



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

Recommendations From the Report Titled Bureau of Land Management's Minerals Materials Program (C-IN-BLM-0002-2012)



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

Memorandum

OCT 20 2021

To: Tonya Johnson
Deputy Chief Financial Officer and Director, Office of Financial Management

From: Amy R. Billings *Amy R. Billings*
Regional Manager, Central Region

Subject: Verification Review – Recommendations From the Report Titled *Bureau of Land Management's Minerals Materials Program* (C-IN-BLM-0002-2012)
Report No. 2021-CR-038

The Office of Inspector General (OIG) has completed a verification review of all 15 recommendations presented in our audit report titled *Bureau of Land Management's Mineral Materials Program* (C-IN-BLM-0002-2012), issued on March 31, 2014. We sought to determine whether the Bureau of Land Management (BLM) implemented the 15 recommendations in the evaluation as reported to the Office of Financial Management (PFM), Office of Policy, Management and Budget. The PFM reported to us when each of the 15 recommendations were addressed and provided supporting documentation. Based on our review, we consider recommendations 1 through 10 and 12 through 15 resolved, implemented, and closed. We consider recommendation 11 not implemented and recommend that the PFM reopen it to track implementation.

Background

In our March 2014 audit report titled *Bureau of Land Management's Mineral Materials Program*, we found that the BLM had little assurance that it obtained market value for the mineral materials it had sold. This occurred because of outdated regulations and policies, which led to staff not always recovering the processing costs for mineral materials contracts or verifying production volumes. We also found evidence that the BLM may not have been collecting fees for minerals used on lands that were sold under the authority of the Southern Nevada Public Land Management Act of 1998. We made 15 recommendations designed to help the BLM better oversee mineral materials sales.

In its response to our draft report, dated February 10, 2014, the BLM concurred with our recommendations and detailed its plans to implement them. We considered 14 of the recommendations resolved but not implemented and found that the BLM's response to recommendation 9 did not meet our intention. We consulted with the BLM regarding this issue and, as a result, modified the wording of the recommendation. As a result, when we issued our final report in March 2014, we considered all 15 recommendations resolved but not implemented and referred them on September 3, 2014, to the Director of the Office of Financial Management

to track implementation. As of September 2020, the PFM reported to us that it considered all 15 recommendations implemented and closed.

Scope and Methodology

We reviewed whether the BLM implemented the 15 recommendations we reported in our March 2014 audit report. To accomplish our objective, we obtained and reviewed all the documentation the BLM submitted to the PFM related to the actions the BLM took to implement each recommendation. We did not perform internal control testing or conduct fieldwork to determine whether the BLM corrected the underlying deficiencies that we initially identified. As a result, we did not conduct this review in accordance with Generally Accepted Government Auditing Standards, issued by the Comptroller General of the United States, or Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

Results of Review

We found that the BLM implemented 14 of the 15 recommendations reported to us as closed by the PFM. We determined that the BLM has not implemented recommendation 11 and that the PFM should reopen this recommendation until the BLM initiates the regulatory change process.

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

Action Taken: We found that the regulatory language requires the BLM to use appraisals even though other acceptable valuation methodologies exist for standalone commodities such as sand and gravel. To implement the recommendation, the BLM requested an opinion from the U.S. Department of the Interior’s (DOI’s) Office of the Solicitor (SOL) on replacing “appraisal” and “reappraisal” through regulatory change with terms that indicate a valuation methodology more appropriate for mineral materials. The SOL concluded that the BLM does need to change the regulatory language. The BLM, however, later informed the SOL that it was unable to undergo the rule-making process due to internal staffing issues. In response, the SOL stated that the BLM may coordinate with the DOI’s Appraisal and Valuation Services Office¹ (AVSO) to pursue a solution through policy rather than regulatory change. The SOL informed the BLM that the BLM would have a “good faith argument” to continue using its interpretation of the term “appraisal,” with which AVSO agreed. We consider recommendation 1 resolved, implemented, and closed.

Recommendation 2: Work with the OVS to update the Bureau’s Mineral Material Appraisal Manual 3630 and H-3630-J Mineral Material Appraisal Handbook.

¹ In March 2018, Congress directed the Secretary of the Interior to ensure that appraisals and valuations of Indian trust property be administered by a single bureau, agency, or other administrative entity within the DOI. In response, the DOI consolidated the Office of Appraisal Services (OAS) and the Office of Valuation Services (OVS) to form the AVSO.

Action Taken: A team of BLM and OVS specialists met over 2 years to review the Bureau's *Mineral Material Appraisal Manual 3630 (Manual)* and *H-3630-J Mineral Material Appraisal Handbook (Handbook)*. The team identified appropriate modifications to the methodology and procedures for mineral materials evaluations and fair market value estimations. These modifications included renaming the *Handbook* to the *Mineral Materials Fair Market Value (FMV) Evaluation Handbook* and providing a narrative and flowcharts on the FMV evaluation and determination processes. Also, the OVS and the BLM determined that the OVS' Division of Minerals Evaluation (DME) will review area-wide market studies, controversial site-specific reports, and large site-specific reports. Updates to the *Handbook* included a description of the DME's duties, including a flowchart of steps in the evaluation process, and a chapter describing the review process, including the DME's role. We consider recommendation 2 resolved, implemented, and closed.

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

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

Actions Taken: To implement recommendations 3 and 4, the BLM first coordinated with the OVS to develop a standardized statement of work for the contracting of mineral materials valuations. The BLM then incorporated the standardized statement of work as a template in their Instruction Memorandum No. 2016-099, "Policy for Evaluations Contracts for Mineral Materials Prices." The instruction memorandum requires field offices to use the standardized statement of work for preparing all contract solicitations to perform mineral materials evaluations and clarifies that staff may only use modifications approved by the BLM Washington Office and the DME. We consider recommendations 3 and 4 resolved, implemented, and closed.

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

Action Taken: The BLM and the OVS formed a team of subject matter experts to develop a process for the OVS to review mineral materials valuations. The team met in 2015 and 2016 and determined that the DME should review area-wide market studies, controversial site-specific reports (e.g., trespass evaluations), and large site-specific reports of 1 million cubic yards or more. The BLM incorporated this review process in their updated *Handbook*. We consider recommendation 5 resolved, implemented, and closed.

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

Action Taken: The BLM and the DME agreed to have the DME prepare new fair market value determinations rather than try to correct the deficiencies in the existing appraisals.

The DME recommended a short-term solution for up to 1 year that allowed partial use of the existing appraisal reports, after which completely new mineral materials evaluations conducted in accordance with the new *Handbook* were required. The DME and the BLM signed a comprehensive memorandum of understanding in 2014 that included the DME's review of the rejected appraisals and provided new fair market value determinations. We consider recommendation 6 resolved, implemented, and closed.

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

Action Taken: The BLM developed a mechanism through which it will reimburse the OVS for mineral materials valuation services as needed. The BLM established a miscellaneous obligation (MO) document in the financial management system to pay the OVS. The MO was initially funded at \$150,000 through a reimbursable support agreement that reimbursed the OVS for its review of the updated *Handbook* and existing BLM valuations for mineral materials. The BLM and the OVS plan to use this MO to deliver funds to the OVS to review future mineral materials valuation documents as needed. In addition, the 2014 memorandum of understanding between the BLM and the OVS also outlines this reimbursable agreement between both agencies. We consider recommendation 7 resolved, implemented, and closed.

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

Action Taken: To ensure that field offices make necessary price adjustments in existing mineral materials contracts, the BLM Washington Office's mineral materials lead employee emailed BLM staff in August 2018 asking State offices to identify which prices needed adjusting and to rank the State's need for updating contracts, based on their review policy. The State mineral materials lead employees also held monthly teleconference calls to discuss guidance and pricing. The BLM provided us notes from two of those meetings; the notes indicate that the State employees discussed current and future price adjustments, which States have mineral materials activity, creating a canned template for mineral price reports, and updates on State offices' valuation reviews. Based on these activities, which we understand the BLM continues to do, we consider recommendation 8 resolved, implemented, and closed.

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

Action Taken: The BLM undertook several actions to implement this recommendation. In 2015, the BLM issued instructions to its State offices on how to identify and prioritize contracts that need to be valued and revalued with Instruction Memorandum 2016-011, "Mineral Materials Valuation Policy." The BLM incorporated the instructions into its updated *Handbook* issued in 2016. Specifically, this instruction memorandum requires State offices to develop an annual ranking of individual and market-area valuation reports needing to be valued or re-valued based on a required adjustment

interval. This interval depends on the type of disposal and occurs every 2 years or at contract renewals. The BLM also sent a partial list of contracts to State offices and asked the State offices to identify which prices needed to be adjusted and to rank the contracts that needed to be updated. Furthermore, as mentioned previously, guidance and pricing issues are discussed during the monthly teleconference calls with the State mineral materials lead employees. We consider recommendation 9 resolved, implemented, and closed.

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

Action Taken: The BLM issued Instruction Memorandum No. 2016-100, “Case-by-Case Fees for Mineral Materials Program,” in June 2016 to provide guidance on how to properly charge cost-recovery fees for mineral materials, including exclusive-sale contracts. This instruction memorandum outlines procedures for BLM State, district, and field office staff to follow to ensure that case-by-case processing fees are properly charged to the mineral materials applicants. To ensure office staff recover costs incurred, the BLM also issued procedures for collecting and billing of case-by-case fees for processing mineral materials documents. In addition, the BLM reported that they must collect cost-recovery fees from applicants for processing mineral materials sale applications as directed by its annual budget directives. We consider recommendation 10 resolved, implemented, and closed.

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

Action Taken: The BLM worked with the SOL to obtain an opinion regarding the wording of 43 C.F.R. § 3602.11(c). The SOL advised the BLM to “(1) change the wording of 43 C.F.R. § 3602.11(c) to insert the phrase ‘nonexclusive sales of’ into the existing wording of the regulation; and (2) promulgate that wording change through notice and comment rulemaking procedures.” In 2016, the BLM stated it would begin the regulatory change process as advised by the SOL, but we learned in August 2021 that this process has not progressed beyond obtaining the SOL opinion. The BLM told us it had identified other areas where the regulations needed updating, and that “due to the migration and reorganization of BLM [headquarters] offices, the concurrent vacancy of staff positions, and priorities of the Directorate and Divisions, the BLM has not been able to initiate the process.” The BLM stated that “at such time as staffing and priorities allow,” it will revise 43 C.F.R. § 3602.11(c) but did not provide a target date. Until the BLM initiates the regulatory change process, we recommend that the PFM reopen recommendation 11 and continue tracking its implementation.

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

Action Taken: The BLM reissued guidelines for production verification on September 22, 2015, with Instruction Memorandum 2015-147, “Mineral Materials Production Verification (PV) Frequency and Reporting Policy.” This instruction memorandum directs field office staff to provide accurate accounting of removed materials by outlining the minimum PV frequency requirements. This includes a chart that lays out the frequency of PV determinations, which are based on the total contract quantity authorized, with the number and frequency of verifications scaled up commensurate to the size of the contract. The instruction memorandum also includes other procedures BLM staff must undertake during the PV process, including reviewing contract requirements, conducting inspections, taking measurements, making calculations, and analyzing and evaluating data and reports submitted by the operator.

To ensure field offices comply with the instruction memorandum, the BLM reported that field office staff are also required to verify and document operators’ production reports and record them in a spreadsheet within 5 business days of receipt and enter them monthly into BLM’s Performance Management Data System to check that operator submittals are mathematically accurate. Staff are also required to verify that full payment has been received for all production; that quantities in the purchaser’s production reports accurately match the sum of quantities provided by operator submittals of weight tickets and truck counts; and that the payments submitted for the production reports are accurately calculated using the current fair market value contract price for the materials. We consider recommendation 12 resolved, implemented, and closed.

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

Action Taken: In our March 2014 report, we noted that confusion existed between BLM officials regarding what constitutes a “minimal amount” and whether use of minerals for construction and landscaping of residential properties could be considered “personal use.” In response to our recommendation, the BLM issued Instruction Memorandum No. 2014-085, “Unauthorized Use of Mineral Materials on Split Estate Lands,” on May 5, 2014. This instruction memorandum clarifies policies for addressing mineral materials by surface estate owners, including unauthorized personal uses of the mineral materials. The instruction memorandum noted that the preamble to the Federal Register notice publishing the regulations explains the type of use regarded as “minimal personal use” for the purpose of 43 C.F.R. § 3601.71 (b)(1):

“[W]ithout a contract or permit, or other express authorization, a surface estate owner may make only minimal personal use of federally reserved mineral materials within the boundaries of the surface estate. Minimal use would include, for example, moving mineral materials to dig a personal swimming pool and using those excavated materials for grading or landscaping on the property. It would not include large-scale use of

mineral materials, even within the boundaries of the surface estate (66 Fed. Reg. 58894 (Nov. 23, 2001)).”

Even though the instruction memorandum does not address commercial use, it does clarify what constitutes personal uses of BLM mineral materials, including the materials' location and examples of authorized minimal use. The instruction memorandum also explains unauthorized processing and use in construction and removes the uncertainty that contributed to our initial concerns. We consider recommendation 13 resolved, implemented, and closed.

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

Action Taken: The BLM’s Instruction Memorandum No. 2015-124, “Mineral Materials Policy on Unauthorized Use” addresses the unauthorized personal use of mineral materials on split-estate lands and instructs field office staff to “investigate and take enforcement actions” whenever they identify such instances, including confirming where trespasses occurred relative to tract boundaries, conducting title reviews, and verifying ownership status. In addition, the instruction memorandum requires that BLM staff consult with the SOL to verify that the Federal interests on all split-estate ownership tracts include mineral materials. This guidance requires BLM staff to take action to collect the fair market value of the unauthorized removal of mineral materials. We consider recommendation 14 resolved, implemented, and closed.

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

Action Taken: In response to the recommendation, the BLM stated that the Las Vegas Field Office investigated the Del Webb/Anthem property highlighted in our report and did not find any documentation that would establish the occurrence of a past trespass to substantiate a case to refer to the SOL. The BLM, however, provided other examples of working with the SOL to investigate and resolve several suspected and actual instances of mineral trespass on split-estate land, including Ryland Homes, in which the SOL issued a trespass notice in 2014 that was later rescinded; D.R. Horton, in which the BLM received full payment for a trespass; Inspirada, a master planned community, in which the BLM identified areas of trespass and entered into a settlement agreement with the group of developers; and in the Northwest Las Vegas Valley, where, in 2015, the BLM and the SOL investigated six new mineral materials trespass cases against the developers. We consider recommendation 15 resolved, implemented, and closed.

Conclusion

We conclude that recommendations 1 through 10 and 12 through 15 are resolved, implemented, and closed but that recommendation 11 has not been implemented. We recommend the PFM reopen recommendation 11 and continue tracking its implementation until the BLM has initiated the regulatory change process to insert the phrase “nonexclusive sales of” into the existing wording of 43 C.F.R. § 3602.11(c). We informed BLM officials of the results of this review on September 9, 2021.

We would like to thank the BLM for providing information that we requested during our review. If you have any questions concerning this memorandum, please contact me at 303-236-9161.

cc: Nada Wolff Culver, Deputy Director of Policy and Programs, Exercising Delegated Authority of Director, BLM
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