



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

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Memorandum

To: Amy Holley  
Acting Assistant Secretary for Policy, Management and Budget

James Cason  
Acting Deputy Secretary of the Interior

From: Amy R. Billings *Amy R. Billings*  
Central Region Manager for Audits, Inspections, and Evaluations

Subject: Verification Review – Recommendations for the Report, “Management of Rights-of-Way in the U.S. Department of the Interior,” (Report No. C-IN-MOA-0013-2010)  
Report No. 2017-CR-009

The Office of Inspector General (OIG) has completed a verification review of 13 of the 17 recommendations in our September 27, 2012 audit report, “Management of Rights-of-Way in the U.S. Department of the Interior,” (Report No. C-IN-MOA-0013-2010). Our objective was to determine whether the National Park Service (NPS), the Office of Valuation Services (OVS), and the Office of Appraisal Services (OAS) implemented the recommendations pertaining to them as reported to the Office of Financial Management (PFM), Office of Policy, Management and Budget (PMB).

PFM reported to us when each of the 13 recommendations were addressed and provided supporting documentation. Based on our review, we consider 8 of the 13 recommendations (1, 4, 5, 7, 9, 12, 16, and 17) resolved, implemented, and closed. In addition, we acknowledge that OVS’s ability to fully meet the intent of recommendations 10, 13 and 14 is hampered by the need for other bureaus to voluntarily change their rules and regulations. Therefore, we consider these recommendations closed but not implemented. We consider recommendations 2 and 3 not implemented and not closed.

**Background**

Our audit report found that NPS, OVS, OAS and the Bureau of Land Management (BLM) did not receive market value for rents on Rights-of-Way (ROW) and had an opportunity to collect as much as \$100 million or more annually if they had assessed market value for rents. We made 17 recommendations designed to take advantage of these opportunities including performing ROW rent valuations based on actual market values, revising and updating ROW rent schedules, and identifying unreported services and collecting back rents on ROW. The Department generally concurred with the report’s recommendations in a memorandum dated July 18, 2012.

On March 12, 2013, we referred all 17 of the recommendations to PFM to track their implementation or resolution. PFM issued a series of memoranda to us between March 5, 2014, and September 27, 2016 reporting the recommendations as implemented and closed. As of September 27, 2016, 13 recommendations—1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 16, and 17—were reported closed by PFM, which are the subject of this verification review. Recommendations 6, 8, 11 and 15 pertain directly to BLM and are closely tied to the recommendations covered in this review. BLM’s recommendations, however, have not yet been reported as closed and were not part of this review.

## **Scope and Methodology**

We limited the scope of this review to the 13 recommendations reported closed by PFM and pertaining to NPS, OVS, and OAS. To accomplish our objective, we reviewed the supporting documentation that was provided to PFM, discussed issues with the OVS Chief Appraiser, and collected and reviewed additional supporting documentation as required to independently verify each recommendation’s implementation.

We did not test internal controls, visit sites, or conduct fieldwork to determine whether the underlying deficiencies that we initially identified have been corrected. As a result, this review was not conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States or the Quality Standards for Inspection and Evaluation of the Council of the Inspectors General on Integrity and Efficiency.

## **Results of Review**

Based on our review we conclude that 8 of the 13 recommendations reported as closed by PFM have been resolved, implemented, and closed:

**Recommendation 1:** Following “Uniform Appraisal Standards,” Valuation Services should define market value of ROW to include the value of the right or use granted.

**Recommendation 4:** Valuation Services should perform high-priority, individual valuations as allowed, given its resources.

**Recommendation 5:** Valuation Services should develop and implement guidance and training requirements for staff to conduct individual ROW valuations.

**Recommendation 7:** Valuation Services should work with BLM to implement linear rent schedules for department-wide use with provisions to periodically update the schedules.

**Recommendation 9:** Valuation Services should work with BLM to implement communications rent schedules for department-wide use with provisions to periodically update the schedules.

**Recommendation 12:** The Department’s Office of Budget should seek authority for BLM and other bureaus with ROW responsibilities to retain a percentage of the revenues

recovered from reviews that identify unpaid rent from unreported services. Bureaus could use these additional revenues to fund additional reviews.

**Recommendation 16:** NPS should continue to implement a ROW management program that includes completing an inventory of its ROW and assigning qualified realty staff.

**Recommendation 17:** Appraisal Services should consult with the Office of the Solicitor to determine which recommendations in this report are applicable to Indian Affairs.

We consider recommendations 10, 13, and 14 closed, but not implemented:

**Recommendation 10:** Valuation Services should work with BLM to develop and implement procedures for department-wide periodic reevaluations of ROW grants, with authority to update rental rates to reflect current market values.

**Actions Taken:** In its response to our audit report, the Department stated that OVS would assist in the development of a department-wide reevaluation procedure by assisting BLM and DOI with developing methodologies for periodically reevaluating and updating the linear and communications rent schedules. It also stated that OVS would conduct periodic audits of ROW grants to determine whether rental rates are still representative of market value post-implementation.

In its request to PFM to close this recommendation, OVS stated that BLM determined it would have to pursue formal rulemaking to allow development of rent schedules other than those included in regulation. During our review, OVS provided us with drafts of the regulations that BLM wants to change and which OVS had input. OVS is not conducting periodic reevaluations of ROW grants, which was a finding in our original report. Rather, grant leases are evaluated at the end of the ROW terms. We believe that periodic audits of ROW grants are warranted; however, we understand that OVS' ability to implement the full intent of the original recommendation is heavily contingent on BLM action. Therefore, we consider this recommendation closed but not implemented.

**Recommendation 13:** Valuation Services should work with bureaus with ROW responsibilities to implement penalties for grantees that do not report additional services and fail to pay rents.

**Recommendation 14:** Valuation Services should work with the bureaus to develop and implement department-wide procedures for calculating and collecting unpaid back rents.

**Actions Taken:** In its response to our audit report, the Department noted that a considerable amount of research would be needed prior to implementing penalties for grantees or developing department-wide procedures for calculating and collecting unpaid back rents. To address these two recommendations, the Department stated it would have OVS convene a work group to—

- Identify authorities that may permit penalties and collection of back rents;

- Review current penalty and rent collections programs in the bureaus, if any;
- Develop recommendations for the implementation of penalties and back rent collections programs; and
- Implement programs in each bureau.

In its request to close the recommendation, OVS stated that it had convened a work group made up of key bureau personnel, and provided a list of attendees and a small chart outlining each bureau's applicable regulations, the section of the regulation that pertains to back rents, and a brief summary of the types of penalties or pecuniary actions available to each bureau. We were told, during the course of this review, that the work group met once, discussed the information provided in the chart, and concluded that OVS did not have the authority to implement any department-wide policies regarding penalties and back rents and that each of the bureaus would need to complete rulemaking to modify their existing regulations.

Though a work group was convened, and each bureau identified its own applicable authorities that may permit penalties and the collection of back rents. The group did not undertake any sort of in depth review, develop any recommendations regarding possible improvements, or implement—or improve the implementation of—penalty or back rent collection programs in the bureaus. However, since OVS does not have direct authority to implement penalties, or to develop department-wide procedures for calculating and collecting back rents, its ability to meet the full intent of these two recommendations is limited. Therefore, we consider Recommendations 13 and 14 closed but not implemented.

We do not consider recommendations 2 and 3 implemented or closed:

**Recommendation 2:** Valuation Services should create and maintain a database of comparable ROW information.

**Actions Taken:** OVS has begun collecting market transaction data related to ROW from completed NPS and FWS appraisals, as well as ROW market-related information from State government agencies and other public sources. In addition, OVS has come to an agreement with OAS to buy licenses (through OAS' enterprise agreement) for OAS' appraisal software program, which includes the ability to create a database for ROW market transactions. In order to use the appraisal software program, however, we learned that OVS must clear this arrangement through the Department's Office of the Chief Information Officer (OCIO). According to OVS' Chief Appraiser, OVS has not yet submitted this request to the OCIO, and as such is not currently using the appraisal software system.

OVS has made significant progress towards implementing this recommendation, and we commend the efficiency of using available resources (OAS' appraisal system) rather than duplicating efforts by securing another similar system. Until OVS submits its request to the OCIO and gets approval, however, it cannot create and maintain a database of comparable ROW information as intended by the recommendation. Therefore, we do not consider this recommendation implemented or closed.

**Recommendation 3:** Valuation Services should establish criteria to prioritize ROW using market considerations, including the value and volume of the service authorized.

**Actions Taken:** In its closure request, OVS proposed that this recommendation be “closed without implementation pending legal review.” OVS noted that it did not have the authority to establish criteria for prioritization of ROW, but it met with BLM numerous times to discuss the implementation of this recommendation. The issue in question is whether determining market rents based on the value and volume of the authorized services violates the Commerce Clause of the U.S. Constitution, as ruled in *Western Oil and Gas Association v. Cory*, 726 F. 2d 1340 (1985). If the Office of the Solicitor determines that this approach is not a violation, OVS stated that it could take on the necessary market data collection effort to assist BLM, in the event that BLM requests valuation work from OVS. The other bureaus would each have to amend their regulations through the rulemaking process to allow this methodology to be used for establishing market rent.

Shortly after we began our review, OVS submitted a request for legal review to the Office of the Solicitor. At the time of this report, OVS had not yet received an opinion. Until OVS receives an opinion from the Solicitor indicating whether determining market rents based on the value and volume of the authorized services is a violation, we do not consider this recommendation implemented or closed.

## **Conclusion**

We informed NPS, OVS, and OAS officials of the results of this review on March 17, 2017.

cc: Olivia Ferriter, Deputy Assistant Secretary for Policy, Management and Budget  
Elena Gonzalez, Acting Deputy Assistant Secretary, Technology, Information and Business Services  
John Ross, Director, Office of Valuation Services  
Timothy Hansen, Chief Appraiser, Office of Valuation Services  
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