlog of work which needs to be completed. Also, our audit noted that, due to an administrative error by BLM, regional lands staff are concentrating their efforts on clearing title to properties conveyed to the FS over 3 years ago in the Galena Resort exchange.

The reduction in staff has not resulted in a corresponding reduction in the number of land exchange cases being processed. As we have noted throughout this report, the regional lands staff has routinely agreed to process exchanges proposed by third-party facilitators, even though the number of exchanges has clearly exceeded the staff's ability to keep abreast of them. In addition, the region is processing land exchanges which are increasingly complex and sophisticated. In our opinion, lands staff management is not competent to judge the appropriateness of the workload or, as is evident from its other actions, to engage in land exchanges that demand a comprehensive expertise in real estate transactions.

Regional management should determine the effect that the backlog is having on the land exchange program and whether it is causing delays in case processing. Regional management

should also assess the current workload and the skills and competence of the lands staff. Based on this assessment, the region should consider the options of (1) issuing a moratorium on new land transactions so lands staff can process the current backlog; (2) hiring the needed personnel to handle the workload; and (3) ensuring skilled and competent individuals are placed in key lands staff management positions.

RECOMMENDATION NO. 12

Assess staffing and skill levels (competency) to ensure they are commensurate with the demands of the existing workload.

FS Response

The FS concurs. The make-up of regional and forest lands staff should include individuals with the necessary skills and competencies to perform the priority landownership adjustment workload. The regional forester has identified the need and is committed to filling a journeyman-level lands staff position on the Humboldt-Toiyabe Forests to increase the technical and managerial expertise in the Lands Program at that level. The regional forester has also committed to increasing the managerial lands expertise at the regional level by establishing an assistant director of lands and recreation position with emphasis on lands expertise.

The competency and performance levels of both the regional director and the regional land adjustment program manager will also be evaluated as part of the personnel review noted in response to Recommendation No. 1a. The regional forester will also be requested to assess the workload and prioritize the landownership adjustments program and assure the necessary personnel to carry out those priority adjustments.

OIG Position

We accept management decision on this recommendation.

EXHIBIT A - SUMMARY OF MONETARY RESULTS

RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
1b	Incorrect acceptance of bargained value.	$5,900,000	FTBPTBU[5] - Management or Operating Improvement/ Savings
3a	Excessive appraisal valuations.	$2,900,000[6]	FTBPTBU - Management or Operating Improvement/ Savings
5a	Invalid statement of intent. The statement of intent is a non-binding agreement between exchange parties. The FS withdrew from this proposal after being alerted by OIG.	$6,500,000	FTBPTBU - Management or Operating Improvement/ Savings
7a	Acquisition of water rights that could not be used by the FS.	$2,100,000	FTBPTBU - Management or Operating Improvement/ Savings
8a	Proposed land exchanges with little or no benefit to the FS. Gaspari proposal valued at $8.5 million was being considered by the forest supervisor at the time of our audit. According to the FS, the Deer Creek lots proposal valued at $1.6 million has been deferred. The Durkee Donation valued at $375,000 has been disclaimed by the FS after notification by OIG.	$10,500,000	FTBPTBU - Management or Operating Improvement/ Savings
TOTAL		**$27,900,000**	

[5] Funds To Be Put To Better Use

[6] The total amount questioned in Finding No. 3 is $8,800,000; however, $5,900,000 of this amount is the same $5,900,000 questioned in Finding No. 1. As a result, we are only indicating the difference of $2,900,000 for this recommendation.

EXHIBIT B - LOCATIONS VISITED OR CONTACTED

ORGANIZATION/ENTITY	LOCATION
Forest Service Washington Office	Washington, D.C.
Forest Service Intermountain Regional Office (Region 4)	Ogden, Utah
Humboldt-Toiyabe National Forest Supervisors Office	Sparks, Nevada
Carson City Ranger District	Carson City, Nevada
Spring Mountain National Recreation Area Ecounit Office	Las Vegas, Nevada
Bureau of Land Management	
State Office	Reno, Nevada
District Office	Las Vegas, Nevada
Office of the General Counsel	
Washington Office	Washington, D.C.
Regional Office	Ogden, Utah
Office of Inspector General, Department of Interior	Sacramento, California
Fee Appraisers' Offices	Carson City, Nevada Las Vegas, Nevada
Exchange Proponent's Office	Las Vegas, Nevada
Third-Party Facilitator's Office	San Francisco, California
State of Nevada, Division of Water Resources	Carson City, Nevada

EXHIBIT C - LAND TRANSACTIONS REVIEWED

CASE NAME	ACRES		VALUE	
	Federal	NON-FED	Federal	NON-FED
State of Nevada	120.00	14.67	250,000	250,000
Grover Hot Springs	93.42	185.83	350,000	350,000
Elko County	152.83	120.00	8,000	8,000
D. L., Trustee	95.00	798.83	2,090,000	2,000,000
Sweetwater Ranch	507.63	959.04	85,000	85,000
Fibreboard (Last Chance)	88.96	360.00	230,027	222,000
K. J., et ux.	320.04	400.00	40,000	40,000
Rosaschi Ranch	A	1,013.49	A	1,600,000
Venture	A	3,120.00	A	2,150,000
Peavine	A	5,404.00	A	3,475,000
Galena	A	3,864.00	A	19,868,696
J. C. & J. C.	40.00	80.00	16,000	16,000
Washoe County	20.00	200.00	230,000	234,000
Deer Creek (Bulk) (Lots)	A	383.21 75.77	A	7,630,000 2,890,000
Cashman	A	1,300.33	A	8,500,000
H./Deer Creek Lots (3 lots)	10.00	8.75	275,000 Not apprvd by FS	393,000 Not apprvd by FS
Mt. Rose	831.35	B	3,235,000 Not apprvd by FS	B
N. LV/Red Rock	A	278.62	A	3,900,000
PB/Deer Creek Lots (14 lots)	C	25.37	C	1,458,000 Not apprvd by FS
RO Ranch	D	3,074.25	D	D

EXHIBIT C - LAND TRANSACTIONS REVIEWED

CASE NAME	ACRES		VALUE	
	Federal	NON-FED	Federal	NON-FED
B./Mustang	A	200.00	E	E
Boy Scout Exchange	200.00	142.97	F	F
Harris Springs (Tied to Kings Canyon exchange)	C	48.62	C	1,215,000 Not apprvd by FS
Hutchinson (Possible addition to Kings Canyon exchange)	C	C	C	C
Kings Canyon	A	1,880.00	A	4,450,000
Douglas County Office (Prospectus Exchange)	G	G	G	G
H-P/S.	50.00	160.00	F	F
R. Homes	675.00	279.30	C	C
R. R.	155.99	100.71	8,000	F
Springmeyer/ Dresslerville Pit	680.00	480.00	E	E
Western Resources Management	H	1,312.40	H	164,000
Western States Minerals Corp. (Northumberland)	3,425.56	767.29	522,556	503,500
Tonapah Administrative Site	I	I	I	I
Faye-Luther Canyon	J	3.00	J	37,000 Not apprvd by FS
Blue Diamond Oil	C	2,997.67	C	C
Gaspari	K	1,000.00	K	8,500,000 Not apprvd by FS
Durkee	L	32.00	L	375,000

EXHIBIT C - LAND TRANSACTIONS REVIEWED

LEGEND

A - Part of a BLM pooling exchange.
B - Non-Federal lands had not been identified for exchange.
C - Part of a proposed exchange with BLM.
D - Part of a Department of Justice case.
E - Exchange dropped by FS/proponent.
F - Exchange in process.
G - Competitive exchange that is in the planning process.
H - Will be acquired by purchase.
I - Acquired by purchase.
J - Now a right-of-way acquisition.
K - Proposed for exchange with the FS.
L - Proposed donation to the FS.

EXHIBIT D - FS RESPONSE

United States Department of Agriculture | Forest Service | Washington Office | 14th & Independence SW, P. O. Box 96090, Washington, DC 20090-6090

File Code: 1430 Date: JUL 10 1998
Route To:

Subject: Office of Inspector General Official Draft Report, Humboldt-Toiyabe National Forest Land Adjustment Program

To: JAMES R. EBBITT
Assistant Inspector General for Audit
Office of Inspector General

We have completed our review of the Office of Inspector General (OIG) Official Draft of the Humboldt-Toiyabe National Forest, Land Adjustment Program, Report No. 08003-02-SF, issued June 11, 1998. We generally concur with the audit findings and recommendations except in a few instances as noted.

Enclosed is our response to the OIG report. If you have any questions, please contact our Agency External Audit Liaison, Andrea Fowler at 202-205-1315.

Clyde Thompson
CLYDE THOMPSON
Deputy Chief for Business Operations

Enclosure

EXHIBIT D - FS RESPONSE

Audit Report No. 08003-02-SF

United States Department of Agriculture
Forest Service (FS)

Office of Inspector General (OIG)
Humboldt-Toiyabe National Forest, Land Adjustment Program
June 11, 1998

Forest Service (FS) Review Comments
July 13, 1998

GENERAL COMMENTS CONCERNING THIS REPORT: Overall, the FS believes that this audit was beneficial and concurs with the vast majority of the recommendations. A few exceptions are noted in our responses. It highlights the need for increased accountability in the Lands Program area to ensure that the landownership adjustment activities are focused to support and enhance our forest plan resource management objectives while meeting the obligation to ensure that the American public gets full value for the Federal assets involved in these transactions. It clearly points out critical management issues associated with the implementation of this program both in Region 4 as well as on an agency-wide basis.

It also enforces our objective of maintaining qualified valuation skills and the importance of managing the role of third-party facilitators in our land adjustment transactions. Clearly, the use of third-party facilitators has been and will continue to be a major benefit to the FS in meeting the landownership adjustment needs of the National Forest System. The audit reaffirmed the need to manage this assistance to minimize risks and to ensure that the public interest and National Forest objectives remain paramount. It also emphasizes the importance and need for training to ensure that our managers and technical Lands positions have the necessary skills and knowledge to appropriately administer this activity.

The implementation of the following recommendations has the highest levels of support in the FS and, as noted earlier, various actions have already been initiated in response to many of the findings. Under Secretary James R. Lyons, Chief Michael Dombeck, and Deputy Chief Robert Joslin have directed immediate actions that address the required filing of Financial Disclosure Reports, development of guidelines for the appropriate role of third-party facilitators in land transactions, and a review of how lands are prioritized for acquisition and conveyance. In addition, over the last 30 days, all third-party facilitated land exchanges needed to be first approved by Deputy Chief Robert Joslin prior to closure. This requirement has been extended indefinitely.

Recommendation No. 1a: Refer the improper actions of the FS employees involved in the Deer Creek bargaining agreement to the Human Resources Management Division for the appropriate action. (Hold personnel action pending completion of investigation and notification from OIG to proceed). Ensure that these employees do not participate in future negotiations with proponents and third-party

facilitators involving land exchanges including bargaining sessions. (See also Recommendation No. 12.)

FS Response: We concur with the first part of the recommendation. The Forest Service will delay taking action on the first portion of the recommendation until it is given the go-ahead from the OIG and provided access to the complete investigatory information. Regarding ensuring that "these employees do not participate in future negotiations with proponents and third-party facilitators involving land exchanges including bargaining sessions", we understand that the intent of this recommendation was to preclude participation in all land exchanges whether or not bargaining was involved. Pending review of the complete investigatory file, the FS has taken steps to ensure that the employees involved in the Deer Creek bargaining agreement are not involved in further land exchange activities and have been detailed to other duties. If, after review of the complete information, it is determined that personnel actions are warranted, the FS will consider various options including disciplinary actions, reassignments, training, a period of increased oversight and/or supplemented staff expertise.

Regarding the use of bargaining in land exchanges, the Forest Service has already taken action to ensure oversight on future use of bargaining in land exchanges. Interim Directive (ID) 5400-96-2 issued in 1996, in Forest Service Manual and reissued in ID 5400-98-1, provides for WO oversight relative to use of bargaining or arbitration. Specifically, the WO Director of Lands must approve the use of values arrived at through bargaining or arbitration in land exchanges prior to finalization of an exchange agreement, decision notice, or consummation of the exchange.

Recommendation No. 1b: Permanently incorporate the Interim Directive on Bargaining into the FS Manual System. Provide additional direction in the FSM and FSH related to the bargaining process by incorporating OGC's 9 legal criteria and FS WO guidelines.

FS Response: Generally concur. Interim Directive No. 5400-98-1 to Forest Service Manual 5400 zero code which addresses responsibility and approval for bargaining proceedings in land exchanges expires on August 26, 1999. Prior to expiration date, this direction will be permanently incorporated into the Forest Service Manual.

On December 4, 1996, then Deputy Chief, National Forest System, Gray Reynolds issued a policy letter which provides interim guidelines and policy on the use of bargaining and arbitration. This policy letter is consistent with the FS WO guidelines and OGC criteria which were developed specifically for the Deer Creek transaction. The direction contained in the December 4, 1996, policy letter will remain in effect until incorporated into the Forest Service Land Acquisition Handbook which is scheduled for revision FY 98-FY 99.

Recommendation No. 1c: Require the Region to submit, for WO Chief's Appraiser review, any land exchanges involving conflicting appraisals of over $1 million or appraisals using methods other than comparable sales approach or establish alternative controls to ensure that appraisals of large land transactions meet Federal appraisal standards.

FS Response: We do not concur with the first approach in this recommendation. We have delegated full review and approval authority in FSM 5410 to only fully qualified appraisers as defined in FSM 5410.6. As such, Regional Appraisers are certified and licensed to make such determinations in their

professional capacity. The WO Chief Appraiser will continue to do oversight and compliance reviews, as required in FSM 5410.41b, to insure qualifications and competency of FS appraisers as well as compliance with standards of professional practice as prescribed in FSM 5410.3. These reviews will focus on both technical and managerial competencies associated with this function.

Recommendation No. 1d: Instruct FS lands and appraisal staff not to rely on values of the Deer Creek exchange in future Federal land exchanges.

FS Response: Current FS appraisal instructions and Uniform Appraisal Standards do not allow use of agency transactions in determining indications of value for other properties. All evidence must be "arms length" market transactions from the private sector as reflected in the Uniform Appraisal Standards for Federal Land Acquisitions, (UASFLA) Section A4. The FS appraisers working in Nevada are aware of this matter and the appraisal standard which prohibits the use of this transaction as market evidence in future Agency appraisals.

Recommendation No. 2a: Develop guidelines on land transactions that limit the authority of FS staff dealing with third-party facilitators to key personnel with the expertise and training in FS policies and procedures on land acquisitions, and that ensure FS lands staffs: (1) deal primarily with landowners directly for land exchange transactions, (2) document when direct exchanges are not possible, and institute a referral process to ensure that any relevant available third-party facilitators are contacted, and (3) accept or reject land transactions proposed by third-party facilitators according to the FS priority list of land exchanges, and document all decisions relating to these transactions in writing to the third-party facilitator.

FS Response: FS concurs with the need for formal guidelines on the use of third-party facilitators in land transactions and has already taken action to respond to this recommendation. In letter dated May 21, 1998, Under Secretary James Lyons directed the FS to immediately address this matter and clearly define the appropriate use of third-party facilitators. To accomplish this a taskforce has been formed that will in the next 60 (On or before October 1, 1998) days develop draft guidelines which will define the procedures and appropriate roles of FS officials and third-parties in land transaction. We will provide an opportunity for key third-party facilitators to review and comment on these guidelines as part of this effort. In addition, we will also hold joint workshops with FS land adjustment personnel and third-party facilitators to develop common understanding of use of these guidelines. When finalized, which is anticipated this Calendar Year (CY), they will be incorporated into the FS directive system.

Currently, delegations for most activities associated with land purchases and exchanges are delegated to Regional Foresters, Deputy Regional Foresters, or Director of Lands including dealing with third-party transactions (FSM 5404.14). As a general rule, each Regional Office has experienced staff to provide technical support at this level. These responsibilities can only be delegated further by the Regional Forester to the Forest Supervisors if the Forest has staff with sufficient skills, knowledge, and training to perform the required landownership adjustment duties. This level of delegation has been appropriate for many years and we still believe it is applicable. However with recent downsizing many highly skilled and experienced individuals in the Regions and at the forest level have retired, we do recognize the need to develop new lands specialists in most Regions. To ensure that we have qualified people in the various lands jobs, the WO Lands Staff is developing competency standards which will identify the training and experience needed for all positions involved with lands program work in the FS.

Completion date is anticipated in CY 1999. These standards will be the basis for future delegations and position requirements.

Recommendation No. 2b: Instruct all FS lands staff members on the developed guidelines.

FS Response: FS concurs. Once the third-party transaction guidelines are finalized, in addition to the workshops noted above, they will be incorporated into lands training opportunities and in the FS directive system.

Recommendation No. 3a: Ensure that conceptual developments include data that accurately supports the costs and feasibility of the project. This data should be prepared by various experts in their fields, such as engineers and geologists. Detailed information, supporting all of the proposed costs, should be included in the appraisal or in a supplemental report. Any changes in the proposed development, such as the amount of anticipated road work, septic designs, water sources, etc., must also be fully supported. If disputes arise over the feasibility of a project, an objective outside expert should be consulted.

FS Response: We concur. Undocumented development proposals take the form of speculative evidence and fail to conform with the requirements of the Uniform Appraisal Standards for Federal Land Acquisition, (UASFLA) Section A-9. All appraisals prepared and/or submitted for Agency use must conform to the requirements reflected in UASFLA. Periodic compliance and oversight reviews of Regional appraisal activity by the FS Chief Appraiser shall focus on this type of unsupported supposition. At the annual review of FS appraisal policy, practices, and procedures we will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in 3a above.

Recommendation No. 3b: Ensure that presumed zoning changes are supported by: (1) evidence that the landowner has filed the appropriate applications, (2) documentation from the approving State or county agency supporting the proposed change, and (3) an analysis of the local environment, including resident attitudes, recent zoning changes, etc., to support the appraiser's assumption that the change is reasonably probable, not just possible.

FS Response: We concur. Undocumented reflections of potential zone changes are unacceptable as they are speculative and conjectural in character, and fail to meet the requirements as defined in UASFLA, Section A9. Periodic compliance and oversight reviews of Regional appraisal activity by the Forest Service Chief Appraiser shall focus on the potential for type of unsupported supposition. If repeated deficiencies are noted, the delegated appraisal approval authority can be rescinded. That would result in WO approval requirements for all appraisals prepared in the region. As part of the annual review of FS appraisal policy, practices and procedures, we will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in 3b above.

Recommendation No. 3c: Ensure that appraisal claims about water rights, access, septic designs, etc., are supported by documentation from the approving State or County agency. Special attention should be given to the status of water applications and whether they have been protested. If no documentation is available, the assertions should be considered speculative and excluded from consideration.

FS Response: We concur. Undocumented assertions concerning water rights, access, septic designs, etc., are unacceptable as they are speculative and conjectural in character, and fail to meet the requirements as defined in UASFLA, Section A9, and further, fail to properly support the requirements associated with a properly documented highest and best use analysis as reflected in UASFLA, Section A3. Periodic compliance and oversight reviews of Regional Appraisal activity by the FS Chief Appraiser shall focus on the potential for this type of unsupported supposition. At the annual review of FS appraisal policy, practices and procedures, we will review current policy and direction and incorporate appropriate policy and procedures to properly reflect fair market value under circumstances as described in 3c above.

Recommendation No. 3d: Require that all appraisals and valuations of non-Federal land be reviewed and evaluated by qualified Federal appraisers.

FS Response: Generally concur. All appraisals prepared for FS lands activities are required by Law and Regulation to be reviewed by a qualified Agency review appraiser as prerequisite to their acceptance for Agency use. The only situation where this standard does not apply is if the land in question consist of small parcels, low value properties, where the cost of appraisal and review approaches or exceeds the value of the property under consideration. This exception may only be applied where the case is non-controversial and simple in character. Periodic compliance and oversight reviews of Regional appraisal activity by the FS Chief Appraiser shall focus on this compliance and program managers will be held accountable if this situation is found to occur.

Recommendation No. 4a: Discontinue the practice of conducting another Federal appraisal if the proponent or third-party facilitator objects to the Federal appraisal on hand. If another appraisal is warranted, it should be at the expense of the proponent and/or third-party facilitator but under the direction of a Federal appraiser and the final appraisal should be reviewed for adherence to Federal appraisal standards.

FS Response: We concur. There may only be one Agency approved appraisal on any given property at any point in time. Any proponent may submit an appraisal prepared at their own expense for consideration on any pending Agency action to which they are a participant. All such submissions must be reviewed by qualified Agency review appraiser for compliance with UASFLA. If the submission by the proponent meets UASFLA standards, it is considered in context with any existing current appraisal that has been approved for Agency Use. "Appraisal shopping" is inappropriate. At the annual review of FS appraisal policy, practices and procedures, we will review current policy and direction and incorporate appropriate policy and procedures to address this situation.

Recommendation No. 4b: Elevate any allegations relating to the competence of FS appraisers to the WO Chief appraiser, who can review the proponents allegations and determine whether valid concerns relating to the appraiser exist.

FS Response: Generally concur. A formal process is in place for such reviews and is reflected in FSH 5409.12, 7.35 and 7.4. Annually, all FS appraisers' credentials and production are reviewed, as a portion of the ongoing quality control and annual re-delegation of appraisal/review authority carried out by the Regional Appraiser. (FSM 5410.6) Further, periodic reviews of Regional appraisal activity carried out by the FS Chief Appraiser already focuses on this issue. FSM 5410.42c requires the

Regional Appraiser to manage the appraisal function within the Region and to notify the Chief Appraiser of any valuation problem that might attract Congressional or Media attention.

Recommendation No. 4c: Ensure that the technical performance of the Regional Appraiser is prepared by the WO Chief Appraiser and is given greater consideration in the evaluation prepared by the Regional Director of Lands.

FS Response: We concur with this recommendation. The delegation of appraisal responsibility to the Regional Appraiser is a name delegation from the Chief Appraiser to a well qualified named incumbent. Periodic compliance reviews by the Chief Appraiser provides oversight as to the function and performance of the Regional Appraiser and Regional appraisal capability. If repeated deficiencies are found the delegated appraisal approval authority can be rescinded. Chief Appraiser currently provides input on performance of Regional Appraisers to the Regional Director of Lands through compliance reviews. Continued use of the periodic compliance reviews with emphasis on Regulatory and Statutory requirements will provide ample oversight.

Recommendation No. 4d: Approve each appraisal as soon as it is determined that the appraisal meets Federal appraisal standards.

FS Response: We concur. A timely and prompt closure on all appraisals submitted for Agency consideration is a requirement of good professional practice. Currently, there is no specified timeframe, as each appraisal is considered on its own merit. Due to the maximum age-life of one year from the date of value, prompt closure of the appraisal process is essential to timely closure of the case. At the annual review of FS appraisal policy, practices and procedures, we will review current policy and direction and incorporate appropriate policy and procedures to properly address the situation.

Recommendation No. 5a: Withdraw from the Mt. Rose Statement of Intent. Ensure that future agreements with third parties provide for mutual identification of lands that are proposed to be exchanged and a reasonable timeframe for completing the exchange.

FS Response: The FS has taken appropriate action on this matter. By letter dated April 15, 1997, the Regional Forester directed the Humboldt and Toiyabe Forest Supervisor to withdraw from both the Mt. Rose and Hunter land exchanges due primarily to deficiencies noted in the Statements of Intent. On April 17, 1997, a certified letter was sent by the Forest Supervisor to the third-party facilitator, advising that the FS was withdrawing from these two land exchange proposals.

Additionally, the Regional Forester suspended all delegations in lands and landownership adjustment cases of the Humboldt and Toiyabe Forest Supervisor. The Regional Forester directed that any subsequent Agreements to Initiate involving the Humboldt and Toiyabe National Forest would comply with 36 CFR Part 254.4, which includes identifying a reasonable timeframe for completing the proposed exchange.

Recommendation No. 5b: Repackage the Federal lands in the Mt. Rose exchange to maximize their value and consider conducting competitive land exchanges for these lands.

FS Response: As noted in Recommendation No. 5a, the FS has withdrawn from the Mt. Rose exchange. Prior to entering into any subsequent exchange proposal involving these lands, the Regional

Forester will review various assembled packages in order to optimize the value of the involved Federal lands and consider the possibility of offering all or a portion of these lands under a competitive proposal.

Recommendation No. 5c: Advise the third-party facilitator to cease any further work on FS-owned lands in the Mt. Rose exchange and obtain legal advice from OGC on liabilities that may arise from expenses already incurred by the third-party.

FS Response: The FS has already taken the recommended action on this matter. The Humboldt and Toiyabe Forest Supervisor's April 17, 1997, letter advised the third-party facilitator that as a result of the withdrawal, the third-party facilitator was not to take any further action that would involve the Federal properties.

In addition, the Regional Forester has obtained an opinion from OGC as to potential FS liability for any expenses already incurred by the third-party on the Mt. Rose exchange case, should the third-party facilitator raise this matter as an issue in the future.

Recommendation No. 5d: Minimize future liabilities and maintain adequate controls over land exchange activities to ensure that any future agreement to initiate an exchange clearly documents the responsibilities and costs to be incurred for each party in the exchange.

FS Response: All land adjustment activities on the Toiyabe/Humboldt National Forests are being handled by the Odgen Regional Office. This authority will not be re-delegated to the Forest until they have a qualified individual on staff to manage the Lands Program. The Region will be filling this position in the near future. Until this occurs, the Regional Forester will ensure that any subsequent Agreement to Initiate on the Toiyabe/Humboldt will comply with 36 CFR 254 and contain an assignment of responsibility for performance of required functions and costs associated with processing the exchange.

Recommendation No. 6a: Formally reject the Durkee donation unless the third-party facilitator can provide verification of the actual benefits and the Region determines that the benefits outweigh the costs and liabilities associated with the donation.

FS Response: This action has been taken.The proposed Durkee donation has been reviewed by a team of FS specialists and it was determined that the acquisition of this parcel was not in the best interest of the National Forest System. By letter dated June 10, 1998, the Regional Forester advised the third-party facilitator of this finding and rejected the proposal.

Recommendation No. 6b: If the Region accepts the donation, ensure that all required steps of a donation are completed prior to acceptance, including the review and prior approval by OGC and the FS WO of the terms of the donation.

FS Response: The Regional Forester rejected the donation. See response to 6a.

Recommendation No. 6c: Ensure that all lands staff are aware of the delegations of authority relating to land donations and the procedures required to be met prior to the acceptance of a donation.

FS Response: We concur. The Regional Forester will be directed to formally remind R-4 Forest Supervisors of the delegations of authority and proper procedures (FSM 5404.14) when considering donations. These procedures will also be incorporated in FS national training for line officers and program managers which is presented annually.

Recommendation No. 7a: Explore all options to use the water rights in the public interest or, if it is determined that these rights are excess to public needs, exchange the water rights for properties or services that would be equal value to the FS.

FS Response: Surface Water Rights: The FS was unable to meet the water right change-of-use permit conditions which prior to Federal acquisition were tied to the proposed private development. Therefore, a request was made to the State engineer to withdraw the appropriate applications in order for the rights to revert to their initial decreed status. Unlike non-decreed water rights, failure to meet conditions of these permits simply cause the point of diversion, manner and use to revert to the base rights adjudicated in the 1944 Ore Ditch Decree. These water rights remain in Federal ownership and are not currently in jeopardy. It is anticipated that "use" of the water for national forest management purposes can be best met by changing the purpose to non-consumptive "in situ" use for protection of instream flows and streamside vegetation of Galena Creek. The FS will take appropriate action by requesting a change of use which is permitted under State law. The change of use will be accomplished as soon as all possible options have been evaluated.

Ground Water Rights: The FS does not desire to develop the permitted use. Due to deed transfer delays and failure to file Proofs of Completion of Work and Beneficial Use, these permits were cancelled on January 12, 1996. The FS did petition the State for review of the cancellation and then applied for a time extension. The State granted a 1-year extension which expired May 20, 1998.

The Forest is attempting to develop a land exchange proposal that will involve land and the 190-acre-feet of undeveloped ground water. By including these rights in a land exchange the United States would receive equal value in the form of land or interest in land. A meeting was held with the State Engineer on April 8, 1998, to discuss the proposal and to request a further extension of time to pursue the land exchange. The State Engineer indicated that an extension could be granted to complete the exchange. An extension request was filed with the State Engineer on May 19, 1998. The Forest is continuing to work on the exchange proposal while waiting for the formal response from the State Engineer.

Recommendation No. 7b: Review the utility of water rights attached to non-Federal land proposed for exchange. Determine if the water has potential Federal uses by consulting the FS hydrologist or interested staffs from other Federal agencies. If no uses are determined, separate the value attributable to the rights, and have the landowner dispose of those rights prior to the land exchange.

FS Response: We concur. The Regional Forester will insure that an analysis of water rights will be completed on the non-Federal land in considering future exchange or purchase transactions. This analysis will address:

1. Contributory value of the water to the property to be acquired.

2. Necessary actions for use of the water after acquisition, i.e., change of use, change of diversion point, issuance of special use permit, reconveyance, etc.

3. Identify cost, funding source, and program responsibility to accomplish actions in No. 2. above.

4. Effects on highest and best use and value of the land if the water is severed from the estate it serves.

In some cases, acquisition of water rights will have no effect on appraised value of the land. In other cases, severance of water rights can reduce the value of the land to a much greater degree than the value of the severed rights. It is also difficult for some entities, such as local governments or State agencies, to sever water rights and convey them in separate transactions. Thus, it is not always appropriate or in the national forest interest to take the recommended course of action. However, we agree that a short term or intermediate use of the water such as authorizing the use of the water under a special use permit or reconveyance should be identified when long-term utility is unknown.

Recommendation No. 7c: Develop a system to account for water rights in order to track the status of acquired water and the actions necessary to protect those rights from loss.

FS Response: We concur and the FS is currently developing an integrated data base (Water Uses Tracking System) for water rights. The data base will store basic water rights data and will integrate State-by-State data needs as the system is completed. A prototype of this system will be available in November 1998. In the meantime, water rights data bases are being obtained from Utah, Nevada, California, Colorado, Wyoming, and Idaho. These data bases will contain water rights data such as location of water source, ownership, point of diversion, quantity of water, and other relevant information dealing with status of these water rights. We anticipate that this data will be in place in Region 4 by September 1998. Acquired water rights obtained through land exchange or purchase will be added to the data base as soon as the transaction have been finalized.

Recommendation No. 8a: Ensure that a landownership adjustment plan is prepared and approved for both the Humboldt and Toiyabe National Forests.

FS Response: We concur and the Forest Supervisor has been directed to complete a landownership adjustment plan. In May 1997, a review team which included the WO and RO representatives met with Forest officials to review their land adjustment program. The Team made several recommendations that were presented to the Regional Forester. As a result, an Action Plan was developed that included an action item to prepare a landownership adjustment plan that would be incorporated into the revised Forest Plan. The Forest was advised to utilize the direction in R-4 Supplement No. 5400-92-2 as a guide in this effort. The Regional Forester will ensure that the landownership adjustment plan will be completed by September 1, 1998. In the interim, the Forest has prioritize lands for acquisition based on their associated contribution toward meeting Forest Plan resource management objectives.

Recommendation No. 8b: Improve the procedures used to identify and prioritize lands for acquisition. These procedures should correspond to the landownership adjustment plan.

FS Response: We concur, see 8a and 8c.

Recommendation No. 8c: Direct FS staff at the forest level to initiate land exchanges involving private property targeted on priority listings.

FS Response: This action has already been taken. As a result of the May 1997 review, the Toiyabe-Humboldt National Forests Forest Supervisor was directed to, and has developed a priority listing of available non-Federal lands that would be desirable for acquisition. These lands were ranked based on their contribution to meeting and enhancing the Forest Plan resource management objectives. This priority ranking is being utilized as the basis in developing the Forests Landownership Adjustment Program.

Recommendation No. 8d: Reject any land exchange proposals that do not correspond to the Forest priority list.

FS Response: We generally concur. As noted in 8c, the priority ranking of non-Federal lands will be the basis to guide the development and processing of future landownership adjustment transactions. The ranking of specific parcels will need to be re-evaluated as new proposals or opportunities are made available as noted in 8e. The Forest will take action on proposals based on priority and availability basis. Those parcels that do not make the prioritized list will be rejected and the proponent notified in writing.

Recommendation No. 8e: If land is offered that has not been identified as a priority, determine that the lands provide benefit in compliance with the landownership adjustment plan, and the goals and objectives of the Forest Plan.

FS Response: We concur. The Forest land adjustment program needs to have flexibility to be able to react to new proposals that were not previously available or considered in the priority ranking. If the offered non-Federal lands are not on the prioritize list, then the parcel will be evaluated based on overall contributory value in meeting and enhancing resource management objectives of the forest plan. If appropriate, the parcel will be added to the prioritized list based on contributing benefits or formally rejected.

Recommendation No. 8f: Officially notify the facilitator that the Gaspari Ranch is not acceptable for exchange because it does not provide any benefit to the FS.

FS Response: We concur. The Gaspari Ranch was evaluated based on its public benefit and is not on the current Forests prioritized acquisition list. The third-party who proposed this acquisition has been verbally apprised of its status; however, we agree that this determination needs to be formally documented. Accordingly, the Forest Supervisor will be directed to advise the facilitator in writing as to the FS's' interest in this property.

Recommendation No. 8g: Officially notify the third-party facilitator of the FS' decision to withdraw from the Deer Creek lots exchange, as it is currently configured by the third-party facilitator.

FS Response: This action has already been taken. The facilitator had configured an exchange proposal known as the Hunter case which contained some of the Deer Creek lots. In letter dated April 17, 1997, the Humboldt-Toiyabe Forest Supervisor advised the facilitator of our withdrawal from this exchange proposal. Since this action, the facilitator has been advised verbally by the Regional Forester that the

Forest Service is not interested in the acquisition of these properties due to their low priority and public benefit.

Recommendation No. 8h: If the Deer Creek lots are determined to provide benefit and are placed on the priority list, officially notify the facilitator of the position of the lots on the list and establish a possible timeframe for accepting proposals relating to the lots.

FS Response: See response in 8g.

Recommendation No. 9a: Develop and sign an MOU with BLM on the areas relating to: (a) mutual decisions on the acceptance of non-Federal lands, (b) review and approval of land valuations, and (c) responsibilities relating to title acceptance, including the performance of property inspections and clearance of title.

FS Response: We concur and the Region has initiated action to finalize an MOU. A draft MOU has been prepared and is currently being reviewed by both the Region and Nevada State Office, BLM. The draft specifically includes items a - c above as well as defines responsibility for other procedures and requirements associated with BLM/FS land exchanges. We anticipate excuting the MOU by October 1, 1998. In the interim, both BLM and Region 4 have been operating under the provisions of the draft MOU.

Recommendation No. 9b: In coordination with BLM, establish a system of tracking the quality of appraisals performed by private appraisers on Federal land exchanges, referring substandard appraisals to the State Board and the Appraisal Institute, and debarring appraisers who continually provide substandard appraisals from performing appraisals on Federal land exchanges.

FS Response: We do not concur. The FS currently tracts successful sources of appraisal services, and will respond to other Agency requests with positive list of historically successful appraisal firms. We do not formally track appraisers who have not provided successful appraisal products, to do so can result in potential litigations involving allegations of defamation of character, slander, and possibility restraint of trade. Appraisers submitting reports that are in obvious violation of the Uniform Standards of Professional Appraisal Practice (USPAP) and or the code of ethics of any professional appraisal organization to which they claim affiliation are submitted to the appropriate agency/organization for review of their professional practices. It is inappropriate for a Federal Agency to debar or "blackball" private appraisers, due to the potential for litigation referred to above. It is the responsibility of the State licensing authorities and professional appraisal organizations to police their licensee's and designee's. The FS will continue to evaluate potential contract appraisers based upon their demonstrated success with the Agency and other public Agencies used as references.

Recommendation No. 9c: Suspend all current and future land exchange transactions with the third-party facilitator on the Galena Resort exchange until the FS lands staff have reworked all the warranty deeds to the properties.

FS Response: We do not think that suspension of all current and future land exchange transactions with the third-party facilitator involved with the Galena Resort exchange is appropriate. The FS acquired the Galena Resort property through a Bureau of Land Management land exchange. Some of the title issues with the property were not the result of or within the control of the third-party facilitator.

The Bureau of Land Management, FS and third-party are working to resolve these title issues and to date the third party facilitator has been cooperative and responsive in this effort. Should this situation change in the future, we will then consider actions that maybe appropriate.

RECOMMENDATION NO. 10: This recommendation was deleted by OIG.

Recommendation No. 11: Develop a tracking system at the Region to ensure that financial disclosure statements are submitted by the required FS personnel.

FS Response: The FS concurs but would like to broaden the recommendation to include all Regions. Under current procedures, each Region is required to track and submit compliance reports to the WO on the numbers of occupied positions whose incumbents are designated to complete Confidential Financial Disclosure Reports and whose reports have been received. They must submit updated compliance reports on a monthly basis until all documents are received. During the next reporting cycle, which begins October, 1998, the WO will ask that all compliance reports be signed by someone who attests to their accuracy. Forest Service Regional and Station ethics officials received training from the Office of Government Ethics in tracking and reviewing financial disclosure documents on April 16, 1998. Also, in letter dated June 5, 1998, the Acting Director of Human Resources Management sent letters to all Regional Foresters, Station Directors, Area Directors, IITF Directors, and WO Staff to reinforce the understanding about the requirement for filing the Confidential Financial Disclosure Report with emphasis on positions involved in Lands activities. In addition, during periodic reviews of Regions and Stations, confidential financial disclosure files are reviewed by the WO Human Resources Management Staff.

Recommendation No. 12: Assess staffing and skill levels (competency) to ensure they are commensurate with the demands of the existing workload.

FS Response: We concur. The make-up of Regional and Forest lands staff should include individuals with the necessary skills and competencies to perform the priority landownership adjustment workload. The Regional Forester has identified the need and committed to filling a journeyman level Lands Staff position on the Humboldt-Toiyabe Forests to increase the technical and managerial expertise in the Lands Program at that level. The Regional Forester has also committed to increasing the managerial Lands expertise at the Regional level by establishing an Assistant Director of Lands and Recreation position with emphasis on Lands expertise.

The competency and performance levels of both the Regional Director and the Regional Land Adjustment Program Manager will also be evaluated as part of the personnel review noted in response to recommendation 1a. The Regional Forester will also be requested to assess the workload and prioritize the landownership adjustments program and assure the necessary personnel to carry out those priority adjustments.

Informational copies of this report have been distributed to:

Office of the Chief Financial Officer
  Director, Planning and Accountability Division (1)
General Accounting Office (1)