United States Department of the Interior

Office of Inspector General

Washington, D.C. 20240

Memorandum

To: Secretary

From: Earl E. Devaney
Inspector General

Subject: Office of Inspector General Special Report

With this memorandum, I am transmitting to you our "Special Report on the Agreement for the Acquisition and Donation of the Mineral Estate between the United States of America and the Collier Family."

We initiated our investigation in September 2003, after receiving allegations from a confidential source that the Collier Resources Company (CRC) took advantage of the politically charged situation surrounding drilling in the Florida Everglades and "bluffed" the Department into executing an agreement to purchase CRC's mineral interests in the Big Cypress National Preserve (BCNP) in Florida for $120 million.

The attempted purchase of CRC's mineral interests in BCNP has a long history, spanning more than a decade and two administrations, much of which is chronicled in our Special Report. The significant trends throughout this history are the 1) objections of career program staff who knew the rules were not being adhered to, and 2) the persistence of the lawyers who advanced the deal in disregard of the rules that career program staff were so concerned about.

In my view, the Department is simply not well-served by senior, seasoned, career employees who dissemble an illicit process and present it to decision-makers - in both the Department and in Congress - as righteous. The conduct revealed in this Special Report cries out for accountability. Therefore, I would ask that you direct the proper Departmental officials to take appropriate administrative action to bring accountability to bear.

Having said this, I commend you for the recent reforms you have made to the appraisal process at the Department. I believe these reforms will, if strictly adhered to, correct most, if not all, of the problems we discovered in this matter.

Should the Department choose to again consider acquisition of CRC's mineral interests in BCNP, given all of the remaining uncertainties and speculation involved in the valuation of the mineral interest - offset by the arduous legal requirements, practical implementation and the financial investment - the Department may fare best, overall, by simply proceeding with condemnation, as contemplated by the enabling legislation.

Attachments

SPECIAL REPORT

ON THE

AGREEMENT FOR THE ACQUISITION
AND DONATION OF THE MINERAL ESTATE
BETWEEN THE UNITED STATES OF AMERICA
AND THE COLLIER FAMILY

REDACTIONS HAVE BEEN MADE THROUGHOUT THE REPORT PURSUANT TO
5 U.S.C. § 552(b)(4), (b)(6), AND (b)(7)(C) OF THE FREEDOM OF INFORMATION ACT.

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Acronym List

BCNP – Big Cypress National Preserve
CRC – Collier Resources Company (also refers to Collier family)
CS-1 – Confidential Source No. 1
CS-2 – Confidential Source No. 2
DOI/Department – U.S. Department of the Interior
DOJ – Department of Justice
FY – Fiscal Year
MMS – Minerals Management Service
NPS – National Park Service
OIG – Office of Inspector General
POOs – plans of operation
SOL – Office of the Solicitor
UASFLA – Uniform Appraisal Standards for Federal Land Acquisitions
URARPAA – Uniform Relocation Assistance and Real Property Acquisition Act of 1970
USGS – U.S. Geological Survey
USPAP – Uniform Standards for Professional Appraisal Practice

Name List

Name	Title
Burton, Johnnie	Director, MMS
Cloues, Philip	Mining Engineer/Mineral Economist, Geologic Resources Division, NPS
Cooke, David	Former Chief of MMS' Resources Studies Section, Currently Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS
Dickerson, Barry	Former Chief, Models Division, MMS
Doddridge, Joseph	Former Assistant to the Assistant Secretary for Fish and Wildlife and Parks
Grace, Dr. John D.	President, Earth Science Associates
Graham, Bob	Former U.S. Senator, D-Florida
Griles, J. Steven	Former Deputy Secretary, DOI
Hunt, Michael	Former Chief, Resource Evaluation Division, Offshore Minerals Management, MMS
Klee, Ann	Former Counselor to Secretary Gale Norton
Manson, Craig	Assistant Secretary for Fish and Wildlife and Parks
Marin, David	Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS
Nelson, Bill	U.S. Senator, D-Florida
Norton, Gale A.	Secretary of DOI
Readinger, Thomas	Former Assistant Associate Director, Offshore Minerals Management, MMS, Currently Associate Director, Offshore Minerals Management
Roth, Barry	Former Attorney, SOL, DOI, Currently Deputy Associate Solicitor, Division of Parks and Wildlife, SOL
Schaumberg, Peter	Deputy Associate Solicitor, Division of Minerals Resources, Onshore Minerals, SOL
Woods, James	Chief, Geosciences and Restoration Branch, Geologic Resources Division, NPS

Introduction

In September 2003, a confidential source (CS-1) alleged that the Collier Resources Company (CRC) took advantage of the politically charged situation surrounding drilling in the Florida Everglades and "bluffed" the Department of the Interior (DOI or Department) into an agreement by which the Department would purchase CRC's mineral interests in the Big Cypress National Preserve[1] (BCNP) in Florida for $120 million.

The Office of Inspector General (OIG) initiated an investigation into this transaction that same month. At the outset, we sent a Department-wide memorandum through the Office of the Secretary, dated September 23, 2003, requesting that Department personnel provide the OIG with all documents, e-mails, and other material relevant to the proposed agreement.

Our investigation took us to seven states and the District of Columbia, where we interviewed over 100 people involved in this attempted transaction. Given the complexity of the issues, many of these individuals were interviewed multiple times, some as recently as May 2005. In the end, all of the individuals that we contacted – whether DOI employees or otherwise – agreed to speak with our investigators, with one notable exception. Joseph Doddridge, former Assistant to the Assistant Secretary for Fish and Wildlife and Parks, who had been involved in the CRC discussions from the start, initially agreed, but then refused to be further interviewed, upon advice of his retained legal counsel. Therefore, in regard to his role, we are unable to provide a complete picture of what happened. We also reviewed thousands of Department e-mails and collected thousands of documents, including oil and gas exploration trend maps, technical evaluation methodologies, and correlated financial determinate tables for unproven oil and gas resources.

During our review and analysis of information and documents, we readily recognized that the OIG did not have the substantive expertise to adequately address the intricacies and complexities of the appraisal process and its attendant rules and standards. Therefore, we contracted with The Appraisal Foundation, an independent, not-for-profit educational organization, authorized by the Congress as the source of appraisal standards and appraiser qualifications, to review and comment on key DOI valuation reports, the processes involved in preparing them, and the underlying data used in support of the reports' conclusions. The Appraisal Foundation was an invaluable resource to us in this investigation. In addition to reviewing and commenting on the information we provided, The Appraisal Foundation educated us in the Uniform Standards for Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), and imparted discerning institutional insight into departmental appraisal practices.

The attempted acquisition by the Department of CRC mineral rights in the BCNP has been years in the offing. This was an acquisition supported by the Clinton Administration as well as by the present Bush Administration. It was heralded by environmentalists and enjoyed

[1] The mineral interests at issue are located in the BCNP, the Florida Panther Wildlife Preserve, and Ten Thousand Islands National Wildlife Refuge. For simplicity, when we refer to the mineral rights in the BCNP in this report, we are including the mineral rights located in the Florida Panther Wildlife Preserve and Ten Thousand Islands National Wildlife Refuge.

the enthusiastic backing of the citizens and leaders of the State of Florida. The intentions behind the attempted acquisition have always appeared to be firmly grounded in a righteous desire to protect the environmentally sensitive Everglades from potential harm. The means by which these intentions were advanced, however, were distressing.

Because the CRC transaction came to our attention, it was not consummated. Based on the results of our investigation, however, we believe that the Department – if it ever chooses to go forward with this acquisition – must take a fresh, wholesale look at the issue of subsurface mineral rights in the BCNP and address the matter using a fair, objective, transparent process that treats all interested parties equitably, complies with the law, and protects the interests of the American public.

Results in Brief

The BCNP was established by legislation in 1974 (see **Figure 1** on the following page). The 1974 enabling legislation authorized the Department to acquire private property rights, including oil and gas rights. The Department could not, however, buy oil and gas rights without the owner's consent, unless the Secretary made a determination that the property was subject to, or threatened with, uses that are, or would be, detrimental to the purposes of the Preserve.[2] The Department acquired property rights of numerous small landowners as a result of the 1974 legislation, although the acquisition excepted oil and gas rights. In 1988, legislation expanded the Preserve's boundaries,[3] and the Department acquired additional property rights, including those of CRC, but again excepting the oil and gas rights.

Acquisition of CRC's property rights pursuant to the 1988 legislation was based on three DOI-generated appraisals and a fourth appraisal performed for the State of Florida and the Federal Highway Administration. In a May 1988 report, the General Accounting Office (currently the Government Accountability Office) said of the DOI appraisals:

> All three appraisals agreed that the 'highest and best use' of the properties would be for recreational use and speculative holding. This is because the land is predominantly what a layman would call a 'swamp' and has practical as well as regulatory restrictions on commercial or residential development.

Based on our understanding from the Appraisal Foundation, "highest and best use" would have considered the subsurface mineral interests. Therefore, we asked our consultant from the Appraisal Foundation to review all four of these appraisals and tell us if they included mineral interests. Our consultant opined that all four appraisals were for a "fee simple" estate, meaning that the mineral interests were included. Yet, the agreement between the Department and CRC excepted oil and gas rights.

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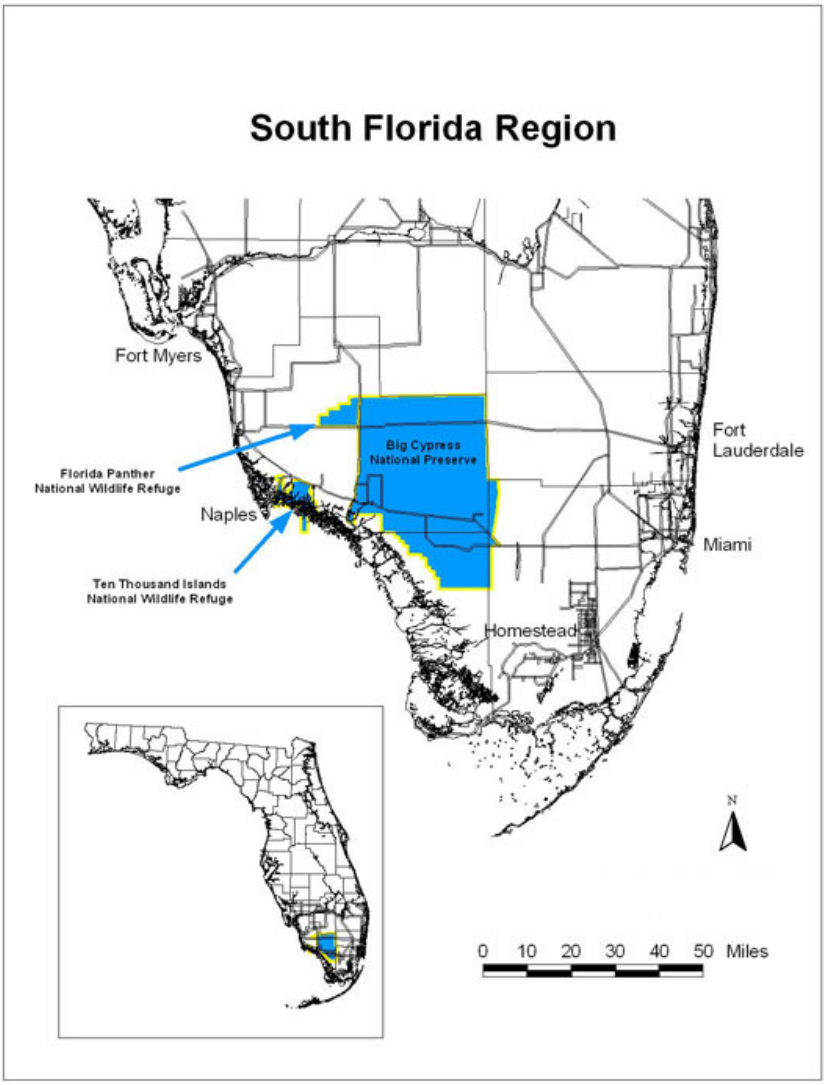
[2] 16 U.S.C. § 698f.

[3] Pub. L. 93-440, 88 Stat. 1257 (1974), as amended by Pub. L. 100-301, 102 Stat. 443(1988), *codified at* 16 U.S.C. § 698f to 698m-4.

The BCNP enabling legislation requires appraisal of any land to be acquired pursuant to the statute, with the express exception for lands valued at less than $10,000. All other acquisitions are subject to the requirements of the Uniform Relocation and Assistance and Real Property Acquisition Act (URARPAA).

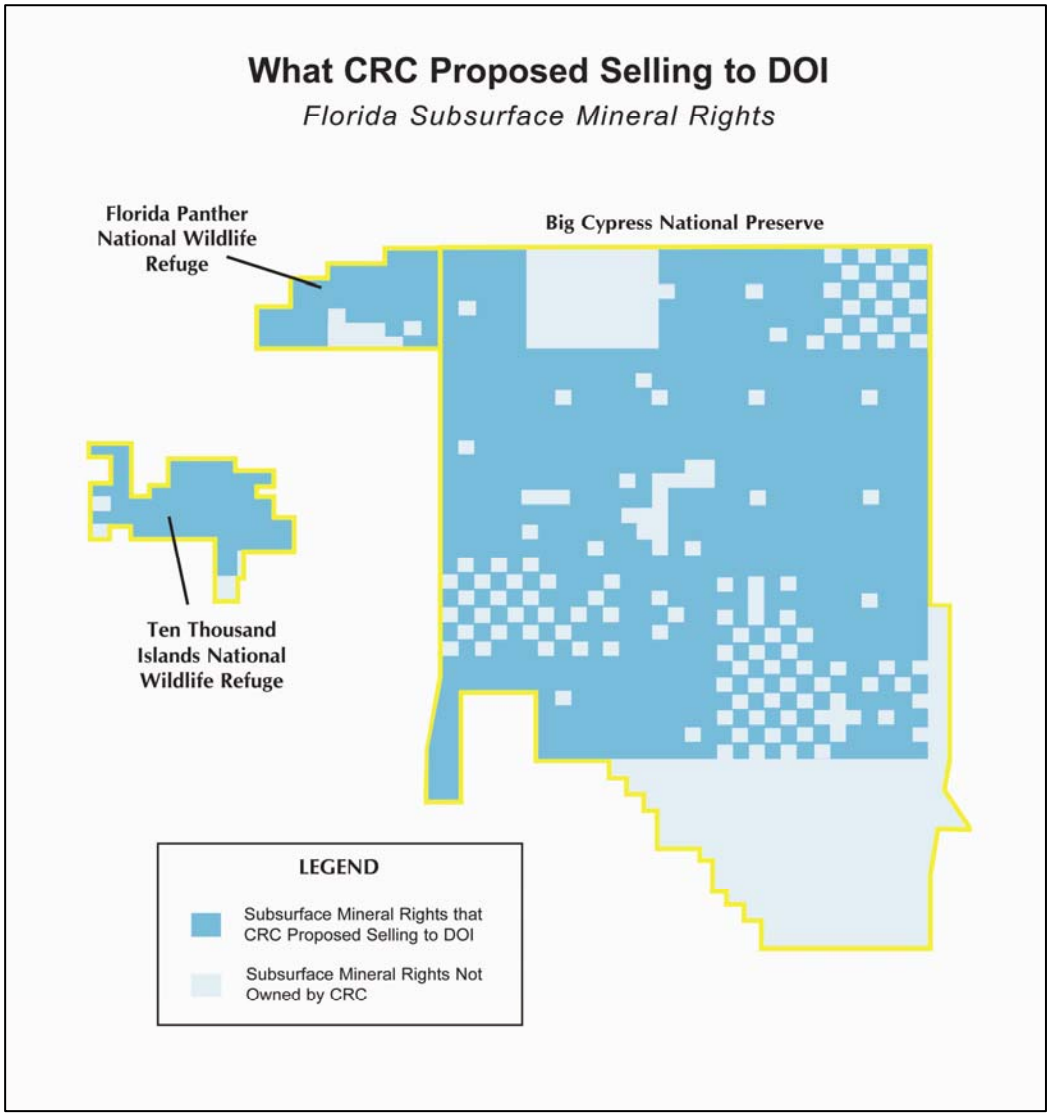
To regulate operations and development in the BCNP, the Congress required the Secretary of the Interior to develop rules and regulations governing the exploration for, and development and production of, private interests in oil and gas. These regulations are codified at 36 C.F.R. Part 9B (9B Regulations). In 1991, the National Park Service (NPS) developed an extensive set of stipulations for various exploratory and operational phases of oil and gas development and incorporated them into the BCNP Minerals Management Plan. Generally, this plan limits oil and gas exploration and development activities within the Preserve to 10 percent at any given time.



In the early 1990s, talks began between DOI and CRC concerning possible acquisition of CRC oil and gas rights by land exchange. During an April 1992 meeting, CRC's consulting geologist offered his summarized research from which he concluded that CRC's mineral interests in the lands proposed for exchange were valued at $472.5 million. At that time, the Department had nothing to either substantiate or refute the consultant's conclusions.

In 1995, the Department and CRC discussed the possibility of an exchange of CRC's oil and gas rights for surplus Department of Defense property scheduled to become available at closed military installations. The Department initiated a process to estimate the CRC mineral estate value, and in August 1995, the Bureau of Land Management asked the Minerals Management Service (MMS) to work with NPS in deriving an estimate of the subsurface rights within the Preserve. MMS was to conduct an "economic evaluation" of approximately 400,000 acres of mineral rights CRC claims to own in South Florida (see **Figure 2**).

Figure 2



MMS was selected purportedly because of its expertise in **off**shore oil and gas evaluation, and its perceived independence. MMS conducted an initial evaluation in 1995 using its Probabilistic Resource Estimates Offshore V Model. This model uses a technique known as the *Monte Carlo* simulation to quantify uncertainty. The 1996 report entitled, "Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve," was based entirely on data provided by CRC. In developing this and later evaluations, MMS primarily relied on data provided by CRC, but in a confidentiality agreement, CRC refused either to warrant or to verify the accuracy of the data provided. Issues surfaced about CRC's ownership interests during the 1996 evaluation. Best guess estimates by MMS were that CRC owned approximately two-thirds of the rights, i.e., 66 percent. In the end, the evaluation amount developed by MMS in 1996 was a mean of $154.791 million for **100** percent of the mineral rights.

CRC thought that MMS had undervalued its mineral resources. NPS appraisal personnel also questioned the validity of the MMS 1996 report because, among other things, it did not rely on comparable sales methodology as preferred under the UASFLA and because the proposed exchange of "low potential speculative oil and gas lands" for "high potential real estate at closed military bases" did not seem to be in the public interest. These concerns were not resolved, and ultimately, the deal using this evaluation failed.

During the late 1990s, CRC embarked on a public outreach effort to signal that it was about to exercise its rights to explore for subsurface oil and gas in the BCNP. Between 1997 and 2001, CRC submitted 27 plans of operation (POOs) to explore within the BCNP. Not unexpectedly, this caused a panic in the environmental community, raised an election issue in Florida, and positioned CRC nicely for another round of exchange negotiations with DOI.

In 1999, CRC again approached the Department with a proposal to exchange its mineral interests in the BCNP. The Office of the Assistant Secretary for Fish and Wildlife and Parks asked MMS to update its earlier evaluation. Although hesitant to do so, MMS updated its 1995 evaluation to facilitate the newly proposed exchange in October 2000. This time the Department planned to exchange CRC's interests for Homestead Air Force Base in southern Florida. A different MMS geologist re-evaluated the same data provided by CRC in 1995 and in 2000 adjusted the evaluation **downward** to a mean of $68 million for **100** percent of the subsurface mineral rights. CRC's actual ownership still remained in question, with a best guess in the range of 50 to 80 percent.

In January 2000, the NPS Geologic Resources Division requested a U.S. Geological Survey (USGS) assessment of undiscovered oil and gas in the BCNP. The USGS assessment was **not** an appraisal, but rather, was an attempt to hypothesize about the size of the undiscovered resources. Using information in the USGS assessment, the NPS prepared an economic estimation of the BCNP's mineral value. Based upon the data presented in the USGS report, NPS' Geologic Resources Division concluded that the likely combined estimated market value for CRC's oil and gas interest was between $5 million and $20 million, in significant conflict even with MMS' downward adjustment of $68 million.

CRC was given a copy of MMS' 2000 evaluation shortly after the new administration took office in 2001. CRC reacted negatively to MMS' 2000 evaluation of approximately $68 million, and vehemently protested the new number to DOI as being too low.

In January 2001, Homestead Air Force Base was taken off the negotiating table. The new evaluation then became geared toward facilitating the Department's outright purchase of the CRC mineral rights.

Secretary Gale Norton asked Ann Klee, then Counselor to the Secretary, to assume the CRC minerals acquisition as part of her portfolio. Klee relied on two Office of the Solicitor (SOL) attorneys, Barry Roth and Peter Schaumberg, as her principal advisors for the new negotiations with CRC.

A July 16, 2001 e-mail sent by Michael Hunt, former Division Chief, Resource Evaluation Division, Offshore Minerals Management, MMS, to the then Associate Director, Offshore Minerals Management, MMS, is indicative of the concern that was being expressed within MMS at the time.

In this e-mail, Hunt states:

> Barry [Dickerson, then Chief of MMS Models Division,] & I discussed this with [the then Deputy Director of MMS,] last Wed. … and we don't believe Dept. management appreciates the significant problem this issue might cause them. Barry & I have expressed concern that Collier is inching his way into a situation where he wants to discount the MMS assessment (because it's too low for their purposes) and put pressure on the Dept. to accept a higher assessment, i.e. their 3rd party or a 'negotiated' value. …Perhaps if the Dept. wants to pursue this further, the value should be established by BLM and the Park Service, & we get out of it …. The last thing they all need is for them to make what is perceived to be a sweetheart deal in Fla. with an oilman.

In late 2001, yet another re-evaluation was being considered. MMS once again objected but eventually produced a spreadsheet containing numbers from a re-evaluation in early 2002 that valued **100** percent of BCNP mineral rights at $68 million.

Consistently throughout the time these evaluations were being conducted, NPS appraisal personnel persisted in their view that the UASFLA should be used to appraise the value for the CRC mineral interests. During late 2001 and early 2002, former SOL attorney Barry Roth, currently Deputy Associate Solicitor, Division of Parks and Wildlife, SOL, told NPS officials that he did not believe that CRC would accept an appraisal conducted under the UASFLA. By this time, CRC had made it known to the Department that its range of values was from $130 million to $180 million, with $130 million being the absolute minimum that it was willing to accept. Therefore, the MMS evaluation process continued to be pursued to support the proposed bottom-line purchase price that CRC had made known to the Department.

In late January or early February of 2002, Peter Schaumberg, Deputy Associate Solicitor, Division of Minerals Resources, Onshore Minerals, SOL, contracted with Dr. John Grace, doing business as a private company, Earth Science Associates, to conduct a review of MMS' methodology used in the 2000 evaluation. Subsequently, Dr. Grace was also asked by Schaumberg to develop a "range of value" around the MMS mean of $68 million. Dr. Grace determined that a "range of value" around the $68 million mean was $31 million to $140 million, for **100** percent of the BCNP mineral rights.

Using Dr. Grace's range of values as support, the Department extended to CRC its "best offer" of $120 million. In March 2002, Klee notified the Council on Environmental Quality that the Department had reached an agreement with CRC to purchase CRC's oil and gas rights. On May 29, 2002, an agreement in principle was signed between CRC and the Department for $120 million. The agreement was announced in a ceremony at the White House.

Finally, in January 2003, Assistant Secretary for Fish and Wildlife and Parks, Craig Manson, signed the final agreement, which called for CRC to receive cash for its mineral rights: $20 million at closing, $40 million from the Fiscal Year (FY) 2004 DOI budget, $30 million from the FY 2005 DOI budget, and $30 million from the FY 2006 DOI budget. The agreement also called for the Secretary to acknowledge that CRC had the right to claim a donation for any amount over $120 million that it could substantiate.

Clearly, CRC had received extraordinary treatment by the Department, spanning two separate administrations – both Democrat and Republican. Due, in part, to its sheer tenacity, as well as a very well orchestrated campaign that included instilling fear into the environmental community and into the Department itself with its purported intent to drill in the Preserve, CRC successfully captured the attention, the power, and the will of the very highest political officials at the Department to grant its monetary wishes. With the assistance of the two SOL lawyers who creatively navigated around the human, legal, and financial impediments that plagued the transaction, CRC came precariously close to accomplishing its objective.

In the final analysis, however, particularly from an appraisal standpoint, we believe that compensation has already been made in previous transactions for some or all of the mineral interests that CRC seeks to sell and the Department to acquire. As a result, the federal government is in a troublesome quandary: Since the fee simple appraisals that supported the 1988 transactions by which the Department acquired CRC's surface interests in BCNP took subsurface mineral rights into account in arriving at fair market value, the mineral rights were subsumed. Yet, the federal government, in the land exchange agreement, allowed CRC to retain the mineral rights. To now pay CRC for any mineral rights that were considered in the 1988 acquisition transactions would result, in practical terms, in dual compensation.

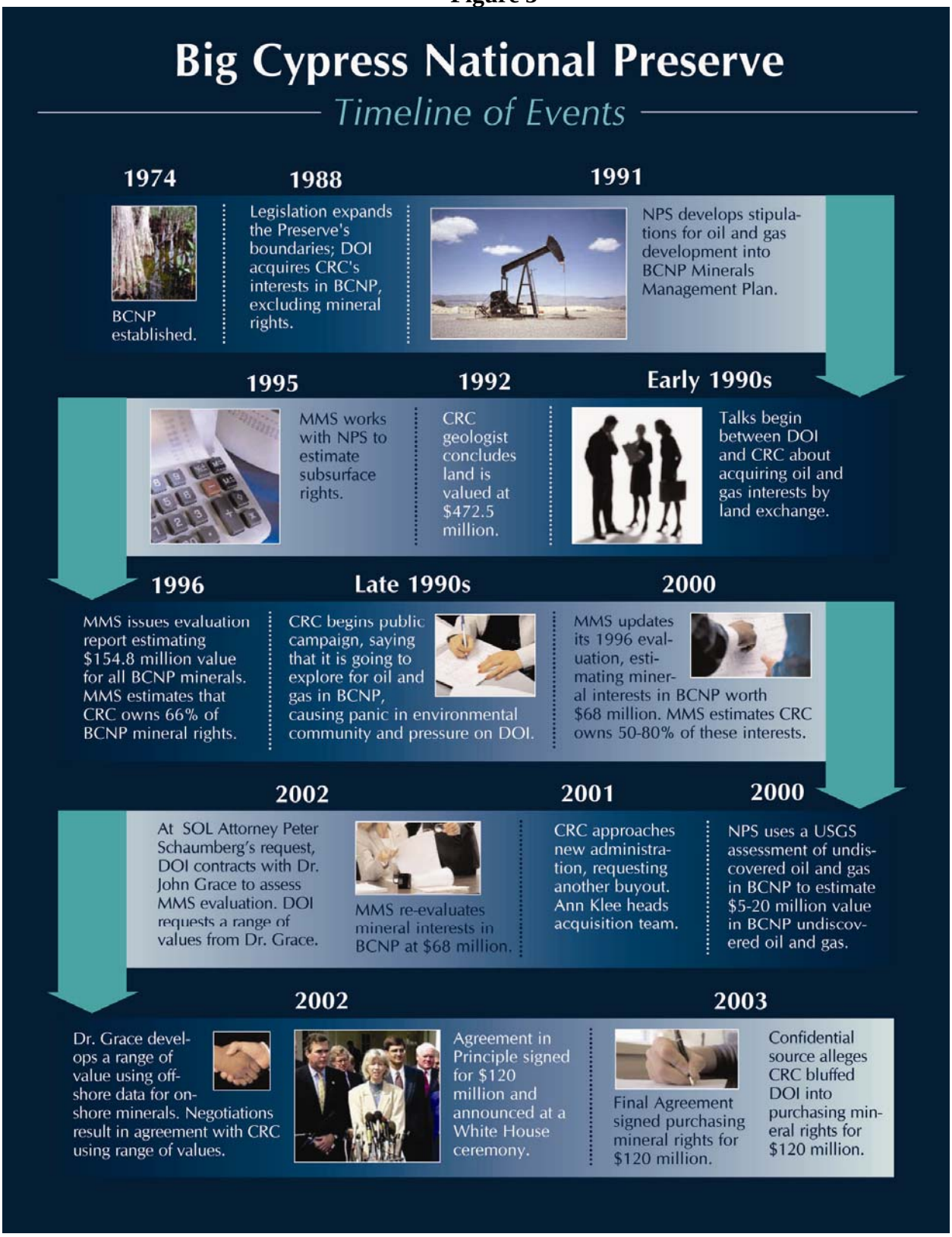
The enabling legislation is partially to blame: It is internally inconsistent. The statute requires an appraisal compliant with the UASFLA for acquisition of property rights. Absent a congressionally mandated exception, this appraisal would include the entirety of privately owned real property rights, which must include consideration of any market value for subsurface mineral rights, in reaching a final fair market value amount for the "highest and best" use of the

land. The UASFLA prohibits the separate valuation of different components of a tract of land to then be added together, resulting in a prohibited *summation* or *cumulative* appraisal. The statute, however, goes on to make special provisions for the subsurface mineral rights – the rights that would be contemplated, and ultimately subsumed, in a fee simple appraisal for the surface property. One must be intimately familiar with both the enabling legislation **and** appraisal practice and standards, however, to recognize these incompatible provisions.

If the Department's appraisers had been allowed to perform their job at the outset, if senior Department officials had listened as well to their own employees as they did to CRC, and if the Department's legal advisors had spent the same level of effort on a thorough, comprehensive analysis as they seemingly did to obscure and secrete the issue of value, this long, sophisticated charade, which has consumed incalculable hours of time and money on both sides, might have been avoided altogether.

Figure 3, on the following page, summarizes BCNP historical events.

Figure 3


Big Cypress National Preserve
Timeline of Events
1974
BCNP established.
1988
Legislation expands the Preserve's boundaries; DOI acquires CRC's interests in BCNP, excluding mineral rights.
1991
NPS develops stipulations for oil and gas development into BCNP Minerals Management Plan.
1995
MMS works with NPS to estimate subsurface rights.
1992
CRC geologist concludes land is valued at $472.5 million.
Early 1990s
Talks begin between DOI and CRC about acquiring oil and gas interests by land exchange.
1996
MMS issues evaluation report estimating $154.8 million value for all BCNP minerals. MMS estimates that CRC owns 66% of BCNP mineral rights.
Late 1990s
CRC begins public campaign, saying that it is going to explore for oil and gas in BCNP, causing panic in environmental community and pressure on DOI.
2000
MMS updates its 1996 evaluation, estimating mineral interests in BCNP worth $68 million. MMS estimates CRC owns 50-80% of these interests.
2002
At SOL Attorney Peter Schaumberg's request, DOI contracts with Dr. John Grace to assess MMS evaluation. DOI requests a range of values from Dr. Grace.
MMS re-evaluates mineral interests in BCNP at $68 million.
2001
CRC approaches new administration, requesting another buyout. Ann Klee heads acquisition team.
2000
NPS uses a USGS assessment of undiscovered oil and gas in BCNP to estimate $5-20 million value in BCNP undiscovered oil and gas.
2002
Dr. Grace develops a range of value using offshore data for onshore minerals. Negotiations result in agreement with CRC using range of values.
Agreement in Principle signed for $120 million and announced at a White House ceremony.
2003
Final Agreement signed purchasing mineral rights for $120 million.
Confidential source alleges CRC bluffed DOI into purchasing mineral rights for $120 million.

Details of Investigation

The Negotiating Environment

From the start, CRC was the driving force behind DOI's acquisition of its BCNP mineral rights. CRC initiated the discussions in the mid-1990s; it renewed them in January 2000 and, yet again, with the present administration in 2001. Joseph Doddridge, then Assistant to the Assistant Secretary for Fish and Wildlife and Parks, who had been involved in the CRC discussions from the start and who initially agreed to talk to us but later refused to continue his interview upon advice from his retained legal counsel, described the CRC "pitch" as "trade, buy, or drill."

DOI conducted its evaluation efforts using CRC-provided data, data that CRC refused to warrant or verify as accurate, saying the Department was responsible for conducting its own due-diligence on the accuracy and reliability of the data. Even as recently as December 2004 and January 2005, CRC continued to request and schedule meetings with Department officials regarding a proposed agreement.

As MMS was developing the first evaluation, CRC had virtually unfettered access to the MMS employees responsible for this effort. During his interview with us, Thomas Readinger, then Assistant Associate Director, Offshore Minerals Management, MMS, described CRC representatives as "badgering" MMS with questions. He told us that the then Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS, called him approximately six times saying CRC's representatives were "bothering" him by asking to meet and discuss the evaluation. Readinger also said he felt some pressure from Doddridge about CRC; Doddridge told him that the evaluation was a "big priority" and that "this is something the Department wants."

During his interview, the former Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS, recalled that shortly after starting the evaluation, CRC representatives were asking him for MMS' results.

The Associate Director, Natural Resources Stewardship and Science, NPS, said in his interview that he had told Doddridge that the CRC matter was not being handled in the normal way. The Associate Director said that Doddridge told him that this was way beyond the Associate Director's position and that the decisions were being handled at a much higher level.

When we interviewed him, the then Deputy Director of MMS said that the then Director of MMS wanted him involved in the CRC matter. He referred to the CRC matter as both a "nuisance" and "complicated" but that it was something they had to deal with. The former Deputy Director stated that the Bush Administration inherited the CRC matter from the Clinton Administration and that Ann Klee, Counselor to the Secretary, seemed to want to resolve it. He recalled attending a meeting with Klee; the then Associate Director, Offshore Minerals Management, MMS; and the former Deputy Regional Supervisor, Resource Evaluation Division, whom he described as "one of their best analysts," but he could not remember any details of the meeting.

During a second interview, the former MMS Deputy Director was shown a copy of his handwritten notes that we had obtained during our investigation. After being asked to discuss the notation, "[a CRC Attorney] calls Joe everyday," he responded, "I know what it looks like, but I'm not going to characterize it." *Agent's Note: The following notations were also found in former Deputy Director's notes: "Collier – Not want to drill – but want top dollar. Collier wants cash and land. Park and MMS – Figure out valuation."*

The former MMS Deputy Director said that on June 21, 2001, Joseph Doddridge, then Assistant to the Assistant Secretary for Fish and Wildlife and Parks, telephoned him and asked to have the MMS evaluation (2000) updated. The former Deputy Director said Doddridge was a "conduit" between NPS and MMS for the CRC issue. He opined that Klee would telephone Doddridge and ask that something be done and that Doddridge would then contact him relaying Klee's request.

Readinger also said, "We were always asked [to do] things [regarding the CRC evaluations] where we had to ask ourselves, 'Is this appropriate?' We don't normally work in that environment." He went on to say, "Companies don't come to us and tell us what to put into [our] study."

MMS issued its first evaluation in 1996. The former Deputy Regional Supervisor, Resource Evaluation Division, called it a "ballpark evaluation," saying that MMS did not thoroughly analyze the geologic data, partly due to CRC representatives "constantly harassing" MMS during the evaluation.

In conducting its evaluation, MMS relied almost exclusively on data provided by CRC, something that concerned the former Deputy Regional Supervisor, Resource Evaluation Division. Furthermore, in the Confidentiality Agreement that covered this data, CRC included the following language: "CRC makes no warranty, express or implied, as to the accuracy, correctness or completeness of the above listed proprietary data. This data is supplied for the convenience and information of the evaluator and any reliance on this data is at the evaluator's sole risk." Thus, the data was neither independently obtained nor verified and warranted by CRC, the provider.

In the end, however, CRC criticized the MMS evaluation, saying the value was too low, while, on the other hand, NPS accused MMS of inflating the values. Michael Hunt, then Chief, Resource Evaluation Division, Offshore Minerals Management, MMS, said in his interview that "the field was not only fighting the Colliers, but departmental personnel as well."

To bolster its negotiating position, CRC also filed 27 POOs with NPS and the U.S. Fish and Wildlife Service, and made its filings very public, particularly with environmental groups. The POOs purportedly signaled CRC's intent to launch exploration activities for oil in the BCNP. This riled and galvanized the environmentalists, as well as the citizens of Florida, who opposed drilling in the state, and particularly in the Everglades ecosystem. CRC developed and displayed a proposed 3-D seismic map at a meeting involving environmental organizations that depicted virtually the entire Preserve being under exploration activity once CRC began to

develop its POOs. From a public relations standpoint, this placed DOI officials in a defensive posture, placing them, in turn, in a vulnerable position from a negotiation stand point.

This concern was exacerbated by the outspoken NPS Park Superintendent for BCNP at the time, who said that the NPS regulations are "sufficient to manage oil and gas development, but not enough to regulate the environment." In the Superintendent's view, buying CRC's mineral interests would be money well spent. He said, "[It] does not make a difference as to why they are doing it, as long as it gets done and we have the resource." He equated the CRC acquisition to the Louisiana Purchase; some aspects of the acquisition "may seem negative now, but 50 to 100 years later, it would be a good deal." This view was not shared, however, by many of his NPS colleagues, particularly those who would normally be tasked with appraising the value of the mineral rights in a transaction such as this.

In short, the CRC POO-campaign was brilliantly executed to bring everyone – the environmentalists, interested citizens, and political leaders for both the state and federal governments – to the ultimate conclusion that DOI's acquisition of CRC's mineral rights in BCNP was a "win for all sides" – as stated by Secretary Gale Norton in a Department of the Interior press release.

What nearly everyone, except for the excluded Geologic Resources Division and BCNP personnel in NPS, failed to, or perhaps, *chose not to*, recognize was (1) that none of the POOs were complete; (2) that the POOs were designed to suggest the most extreme impact possible on the Preserve's environment, regardless of expenditure; (3) that the approval of the POOs – once complete – would be subject to NPS regulations governing activity on the Preserve that limit exploration to a maximum of 10 percent of the Preserve at any given time; and, as such, (4) that several decades would likely pass before CRC could incrementally actualize the 27 POOs that it had filed with the Department.

In a document we received from a petroleum engineer, Geologic Resources Division, NPS, he wrote the following:

> In last year's annual report, the Division reported that Big Cypress National Preserve was being inundated with proposed oil and gas development plans of operations from Collier Resources Company (CRC). CRC is the majority mineral owner in the Preserve. The company continued its efforts during 1999 by revising and augmenting many of its 24 plans. Each plan of operations includes proposals for extensive 3D-seismic programs and 1 to 3 exploration wells. In all, acreage covered by all the seismic programs approaches 500,000 acres with nearly 100,000 shot hole points, 80 miles of new roads, and 35 acres of improved staging pad for seismic. The Colliers have also proposed 28 exploration wells. If conducted on [sic] after the other, it would take over 30 years to complete everything that's been proposed.
>
> CRC has taken an atypical approach in their permit applications leading the Division to believe the proposal are more likely part of a larger plan to foster a buyout or mineral exchange via threats of large-scale development.

> However, the exchange of Big Cypress minerals for Homestead Airforce Base has several factors to overcome. First, most of the areas where CRC holds a mineral interest, it is not 100% ownership. Acquisition of CRC's interest in those areas would not keep the remaining owners exploring for and extracting oil and gas – no environmental protection guaranteed. Only lands owned 100% by CRC should be considered for exchange. Secondly, since Federal minerals in the Preserve cannot be leased under current law, the mineral estate has no financial value to the American public. It must then be justified on purely environmental benefits. Lastly, a significant sticking point may be a determination of the fair market value of CRC's mineral estate. Fair market appraisals for mineral properties, especially where the presence or absence of oil and gas is not proven, is very difficult. When comparable properties cannot be found to base appraisals, the determination may have to resort to cash flow analysis. Even when used by an appraiser experienced in this field, this approach is a highly speculative appraisal method.
>
> The Division has recommended that independent certified mineral appraisers need to be brought in to ensure any land exchanges are equitable to the public's interest.

James Woods, Chief of the Geosciences and Restoration Branch, Geologic Resources Division, NPS, who is familiar with POOs, called CRC's plans "very out of the ordinary," saying he had never before seen NPS "bombarded" by so many POOs in such a short time by one entity. He was, he said, also in a quandary regarding the cost prohibitive nature of the collective proposals. For example, Woods said he had never seen a permit application for exploration that included a drilling site prior to conducting exploration. It did not make sense, he explained, to plan drill sites prior to conducting exploration and analyzing the resultant data. He also questioned CRC's proposed use of "all weather roads" and "drilling pads" for exploration access activities. According to Woods, CRC proposed to build access roads and drilling pads with lime rock. He opined that trucking lime rock into the BCNP for this purpose would be a prodigious task and cost millions of dollars. Woods said that there are less expensive ways to access the swamplands for oil and gas exploration.

A senior manager of the Resource Management Division, NPS, BCNP, was interviewed and opined that it was "not feasible" for CRC to explore and develop all plans as proposed. For one of its plans alone, he estimated that building the purported 6.5 miles of road would have cost approximately $6 million. In his interview, the senior manager reiterated the view of Woods, saying that he had never seen POOs with actual drilling sites included.

In a letter supporting the initiation of our investigation into this matter, a public interest group outlined the regulatory obstacles that CRC would face in advancing its intention to explore and develop:

> Preserve regulations reasonably limit exploration and allow for 10% area of influence of oil and gas operation[s] according to the Preserve's Mineral

> Management Plan….The Preserve has nine existing producing wells in two fields and is already relatively close to the area of influence threshold….the addition of just one more well would take the area of influence very close to the maximum 10% threshold. Therefore to be able to drill a second well, at least one existing well would have to come out of production and the site restored to the Preserve's standards. Since wells sometimes produce for decades, the wait for another drilling opportunity could be very lengthy. Therefore, the threat of massive wide-scale drilling (promoted by the Colliers [CRC]) with 27 plans of operation is unrealistic given current regulations.

Nonetheless, CRC and its representatives, who were obviously shrewd in business and unabashed in politics, found in DOI a malleable bureaucratic instrument. Exploiting a combination of public policy, politics, and environmentalism, which was being fueled by the demoralization of career DOI employees, at one extreme, and sycophantical enabling, at the other, CRC took complete advantage of a negotiating environment weighted heavily in its favor.

Establishing Value

During this investigation we found nothing to indicate that minerals in the South Florida BCNP area have any significant value. To the contrary, several sources suggest that the mineral resources in BCNP are worth little or nothing.

During an interview with the Chief of Land Acquisition, Environmental and Natural Resources Division, Department of Justice (DOJ), the Chief said that DOJ had contracted for a BCNP market study between 1998 and 1999. The Chief provided a copy of the study entitled, "Market Study, Big Cypress National Preserve; Big Cypress First Revision," dated June 8, 1999. In its Summary of Conclusions, the report concluded, "For sales in freshwater wetlands, there is no evidence of any change in the price per acre directly associated with the issue of Mineral Rights."

When we asked during our interview of a certified Florida evaluator, Collier County, Florida, what the current fair market value for mineral interests in the BCNP is, the evaluator responded with a hand gesture indicating zero value. He said that he was not aware of any interest in oil or gas sales since the 1960s. Additionally, the evaluator was shown a Lands Available List, published by the Office of the Clerk of the Circuit Court, Collier County. The list indicated 18 sites involving mineral interests currently for sale in the BCNP. The Collier County evaluator said the "minimum bid" listing for those interests, ranging from $419.45 to $1,236.08, was for taxes due, and no additional value was reflected for potential oil and gas resources.

An NPS petroleum engineer said the only company currently producing oil in the BCNP, Calumet of Florida, Inc., has attempted to sell its working interests multiple times. He said Calumet was unsuccessful, having received no credible offers. We subsequently verified this information with officials from Plains Exploration and Production Company, the parent company of Calumet. Plains officials said that at least twice contractors were hired to set up "data rooms" for potential buyers to view their production data, but in both cases, they received no offers that would have allowed them to complete the sale.

In our interview of a Reservoir Engineer of the Plains Exploration and Production Company, we also learned that the quality of the oil being produced in this section of South Florida is low-end.

When a CRC manager was interviewed, he admitted candidly that because of the rating of the oil in the BCNP, it "suffers" a discounted price in comparison with West Texas Crude. He added that multiple products are created from BCNP oil, although he could not name any.

Thus, the Department faced considerable challenges to establish any value for the mineral rights in the BCNP, never mind a value that would be acceptable to CRC.

When MMS was first tasked to conduct an evaluation, it was told by Doddridge to simply, "get it done." Although Readinger advised Doddridge that such an evaluation would be unprecedented for MMS because MMS usually works offshore, he said they could do it. As Readinger put it in a September 19, 2000 e-mail, "MMS was asked to perform this task because of our expertise; we reluctantly, as 'good soldiers' agreed." Using the tools it had available, MMS prepared an evaluation based on MMS' experience with **off**shore oil and gas minerals. This valuation, however, was being applied to **on**shore mineral estates.

Thus, at the outset, the Department was using an "apples and oranges" approach to value the CRC mineral estate. It was also an approach that NPS Geologic Resources Division personnel firmly believed was wholly improper for the proposed transaction.

Once again in 2000, Doddridge applied pressure on MMS to conduct another evaluation. Readinger strongly resisted doing another evaluation and, ultimately, was summoned by Doddridge to a meeting with the then Deputy Assistant Secretary for Water and Science, who "strongly encouraged" Readinger to do another evaluation. The 2000 evaluation, which, in the opinion of Readinger and the other MMS officials responsible for its production, was considerably more thorough than the earlier one, resulted in a mean value nearly $86 million less than that generated by the 1996 evaluation.

When in 2000, NPS Geologic Resources Division independently requested USGS to conduct an evaluation of undiscovered oil and gas in the BCNP, it did so without Doddridge's knowledge because NPS career personnel felt that an exchange with CRC was unnecessary and that the dollar figures being discussed were way out of line. Readinger also said that when Doddridge learned of this development, he said he was reportedly dismayed.

When we interviewed a senior manager of the NPS Lands Resources Division, he told us that the Lands Resources Division had felt it was being "pushed aside" because the Department did not want to use prescribed policy or procedures to conduct this exchange.

Another confidential source (CS-2), who was in a position to know NPS' role in this matter, stated that the normal process used had been "waylaid and prostituted" based on the cultural mindset within DOI and politics.

When we interviewed the Associate Director, Natural Resources Stewardship and Science, NPS, he confirmed that Barry Roth, then SOL attorney, was "trying to twist my arm" and that Roth and Doddridge "were pushing us to get on board with something we could not do."

A considerable amount of effort was subsequently expended among MMS, NPS, and USGS to reconcile the results of their respective evaluations. By late September 2000, one option was "the SOL idea of having a host of numbers…." At this point, another e-mail authored by Readinger indicates that the Director of MMS at the time had become involved: "[The former Director] met with Peter and indicated MMS would not prepare a report with numbers. Although [the former Director] said we may hear more from 'upstairs,' so far, this is holding….He does not support the SOL proposal to 'cloud' the issue by having many different numbers."

When yet another MMS evaluation was being considered in 2002, MMS personnel told us that it was clear that the Department wanted MMS' numbers to go up. In an e-mail exchange between Barry Dickerson, then Chief of MMS' Models Division, and the then Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS, Dickerson stated, "I am not clear as to why we are evaluating this based on CRC's value. What the government should pay for this is more closely tied to what a buyer would pay than what Collier would sell for." The former Deputy Regional Supervisor replied:

> I agree with your impression….CRC continues to snipe at our evaluation and push the envelope, without acknowledging anything that was to their benefit in the analysis. Since they refuse to show us their model and the lawyers won't insist on seeing this info. I'm beginning to suspect that either their results are similar or they don't have one.

By this time, Klee had assumed control of this issue, and Readinger had become marginalized in the valuation efforts. Instead, Klee, Roth, and Schaumberg began dealing directly with the former Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, and the former MMS Associate Director, Offshore Minerals Management.

When we interviewed the former Deputy Regional Supervisor, he said that when the former Associate Director asked him to become more involved, he had asked her if he was going to be allowed to conduct a "real evaluation" or whether it would be something similar to the last one (in 1996). The former Deputy Regional Supervisor told the OIG that the former Associate Director responded by agreeing to get written instructions from the Department that would include language indicating that MMS would do an independent evaluation.

CRC entered negotiations with a clear dollar objective of not less than $130 million, which it had made known to the Department's negotiators. As noted earlier, Barry Roth, the attorney with the lengthiest involvement in the deal, told others involved that a traditional appraisal could not be done. During our investigation, we found documents and heard witnesses claim that Roth advocated the use of MMS rather than an appraisal to prepare the evaluation, which would be used for the purposes of negotiating a purchase price with CRC.

For instance, Philip Cloues, a Mining Engineer/Mineral Economist with NPS' Geologic Resources Division, said when we interviewed him that he had participated in a teleconference in early October 2001 in which Roth specifically stated that the UASFLA would not be used for the determination of value and that MMS would perform the evaluation to determine value.

After several meetings between MMS and CRC, the former Deputy Regional Supervisor, Resource Evaluation Division, was instructed to meet with Klee, the then Deputy Director of MMS, Schaumburg, and Roth on August 16, 2001, to explain the 2000 evaluation. In his interview, the former Deputy Regional Supervisor said Department personnel "strongly" questioned MMS' evaluation during the meeting. When he tried to explain it, he said Klee did not seem to listen. He said that Klee wanted to know why MMS' numbers had not changed as a result of MMS' meetings with CRC. Overall, the former Deputy Regional Supervisor felt that his and MMS' efforts were not being held with the same regard as CRC's views of their evaluation. He went on to describe the later stages of MMS' involvement as "one big pissing match." He said MMS was not going to come up with a number to make NPS or anyone else in the Department happy. He said, "We were going to do what we needed to do."

When asked, Ann Klee stated she could not recall any meeting she had with former Deputy Regional Supervisor of the Resource Evaluation Division that was cantankerous as a result of her questioning him on why MMS could not get its valuation numbers higher.

The notes of the former Deputy Director, MMS, reflect that he attended the meeting on August 16, 2001, with the former Associate Director, Offshore Minerals Management; the former Deputy Regional Supervisor of the Resource Evaluation Division, Offshore Minerals Management; and Klee. When interviewed, he had no recollection of the meeting except for what he wrote in his notes: "Yes – Ann says we can" and "[the former Deputy Regional Supervisor]" said "no." However, that notation appeared related to another comment about a common understanding between parties concerning resources. He also wrote that they needed to "…try to narrow the differences" and "Collier wants us to buy them out – they do not want to develop."

Regardless, in all instances, the MMS evaluations covered **all** of the mineral rights (**100** percent) in the BCNP. Although MMS had repeatedly asked CRC for exact ownership data, CRC never provided it. Even today, the Department does not know the extent of CRC's ownership of subsurface mineral rights in the BCNP. Information subpoenaed from CRC during our investigation now suggests, however, that its ownership falls, at best, in the 63-percent range.

MMS was very concerned about how its evaluation was being represented in negotiations and reiterated numerous times to various officials involved in the negotiations, but specifically to Barry Roth and later, over and over again, to Peter Schaumberg, another lawyer involved in the negotiations, that the evaluation covered **all** of the mineral rights in BCNP, not CRC's percentage.

In their interviews, Readinger; David Marin, Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management, MMS; and David Cooke, former Chief of MMS' Resources Studies Section, as well as Dickerson and a former Deputy Regional

Supervisor of the Resource Evaluation Division, Offshore Minerals Management, said they repeatedly told Schaumberg that the mean value determined by MMS was for **all** of the oil and gas reserves in the BCNP, of which CRC owned an undetermined percentage. Readinger said, "We were intent to underscore, and note in bold, the issue of ownership." He said that Marin and Cooke seemed "troubled" that Schaumberg did not "get" that the mean value of approximately $68 million did not truly reflect CRC's interests. He also said that he "was not comfortable that Schaumberg understood the percentage point. [Schaumberg] did not seem to listen." Readinger recalled "strongly" asking, "Peter, what's going on here? This is not right. Do you understand that the mean value determined by MMS was for all of the oil and gas resources, of which the Colliers own an undetermined percentage?" Readinger said that Schaumberg did not acknowledge the point he was trying to convey. Readinger said he felt his and MMS' integrity were at stake. Other MMS employees who were interviewed also expressed concerns over Schaumberg's lack of acknowledgement over CRC's percentage of ownership issue.

While the third evaluation was being considered, it became clear to MMS that it could not come up with a value higher than its 2000 value. Thus, MMS did not actually complete the third evaluation and, instead, produced a spreadsheet that reported an approximately $68 million mean value for the entire BCNP mineral estate. This was roughly half of CRC's lowest dollar objective amount.

In a meeting at DOI on January 28, 2002, CRC representatives were provided another opportunity to express their position on their mineral interests. DOI officials attending this meeting included Ann Klee; Barry Roth; Peter Schaumberg; the Superintendent of BCNP at the time; the former Deputy Regional Supervisor, Resource Evaluation Division; David Cooke; David Marin; and Michael Hunt.

Marin confirmed that the meeting was called to allow CRC to present its position. Marin said CRC representatives continually interrupted Cooke when he spoke, and he did not recall MMS receiving any support from the DOI representatives present.

According to Cooke, Ann Klee led the meeting and said its purpose was to let CRC explain why its value should be higher. Cooke said no one from MMS was seated at the main conference room table; they all sat in the row behind. He and the former Deputy Regional Supervisor of the Resource Evaluation Division made a few comments in rebuttal to CRC, and at one point Klee interjected on behalf of MMS.

Schaumberg said the January 28, 2002 meeting was his first involving the CRC matter. He said, "That's the first meeting I had a sense of where we were." However, he did not recall what was presented or discussed. When asked if MMS did any further work or evaluations of CRC's mineral interests after the meeting, Schaumberg said MMS "updated their numbers," but he did not recall what they changed or updated.

We obtained an e-mail from Hunt, dated January 29, 2002, that stated the following:

> [a consulting geologist] for Collier, presented their tech. information to Ann, and pointed out approx.'ly [sic] 18 areas where they differ with MMS. This took most of the 2 hrs., and they did most of the talking. A few times Ann requested that MMS ([the former Deputy Regional Supervisor of the Resource Evaluation Division] & Dave Cooke) respond to specific questions, and that was handled well. Ann grasped the tech. issues and asked good questions. She didn't appear to be completely 'buying' Collier's sales pitch. …Overall, I believe it went well. Ann Klee was even-handed, perceptive, and understood what was being cover [sic].

When interviewed, the former Deputy Regional Supervisor of the Resource Evaluation Division said the meeting was held in a conference room at the Department. He said he and David Cooke, then Chief of MMS' Resources Studies Section, attended the meeting representing MMS. The former Deputy Regional Supervisor of the Resource Evaluation Division did not recall the names of any additional MMS people who were in attendance, but he said he thought there were others. He said that during most of the meeting, CRC had "laid out…a litany" of their "substantial" differences and disagreements with MMS' assessment of CRC's mineral interests. He said that from his seat in the back of the room, he eventually interrupted the CRC representatives because they seemed to be "…moving right along" unchallenged. He wanted it to be known that MMS did not agree with what the CRC representatives were saying. Cooke also spoke out, adding details to the points raised by the former Deputy Regional Supervisor of the Resource Evaluation Division.

The former Deputy Regional Supervisor of the Resource Evaluation Division did not recall what, if any, response the Department officials had to his rebuttals. He also did not recall if there was a published agenda for the meeting or if MMS would have been allowed to counter the points made by the CRC representatives, had he not interjected.

When interviewed regarding this meeting, Klee told us that the meeting allowed her to hear the technical debate between CRC and MMS. Prior to this meeting, she had not heard from the MMS "technical people" who had conducted the evaluation of CRC's mineral rights. She said that another purpose of the meeting was to see if the differences in CRC's and MMS' evaluations could be narrowed. She said she was "under whelmed" by the discussions, particularly referring to MMS.

When interviewed about the January 28, 2002 meeting, the former Superintendent, BCNP, stated that MMS was asked to present its views on valuation. He said MMS and CRC were far apart on their valuations. Although he did not recall the names of the MMS personnel who conducted the presentation, he characterized them as somewhat "nervous" and "anxious." The former BCNP Superintendent was asked if he could have mistaken a speech impediment for nervousness and he replied, "I could have." *Agent's Note: One of the meeting's participants stutters when he speaks.*

Overall, the former BCNP Superintendent said that MMS stood its ground and he was satisfied with the presentation. However, he noted that the MMS personnel did not seem happy about presenting their views to people who did not seem to want to hear them. When asked if this included Department representatives, the former BCNP Superintendent said he meant that the CRC representatives did not seem to want to hear MMS' views.

The former BCNP Superintendent said CRC's presenter painted a different picture than MMS. He said he was given a lot of "leeway" at the meeting and he seemed to have been accepted as a qualified expert. The former BCNP Superintendent said the CRC presenter was more "emotional" than other CRC representatives that he had dealt with in the past.

According to the former BCNP Superintendent, Ann Klee was in charge of the meeting; however, he thought she portrayed herself as not being knowledgeable about the topics discussed by MMS and CRC and that she was "just listening."

When asked about this meeting, unlike all other attendees, Barry Roth could only recall that he attended a couple of briefings with MMS in a conference room.

The Grace Review

When the Department failed to reach a value that would be acceptable to CRC, Peter Schaumberg sought and obtained the services of an **off**shore minerals expert, Dr. John D. Grace, President of Earth Science Associates. Dr. Grace was initially asked to review MMS' evaluation methodology and report his findings in a teleconference. Dr. Grace told us during an interview that the data MMS used was "sufficient" for the task MMS was assigned to do and that MMS employed the methodology "well." In his interview with the OIG, however, Grace explained that using **off**shore auction bids might be viewed as representing a "synthetic" market in comparison to a different or nonexistent **on**shore market.

Subsequently, Schaumberg asked Dr. Grace to include a "variance" – or range – of values that one might pay for the oil resources evaluated by MMS and to produce a written report. Initially, Dr. Grace was very reluctant to do so and sought the advice of a colleague, a consultant on mathematics in financial matters and professor of statistics. When we interviewed the consultant, he confirmed that he had been contacted by Grace regarding a project Grace was working on for the Department of the Interior. The consultant said that during his conversation with Dr. Grace, Grace stated that he was "struggling" to put a range of variance around one professional estimate and that he was looking at Outer Continental Shelf bids to help establish this variance. At the time, the consultant advised Grace that he could not think of any better way to suggest putting a range of variance around one estimate. When we asked, the consultant indicated that one possible reason for establishing the variance was to give an "excuse" to go higher during negotiations than the $68 million mean contained in the information Grace was working with.

Ultimately, Dr. Grace produced a nine-page report, addressed to Schaumberg, reiterating his overall conclusion that the methodology employed by MMS was "sound and correctly applied"; he also included a "range" of values from $31 million to $140 million based on MMS' $68 million mean.

During his interview, Dr. Grace said he probably created this value range at the request of Peter Schaumberg, that he understood from Schaumberg that the Department needed a value range to meet its needs in the proposed mineral rights acquisition, that he had never before created such a value range, and that he had no plans to create one again. He also conceded to us that his range of values had a "positive bias."

Dr. Grace explained that "positive bias" means his analysis resulted in a greater range of values, or variance, which would have favored the seller, or the party seeking the higher dollar amount. In this case, his range favored CRC. Dr. Grace stated that he used an example set (offshore auction bids) that was "much richer in prospects" than bids that might have existed onshore in South Florida at the time of his analysis. The "pot is much richer in size offshore than it is onshore," Dr. Grace said. He explained that the magnitude of rich offshore auctions used to represent onshore prospects caused "the whole picture to be up shifted."

Dr. Grace went on to tell us:

> The positive bias in the range of values obtained from bids in the Gulf of Mexico [GOM] might be better understood by the following rough analogy. If we wanted to analyze the range of salaries earned by minor league baseball players, the range of salaries of major league players would be informative. However, because there are no 'superstars' in the minors, the range of salaries in the majors would be positively biased relative to minor leaguers.
>
> Likewise, onshore Florida, there just is not the potential for super-giant fields that exists offshore. Therefore, there would be a smaller range for onshore bids on leases (were such an auction held) than would occur in an offshore lease sale. Unfortunately, there were no organized data on onshore lease auctions that could be used in constructing the range for onshore Florida. Therefore, the offshore GOM lease sales were used, and the existence of some positive bias (of unknown degree) was reported with the analysis.

The peculiarity of this range is further revealed by Dr. Grace in his report:

> ….I was asked to prepare a range around the mean of the distribution in value calculated by MMS. The mean of that distribution (when finalized and prorated for that portion being bought) is, according to microeconomic theory, the price at which the asset would trade on an open market.
>
> *There is no specific provision in that theory for developing a range around that mean* to reflect how different participants in the market would value the asset in practice. And assumption of the pure equilibrium market model is that all participants have perfect

> information. Therefore, one would not expect a variance in evaluations, so there is no need for a range – in theory. [Emphasis added]
>
> However, *development of a range was required to meet the practical needs of the Department of Interior*. [Emphasis added]

Later, in a memorandum crafted and signed by Barry Roth and Peter Schaumberg, Dr. Grace's efforts would be characterized as an "Independent Review," which would later be interpreted by congressional staffers as a "Peer Review," although the Appraisal Foundation granted it no credit for either, and was, for practical purposes, the basis upon which the key Department decision-makers – specifically Ann Klee and ultimately the Secretary – relied to reach the purchase price of $120 million.

Although his report parenthetically qualified the need to prorate for the portion being bought, like MMS' evaluation, Dr. Grace did not calculate an allocation for CRC's partial ownership interest in BCNP. He did not discuss prorating with Peter Schaumberg because, he said, it seemed so obvious that he assumed Schaumberg would have accounted for it.

Dr. Grace said that he was concerned that the approximate mean of $68 million should have been reduced proportionately to CRC's actual mineral interests in BCNP. When he was asked if he believed that his work supported the $120 million agreement between the Department and CRC, Dr. Grace said that he did not know about the $120 million until he heard the Presidential announcement. He opined that someone might potentially pay that amount, but it would be "odd." Dr. Grace explained that the mean is the expectation, that is, the price that would be expected in an ideal theoretical market. If a price is derived that is above the mean, Dr. Grace said that the seller has received a better deal, has a better position, or is a better negotiator.

Dr. Grace also said that failure to prorate the mean value, from which he constructed his range of values, was incorrect, and not completing such a rudimentary and elementary step in valuing CRC's mineral interests was "a dead-out mistake."

As the following section will explain in greater detail, the MMS and Grace reports were conceived, crafted, and presented as if to replicate – or at very least, substitute for – a standards-compliant appraisal. While the sum of all these reports would suggest that they provide the basis for determining the $120 million value of CRC's subsurface mineral rights in the BCNP, we were told during interviews of the very people who caused these reports to be generated that they are not the basis for the $120 million offer. Rather, Barry Roth and Peter Schaumberg say the $120 million was a "negotiated price" justified by congressional ratification (Agreement Subject to Ratification).

The independent evaluation conducted by The Appraisal Foundation and our own analysis of the Agreement Subject to Ratification belie the validity of this last-ditch mendacity.

The Appraisal Foundation's Evaluation

Included in its entirety as an attachment to this report, the "Evaluation of the Department of the Interior's Value Justification Process and Procedures Associated With Collier Resources Company Undiscovered Oil and Gas Interests in Florida," dated May 28, 2004, prepared by The Appraisal Foundation, speaks for itself.

A synopsis, however, of the evaluation's findings and conclusions will inform those who choose not to read the entire evaluation, and should assist those who do. In addition to thoroughly addressing the specific questions we presented, The Appraisal Foundation adeptly and articulately crafted its responses in a context, both historical and practical, that provides even the most uninformed reader a clear understanding of what took place in the effort to secure a value for the subsurface mineral rights in this matter.

Before we summarize the Foundation's findings, we must make this very important caveat: While the Foundation is critical of the form of and representations contained in the MMS reports it reviewed, its criticism must not be extended to those MMS employees who created the reports. As we discussed in the section entitled, "The Negotiating Environment," the MMS civil servants who were pressed into service acted only after repeatedly expressing their reservations and concerns in every way and to everyone possible, short of becoming insubordinate (although Readinger opined that he believed that when he objected to conducting a re-evaluation in 2000, he may have, in fact, crossed the insubordination line). **(See Attachment)**

Keeping this caveat in mind, we asked the Foundation to:

1. Explain the evaluation methodologies and appraisal practices that are used by the federal government in determining the value of subsurface oil/gas mineral rights, including a discussion of the Uniform Standards for Professional Appraisal Practice (USPAP).

2. Determine whether the processes employed in the 1996 and 2000 MMS evaluations, and the 2002 review conducted by Dr. John Grace, of the CRC mineral estate were valid and appropriate. Identify whether, in general, the processes constituted a valid methodology for use by the federal government in determining onshore mineral values.

3. Explain whether an appraisal is necessary in cases involving the purchase or exchange of subsurface oil/gas mineral rights. If so, explain what part of the USPAP applies and what part of the Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA) apply; if not, explain why not, and identify the range of options by which a federal entity has for valuing the purchase or exchange of subsurface oil/gas mineral rights.

4. If the evaluation methodology used by DOI was outside of acceptable industry practice, identify and describe generally the impacts to the valuations.

5. Identify any acceptable deviations to the evaluation and valuation methodology used by MMS and describe generally the impact of the deviations.

6. In light of the above consideration, review the following document: GAO Report entitled, "Land Exchange-New Appraisals of Interior's Collier Proposal Would Not Resolve Issues," May 1988, GAO Report No. GAO/GGD-88-85.

In its report, the Foundation first provided some history: The United States has had ethical rules statements for real property appraisals since the late 1920s, developed in part as a response to fraudulent market practices and abuses in real estate characterized by the repetitive sales of the Brooklyn Bridge and the rampant abuse of a "buyer beware" marketplace. Recognizing that these and related systemic failures contributed to the severity and extent of the Great Depression, professional appraisal organizations were formed in the public interest to assist in stabilizing markets and establishing foundations of certainty and security for real estate investments.

The purpose of the USPAP is to promote and maintain a high level of public trust by establishing requirements for appraisers in order that they may develop and communicate their analyses, opinions, and conclusions in a meaningful way that is not misleading. The standards prohibit appraisers from advocating the particular needs or dictates of the client and provide the foundation for fairness, transparency, objectivity, independence, and competency.

The USPAP is recognized in the courts, in the Congress, and in a wide spectrum of private market transactions, especially in mortgage lending and the purchase and sale of real property rights. It serves as an important set of supplemental standards to allow for the minimal number of special differences that occur in the federal jurisdiction.

The UASFLA was first published in 1971. It is the product of more than 30 federal agencies who are signatories to it. It is intended to apply to all federal government land acquisitions and exchanges with the private sector.

The USPAP and the UASFLA each have their roots in principles that were developed to avoid fraud, waste, abuse, and misunderstanding, and promote independence and objectivity, whether the users are public or private.

As a result of its evaluation of the information we provided, the Foundation recognized that professional appraisers were "consciously by-passed" by management. The Foundation found the stated reasons for by-passing the appraisers to be "more suited to an excuse that attempted to justify what was clearly an unwarranted decision, and thereby permit development and reporting of inflated 'values.'" The Foundation also recognized that DOI officials involved in the transaction were aware of legal standards and requirements, but neither sought nor received reports that complied with those requirements. **(See Attachment, page 66)**

In response to our specific inquiries, the Foundation provided the following:

1. Explain the evaluation methodologies and appraisal practices that are used by the federal government in determining the value of subsurface oil/gas mineral rights, including a discussion of the USPAP.

    - Appraisals are to be performed in the federal jurisdiction by qualified appraisers who are trained and experienced to meet the professional standards required to develop market value opinions. *There are no provisions for "alternative valuation means" where market value determinations are an element of land acquisitions or exchanges involving private sector entities.*

2. Determine whether the processes employed in the 1996 and 2000 MMS evaluations, and the 2002 review conducted by Dr. John Grace, of the CRC mineral estate were valid and appropriate. Identify whether, in general, the processes constituted a valid methodology for use by the federal government in determining onshore mineral values.

    - None of the reports reviewed by the Foundation were standards-compliant market value appraisals. The 2000 MMS report in particular was misleading in that, without complying with the requirements for federal appraisals, and without appropriate data reasoning, analysis, and conclusions, it was *reported in a form and was apparently used as though it were prepared in accordance with federal appraisal standards.*

    - Despite the extent of information, discussion, and recitation of how statistical models were used in the MMS reports, these reports are hypothetical, highly speculative, and not based upon supportable market data.

    - The purported subsurface oil and gas mineral interests owned by CRC were not defined on a property-specific basis as to their nature and extent, or even as to their location. As such, any value ascribed to these interests is misleading and improper because even if minerals were to exist, there is no way to quantify the CRC portion of any market value that might be ascribable to the interests.

    - At best, the MMS report deals with a factual unknown: No one knows that economically viable oil and gas exists on the real estate to which CRC's mineral interests apply.

3. Explain whether an appraisal is necessary in cases involving the purchase or exchange of subsurface oil/gas mineral rights. If so, explain what part of the USPAP applies and what part of the UASFLA apply; if not, explain why not, and identify the range of options by which a federal entity has for valuing the purchase or exchange of subsurface oil/gas mineral rights.

    - The USPAP and the UASFLA provide pertinent standards and guidance for the valuation of real property interests, but the requirements of these standards were

overlooked and not reflected in the materials reviewed. These failures, among others, render the reports and the processes by which the reports were generated as highly questionable.

- A determination that there are no comparable sales transactions that would allow an appraisal to be done must be adequately supported by a qualified appraiser.

4. If the evaluation methodology used by DOI was outside of acceptable industry practice, identify and describe generally the impacts to the valuations.

   - With the number of mischaracterizations, misrepresentations, and misapplications reflected in these materials, the Foundation found no reliable foundation for concluding or using any opinion of market value of the CRC mineral interests involved.

5. Identify any acceptable deviations to the evaluation and valuation methodology used by MMS and describe generally the impact of the deviations.

   - In a situation such as the CRC mineral interest in Florida, qualified appraisers are particularly needed. The way in which this transaction was handled evidences an improper and unsupported land deal, not in compliance with the law and the need to uphold the public trust.

   - Market value appraisals developed and reviewed by qualified appraisers should be recognized as necessary in all land acquisitions and exchanges by DOI and its agencies.

6. In light of the above consideration, review the following document: GAO Report entitled, "Land Exchange-New Appraisals of Interior's Collier Proposal Would Not Resolve Issues," May 1988, GAO Report No. GAO/GGD-88-85.

   - Although the GAO report does not discuss the rights appraised, distinguishing between surface rights and any reserved mineral interests, it does state that all three of the appraisers in Florida agreed that the highest and best use of the properties would be for recreational use and speculative holding.

In addition to responding to our specific inquiries, the Foundation offered other insights and concerns:

- The Foundation expressed concern that *program abuses or more serious violation of the public trust may have occurred.*

- The MMS reports relied heavily upon materials, information, and discussions with CRC, *compromising the independence and objectivity that are required for standards-compliant market value opinions.*

- The Foundation could not understand how rational program staff could rely on the MMS reports as support for the proposed exchange. The 2000 MMS report was not an appraisal, was heavily influenced by CRC data that even CRC would not warrant as true and correct, and was adjusted by non-appraisers to have the appearance that the MMS had developed a market value conclusion.

- Market value definitions are based upon the concept that the buyer and seller are each reasonably knowledgeable, that each is acting in self-interest, and there is an absence of any compulsion. Sellers are generally obligated to provide truthful disclosures of pertinent property facts that might influence buyer decisions. A market value transaction is, thus, an "arms-length transaction" because each party acts independently, without accommodations for special relationships that might exist between the parties.

- CRC did not make disclosures that would meet normal seller requirements, and DOI expressed a compulsion for the transaction or exchange to occur.

- In addition to the obvious questions of propriety and possible abuse of public trust, CRC's unwillingness to "warrant, express or implied, as to the accuracy, correctness or completeness" of the proprietary data provided to MMS, *raises the question of why the agreement would be signed in the first place if the data could or would not be warranted.*

- Negotiators and other program officials may deal with *negotiated prices,* but such negotiated amounts do not substitute for value opinions developed by qualified appraisers.

- Pronouncements of "market value" by administrators do not substitute for the opinion of an independent qualified appraiser. This opinion should form the basis for administrative determinations.

- The spirit of the USPAP and the UASFLA requires that appraisers and reviewers of appraisals examine prior transactions involving an appraised property. An evaluation of previous acquisitions or exchanges involving CRC surface rights, or of congressional actions that may relate to such rights, needs to be analyzed to determine whether CRC interests may have already been compensated for all or part of the mineral rights involved.

- If mineral interests of any sort had been reserved, extracted, or otherwise removed from the bundle of rights, none of the appraisals would have qualified as "fee simple" appraisals.

- In the federal jurisdiction, compensation for acquisitions is generally limited to the real property rights. Business rights are not generally acquired. When an owner of real property rights becomes, or has the potential to become, a developer and/or an operator of resource extraction, the functions of a developer and/or an

> operator are considered as business activities and are to be separated from the land rights that are valued.

In the end, the Foundation concluded that any exchange or transaction based upon any of the documents it reviewed was not based on credible or reliable information by which to judge the market value of purported and undefined CRC property interests. The Foundation, commenting on the Department's justification, stated: "Overall, the Department's experience in various large land acquisition projects over the years has found that the appraisal process has the potential for devolving into an essentially adversarial proceeding that can be counterproductive to protect the underlying resources." The Foundation likened the Department to a child who says, "I don't ask Dad if I can go to town because he might say no. Instead, I only ask mom" **(see Attachment, pages 75 and 76)**. Interestingly, during his interview, Peter Schaumberg conveyed a similar adage: "It's the old joke, 'I'd rather just do something and get approval later.'" We suspect he was referring to the adage: "It is easier to get forgiveness than permission," commonly ascribed to *Stuart's Law of Retroaction*. From this, the Foundation deduced that DOI does not care about requirements when requirements frustrate program goals. "These goals would trump properly founded financial decisions that can stand public scrutiny…." **(See Attachment, page 76)**

The Foundation construed in a scathing denunciation: "Further, examples such as this foster *individual and agency abuses of office* and opportunity for *failures to uphold the public trust*." (Emphasis added) **(See Attachment, page 76)**

The Tax Treatment

Despite the difficulty with and lengths to which the Department had to go to reach the $120 million price tag, CRC continued to insist that its subsurface mineral rights in BCNP were considerably more valuable. In keeping with this position, CRC also insisted that the Agreement include language that would allow it to do two things: First, to claim credit for a donation for any amount it could sustain with the IRS over the $120 million that the Department was willing to pay, and second, to reap the tax benefits associated with a sale of the property "in lieu of condemnation," which, in summary, equates to the ability to defer or avoid taxation on capital gains.

Thus, the Agreement included the following language:

> Whereas, the United States, in lieu of condemnation and subject to Congressional ratification, has agreed to accept the Collier Mineral Estate from Collier Family through a voluntary acquisition and donation.
>
> Whereas, the Collier Family believes that the fair market value of the Collier Mineral Estate is significantly greater than the monetary consideration offered by the United States; however, in recognition of the environmental sensitivity of the surface rights associated with the Collier Mineral Estate, the Collier Family has

> agreed to convey all right, title and interest in the Collier Mineral Estate to the United States and in return will accept monetary consideration as partial consideration and will donate to the United States the amount by which fair market value of the Collier Mineral Estate exceeds the monetary consideration being paid by the United States to the Collier Family ….
>
> ...The Secretary acknowledges that the Collier Family believes that the fair market value of the Collier Mineral Estate is significantly greater than the monetary consideration that will be paid to the Collier family. The Collier Family nevertheless has agreed to accept the $120 million of monetary consideration with an understanding that it intends to treat this transaction as a partial sale, under threat of condemnation in accordance with section 1033 of the Internal Revenue Code, and as a partial charitable contribution….The Collier family will be solely responsible for any appraisals or other such documentation supporting the charitable contribution deduction for any excess of the fair market value of the Collier Mineral Estate beyond the monetary consideration being paid ….

Since the OIG has no more expertise in tax issues than it does in appraisals, we sought the assistance of the Senate Joint Committee on Taxation. We met with Committee staff members with expertise in these areas to discuss the matter. After being provided a summary of the facts, Committee staff said the circumstances in this case "sound weird." They explained that it seemed like CRC wanted it both ways. Specifically, CRC not only wanted to secure the benefits of donating a portion of its mineral rights under IRS Code Section 170, which applies to charitable donations and requires "donative intent," but also wanted to claim the tax benefits associated with IRS Code Section 1033, which contemplates "involuntary conversion" and requires that property be taken away under threat or use of force. Committee staff opined that tax treatment under these two code sections is, essentially, mutually exclusive.

Committee staff further explained that the intent to involuntary convert property should be formed by the Department and not the property owner. Thus, the government would form the intent to initiate or contemplate an involuntary conversion and notify the property owner in writing. They concluded that involuntary conversion did not appear applicable in this case.

On the other hand, they noted that for the charitable donation, the IRS would ask the donor for information such as the history of the deal/negotiations, the values that were asserted, and other information salient to the transaction. They explained that a donee could incur potential criminal or civil liability if its representative signed IRS Form 8283 (acknowledging the donation) knowing the donated property was overvalued. *Agent's Note: We found no evidence that an IRS Form 8283 was signed by any representative of the Department.*

We asked Committee staff to consider why the Department would want to enter into an agreement that would include these taxation terms and what, if any benefit, the Department

would receive. They responded that they could think of no reason the Department would want to agree to the terms described.

The SOL attorneys who drafted the agreement conducted no independent inquiry or research into these issues. Instead, they simply conceded to the insistence of CRC's legal representatives.

Barry Roth justified the inclusion of the donation aspect because the Department had used similar language in a prior exchange (the Little River Canyon Exchange), adding that the Department has done them before.

In our interview of him, Roth justified the "in lieu of condemnation" language because the Department was not giving any tax advice and because it is up to the IRS to approve. In short, Roth said, "My job is to get a deal done."

During his interview, when asked about the tax aspects of the Agreement, Peter Schaumberg said, "I have nothing to do with that." When we asked if he understood the tax implications of the Agreement, he replied, "There was discussion, but I did not understand …," adding, "…No, I am not aware of the 'involuntary conversion' part, I did not understand that." However, he was aware of the donation aspect of the agreement.

When we examined Schaumberg's February 14, 2002 notes for a meeting with CRC attorneys, we found the following reference to CRC's concern regarding the tax issue: "[The Colliers] suggested that a post tax deal [at $120 million] would work. Otherwise, Colliers not willing to accept it. They would like to meet or talk [with] John Grace to see if there is a way to help up the inputs."

Ann Klee, who knew that the "in lieu of condemnation" language was essential to CRC, said in her interview that CRC wanted to claim the difference between what the Department was going to pay and what CRC felt the mineral rights were actually worth, but the Department felt that CRC would not be able to prove the difference in order to claim a charitable tax donation. Klee said she was told by either Peter Schaumberg or Barry Roth that similar language had been used in other deals, but that the IRS usually does not grant the donation.

In our interview of J. Steven Griles, then Deputy Secretary, he did not express concern about the Department using language that might assist CRC in receiving a tax break. He equated the potential tax break to that of a home seller being allowed to avoid paying capital gains taxes by investing sale proceeds into the purchase of another home within a particular time period.

In April 2002, between the time Ann Klee notified the Council on Environmental Quality that an agreement had been reached and the time that the Agreement in Principle was signed at the White House ceremony, CRC again met with the Department (including Cooke, Schaumberg, and Roth) in an attempt to decrease the prospects that it would be selling to the Department. *Agent's Note: A decrease in the purchased prospect size would later allow CRC to claim that it donated more property to the United States, thereby giving CRC a larger tax benefit when it filed a donation claim with the IRS. CRC's representative referred to this as the*

"bifurcation meeting" but said that after discussions with a consultant, CRC decided not to pursue the "bifurcation scheme."

Like the failed Agreement itself, this tax treatment, today, might be dismissed as "no harm, no foul." We feel compelled, however, to comment in the following regards:

- It represents a careless practice to conclude that something is appropriate simply because the Department has done it before. Without factual basis and analysis, it is reckless to draw such a conclusion and advise decision-makers without more. In fact, the OIG has uncovered numerous, serious programmatic failings when one program relies on the precedent of another for justification to act.

- It represents a compartmentalized view of responsibility that has haunted and thwarted other transactions investigated by the OIG. This compartmentalization results in a wholesale lack of accountability, with the various participants pointing to one another as being responsible for whichever aspect of a transaction breaks bad.

- Taking the compartmentalization one step further, it represents a view that the Department acts only in its own self-interest and not the interest of the federal government and the American public – here the IRS and the taxpayer.

- It represents yet another aspect of the deal that was being driven and controlled by CRC, with the acquiescence and assistance of the Department.

- By including "in lieu of condemnation" language, the Department was acceding to a statement that was false.

- Including both aspects of tax treatment that CRC insisted upon, aspects that are mutually exclusive in the view of subject-matter experts, causes the Department to look, at best, foolish and, at worst, complicit.

Simply stated, in conclusion, this is not the substance of which a sound Agreement in the best interests of the federal government and American public is made.

Agreement Subject to Ratification

As the list of irregularities associated with this transaction grew increasingly long, we grew increasingly concerned about the way in which the transaction transformed, apparently unfettered by rules, process, or restraint.

Rather late in our investigation, we came to understand. Upon interviewing Barry Roth, he cited a concept – "Agreement Subject to Ratification" – as the basis for proceeding. Peter Schaumberg described the process as being "outside the box."

To fully appreciate the concept of "Agreement Subject to Ratification," one must first understand the process as it was intended to work.

Authorities Applicable to Purchasing Interests in the BCNP

NPS buys land under the authority of several general statutes and under individual statutes that address acquisition at specific sites. Some purchases are also governed by the implied authority of appropriations bills. The Congress can also direct NPS to purchase lands through special legislation.

Purchases within the BCNP are primarily governed by the BCNP enabling statute, and secondarily, by general laws applicable to the National Park System. The BCNP enabling legislation, other relevant statutory provisions, and Department policy all require an appraisal before the Department can buy lands in the Preserve. The only exception is for small parcels, costing less than $10,000. Other general laws relating to the National Park System apply to the extent they are not inconsistent with the enabling statute.

The BCNP statute authorizes the Secretary to buy lands and interests in land in the BCNP. The statute specifically states, however, that the Secretary cannot extend an offer to buy in excess of $10,000 without first obtaining an appraisal. The land acquisition process for the federal government is statutorily dictated by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URARPAA).

The URARPAA and its underlying regulations require the Department to appraise real property before it initiates negotiations to purchase real property or real property interests. NPS policy is consistent with this requirement, declaring that both private and public interests be protected "through credible appraisals and reviews." Specifically, the NPS Land Acquisition Procedures 2000 establish the internal framework, processes, and authorities that NPS must adhere to when it buys land. NPS Director's Order No. 25, Land Protection, specifically directs NPS to follow the URARPAA. Consistent with statutory authorities, Director's Order No. 25 provides that NPS must appraise the land before negotiations to buy begin; must establish an amount that is believed to be just compensation or fair market value; and it must make an offer to pay fair market value to the owner of the land. If another bureau, such as the Bureau of Land Management, conducts the purchase for NPS under its (the Bureau of Land Management's) procedures, that bureau must adhere to NPS' requirements, where there is inconsistency.

If the parties cannot agree on a price during negotiations and the Department still wants to obtain the property, the statutes provide that the Department may exercise its power of eminent domain (i.e., take the property). In order to exercise eminent domain, the Secretary has to commence condemnation proceedings. In doing so, the legislation establishing the BCNP required the Secretary to declare that the BCNP was threatened with, or subject to, uses that were, or would be, detrimental to the purposes of the Preserve. Only then could she initiate condemnation proceedings for interests within the BCNP.

The Agreement states that the Department was buying under its authority found in the BCNP enabling statutes. Although the Agreement states that the Secretary determined that

CRC's proposed exploration was detrimental to the purposes of the Preserve, as required by the enabling statute, we were unable to find departmental opinion, memorandum, environmental impact statement, or other documentation to corroborate this assertion.

With such a plethora of law, regulation, and policy directing NPS on how to conduct land exchanges and acquisitions, and since the Agreement cites as authority the enabling statute, which prescribes an appraisal process, we were dumbfounded to understand how the Department could legitimately opt out of established procedures and engage in activities utterly void of structure. Ultimately, we have concluded that the Department could not do so. Although to support this conclusion, we must dissect the concept of "Agreement Subject to Ratification."

In lay-terms, the concept follows this logic: When the Department has neither the statutory authority nor the funding to accomplish a particular land transaction, if, in the end, the transaction is presented to, then approved and funded by the Congress, the Department's efforts to accomplish the transaction are ratified and absolved. This is the very situation we found in the aborted San Rafael Land Exchange – a transaction that was called a "legislative exchange" as opposed to an Agreement Subject to Ratification. In fact, it was actually an exchange conceived between the State of Utah and the Department, carefully crafting the Agreement and ratifying legislation to secrete terms that might be construed as inequitable to the United States.

Astonishingly, both Schaumberg and Roth point to the failed San Rafael Exchange as a model for their actions in the BCNP transaction. San Rafael was an exchange that the OIG so vehemently criticized that the Secretary and then-Governor of Utah publicly voided the deal.

In essence, Roth and Schaumberg both contend that they did not need to follow any statutory, regulatory, or policy guidance in reaching an agreement on the purchase price of the CRC oil and gas interests in BCNP. This was true, they asserted, because they, on behalf of the Department, had opted out of the process and were negotiating an agreement subject to congressional ratification.

However, a presumption of regularity of government operations does not permit the Department to simply ignore all of the laws, regulations, and policies that would normally apply to an acquisition transaction such as this. Upon closer scrutiny, it appears that the SOL attorneys invented this non-process from a piecemeal compilation of past practices in the Department and presented it to Ann Klee (who presented it to the Secretary and Deputy Secretary, who ultimately presented it to the White House) and to the Congress with the veneer of a conventional land acquisition transaction, as if the normally attendant rules and processes applied and had been followed.

As we prepare to launch a rather lengthy critique of the concept of Agreement Subject to Ratification, we must begin with a clear caveat: The OIG is not, and has never been, opposed to land exchanges or land purchases by the Department of the Interior.

The OIG recognizes the authority of the Department to conduct land transactions in accordance with attendant rules and processes. We also recognize the authority of the Congress to direct and approve land exchanges and land purchases through the enactment of legislation,

with specific directions and requirements that may differ from the rules and processes that otherwise bind the Department. We believe, however, that the fundamental concept of a "legislative" land exchange or acquisition **begins** with the Congress, expressing its intent along with any specific direction or requirements to accomplish the transaction. With congressional intent and direction a condition-precedent, we believe that "Agreement Subject to Ratification" would be the conceptual process by which a Department could carry out the wishes of the Congress, so long as the process is conducted with full disclosure and transparency. In the CRC Agreement, as with San Rafael, however, the Department missed the critical condition-precedent – congressional intent – and utterly failed the full disclosure and transparency tests.

Even as we were conducting our investigation, when the Agreement expired, by its own terms, CRC again approached the Department with a new proposal, and another Agreement (2004 Agreement) was crafted. The 2004 Agreement called for a UASFLA appraisal, capped the amount that the Department would be obligated to pay at $120 million, and allowed CRC to walk away if the appraisal came in less than $120 million. The 2004 Agreement reiterated the tax treatment provisions contained in the expired Agreement. Although the 2004 Agreement had yet to be signed, the Department contracted with an outside appraiser to begin the appraisal process. Inexplicably, on December 15, 2004, CRC sent a letter to the Department criticizing the appraisal process as "seriously flawed" and signaling its unwillingness to proceed with the 2004 Agreement. On January 24, 2005, CRC sent another letter to the Secretary signaling its intent to "move ahead with resource development" in BCNP. CRC went on to say, "We will conduct our mineral exploration with the utmost sensitivity to the environment. Congress had no concerns about our environmental stewardship when they expressly declined to acquire the Collier mineral estate in 1974 and again in 1988….The Department should have no concern today and we would appreciate your support as we move forward."

CRC's attribution of congressional intent as to its environmental stewardship rings strikingly similar to the Department's attribution of congressional intent via Agreement Subject to Ratification.

The OIG questioned Barry Roth extensively concerning information that several Department employees cautioned him that an appraisal needed to be prepared for the CRC interests. Roth asserted that it was legally acceptable to ask the Congress to ratify the agreement without a UASFLA-compliant appraisal since Agreements Subject to Ratification had been done before. He claimed that his position was rooted in his experience working on Capitol Hill – specifically his work on the Uranium Enrichment Project. He stated that he was the first to suggest the Agreement Subject to Ratification idea, thinking – "why not negotiate a conditional contract and go to the Hill to ratify?" He made a distinction between what he called administrative action versus legislative action. When asked the difference between the two, Roth stated that administrative action is when an agency acts using existing authority, without new legislation. Legislative action, on the other hand, is action taken by the Congress using new statutory authority.

By his own admission, Roth has never seen a handbook on Agreements Subject to Ratification. He claimed that the roadmap for them is written by the Congress and professed to have seen approximately six of them during his tenure at DOI, but acknowledged that,

considering all DOI land acquisitions, the practice is "clearly abnormal" when compared to the total number of DOI acquisitions. He said DOI had no process for Agreements Subject to Ratification; it just did them. He stated, without context or exception, that it is legally acceptable to petition the Congress to ratify an agreement to buy land without having conducted an appraisal compliant with the UASFLA.

Referring to the Congress' ability to exempt an agency from operation of a statute, Roth cited the National Environmental Policy Act as an example where, at times, the Congress exempts agencies from its requirements. *Agent's Note: We also heard this during our investigation into the San Rafael exchange. In that matter, attorneys in the SOL concluded, summarily, that if the Congress does not grant the Department enough time in the consummation of the exchange to conduct a National Environmental Policy Act study, it is fair to assume that the Congress has "exempted" the Department from the National Environmental Policy Act requirement. Although it was not an issue we addressed in our written report, our analysis at the time brought us to the conclusion that this assumption, without disclosure and dialogue with the Congress, is not sound.* Therefore, during his interview, we asked Barry Roth if the URARPAA was the National Environmental Policy Act of appraisals and whether the Agreement Subject to Ratification practice covertly required the Congress to exempt DOI from the appraisal process. Roth responded only, "What's clear in the agreement is what's on the face of the agreement."

Roth summarily dismissed the laws, regulations, and procedures that govern the Department's land acquisitions. When he was questioned about the requirements of NPS' internal policies Land Acquisition Procedures 2000 and NPS Director's Order No. 25, both of which require fair market value to be established pursuant to a formal appraisal conducted under the UASFLA, Roth commented, "You guys have clearly spent more time investigating than we spent on the deal over the last 10 years." Astonishingly, Roth, whose principal client is NPS, said he has never read NPS Director's Order No. 25 or Land Acquisition Procedures 2000. Nonetheless, at one point he stated that there is an element in the bureaucracy that sees process as everything, and, if you don't get the land, you simply don't get the land. Roth stated that he was there to close the deal. Without support in law or fact, he concluded that the Department could simply agree to buy land and then later submit an agreement to the Congress to ratify. Even though in doing so the Department never determines fair market value for property, Roth said, "It's up to Congress to tell us if they needed more." Shifting the responsibility, he said, "Well, that's what their staffs are for."

Schaumberg said that the value of the property really did not matter because he, Roth, and Klee were going to seek congressional approval for the agreement. Throughout his interview, Schaumberg was persistent and elaborate in his own defense. He explained that the Agreement did not have to be "legally defensible, just reasonable." He admitted that the Department used the Agreement Subject to Ratification vehicle only "[when its] existing legal authority does not work or is inadequate, and [the Department] can't use [its] regular authority…." When asked whether there was any legal basis for the Department to conduct the acquisition, he stated, "There wasn't any [legal basis] to do it…."

Schaumberg was asked if any MMS employees or other Department personnel criticized how he handled their work on the CRC agreement. Schaumberg responded, "It's not that I wasn't listening. I took things back to Klee and Roth." When asked if that included any concerns he heard, he said, "I passed on the e-mails I received and concerns I heard. The lawyer's role was to determine whether the process was unlawful." Earlier Schaumberg stated, "[The agreement] wasn't legal in and of itself; that's why we had to get authority from Congress. It was a negotiated price based on [the information received from MMS, Dr. Grace, and CRC]. He later said, "Sometimes you come across circumstances when you can't do things a normal way."

Schaumberg said that currently, agreements by ratification have come under scrutiny by the Department. Nevertheless, at the time they were working on the CRC agreement, the Department's rules were different. He added, "The Secretary was the one that wanted to do this, but she is not willing now." He said the Department could request that the Congress approve the same type of agreement, yet the Secretary is not now willing to do so without an appraisal. Schaumberg stated, "If an appraisal was required, then we would have done it."

After his interview, Schaumberg offered a memorandum claiming that no pre-existing legal standard applied to the agreement subject to ratification. In this memorandum, he theorized that because the *Congress* has plenary power to enact new legislation to approve whatever acquisition it wanted, *the Department* did not need to follow any particular procedures in this acquisition. Circuitously, Schaumberg concluded that "there is no requirement that any individual acquisition that Congress authorizes and ratifies through special legislation conform to existing laws, regulations or procedures."

Schaumberg's memorandum conveniently ignores the obvious. First, it ignores the fact that the Congress speaks through its statutes, and under them has already given the Department specific legislative authority to purchase, exchange, or otherwise acquire land in general, and at the BCNP specifically, and that it enacted a plethora of laws defining this authority. Second, it ignores the fact that the Department has promulgated numerous regulations and policies to implement the authorities delegated by the Congress. Schaumberg's logic jumps from what the Secretary purportedly wanted to do, i.e., reach an agreement on price, to what the Congress *can* do, i.e., pass legislation. He merges the two concepts in a fuzzy attempt to validate the illegitimate approach taken in this matter.

Although admittedly unfamiliar with the BCNP enabling legislation and NPS' internal policies, Schaumberg stated in his September 21, 2004 memorandum, "Specifically, there is no requirement that there be any particular form of evaluation or 'appraisal' to support the agreed-upon acquisition." Indeed, he surmised that "if Congress may approve, after the fact, an agency action for which it did not have pre-existing authority, it necessarily follows that Congress may approve an agency action for which it does not have pre-existing authority <u>before</u> the agency action becomes effective!" Citing a provision of the Agreement that states that neither party is required to undertake any action or receive any benefit under the agreement prior to congressional enactment of legislation, Schaumberg concluded that the Department was not obligated to buy the CRC mineral interest until the Congress provided the "express legal authority to do so."

Schaumberg conceded that he was unaware of any Member of Congress instructing or authorizing the Department to complete the CRC acquisition. Referencing the San Rafael exchange, Schaumberg stated that neither would have worked if the Department had not availed itself of the Agreement Subject to Ratification. Interestingly, neither has.

Both Schaumberg and Roth pointed to the authority of senior Department officials (here, political appointees) to determine policy. Roth said he only gave people in the Department options and they made their decisions. Schaumberg said he doesn't make policy decisions and said he acted as a "facilitator."

The Supreme Court long ago pointed out that public policy is primarily for the Congress to determine:[4]

> The public policy of the Government is to be found in its statutes, and when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials; but when the lawmaking power speaks upon a particular subject, over which it has constitutional power to legislate, public policy in such a case is what the statute enacts.

The Congress has spoken to the Department about how it expects property and interests in property to be acquired through several statutes, notably here the BCNP enabling statute and the URARPAA. In other words, the Congress told the Department to conduct an appraisal when it buys property interests in BCNP. Like the Congress, agencies speak to the public through the rules and regulations they promulgate to implement the dictates of law.[5] The Department has spoken to NPS and other Department officials, through the NPS Land Acquisition Procedures 2000 and NPS Director's Order No. 25. These require an appraisal when property is purchased and the establishment of fair market value and arms-length negotiations on price. Schaumberg and Roth ignored these requirements; Roth said, "The assignment was to get a deal done, so we got a deal done." Roth described this as a negotiated price – not value. He legitimized his and Schaumberg's actions by reasoning that their actions could be subject to later ratification by the Congress. Throughout our interviews and even beyond, these two lawyers still maintain that they did not, and do not, have to follow established laws, regulations, or procedures, so long as there is an Agreement Subject to Ratification.

When we interviewed Roth's supervisor, the then Associate Solicitor, Division of Parks and Wildlife, on March 30, 2004, he provided us with a draft copy of the Division of Parks and Wildlife Land Exchange Guidelines, dated March 26, 2004. The draft document contained four specific guidelines:

> Any proposed land exchange requiring Congressional ratification must fully and completely explain all of the terms of the land exchange to policy persons within the Department and to Members of Congress.

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[4] United States v. Trans-Missouri Freight Association, 166 U.S. 290, 340, 17 S.Ct. 540, 558, 41 L.Ed. 1007 (1897).
[5] United States v. Turkette, 452 U.S. 576, 580, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981).

> Any proposed land exchange that could require Congressional ratification must fully and completely explain, in an explicit and direct manner, how the Department is complying with all existing and relevant laws and whether ratification would have the effect of modifying or eliminating compliance with such laws.
>
> All proposed land exchanges *must follow the Department's standard survey, appraisal, and contamination requirements.* [Emphasis added]
>
> All proposed land exchanges must be in full compliance with all Departmental ethical requirements, must serve our clients authorized purposes [sic]. Such exchanges must also be primarily in the interest of the public and not serve to unduly benefit, either directly or indirectly, a select interest group.
>
> When questions arise concerning any proposed land exchange with regard to any of the factors listed above, those questions should be expressed to the appropriate Assistant Solicitor or to the Associate Solicitor and pursued until a response is received.

Clearly, these draft guidelines would address many of the concerns we raised in the San Rafael transaction and that we address in this report.

In an e-mail commenting on these guidelines, however, Barry Roth maintained his view that the rules need not be followed:

> [M]y initial comment is in the 5th [paragraph about following the Department's standard survey, appraisal, and contamination requirements], any *exchanges should 'address' rather than 'follow' the standards you cite.* [T]here may be transactions where it has been decided at policy levels to pursue an alternative strategy. [W]hen doing so, that should be clearly addressed in the administrative record and the rationale/basis for that decision reflected. [Emphasis added]

While Roth very nearly redeems himself with the last sentence of this e-mail, we remain skeptical if the clarity of the administrative record envisioned in his e-mail resembles anything like the record in the BCNP transaction. The discussion that follows should illuminate our doubt.

The fallacy of the Agreement Subject to Ratification is further exposed by the manner in which information was presented to decision-makers and the Congress. Because we found remarkable memory failure on the parts of Barry Roth and Peter Schaumberg as to who did, said, and wrote what, we must rely on the written word. An analysis of a briefing memorandum from Peter Schaumberg and Barry Roth to Ann Klee, dated April 10, 2003, entitled, "History of Valuation Efforts With Respect to the Collier Oil and Gas Rights," is very telling of how factually accurate, albeit incomplete, information can lead a reader to an intended, although incorrect, conclusion. This memorandum is important not only because it was used to brief Ann Klee and the Secretary, but also because it was used in the briefings for the Congress.

For many of these statements, Peter Schaumberg, during his interview, claimed ignorance, as things outside his area of expertise and responsibility. For most of these statements, Barry Roth, during his interview, admitted knowledge of the information that made the statements incomplete.

We begin our analysis with excerpts from the memorandum:

Factually accurate:

"Although presently stayed, the Colliers have filed twenty-seven plans of operation for exploration within the Preserve and the Panther Refuge."

Albeit incomplete:

Of the 27 POOs, only one had been acted upon by NPS, and that was provisional pending CRC providing complete ownership information. The remaining 26 POOs were not ripe for being considered by NPS because they, too, were incomplete.

Factually accurate:

"While the Service has the right to reasonably regulate such oil and gas activities within the Preserve, it is unlikely that it could deny all such activities."

Albeit incomplete:

NPS regulations limit exploration activities in BCNP to no more than 10 percent of the Preserve area. The proposed exploration contained in the POOs could not be conducted simultaneously and would, thus, take decades to complete.

Numerous sources said that acquisition of CRC's subsurface mineral rights in BCNP was necessary to save or preserve the "park." Contrary to this sentiment, Big Cypress was statutorily established as a *preserve*, not a park. In establishing the Big Cypress National Preserve, the Congress envisioned the potential for exploration and drilling. Exploration and drilling were not antithetical to the statutory purpose and establishment of the Preserve; in fact, they were provided for, specifically, by the Congress, with explicit direction to NPS to develop and publish rules to regulate exploration and drilling. The Preserve was already legally protected, insofar as the Congress intended.

Factually accurate:

"Access to proprietary data possessed by the Colliers was critical to this evaluation and a confidentiality agreement was entered into by MMS and the Colliers to protect this data."

Albeit incomplete:

The Department relied blindly on the data provided by CRC, as CRC refused to warrant the accuracy of the data pursuant to the confidentiality agreement.

Factually accurate:

"Before making this request to MMS [to update its earlier evaluation], Department and NPS staff, along with Collier representatives, met with the Land Acquisition Section staff at the U.S. Department of Justice (DOJ) to ensure that the use of the MMS methodology for the Collier holdings would not prejudice the United States' position in various Everglades condemnation cases involving mineral rights."

Albeit incomplete:

Roth and Doddridge were told by DOJ's Chief Appraiser, as early as 1999, that the MMS methodology was not the proper approach to valuing the CRC mineral rights in the BCNP. The Chief Appraiser recalled at least two 1999 meetings in which he told DOI officials that the UASFLA should be used for establishing fair market value for exchanges and acquisitions.

The DOJ attorney followed up the meeting with a letter that clarified what she did and did not agree to:

> As to the support for any determination of value for the Collier minerals…[I] advised you that we would not review [the documents that CRC offered to provide in support of the value]; *we take no position as to the substantive and procedural details of any actual exchange*. [Emphasis added]

Factually accurate:

"Moreover, in November 2001, the Associate Director, Natural Resources Stewardship and Science, of the National Park Service wrote to the Acting Assistant Secretary for Fish and Wildlife and Parks: 'This [MMS report] involves an evaluation of mineral reserves, not a formal mineral appraisal. Since MMS is the recognized Federal authority in evaluating offshore mineral leasing potential and we understand their analysis will account for USGS onshore mineral reserve estimates, there is no need for NPS to be involved in the development of this mineral reserve evaluation."

Albeit incomplete:

NPS officials said that they felt pressured by Barry Roth to draft this memorandum. By selecting their words very carefully, however, they created a document that satisfied Roth, but which did not say they **agreed** with the MMS evaluation.

Although in his interview Roth did not remember directing anyone to draft such a memorandum, a November 2, 2001 e-mail from Barry Roth to NPS suggests otherwise:

> We still need to get something in writing that there is no need to further review the MMS estimates for the Collier's reserves. You might simply explain because NPS is considering options that do not at this time require an appraisal under the Uniform Standards, there is no need for NPS to review or approve the report based on the MMS' methodology.

The *"factually correct, albeit incomplete"* paradigm is subtle in the manner by which it leads a reader to the intended, although incorrect, conclusions. It may also vindicate an author from allegations of presenting **false** information. In one critical area, however, the authors of this memorandum go beyond the paradigm and step precariously close to, if not over, the line that divides incomplete from deceit.

Beginning with the title of the memorandum, the term "valuation" is used. "Valuation" and "value" are scattered throughout the April 10, 2003 briefing memorandum. Without more, an educated reader might reasonably ascribe the common definitions to these terms (taken from *Webster's II New Riverside University Dictionary* (1994)):

> Valuation – *n.* 1. An act or process of assessing value or price: an appraisal. 2. Assessed value or price. 3. An estimation of worth….
>
> Value – *n.* 1. An amount regarded as a suitable equivalent for something else, exp. a fair price or return for goods or services. 2. Monetary or material worth….*vt.*…1. To determine or estimate the worth or value of: APPRAISE….4. To assign a value to….

During our interviews of them, however, both Roth and Schaumberg evaded the "value" terms. Roth called it "a negotiated price," whereas Schaumberg said, "This was a negotiation, not a valuation."

Schaumberg went on to say that the MMS number was not a valuation number as he understood it. MMS came up with a mean calculation of "intangible" mineral interests. He said, "We took a little of this and that and shake it all together and came up with a net economic value – not a value that should be relied upon."

Although Barry Roth conceded during his interview that the Grace report was used to support the $120 million, and Ann Klee said that she offered the $120 million based on the Grace report and after Peter Schaumberg suggested the number to her, we are now being told by the two primary architects of the Agreement that this was a "negotiated" price, not necessarily a determination of "value."

Ann Klee, however, could not have been more clear when we interviewed her. She said that while she knew a traditional appraisal was not being done, it was her understanding that the MMS method was appropriate. She reiterated that at no time during her involvement in the CRC mineral rights acquisition was she told that fair market value had not been established. When

asked, Klee indicated that she could not remember anyone telling her that CRC would not accept a fair market value derived from a formal appraisal.

The statements of Barry Roth and Peter Schaumberg now fly in the face of their words then, the words that the decision-makers in the Department and the Congress were to rely upon:

> The Department elected to proceed upon the basis of the MMS estimates of *value* for several reasons, including the evaluation of the MMS analysis by Dr. Grace…A more accurate estimate of *value* would ordinarily require additional field work that would impact the resources this acquisition was intended to protect. [Emphasis added]

Closing the Deal

As the Agreement's progress continued to advance, the concerns of career officials in both NPS and MMS continued to escalate.

David Cooke said in his interview that he warned Klee and Schaumberg that if he had completed his work – something which he clearly felt he had not been able to accomplish – that the numbers would have decreased by half. Cooke said that it would not be "right" if MMS' numbers were used as a basis for a $120 million agreement with CRC.

Employees in NPS, Geologic Resources Division, continued to express their concern that a UASFLA appraisal had not been conducted. For instance, James Woods, Chief of the Geosciences and Restoration Branch, Geologic Resources Division, NPS, told us in an interview that up until approximately February 2002, some NPS Geologic Resources Division employees continued to prepare briefing statements regarding their findings and views about the valuation of CRC's mineral interests, as noted above. He said their opinions were sent through the NPS chain-of-command until they grew "tired of pushing the issue."

Thomas Readinger persisted in his protest against the tentative agreement to anyone who would listen. He was extremely concerned that DOI was paying too much for the CRC mineral estate and felt that the MMS valuation of $68 million was a much better estimate of value for all of the mineral rights evaluated by MMS. He was also upset that an initial briefing memorandum on the agreement authored by Schaumberg had failed to note that CRC did not own 100 percent of the mineral rights in the BCNP. Readinger said he felt like MMS was being "used" in the process and that the $120 million figure was not representative of CRC's interests. By this time, however, Readinger had been effectively silenced and cut out.

Congressional Briefings

We fully understand that congressional briefings are typically abbreviated and tend to be accomplished in short order. We expect, however, that Executive Branch Agencies and Departments with business before the Congress will do their best to punctuate brevity with the utmost clarity and transparency. Unfortunately, in this case, clarity and transparency would reveal the profound pretenses that had kept this deal alive for so many years.

We sought to determine what, exactly, the Congress had been told about this deal. We discovered that the initial briefings were conducted while negotiations with CRC were still ongoing. Lasting approximately 30 minutes, these briefings with both the Senate and the House of Representatives were described by Peter Schaumberg as "30,000 feet briefings."

Some time after the Agreement had been struck, the Senators from Florida requested and eventually received an additional briefing from Klee, Roth, and Schaumberg. Schaumberg described these briefings as very general, saying that he didn't present them with a lot of information. He said he talked about how MMS conducted an evaluation that was generally based upon its models using a modified version of the program it uses for evaluating offshore resources. He said he briefed that the *Department engaged Dr. Grace*, who said that the MMS method was reasonable, and that Dr. Grace then created a range of values.

Although one staff member remembered that Barry Roth told them that NPS did not do mineral valuation because it was not capable, Roth himself has little recollection of the congressional briefings. Because Ann Klee remembers her role as primarily introducing Schaumberg and Roth, and the congressional staff members we interviewed could not remember specifically who spoke on what issue, we must again rely on the written word for clarity. The April 10, 2003 memorandum was used in the briefings to the Senators and their staffs:

> MMS began a review and refinement of its 2000 report in late 2001, and in January 2002, prepared a preliminary run based on its further interpretation of the geological and geophysical data. Economic adjustments in the analysis were made in February and early March….This update estimated that there are 133.067 Mmbbl [Million barrels of oil] of conventionally recoverable oil at the 5th percentile, 5.403 Mmbbl at the 95th percentile with a mean of 49.057 Mmbbl. This represented a net economic value of $287.413 million at the 5th percentile, $7.711 million at the 95th percentile, and a mean of $123.230 million. The estimated net present worth profits was $156.919 at the 5th percentile, $4.159 million at the 95th percentile and a mean value of $67.157 million.

It is no wonder that the congressional staff members who received the briefings found the valuation discussions to be "very technical."

Dr. Grace's report became essential to anyone without geological and geophysical minerals expertise to understand the bottom line. The April 10, 2003 briefing memorandum says:

> While conclusions are best drawn from his report by reading it as a whole, the key conclusion was 'that if an auction on the Florida AOI [area of interest] was conducted, 75% of the bids would fall between $31 and $140 million, assuming that the mean of $68 million [the 2002 MMS mean estimate of value] was the mean evaluation of all bids submitted.'

Members of Senator Bill Nelson's staff said that they understood the Grace report to be similar to a "Peer Review" and said that the Senator felt like he received the answers he needed. One staff member offered his personal feelings during an interview, stating it was a "lousy deal for the taxpayers." Former Senator Bob Graham's staff said that after questioning how DOI developed the $120 million figure, Ann Klee explained that it was negotiated from a range of values established and comfortable to DOI. They said that the Senator was somewhat more comfortable with the $120 million figure after the briefing and was glad that the DOI had its work evaluated by an outside independent source.

Although the briefing paper disclosed the fact that both MMS' and Dr. Grace's work represented the entire mineral resources in BCNP and that CRC owned less than 100 percent, there was no discussion about discounting the $120 million to reflect CRC's true ownership share.

With this, Schaumberg and Roth shared the same sentiment: It was up to the Congress to ask for more information if it felt it was needed.

Congressional ratification was to be obtained with a single line: "The agreement between the Department of the Interior and Collier Resources is hereby ratified and confirmed."

Ann Klee understood this ratification to be necessary because the funding would span several years. Roth and Schaumberg, on the other hand, cite the legislation as the ultimate act that gave the Department the retroactive authority to conduct itself as it had – without rules or reign – over the course of nearly 7 years.

"There are no Standards. It's Congress' last act that counts," Peter Schaumberg said.

<u>White House Briefing</u>

Here, we have a missing piece. We know an announcement of the Agreement in Principle was made at the White House with CRC and representatives of the federal and state governments in attendance on May 29, 2002.

We also know that just prior to the announcement Readinger expressed concerns to an SOL attorney. The SOL attorney told the OIG that Readinger had approached him and wanted him to evaluate the proposed agreement. He said Readinger told him that Peter Schaumberg said the deal "did not involve much risk," and, as a result, MMS' evaluation "numbers" could be increased. The SOL attorney and MMS Director Johnnie Burton, in turn, brought these concerns to the attention of then Deputy Secretary J. Steven Griles several days before he went to the White House to present a briefing on this issue.

Burton, in her interview with us, had little recollection of her meeting with Griles and the SOL attorney, although she did recall a question about ownership interest arising. The SOL attorney, on the other hand, said that he specifically recalled the meeting with Burton and Griles and that Griles expressed some concern over what he learned and that he said he would discuss this with the White House. The SOL attorney said Burton and Griles asked him to write a

briefing memorandum about the concerns discussed during their meeting. The memorandum that the SOL attorney produced and forwarded to Griles was dated May 13, 2002 – 2 days before Griles was scheduled to attend a White House meeting that involved four oil and gas issues, one of which was "Big Cypress/Collier Oil and Gas Rights." The memorandum detailed problems the SOL attorney found with the Department's proposed purchase of CRC's mineral interests, including the CRC ownership issue.

When interviewed, Griles said he had no specific recollection of this memorandum despite his admission that the handwriting on the copy we showed him was his own; Griles said that Ann Klee was taking care of the ownership records. Griles went on to say, "To date, I have heard of nothing to suggest $120 million was too much." He added that the matter of value is "very subjective."

In addition, Griles said that he had no specific recollection of his May 15, 2002 meetings at or with the White House where the CRC matter was discussed. However, Griles' calendars list two separate meetings at the White House – one at 4:25 p.m. and one at 4:55 p.m. on May 15, 2002.

In addition, a briefing paper from Ann Klee notes: "Steve – For your meeting at the WH re: Big Cypress…." The SOL attorney, who met with Griles on May 15, 2002, just after the meetings at the White House, told us that Griles related specific details about his White House meetings. In his interview, Griles admitted that he had a conversation with the SOL attorney but said he could not remember the context or content of the discussion. *Agent's Note: During an interview for a separate investigation, Griles admitted to OIG agents that he had gone to the White House to discuss the Big Cypress/CRC issue.*

Furthermore, prior to our interview with Griles, we had received information from a confidential source (CS-1) that Griles had commented to Readinger much later about the failed CRC/BCNP deal. CS-1 said that in a meeting in 2004, Griles asked Readinger if there was a problem with the mean value and range of values in the CRC deal and if the Department was making a mistake with the CRC transaction.

We re-interviewed Readinger to follow up on the information provided by CS-1. Although unhappy to do so, Readinger reluctantly confirmed to us the accuracy of the information reported by CS-1, telling us that the discussion he had with Griles about this matter lasted approximately one minute and that Griles had asked him rhetorically, "Didn't we screw that up?" Readinger said that this was the last time he and Griles had ever had a discussion about CRC.

In his interview, Griles initially denied having any discussions with anyone regarding the CRC matter after the White House ceremony on May 29, 2002; however, he later admitted that he had spoken to Readinger about the use of the Monte Carlo method for evaluating mineral resources.

Subsequent to his interview, Griles felt compelled to send one of our investigating agents a handwritten, personal note purportedly to further explain this matter.

> [Interviewing Agent] – During your interview with me on the proposed buyout of the Collier Resources, you indicated that it was reported that I didn't support the buyout. I have thought a great deal and I can't imagine how anyone would have believed that from any comment I made – so NO I didn't say that. Second, I now have had the opportunity to review the file of more than two years ago. It appears that many answers to the questions you asked me are set forth in those materials! Regards[,] Steve Griles.

On January 13, 2003, Craig Manson, Assistant Secretary for Fish and Wildlife and Parks, signed the final agreement between CRC and the Department. During his interview, Manson characterized himself as being "ankle deep" in the CRC transaction and said Ann Klee was "hip deep." He said that based upon questions asked during his interview and information discussed, he felt he had not received enough information to make an informed decision to sign the agreement between CRC and the Department.

Although CRC withdrew its cooperation from the Department in the appraisal effort and announced its intent to "move ahead with resource development" in its January 24, 2005 letter, the appraisal process initiated by the Department in June 2004 continued.

Even as we were writing the final versions of this report, we learned that a draft appraisal report had been delivered to the Department. While the conclusion contained in this draft appraisal report appears to us to be derived from a lyrical leap between the scientific/geological data and the issue of a marketplace, it is not for us – at this point – to challenge the appraiser's conclusion that the best indication of market value for the excepted mineral interests of CRC is $10.6 million.

Agent's Note: The Department's chief appraiser told us that this unsigned draft appraisal will be reviewed by a minerals economist outside the Department; following that review, an internal DOI appraiser would conduct a review to ensure that the appraisal complied with "yellow book" appraisal standards, and to identify any weaknesses or other areas needing further assessment, such as CRC ownership issues.

One thing the draft report **did** make clear was CRC's continued unwillingness to provide reliable data to the Department or its appraisers. With this, and the other conduct chronicled throughout this report, we are forced to conclude that CRC has failed to demonstrate the integrity or good faith to make it worthy of a partnership effort in the acquisition of its mineral interests.

Conclusion

This report contains the simplest telling of a complex series of events that transpired over the course of many years to reach the deal announced in May 2002. We have attempted to present as clear and accurate a picture as possible in a matter as convoluted as this.

The Office of Inspector General is not timid about publicly critiquing the Department of the Interior and its officials when warranted. On the other hand, we have publicly exonerated the

Department in several high-profile, controversial matters in which strict adherence to the administrative process effectively silenced the Department's potential detractors.

This is the second recent matter in which we found that a well-established process was suspended in favor of an end. When this occurs, the potential for abuse is manifold, and the results are predictable. We found this best described in the words of one of those whose voice had been silenced in this transaction:

> In over thirty years the only times that I have seen the Standards ignored have been with sensitive political interests and all of those incidents to date have resulted in eventual failure or outright embarrassment to the Department.
>
> …While political appointees may not be aware of all the laws and standards, career public servants are expected to follow the law and to inform those in a responsible position when the law appears to be ignored….

With the Department's policy goal and CRC's dollar goal dictating the end, a path was charted where, along the way, all rules seemed to have been abandoned, yet the transaction was developed and presented as if the rules applied. Providing information that was factually correct, albeit incomplete, the decision-makers lay the Agreement at the feet of the Congress. The Congress was then left to determine what might be missing. With too little clear information and too much confusing information, the Congress asked for nothing more and "ratified" the Agreement through appropriations legislation. The architects of the Agreement, thus declared absolution because "it's Congress' last act that counts" – Agreement Subject to Ratification, a concocted process to which no rules apply.

In the end, the "creative" navigation around the legal process and over the objections of the career public servants led to the negotiation of a $120 million deal that is so fundamentally flawed that it may not, in fact, be salvageable without special legislation. If such is pursued, however, we would expect it to be done by way of a fair, objective, transparent process that treats all interested parties equitably, complies with the law, and protects the interests of the American public.

ATTACHMENT

EVALUATION OF THE DEPARTMENT OF THE INTERIOR'S VALUE JUSTIFICATION PROCESSES AND PROCEDURES ASSOCIATED WITH COLLIER RESOURCES COMPANY UNDISCOVERED OIL AND GAS INTERESTS IN FLORIDA

May 28, 2004

CONTRACT No. OIG4P00015

SUBMITTED TO

MR. EARL E. DEVANEY
INSPECTOR GENERAL
U.S. DEPARTMENT OF INTERIOR
WASHINGTON, DC

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EVALUATION OF THE DEPARTMENT OF THE INTERIOR'S VALUE JUSTIFICATION PROCESSES AND PROCEDURES ASSOCIATED WITH COLLIER RESOURCES COMPANY UNDISCOVERED OIL AND GAS INTERESTS IN FLORIDA

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Executive Summary:
DOI Value Justifications and Processes Relating to Collier Resource Company Undiscovered Oil and Gas Interests in Florida
Evaluation by The Appraisal Foundation

Nature of The Appraisal Foundation's Engagement

In a letter from the United States Department of the Interior's ("DOI") Office of Inspector General ("OIG") dated February 20, 2004, The Appraisal Foundation ("Foundation") was invited to submit a proposal for consulting services. Subsequently a contract was issued to the Foundation on March 12, 2004 requiring an evaluation of the DOI's methodologies and appraisal practices in valuing subsurface oil/gas mineral rights.

Principal elements of the evaluation require discussion of the role of the Uniform Standards for Professional Appraisal Practice ("USPAP"). These uniform standards are developed and published by the Appraisal Standards Board (ASB) of the Foundation.[1] USPAP is the principal statement of appraisal standards in the United States and serves in conjunction with the Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA").[2] UASFLA incorporates USPAP standards in the context of real property dealings between the federal government and private sector individuals and entities. Other than a few Jurisdictional Exceptions that apply in the federal jurisdiction, UASFLA can be interpreted as supplemental standards for USPAP applications and interpretations.

Focus for the Foundation's evaluations was identified by the OIG as a series of reports, reviews, and related documents regarding Collier Resources Company's ("CRC") mineral estate in Big Cypress National Preserve and the Florida Panther National Wildlife Refuge, both located in Florida. Surface and/or subsurface rights purportedly owned by CRC have been the subject of intense prior attention of the federal government in connection with proposed or actual federal acquisitions and exchanges.

Purpose of the Assignment

As stated in the Foundation's Scope of Work, the Foundation was required to review and evaluate the process employed by the DOI's Minerals Management Service ("MMS") to evaluate and value the Collier mineral estate. Specifically the Foundation is to evaluate the following:

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[1] A brief explanation and history of the Foundation are contained in Section 1.

[2] The first Interagency Task Force federal appraisal standards were published in 1971. The current version revises the style of the report and provides a closer linkage with USPAP, but carries forward long articulated principles.

1. "What evaluation methodologies and appraisal practices are utilized by the federal government, in particular the DOI, in determining the value of subsurface oil/gas mineral rights? Include a discussion of the role of the Uniform Standards for Professional Appraisal Practice (USPAP)."

2. "Determine whether the processes employed in the 1996 and 2000 MMS evaluations, and the 2002 review conducted by Earth Science Associates (ESA), of the Collier mineral estate were valid and appropriate. Identify whether, in general, the processes constituted a valid methodology for use by the federal government in determining onshore mineral values. Review includes the following documents:

MMS Valuations:

- *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve*, [ ] -US DOI MMS, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, LA (March 1, 1996)
- *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve and the Florida Panther National Wildlife Refuge*, [ ] -US DOI MMS, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, LA (October 27, 2000)

Others:

- Dr. John Grace's (d/b/a ESA) independent review of the methodology employed by MMS, and subsequent development of a range of values using statistical models (April 22, 2002).
- National Park Service valuation study of BCNP."

3. "State whether an appraisal is necessary in cases involving the purchase or exchange of subsurface oil/gas mineral rights.

- If an appraisal is necessary, what part of the USPAP applies and what part of the Uniform Appraisal Standards of Federal Land acquisitions apply?
- If an appraisal is not required, state why not, and identify the range of options by which a federal entity, specifically the DOI, has for valuing the purchase or exchange of subsurface oil/gas mineral rights."

4. "If the evaluation methodology used by DOI is deemed to be outside of acceptable industry practices, identify and describe generally the impacts to the valuations."

5. "Identify any acceptable deviations to the evaluation and valuation methodology utilized by MMS and describe generally the impact of the deviations."

6. "In light of the above considerations, review the following document: GAO Report entitled: *Land Exchange-New Appraisals of Interior's Collier Proposal Would Not Resolve Issues*, May 1988. GAO Report No. GAO/GCD-88-85."

The Foundation provided an oral report of preliminary findings to the OIG and several staff members on April 28, 2004.

Intended Use of the Report

This report is for the primary use of the OIG. We understand that it may also be used by other federal agencies or entities. It therefore contains details that would not necessarily be contained if the OIG were the only intended user. The Appraisal Foundation has no restriction on the report's distribution so long as it is distributed in its entirety and without editing. Although information that may exceed the scope of our contract was gathered during our research, no attempt was made to expand our work program and report of findings beyond what we believe is consistent with the assignment.

Work Program Summary and Standards

The Appraisal Foundation established a work team ("Foundation team") of two analyst/reviewers to perform the principal contract work. This team was supplemented with an oversight review and quality control team ("Foundation reviewers") of two additional persons. This group was, in turn, supported by Foundation staff.

A series of reports and a collection of correspondence were furnished to the Foundation by the OIG as the principal subject matter for review. In addition we obtained copies of the 1988 GAO Report referenced above.

The members of the Foundation team performed individual and independent reviews of the materials, analyzed their content, and developed conclusions. These conclusions were then discussed between the Foundation team members and subsequently related to the Foundation reviewers. The conclusions of the group were then orally reported to the OIG on April 28, 2004 prior to the writing of this report.

Because of the nature of the findings, the Foundation determined that no USPAP standards technically applied to the Foundation's work because neither appraisals nor appraisal reviews were included in the materials we

were furnished.[3] Had appraisals been involved, it would be possible to apply USPAP Standard 3, *Appraisal Review, Development and Reporting*, and to analyze any applicable report or reports for their compliance with USPAP's Ethics and other Rules, Standard 1 relating to *Real Property Appraisal, Development*, and Standard 2, *Real Property Appraisal, Reporting*. In the absence of an appraisal, an appraisal review could not be applied *per se*.

USPAP Standards 4 and 5 relate to *Real Property Appraisal Consulting, Development* and *Reporting*, respectively. Although the scope of work of the Foundation originally envisioned the development of an analysis, recommendation, or opinion where at least one opinion where at least one opinion of value is a component of the analysis leading to the assignment results, the absence of a qualified appraisal opinion on the part of MMS or others technically precludes the applicability of these Standards.

Accordingly, it is our opinion that the intent of the DOI scope of work can be appropriately accomplished if the Foundation follows the basic intent of USPAP's ethics and standards provisions, with appropriate references to the applicability of such provisions and their counterpart UASFLA provisions, and we have done so in the following report.

Report Organization and Content

This report consists of an Executive Summary, three sections of information, analysis, conclusions, and exhibits. Section 1 introduces and discusses pertinent appraisal standards as a foundation for our evaluations. Section 2 provides an analysis of the materials furnished to the Foundation by the OIG and details contained in the OIG report. Section 3 contains the Foundation's conclusions and the reasoning upon which these conclusions are based. This final section includes both direct responses to the OIG's list of evaluation issues and a series of related conclusions that were developed from our evaluations.

Principal Findings and Conclusions

As discussed above, the Foundation determined that it was necessary to apply the principles of USPAP and UASFLA in its evaluations of MMS and related materials in the context of market value[4] appraisals, even though they were not such appraisals. This approach is not to imply that the reports could be

[3] The terms "appraisal," "valuation," and "evaluation" are commonly confused. Each is discussed throughout the report. In general, the terms valuation and appraisal are synonymous in the contexts applied within this report. Evaluation, however, is a less precise term that relates to analyses leading to opinions or judgments that do not include the market value, or other value, of specified real property rights.

[4] Market value is defined in footnote 1 of this report's Section 1.

used as substitutes for appraisals performed by "Qualified Appraisers."[5] Instead, it is a means of demonstrating their shortcomings in this context and the reasons why they should not be used by DOI as appraisals. Based upon our research and analysis, and the discussions contained in the remainder of this report, the following findings and conclusions were made by the Foundation. Each of these conclusions is discussed more fully in Section 3.

1. None of the reports reviewed by the Foundation were standards-compliant market value appraisals. The 2000 MMS report in particular was misleading in that regard in that, without complying with the requirements for federal appraisals, and without appropriate data reasoning, analysis, and conclusions, it was reported in a form and was apparently used as though it were prepared in accordance with federal appraisal standards. Even if the report were intended as a "preliminary estimate of value," it was incorrectly developed and used, did not include the disclosure of instructions under which it was apparently developed, and was misleading except as an incomplete and preliminary document that clearly was not an appraisal.[6]

2. The subject matter of the reports and memoranda dealt with purported subsurface oil and gas mineral interests owned by CRC. These purported rights were not defined on a property-specific basis as to their nature and extent, or even as to their location. Because the reports indicate that they vary in each regard, any value ascribed to these interests is misleading and improper because even if minerals were to exist, there is no way to quantify the CRC portion of any market value that might be ascribable to the interests. We use the term "purported" because there has been no identification that permits our ability to confirm these interests.

3. Despite the extent of information, discussion, and recitation of how statistical models were used in the MMS reports, these reports are hypothetical, highly speculative, not based upon supportable market data. They are further not reliable in their present form as work that a Qualified Appraiser could rely upon in developing and reporting a market value opinion.

4. USPAP and UASFLA provide pertinent standards and guidance for the valuation of real property interests, but the requirements of these standards

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[5] "Qualified Appraisers" are defined by the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970 and UASFLA Sections A-39, D-1e, D-2, D-7, and D-15. Their products are referred to as "qualified appraisals." Such appraisers also perform appraisal reviews.

[6] A "preliminary estimate" is, for example, provided for in the BLM's Exchange Handbook which defines the term as, "…a short oral or written report estimating a value or a range of values for properties….Because preliminary estimates are brief they should be used for internal purposes only."

was, in the main, overlooked and not reflected in the materials reviewed. These failures, among others, render the reports and the processes by which the reports were generated as highly questionable. With the number of mischaracterizations, misrepresentations, and misapplications reflected in these materials, we see no reliable foundation for concluding or using any opinion of market value of the CRC mineral interests involved. Further, we are concerned that program abuses or more serious violations of the public trust may have occurred.

5. The MMS reports were developed with heavy reliance upon materials, information, and discussions with a private entity, CRC, that was the private sector party to a proposed exchange with the federal government. The 2000 MMS report discloses its reliance upon CRC, but is not always consistent in its descriptions of the extent or the effect of that reliance. The result is that MMS reports do not contain the evidences of independence and objectivity that are required for standards-compliant market value opinions. We cannot understand how the MMS reports could have been used by rational program staff as a support for the proposed exchange. They understood that, in particular, the 2000 MMS report was not an appraisal, was heavily influenced by CRC involvement that even CRC would not warrant as true and correct, and was adjusted by non-appraisers to have the appearance that the MMS had developed a market value conclusion.

6. Market value definitions are generally based upon the concept that the buyer and seller are each reasonably knowledgeable. Further, each is defined as acting for self interest, with reasonable knowledge and an absence of any compulsion. There is no prohibition that states a buyer and a seller may not talk, exchange information, or otherwise communicate. Most states require that sellers provide truthful disclosures of pertinent property facts that might influence buyer decisions. The concept is that the market value transaction is an "arms-length transaction" because each party acts independently, in keeping with the concepts just explained, and without accommodations for special relationships that might exist between the parties. The materials reviewed did not indicate that CRC made disclosures that would meet normal seller requirements. Further, the materials indicated that the DOI and/or its agencies expressed a compulsion for the transaction or exchange to occur.

7. The DOI and at least some of its agencies have a serious misconception that in situations where market value determinations are an element of land acquisitions or exchanges involving private sector entities "alternative valuation means" maybe preferable. Appraisals are to be performed in the federal jurisdiction by Qualified Valuers, and in keeping with the requirements of federal law and the standards established by USPAP and UASFLA. Only qualified appraisers are trained and experienced to meet the professional standards required to develop market value opinions.

Negotiators and other program officials may deal with *negotiated prices*, but such negotiated amounts are not substitutes for value opinions developed by Qualified Valuers. Neither are pronouncements of "market value" by administrators substitutes for the independent Qualified Appraiser developed and reviewed opinion of market value that should form a basis for administrative determinations. Hence, in situations such as the CRC mineral interests in Florida where Qualified Valuers are particularly needed, the DOI evidences circumstances where improper and unsupported land dealings occur without the benefit of competent and reliable market value figures. We question whether such procedures can always comply with law and the need to uphold the public trust. Market value appraisals developed and reviewed by Qualified Appraisers should be recognized as necessary in all land acquisitions and exchanges by the DOI and its agencies.

8. An evaluation of previous acquisitions or exchanges involving Collier surface rights, or of Congressional actions that may relate to such rights, was beyond the scope of our study. Such inquiry is not, however, beyond the normal inquiry of an appraisal review had such a review been possible for the reports in question. To comply with the spirit of USPAP and UASFLA requirements that appraisers and reviewers of appraisals examine prior transactions involving an appraised property, the Foundation calls your attention to the need for further analysis to determine whether the Collier interests may have already been compensated for all or part of the minerals rights involved in our evaluation. We do not have sufficient information available to us at this time to form a conclusion in this regard.

9. Confusion may have existed within DOI or its staff as to distinctions between real property and business interests and/or incomes. Additional confusion may have been associated with distinctions between the potential interests of a royalty interest, which would apply to real property rights, and developer or operator rights, which would apply to business interests. In the federal jurisdiction, compensation for acquisitions is generally limited to the real property rights. In general, business rights are capable of transfer to other activities and are technically not acquired. When an owner of real property rights becomes, or has the potential to become, a developer and/or an operator of resource extraction activities, the functions of a developer and/or an operator are considered as business activities and are separate from the bundle of land rights that is valued. Development and operation are entrepreneurial activities on the land rather than elements of the land. When a royalty for the land interest is paid at a market rent, contract and market rent are equal, and there is no economic ownership of the Lessee in the land. The Lessee has contract rights that may encumber the land, but they are ascribable to a business arrangement rather than to real property rights.

Section 1:
USPAP and UASFLA Appraisal Standards

Introduction

The Department of Interior's ("DOI") Office of Inspector General ("OIG") requested that the Appraisal Foundation ("Foundation") discuss the role of the Uniform Standards for Professional Appraisal Practice ("USPAP") in methodologies and appraisal practices utilized by the federal government, and in particular the DOI, in determining the value of subsurface oil/gas mineral rights. This report section is intended to acquaint the reader with the history and nature of USPAP; the relationship of the Uniform Standards for Federal Land Acquisitions ("UASFLA"), appraisal methods and practices of the federal government; and how they apply to the valuation of real property rights generally and to oil/gas mineral rights specifically.

The Appraisal Foundation and USPAP

The United States has had ethical rules statements for real property appraisals since at least the late 1920s. They were developed as partial response to fraudulent market practices and abuses in real estate characterized by the repetitive sales of the Brooklyn Bridge and the rampant abuses of a "buyer beware" market place. Recognizing that these and related systemic failures contributed to the severity and extent of the Great Depression, professional appraisal organizations were formed in the public interest to assist in stabilizing markets and the economy at large, and in establishing foundations of certainty and security for real estate investments in homes, places of business, manufacturing facilities, and the public interest at large.

Appraisal principles were recognized prior to the Great Depression as extensions of classical and neoclassical economics and were increasingly recognized later, most particularly following World War II. As appraisal principles were better defined and taught to professionals, they were added to the body of appraisal knowledge and made a part of what is now recognized as "generally accepted valuation principles (GAVP)." Beginning particularly in the 1980s, the advancement of GAVP was accelerated by the promulgation and enforcement of appraisal standards, first by professional appraisal organizations and later by development and promulgation of standards by the Appraisal Standards Board (ASB) of the Foundation.

The Foundation, created as an outgrowth of Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), was created to establish an organized effort and to fix the responsibility for carrying out certain Title XI responsibilities in the areas of appraisal standards and appraiser certification/licensing. Enforcement of standards was federally required at the state level amongst all 50 states, territories, and possessions.

The Appraiser Qualifications Board ("AQB") of the Foundation establishes uniform standards for each state's certification or licensing of professional appraisers. The Appraisal Standards Board ("ASB") develops and interprets standards designed for the use of professional appraisers and the users of appraisal services. These standards are the basis for judging appraiser compliance with professional ethical and standards requirements. Violations may be cause for civil and/or criminal sanctions against a licensed or certified appraiser, including loss of the ability to legally practice as an appraiser.

The focus that Congress brought upon appraisers is strong evidence of the critical importance of Qualified Appraisers and reliable appraisal opinions to our government and to the public at large. This is particularly true when financial transactions are involved.

The Preamble to USPAP 2004 states, "The purpose of the Uniform Standards of Professional Appraisal Practice (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading." USPAP standards intend that appraisers not perform appraisals in a way that would be misleading, advocate the particular needs or dictates of the client, fail the tests of objectivity and independence, or reflect performance that is less than competent.

USPAP addresses Rules of Ethics, Competence, and possible standards Departure. It provides for Jurisdictional Exceptions and Supplemental Standards. UASFLA falls into each of the last two categories, while including each of USPAP's Rules and all Standards that do not fall into the Jurisdictional Standards category. USPAP covers real property, personal property, and business property valuation activities and establishes development and reporting standards for each. It also provides standards for appraisal reviews, mass appraisals, and appraisal consultation. At present only the standards applying to real property appraisals, which include oil and gas mineral interests, are enforced by the states, but all standards are enforced by the various professional organizations that are involved with the various types of property to which they apply.

Jurisdictional Exceptions in UASFLA are discussed in its section D-1. USPAP recognizes that exceptions may exist and provides that only the excepted USPAP provision shall be considered void or of no effect in the particular jurisdiction. We do not believe that any of these exceptions are of significant importance to our studies.

USPAP (as is UASFLA) is based upon generally GAVP, but these principles are more particularly identified and amplified upon in the widely accepted and

applied basic texts of the major professional appraisal organizations. Many are further recognized in the courts, in the actions of investors, and in other market evidences.

Uniform Appraisal Standards for Federal Land Acquisitions

UASFLA was first published in 1971. The current fifth edition was published in 2000, updating the 1992 fourth edition. Although the form and structure of the 2000 edition make UASFLA considerably easier to read and comprehend, the content does not significantly change the 1992 edition as a general matter. It does, however, make more clear the relationship between USPAP and UASFLA and an identification of the Jurisdictional Exceptions that exist for appraisals and review appraisals in the federal jurisdiction. The concept of market value[7] is not changed, although the 2000 edition contains a succinct update of the definition for the federal jurisdiction. Additionally, there are no significant changes to the development or reporting of a market value opinion as compared with the earlier edition.

UASFLA is the product of more than 30 federal agencies who are signatories to its contents. It is intended to apply to all federal government land acquisitions and exchanges with the private sector. As stated in UASFLA, "These Standards have been prepared for use by appraisers to promote uniformity in the appraisal of real property among the various agencies acquiring property on behalf of the United States. It should make no difference to the landowner, whose property is being acquired, which agency is acquiring the land, or what method of acquisition it uses."[8] The standards further refer to the need for uniformity and fairness in the treatment of property owners as a goal of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,[9] and appraisals for direct voluntary purchase, exchange, or eminent domain by the United States.

As a result of DOI agency determinations, the passage of other laws, and the development of policies and procedures within various agencies, not all DOI agencies in fact meet the intentions of the preceding paragraph. As described

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[7] Market value is defined in UASFLA as, "…the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal." UASFLA Interagency Land Acquisition Conference. Washington, DC. Adopted December 20, 2000. Section A-9.

[8] UASFLA. Purpose.

[9] UASFLA. Purpose.

in the Foundation's previous study of the Bureau of Land Management[10] (BLM study) for example, the BLM has provisions in its policies that provide for application of UASFLA "when appropriate." This and other conflicts have led to practices that the Foundation earlier reported as failing to accomplish the intentions of UASFLA, failing to seek and use valid determinations of market value by Qualified Appraisers that would be used in land exchanges or other transactions, and a failure of uniformity in the valuation of government and/or private land interests. We also found that such failures are not, in our opinion, in the public interest.

Importantly, to the extent that specialized training is required to perform appraisals under USPAP or UASFLA standards, each also provides standards for appraisal reviews by Qualified Appraisers. Thus, each requires that technical reviews must be performed under the same standards, but with special requirements for the appraisal reviewer, to assure that both ethical and performance requirements are met and that the review is reported in a form that will be meaningful and not misleading to the ultimate user of the appraisal's opinions. This provides a check and balance when competent professionals are involved and, when properly administered at the program level, should provide insulation against inaccurate, improper, and potentially illegitimate development or reporting of bogus or non standards-compliance value opinions.

Notably, the use of Qualified Appraisers in the development and review of appraisal matters specifically avoids the misuse of non-appraisal opinions and discourages or eliminates program level decisions to administratively set unqualified "values." It is precisely this type of behavior on the behalf of certain banking and savings and loan personnel that led to the financial industry scandals of the late 1980s and resulted in FIRREA. The same practices have been observed in a number of the more recent corporate governance and financial reporting scandals of the past several years. (Again we call your attention to our remarks contained in the 2002 BLM study.) USPAP and UASFLA each have their roots in principles that were developed to avoid fraud, waste, abuse, and misunderstanding, and have value to the users of valuation services because they promote independence and objectivity, whether the users are public or private.

The Foundation's earlier BLM study also referred to inconsistencies among several of our nation's laws relating to land acquisitions and the

[10] The Appraisal Foundation. Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management. Washington, D.C. October 9, 2002.

implementations of those laws within DOI.[11] We do not technically see these as operable problems for the matters involved in this report, because the DOI and its entities apparently realized that market value and appraisal related issues were involved and should be used as a basis for the purposed exchange. Having recognized that a market value determination is required, we have been unable to find any supportable reason why appraisers, who are trained, experienced, and employed to develop and review market value opinions, were—and not infrequently are—bypassed in the land activities of the DOI. Additionally, in our opinion, the inconsistencies and internal policies and procedures within DOI agencies still require the attention of appropriate government inquiry and analysis.

Standards Requirements

Exhibit 1 to this report contains an abbreviated appraiser's checklist, which appears as Appendix A to UASFLA. The MMS reports we reviewed, the USGS report upon which one of the reports was in part based, and the other materials furnished to us, gave no evidence that those involved were aware of any of the fundamental requirements of UASFLA (or USPAP) with regard to this checklist or the more detailed performance requirements for a standards-compliant appraisal. Likewise, management evidenced awareness of certain legal and/or standards requirements, but neither sought nor received staff reports that complied with the necessary requirements.

The 2000 MMS report cites the NPS' admonitions that a valuation should only involve the land interest and no business interest. It also includes other references that indicate that at least some effort was made to guide or adjust the findings of the MMS analysts in a way that would, as a minimum, give the appearance that legal requirements for an appraisal would be met. The attempt did not comply with what was required, instead presenting incomplete, improper, and misleading conclusions. Some of these matters upon which these conclusions are based will be addressed later in this report, but a brief discussion of selected relevant *minimum requirements* of a market value appraisal is an important background understanding:

1. **Identification of the property**. This includes some identification of physical location(s) and the nature of the property. It is important to recognize that appraisers differ in the use of the word "property" between the physical asset (real estate) and the legal asset (real property). Hence, "property" can be a misleading term unless more specifically defined. UASFLA and USPAP each require more specific identifications to avoid confusion or misleading statements.

[11] Section 2 of the BLM study dealt with an identification and evaluation of formal written BLM appraisal function guidance and discussed principal laws and regulations upon which the BLM's appraisal function is to be based.

Comment. Neither the MMS reports nor the USGS report we received contained specific delineations of the property in question. Locations were only generally identified and even acreage measurements were inconsistent. Specific rights associated with each location were not identified. An averaging of disparate locations and property rights is not an acceptable appraisal practice in the acquisition of private rights of ownership. In this instance, those rights could not be analyzed in detail as a result of the missing information. *These elements of information should have been required whether surface or subsurface rights were involved.* Similarly, we found no related questions or issues raised by Dr. Grace or any of the other review materials we received.

2. **Identification of the Rights Appraised**. By identifying the rights appraised, an appraiser assures there is no gap between or lack of understanding of the physical (location and nature) and legal (legal rights) components of a property's ownership. Specific identification of rights is required in any case, but the absence becomes even more confounding when the bundle of rights (the entirety of private ownership rights in land) is split between surface and mineral estates.

Comment. Even though we were unable to ascertain the physical locations of the properties involved in our review, such locations would have been incomplete without accompanying identifications of the rights attached to each location. No specific rights were identified, although their general nature as "mineral interests" was cited in the MMS reports. *Absence of both physical and legal identities essentially invalidates any further analysis, and renders any value opinions as moot, speculative, and highly misleading.* We are astonished that agency personnel and the DOI did not insist on an audit trail between each property, each set of rights, each report, each purported value conclusion, and the basis for each as a fundamental matter regardless of whether they agreed or disagreed with what they styled as a valuation.

3. **Effective date of appraisal**. Because of market and other changes, an appraisal is conditioned upon a stated date. Any value opinion must be stated as of a particular date. Values are rarely constant over time, so dates of value are essential in rendering an opinion of value and meeting even the most basic requirements of accountability.

Comment. There was no identification of a date as of which any of the MMS report figures that were purported to portray "values" was to have applied. *This is further evidence that the reports were not*

appraisals, but even had they been appraisals they would have been invalid for their failure to contain a specific date of value.

4. **Special Assumptions**. USPAP defines the following terms that appraisers are required to define and apply appropriately, along with certain special requirements for disclosures: (a) *assumption*: that which is taken to be true; (b) *extraordinary assumption*: an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions of conclusions; and (c) *hypothetical condition*: that which is contrary to what exists but is supposed for the purpose of analysis.

Comment. The MMS reports and other materials we received did not properly disclose that the existence of ANY oil or gas on whatever properties may be involved was a *hypothetical condition because there was no known oil present*.[12] An extraordinary assumption is not to be stated as such if an appraiser knows that as a matter of fact it is not believed to be true. Thus, the reliance of MMS on statistical models in which probabilities of some degree of higher risk that larger oil and gas deposits were present *at all* obscures the fact that *none are known to be present*. A Qualified Appraiser must identify the MMS analyses as hypothetical models that *might be considered by the applicable market* (if this is true), but which are speculations based on hypotheses rather than measurements of known oil and gas discoveries. Instead, the MMS presentation and the use of their reports present an analysis in which speculative possibilities devoid of any actual known oil and gas presence led to conclusions more in the terms of an undisclosed extraordinary assumption, or even an assumption, in appraisal terms. *Fundamentally, there is no market value of undiscovered oil and gas until the market says so. No market value evidence was presented in any of the reports and other materials furnished for our review.*

5. **Special instructions**. Appraisers are required to disclose any special instructions given to them by their client or others who might influence or may be users of the results of the appraiser.

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[12] Although our Scope of Work did not include a request that we perform research in order to form a market value opinion regarding CRC's mineral interests, we are aware that there is ample evidence that, as mentioned by not fully applied in the MMS report, markets view undiscovered oil and gas possibilities with skepticism. Prices paid, if the properties will sell at all, are based on a fraction of what would be paid for proven producing oil or gas. Ultimately the issue is an issue of what the market will decide for a given situation and it was this market consideration which was absent in the materials we analyzed.

Comment. The appraiser's caveat with regards to special instructions provides for full disclosure by the appraiser of any special instructions or influences that might bias the independence, objectivity, and/or transparency of the appraisal and its report. They also provide for an opportunity for reviewers and users of the report to judge whether the report is competently performed, relevant and applicable to the appraisal's intended uses, and free from outside influences or directions that might bias the result. The Foundation team was furnished memoranda and/or other materials that indicated significant influence was exerted on MMS' work, whether by written or oral means. References were contained in the reports about extensive interaction with CRC and/or its experts, and references to DOI Solicitor views.[13] MMS relied upon CRC produced information as a significant element in its 2000 update report. We do not know whether they were instructed to do so, or by whom. The record is clear, however, that the materials relied upon were subject to a Confidentiality Agreement[14] (Exhibit 2) executed with CRC, but which contained provisions by that CRC disavowed any warranty of accuracy. *Thus, the MMS report and any subsequent use of their report are incomplete and misleading to the extent that special instructions were received but not adequately and fully disclosed.*

6. **Appraiser's Certification**. USPAP and UASFLA each have requirements for the appraiser to execute a signed Certification regarding the appraiser, the assignment, independence, and related matters. Examples are included in Exhibits 3, 4, and 5.

Comment. UASFLA requires that the appraiser's certification include that: (a) the facts are true and accurate; (b) the appraiser has no interest (or bias) in the property; (c) the appraisal and report confirm to USPAP; (d) the extent of property inspection; (e) acknowledgement of

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[13] See for example the February 22, 2002 Memorandum from [former Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management] (MMS) to "Dickerson, Barry, Hunt, Michael." The memo indicates that CRC "continu[ed] to snipe at our evaluations and push the envelope, without acknowledging anything that was to their benefit in the analysis. Since they refuse to show us their model results and the lawyers won't insist on seeing this info, I'm beginning to suspect that either their results are similar or they don't have one." It continues after confirming that the MMS had been instructed to "evaluate" the CRC properties as though they were the owner/operator of the properties, "Apparently in the Solicitors' minds this gets past the NPS Uniform Appraisal Standards questions." [The former Deputy Regional Supervisor] concluded, "I've repeatedly told the Solicitors that I don't believe CRC has any intention of drilling a well—they're just following the Coastal Petroleum paradigm."

[14] Collier Resources Company. Confidentiality Agreement.

professional assistance for work performed; (f) before and after values (where applicable); (g) the appraisal is limited only by stated assumptions; (h) a contingent fee was not involved; (i) the report conforms to federal standards; (j) the appraiser offered to have the owner accompany on property inspection; and (k) the effective date of value. There was no certification in either MMS report.

The certification requirement for professional appraisers establishes a professional accountability and provides a focal point for disclosures that are necessary to judge the independence, objectivity, and framework for the value opinion. Unlike DOI staff reports we have reviewed that contain assertions but not certifications of independence, freedom from bias, assurance of accuracy and completeness, and the like, the required professional appraisal certification "lays it on the line" for each of the required elements and any others that the appraiser may consider necessary to add to the certification statement. This statement is of substantial value to those who use the results of a professional appraisal. *Had certifications and appropriate disclosures been factually prepared in the matters we studied, there would have been no basis for the DOI proposal to proceed.*

We note that no such certification was present for any of the MMS or other reports we reviewed even if the MMS did not intend their reports as appraisals. Neither was there a certification with regard to the geologic, engineering, or other scientific processes that were performed. *The DOI would be well served to have professional certifications designed and prepared for each professional discipline upon which the DOI relies in land transaction and exchange matters.*

7. **History of the property**. This topic generally includes a history of the use of the property, sales and rental histories, assessed value and annual property taxes (and their status), and zoning and other land use regulations, among other requirements.

Comment. There is considerable history of the use of the lands associated with the CRC's mineral interests that may be of significance to a valuation either to the entirety or to partial interests. In any event, *a 10-year use history is required by UASFLA. None is discussed in the MMS reports or related materials.* These lands have been the subject of various acquisition activities over time and a 10-year record of all sales, and any offers to buy or sell the property under appraisal are also required. UASFLA Section B-5 contains a special discussion of sales histories. None is discussed in the MMS reports or related materials. The same is true for historical rental or lease history

of the property, which is required for at least the past three years if data can be obtained. Like assessed value and annual tax load, and zoning and other land use regulations, the MMS reports and related materials are silent on these required appraisal matters.

It is our opinion that the deletion of these histories and related discussions is particularly serious as an appraisal matter. Appraisers are required to collect and consider sales, rental, use, and other historical information not only because they may be indicators of likely market attitudes, but because they assist in verifying title, outstanding interests, restrictions on use, and other factors that may have significant effect on market value. The absence of historical data in appraisal reports was a common failure that facilitated "land flops" and fraudulent sales reports, which were uncovered in savings and loan and bank investigations that led to the necessity for passage of FIRREA. Within DOI and its agencies, the professional certifications provide accountability and aid in reducing fraud and improper practices.

From discussions and the materials submitted, we are aware that all or part of the lands involved in MMS' report(s) may have been or may be the subject of other transactions or exchanges with the United States. There are a myriad of issues that arise in determining whether the compensation and/or economic basis for exchanges for the private interests have been fair and in keeping with constitutional requirements. It is also possible that all or part of the interests that are the subject of the MMS reports have already been compensated for in previous transactions and/or exchanges. Alternatively, there may have been confusion with regard to surface and subsurface rights that should be clarified. To determine which is accurate requires an audit of previous land activities between the United States and CRC or related Collier interests. As an example of our concern, the following scenario is offered:

- Suppose that the surface rights for the Collier lands in question were based upon market value appraisals in which the values were based upon land uses that could not be achieved if oil and gas exploration, development, production, and distribution were to occur. If those uses were the highest and best use of the land and were the basis for original compensation, they would preclude the subsequent addition of market value for mineral interests as such addition would be an example of the prohibited summation or cumulative appraisal method described earlier. Under these circumstances, no further compensation for mineral interests

would be due because they were not deemed highest and best use of the land at the time compensation was determined.

- As a second example, suppose that some form of reservation of mineral interests were established prior to the completion of an original appraisal for compensation purposes. Under UASFLA's unit rule, it would normally be necessary to value the property as a whole rather than attempt a separate valuation of the individual interests, particularly if they were commonly owned or owned by related entities. This means that the highest and best use analysis referred to in the first scenario must be performed and a determination must be made as to whether one or the other interest is dominant and precludes the other, or whether they can in some manner co-exist. In each of these analyses it is the market that is the most crucial determinant and a market analysis must be made.

Although these are only two illustrative scenarios of others that can be conceived, they are used to demonstrate the importance of market studies, distinctions between physical and legal considerations, and a reconciliation of all factors in terms of what is supportably documented from market analysis. None of these types of analyses were reflected in the MMS reports or related materials.

8. **Analysis of highest and best use**.[15]

Comment. According to UASFLA, "Highest and best use analysis is another critical element in the development of a reliable mineral property appraisal. Such a report must contain a well supported and documented market analysis that clearly establishes whether or not there is adequate market demand for the minerals located on the property….It is critical that the appraiser adequately address the question of the market for the minerals found on the property because it has been ruled that an expert must 'make a showing of some sort of market, poor or good, great or small, for the commodity in question before the quantity and price of the commodity or substance may be…used as a factor in the expert's opinion testimony.' "[16]

[15] Highest and best use is defined as, "The reasonably probably and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value." Appraisal Institute. *The Appraisal of Real Estate*, 12th Ed. Chicago, IL. 2001. p. 305.

[16] UASFLA. Sec. D-11.

There was no highest and best use analysis or determination in either of the MMS reports and there was no mention of its absence in the Grace report or agency memorandum. A market value opinion cannot be validly developed or reported without a highest and best use for which the value opinion applies. Its absence is clear evidence that a reliable appraisal of market value could not have been performed and that agency personnel did not have sufficient understanding, expertise, or benefit of due diligence to recommend or conclude market value based on MMS' work.

Note that the above references pertain to identified rather than undiscovered oil and gas or other mineral interests. The MMS reports do not identify any known oil and gas on the CRC properties, whatever their location. In addition, permitting, environmental, exploration, development, construction, production, and distribution considerations associated with a highest and best use estimate are not discussed, even if some allowance for them might have been included in the hypotheses considered in MMS speculative statistical models. Thus, there is no basis from the MMS report to determine financial feasibility or legal possibility of oil and gas development. Without these and other considerations, there is no way for the government to know whether compensation paid for surface rights was already paid for a higher and better use, or in contemplation of some form of combined use if the economic and legal feasibility for mineral production exists at all. This is an important inquiry that should have been performed.

UASFLA explains the need to consider what is known as the *consistent use theory*.[17] This theory, which was illustrated without identification in the above scenarios, holds that land cannot be valued on the basis of one use while the improvements [or minerals] are valued on the basis of another use. At our request, the OIG sought and obtained some of the appraisals that were separately prepared by Collier and government appraisers for acquisition of Collier land interests in Florida.[18] None of the appraisals we viewed identified oil and gas potential as a significant market value factor, instead identifying limited construction and recreation as the most likely highest and best use, and such uses were used in the market value opinions that were produced. *In addition to the fact that the Collier's and the government's appraisals negate any value contribution of oil and gas speculation (since none was identified to be present on the*

[17] UASFLA. Sec. D-11.

[18] To avoid any claims of confidentiality that may exist for these appraisals, we will not list them separately, but have retained them in the Foundation's files.

properties appraised), later addition of some valuation for oil and gas rights would constitute a prohibited cumulative or summation effect, thus doubling up on eligible market value compensation.

We have discussed only a few of many deficiencies in the MMS reports if they were to be considered as standards-compliant appraisals, which they clearly are not even if one claimed that they were *defective appraisals*. Of prime importance are the absence of market data, the substitute of hypothetical and speculative analyses as though they represented or explained the actions of the market, and the absence of analyses that are crucial to a determination of highest and best use. Also important, *the MMS' failure to avoid a possible doubling of considerations by not first establishing that any prior compensation or financial consideration did not preclude or in some other manner affect the value numbers they estimated, given the intended use of their report which they acknowledged, demonstrates a serious failure of government to responsibly uphold the public trust.*

9. **Application of the three approaches to value**.

Comment. USPAP and UASFLA require that each of the three approaches recognized under GAVP must be considered, and for each appraisal for which they are applicable and appropriate they must be applied. These approaches include the Sales Comparison Approach (in which actual market sales and other price indicators are analyzed and compared with the appraised property), Cost Approach (in which land is valued separately and the contributory value of improvements [or minerals] is added after their cost and applicable depreciation are considered), and Income Approach (in which anticipated future revenues applicable to the real property rights are quantified and then reduced [discounted] to a present value). Each requires the use of market data and related documentation and analytical support. The three approaches constitute a system of checks and balances to ensure the integrity of the findings. They are essential to ensuring public trust, which is why UASFLA requires them.

UASFLA states a strong preference for the application of a sales comparison approach, even for the appraisal of minerals interests when sufficient data are available. *Although the MMS reports explain UASFLA's preference that a sales comparison approach be applied, the reports are silent on whether the MMS attempted to apply the approach, and no discussion of any consideration at all is contained in the MMS reports, although required by USPAP and UASFLA.*

Although the MMS performed income analyses, their work was essentially an analysis of *business rather than real property* revenues, without the benefit or support of market data. Income hypotheses were expanded to many iterations through statistical use of Monte Carlo analysis, but were not based upon a highest and best use analysis. *The MMS applied a number of probabilities, rates, and other ingredients in their income analysis that were neither market supported nor likely to represent market processes or attitudes collectively or for any particular property*.

In the 2000 MMS report there was an attempt to apply a limited number of NPS-supplied adjustments. These were apparently intended to reduce what, in the 1996 report was a business evaluation, to what in the 2000 report would appear to be an appraisal of real property rights. *The 2000 MMS analysis did not result in a reliable or credible reflection of market value as presented, was based on faulty analyses, and did not properly apply the appraisal techniques and considerations necessary to value mineral interests.*

We conclude that no appraisal approaches as recognized under applicable standards or GAVP were applied by MMS even though the MMS did perform an incomplete and unsupported form of income analysis.

10. **Reliance on the use of other experts' work**.

Comment. UASFLA and USPAP recognize that appraisers must sometimes rely upon the opinions of other experts. UASFLA particularly notes, "…studies regarding the physical characteristics of the minerals are usually conducted by specialists…who make determinations concerning such important factors as the location, quantity, and quality of the mineral deposit, and any variations in the quality that might be found on the property. Additional determinations may be required regarding such factors as the accessibility of the mineral and problems and costs of extraction."[19] It also states, "However, before the adoption of these studies, it is the professional responsibility of the appraiser to thoroughly review and understand the reports prepared by other experts and adopt them only if the analysis and conclusions were prepared according to appropriate standards, are sound, and are adequately supported."

The MMS reports and related materials clearly fail these appraisal tests. *There is no evidence that MMS separately verified or validated*

[19] UASFLA. Sec. D-11.

the materials furnished to them by CRC, upon which they heavily relied. There is no significant mention of market data or tests relating to market value or how the pertinent market would consider the results of statistical models as based and processed according to MMS' discussions. To translate hypothesis and statistical projections of speculative assumptions directly to a presumption of market value without the support that is required by appraisal standards is misleading. *Further, for DOI officials to claim that the MMS reports were in any way appraisals or that their results represented market value appear to be seriously misleading. The information furnished for our review indicated that these results were most likely intentional.*

Information of a more general nature is available from various industry and market sources, but even this more remote information was not discussed in the MMS reports. Had the information been considered and reported, it is our opinion that the report would have given objective readers pause to accept MMS findings and conclusions even without other pertinent market data.

11. **Valuation of minerals properties generally.**

Comment. UASFLA and USPAP provide that all applicable appraisal approaches are normally applied, and further that the appraiser must justify the omission of any particular approach. UASFLA states, "As in the valuation of other property for federal acquisition purposes, if adequate sales data is available, the sales comparison approach is usually considered the best evidence of value. While it is recognized that each property containing valuable mineral deposits is unique, the same may be said, to some degree of all real estate."[20] The CRC properties to which the MMS reports relate are not known to contain valuable mineral deposits, any such "deposits" being undiscovered and only inferred as of the time of the MMS reports.

The MMS reports state that a Sales Comparison Approach is the preferred valuation methodology for minerals properties wherever adequate data are available, but evidence no attempt to gather or analyze such data. To the contrary, discussions in the MMS reports are far more indicative that no such market exists. This indication arises from the absence of such data and by MMS' references to the limited historical activity in the area due to market's adverse reactions to available data.

[20] UASFLA. Sec. D-11.

Pertinent UASFLA Provisions

To provide the reader with specific provisions of UASFLA's federal appraisal standards, we extracted UASFLA provisions as shown below. The statements chosen were selected based upon their specific relationship to many of our analyses and conclusions. These should not be interpreted as anything but examples of what is stated in UASFLA and the reader is cautioned to refer to UASFLA for a full description and understanding of its contents.

General appraisal provisions

1. Government appraisals are to comply with USPAP except for Jurisdictional Exceptions. Section A, A-4, A-9, and C.

2. UASFLA applies to "direct voluntary purchase, exchange, or eminent domain." Purpose.

3. "These Standards have been prepared in recognition of the fact that the vast majority of federal land acquisitions are accomplished by voluntary means. However, the utmost objectivity, accuracy, and thoroughness of appraisals, upon which those acquisitions are based, are essential regardless of the government's method of acquisition." Purpose.

4. The amount "to be paid to property owners when their property is acquired by the government for public use is a matter of constitutional law." Purpose.

5. If standards must be modified, "[s]uch modifications … should not be undertaken without specific written instructions from the acquiring agency or its legal counsel." Purpose.

6. Section A-14 explains that unity of ownership is an important concept/test. Also, the appraisal must be based on the highest and best use of the land. Splitting ownership (surface v. mineral) may create a conflict that must be considered in a valuation.

7. "The appraiser's estimate of highest and best use must be an economic use." Sec. A-14.

8. "A preliminary value estimate prepared under 43 C.F.R. 2201.1(b) is not considered an *appraisal* even though it is to be prepared by a qualified appraiser. … It is noted that 36 C.F.R. 254.4(b) is silent on whether such a preliminary value estimate is considered an 'appraisal' by the USFS." Sec. D-1e.

9. "[I]t is the agency's responsibility to advise the appraiser of the special conditions under which the appraisal is to be conducted, of the

specific law requiring the invocation of USPAP's Jurisdictional Exception Rule, and, if necessary, of the hypothetical condition or extraordinary assumption. … Any time appraisers confront a potential conflict between USPAP and these Standards, or the client agency's appraiser instructions, they should always analyze the apparent conflict and avoid invocation of USPAP's Jurisdictional Exception Rule whenever possible. Often, these Standards or the agency's special appraisal instructions do not require a jurisdictional exception, but rather merely that the appraiser conduct an appraisal under a hypothetical condition or by adopting an extraordinary assumption.[21] … Appraisers are advised to bear in mind that **full disclosure** is the essential element in preparing an appraisal report in conformance with USPAP." Sec. D-1g.

10. "[T]he government 'is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties.'[22] This does not mean, however, that such transactions are exempt from litigation relating to the valuation of the property involved and/or the adequacy of the appraisal report upon which the transaction was based."[23] This is pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1701 et seq.)

11. "The requirements for classification as a *qualified appraiser* under these exchange regulations are essentially the same as those for a contract appraiser under 49 C.F.R. 24.103(d)(2) and these Standards, as described in Section D-15. … An appraiser may be selected and retained by either party to the proposed exchange, as long as the appraiser is *qualified.*" Sec. D-7.

12. "If an appraiser is retained by a private party to prepare an appraisal for federal land exchange purposes and the client issues an instruction to the appraiser to make an extraordinary assumption or to adopt a hypothetical condition in the conduct of the appraisal which would conflict with the exchange regulations, or these Standards, the appraiser must advise the client of the conflict. … the appraiser [may] make the assumption or adopt the condition in conducting the appraisal … but must clearly identify the assumption and/or condition in the appraisal report" Sec. D-7.

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[21] For instance, the appraiser instructions discussed in Section D-1c could, with proper disclosure, be classified as a hypothetical condition rather than requiring the invocation of the Jurisdictional Exception Rule.

[22] 36 C.F.R. 254.3(a). See also 43 C.F.R. 2200.0-6(a).

[23] See, e.g., Desert Citizens Against Pollution v. Bisson, 231 F. 3d. 1172 (9th Cir. 2000).

13. "A review of the agency's appraisal review should next be undertaken, with particular note being made of any technical or factual errors reported by the review appraiser." Sec. D-9.

14. The functions of negotiating, appraising, and appraisal reviews are separate functions. Sec. D-9.

15. "[A]ny indication that the property owner has accepted the price paid with the understanding that the agency will support (or, at least not oppose) the property owner's attempt to take a tax write-off for a donation for some amount in excess of the actual price paid should be noted. A determination should be made whether the property owner or the owner's representative submitted an appraisal or any meaningful market data to the agency that may have supported a value higher than the government's appraisal and the agency's subsequent determination to pay more than its appraisal. If so, the submitted material should be reviewed and analyzed." Sec. D-9.

16. "A reading should be conducted of any correspondence from the property owner's political representatives, and the agency's response thereto, to determine whether there may have been undue non-market pressure to consummate a sale at something other than market value. A reading should also be conducted of any newspaper clippings that may be in the file, to determine whether there was an undue amount of public pressure on the agency or the property owner to consummate a quick sale. Such public pressure can result in a price that is above or below the market value of the property." Sec. D-9.

Minerals appraisal provisions.

1. "If the parcel under appraisal includes water rights, minerals, or suspected mineral values, fixture values, growing crops, or timber values, the treatment of their contributory value should be discussed, including the methodology employed to avoid the forbidden *summation* or *cumulative* appraisal." Sec. A-10.

2. "The total value of the property shall not be estimated by adding the values of such separate items to the value of the land, and the fact that the various items are in separate ownerships does not alter this rule." Sec. B-2.

3. "The mere possibility of the existence of minerals, oil, or gas is not sufficient to affect market value." Sec. B-2.

4. "Even when valuing that type of property where there are an adequate number of comparable sales available with which to develop an indication of market value, the sales comparison approach to value must also be developed and considered by the appraiser in arriving at a final value opinion." Sec. B-7.

5. The previous statement "…does not mean, however, that the various factors utilized by an appraiser can be used without justification and adequate market support." Sec. B-7.

6. "For these reasons, appraisers utilizing the income capitalization approach in the valuation of property for federal acquisition are encouraged to make rate selections by comparison, as discussed in Section A-18." Sec. B-7.

7. "In using the income capitalization approach, care should be taken to consider only income that the property itself will produce—not income produced from a business enterprise conducted on the property." Sec. B-7.

8. "In these situations, business volumes may be considered but with the sole reference to the market value of the land." Sec. B-7.

9. "The value to be estimated is the market value of the property as a whole, not the value of the various interests into which it may have been carved. This topic is discussed in greater detail in Section B-19." Sec. B-7.

10. "It is generally recognized that it is improper to appraise the market value of a property, for federal acquisition purposes, by capitalizing the net income from a non-existent, hypothetical improvement proposed as the highest and best use for the subject land, and then deducting for development costs of the hypothetical improvement." Sec. B-7.

11. "Property having a highest and best use for mineral production may be appraised by an income approach. … this can be a highly speculative appraisal method that must be used with great care." Sec. B-7.

12. "The market value concept adopted by the courts to be applied in federal acquisitions generally requires application of the so-called *unit rule.* … Property [must] be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved." Sec. B-13.

13. "The whole property or unit valuation remains applicable even where the ownership is divided between such inherently diverse interests as surface rights and timber rights or surface and mineral rights. That does not necessarily mean, however, that the independent values of the various interests are not admissible in a condemnation trial; but if they are admitted it is for the sole purpose of aiding the trier of fact in fixing the value of the property as a whole. Likewise, it is not inappropriate for appraisers to consider the independent values of the interests, but again, only for the purpose of better estimating the market value of the whole property." Sec. B-13.

14. "A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together." Sec. B-13.

15. "A landowner in dealing with a parcel of land on which there is a mineral, timber or like substance may not introduce expert testimony by which the expert multiplies the gross material present by the market value per unit thereof and thereby arrive at a figure which purports to be fair market value for the parcel." Sec. B-13.

16. "In the development of an appraisal concerning mineral properties, it is particularly important to understand the unit rule."[24] Sec. D-11.

17. "Highest and best use analysis is another critical element in the development of a reliable mineral property appraisal. Such a report must contain a well supported and documented market analysis that clearly establishes whether or not there is adequate market demand for the minerals located on the property. The market analysis should provide the underpinning for the appraiser's conclusions regarding the marketability, price, and competition for the mineral commodity found on the property." Sec. D-11.

18. "If no market exists for the commodity, then the expensive and time-consuming determination of the quantity and quality of the minerals on the property is unnecessary. If a market exists for a mineral, then a supportable determination must be made concerning both the legal permissibility of extracting the mineral and the physical characteristics of the minerals located on the property." Sec. D-11.

19. "Before the adoption of these studies, it is the professional responsibility of the appraiser to thoroughly review and understand the

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[24] See United States v. 91.90 Acres of Land, 586 F.2d, 79, 87 (8th Cir. 1978), cert. denied, 441 U.S. 944 (1979).

reports prepared by other experts and adopt them only if the analysis and conclusions were prepared according to appropriate standards, are sound, and are adequately supported." Sec. D-11.

20. "Under the [*consistent use theory*] concept, the "land cannot be valued on the basis of one use while the improvements [or minerals] are valued on the basis of another.[25] … However, if the mineral deposit were oil, a concurrent use of the surface for grazing purposes would not, in most instances, be a violation of the consistent use theory." Sec. D-11.

21. "[E]lements of sales of quite distant properties, even those with different mineral content, may be comparable in an economic or market sense when due allowance is made for variables." Therefore, it is unacceptable for an appraiser preparing an appraisal under these Standards to simply state that there are no comparable sales transactions without providing adequate support for the conclusion." Sec. D-11.

22. "The income capitalization approach to value is also a valid means for estimating the market value of mineral properties, but should never be used exclusively if comparable sales are available for use in the sales comparison approach. The income capitalization approach can be especially applicable when the property under appraisal is already being mined, and thus the historical income stream from the property is available for analysis." Sec. D-11.

23. "The income that may be capitalized is the royalty income, and not the income or profit generated by the business of mining and selling the mineral." Sec. D-11.

24. "DCF analysis has been recognized by the courts as an appropriate method of valuation to be employed in the valuation of mineral properties.[26] In conducting DCF analysis, the appraiser must avoid estimating a property-specific investment value to a particular owner instead of estimating the market value of the property if it were placed for sale on the open market." Sec. D-11.

25. "In developing an estimated income stream, the proper royalty rate can be derived from comparable mineral lease transactions, and the mineral unit price to which the royalty rate is applied may be derived from appropriate market transactions. The annual amount of production and the

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[25] The Dictionary of Real Estate. Appraisal Institute. Chicago, IL. 1993. p. 72.

[26] Whitney Benefits v. U.S., 18 Cl. Ct. 394, 408 (1989); Foster v. U.S., 2 Cl. Ct., 426, 448-449 (1983).

number of years of production are more difficult (and speculative) to estimate, and require as a minimum not only physical tests of the property to determine the quantity and quality of the mineral present, but also market studies to determine the volume and duration of the demand for the mineral in the subject property." Sec. D-11.

26. "[T]he application of various statistical techniques is not a substitute for discount rate selection derived from and supported by direct market data, which is the preferred and most widely accepted approach." Sec. D-11.

Section 2
Analysis of Materials Received from OIG

Introduction

The Foundation's Scope of Work was based primarily upon a review of materials furnished by the OIG. These include:

1. U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, Louisiana. [ ]. *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve.* March 1, 1996. (Administratively Confidential-For U.S. Government Use Only.) Prepared by MMS solely to support U.S. Government negotiations related to a proposed land exchange involving Collier Resources Company's interest in the mineral estate in Big Cypress National Preserve and contains restrictions against disclosure or other use.

2. U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, Louisiana. [ ]. *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve and the Florida Panther National Preserve.* October 27, 2000.

3. U.S. Department of the Interior, U.S. Geological Survey. [ ] *Undiscovered Oil and Gas in the Big Cypress National Preserve – A Total System Assessment of the South Florida Basin, Florida.* Open File Report 00-317. Denver, CO. 2000. (Preliminary and not reviewed for conformity with the U.S. Geological Survey editorial standards or with the North American Stratigraphic Code.

4. Grace, John D., Ph.D. ESA (Earth Sciences Associates). Letter Report. Long Beach, CA. April 22, 2002.

5. General Accounting Office. Land Exchange – New Appraisals of Interior's Collier Proposal Would Not Resolve Issues. GAO/GGD-88-85. Washington, D.C. May 1988.

6. Report, Chief, Geologic Resources Division, Natural Resource Program Center to Director, Natural Resources Stewardship and Science, Special Assistant to the Director – 20 August 2000.

7. Memo, [ ], Acting Assistant Secretary, Water and Science and [ ], Acting Assistant Secretary, Fish and Wildlife and Parks, to [ ], Assistant Secretary, Land and Minerals Management, September 25, 2000.

8. Memo, November 21, 2001, [ ], Associate Director, Natural Resource Stewardship & Science to Joseph Doddridge, Acting Assistant Secretary, Fish & Wildlife and Parks.

9. Staff email, Barry Dickerson, February 20, 2002 and response of [the former Deputy Regional Supervisor, Resource Evaluation Division, Offshore Minerals Management], February 21, 2002.

10. Staff Memo, unnamed person, February 22, 2002.

11. Staff email, Barry Dickerson, February 22, 2002 and response of [the former Deputy Regional Supervisor, Resource Evaluation Division], February 22, 2002.

12. Staff email, redacted and unnamed person, March 1, 2002.

13. Various Public Laws and elements of legislative history pertaining to these laws. Also included were documents that were either used, or proposed for use, in the Collier exchange of Florida lands for the Phoenix Indian School Property in Phoenix, Arizona.

14. Appraisals of Collier land interests that, we believe, were considered by the General Accounting Office in the above referenced GAO report.

15. Collier Resources Company's Confidentiality Agreement, which appears at Appendix 2 of the 2000 MMS report.

The following review comments are not exhaustive, but illustrate observations the Foundation team made during its reviews.

Comments on Materials Furnished by the OIG

1. MMS 1996 Report

   a. The "Notice" at front of this report is an important disclosure. It states that the report is an "evaluation," and subsequent presentations indicate that it was *not a market value appraisal.* The rights to be acquired are probably the "Collier Resource Company's interests," but for valuation purposes a more precise statement is necessary somewhere in the report. Also not disclosed are (a) why the privately furnished information was relied upon; (b) the extent to which such information was relied upon; (c) what validation was applied to assure that the federal analysis was objective and independent; (d) a more straightforward disclosure of the highly speculative nature of *undiscovered*

minerals; and (e) the fact that the analyses performed are primarily *mathematical exercises based upon subjective premises.* There was no apparent attempt to seek some form of market information that would permit a market value analysis for the rights to be valued, even for validation purposes. There is an absence of any appropriate economic feasibility analysis.

b. To meet either USPAP or UASFLA requirements for an appraisal, the report must meet a series of tests that the MMS reports fail:

(1) Set forth a clear and accurate statement of the appraisal in a manner that will not be misleading.
(2) Contain sufficient information to enable the intended users of the appraisal to understand the report properly.
(3) Clearly and accurately disclose any extraordinary assumption, hypothetical condition, or limiting condition that directly affects the appraisal and indicate its impact on value.
(4) State the identity of the client and any intended users, by name or type.
(5) State the intended use of the appraisal.
(6) Describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.
(7) State the real property interest appraised.
(8) State the purpose of the appraisal, including the type and definition of value and its source.
(9) State the effective date of the appraisal and the date of the report.
(10) Describe sufficient information to disclose to the client and intended users of the appraisal the scope of work used to develop the appraisal.
(11) State all assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions.
(12) Describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.
(13) State the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; when the purpose of the assignment is

market value, describe the support and rationale for the appraiser's opinion of the highest and best use of the property. [Note generally accepted valuation principles requirements for an opinion of highest and best use.]

(14) State and explain any permitted departures from specific requirements of USPAP Standard 1 concerning reporting and the reasons for excluding any of the usual valuation approaches.

(15) Include a signed certification in accordance with USPAP Standards Rule 2-3 concerning reporting of values.

c. The Background for the Executive Summary is, at best, incomplete. It indicates that MMS requested additional information from CRC, but does not indicate whether such data were received. Both the nature of the data and whether or not it was received are important because of the apparent lack of MMS validation of CRC information upon which MMS relied. Extensive contact between MMS and CRC is disclosed, but the objectivity and independence of MMS analyses are left in question. References to MMS' visit to Houston do not disclose that CRC's proprietary data are expressly not warranted by CRC. Instead of identifying valuation parameters and how they were handled, the recitation indicates that a standards conforming appraisal was not performed, and raises significant questions as to whether the reported results were the opinions of MMS or those of CRC.

e. The Exploration History provides a general summary of activity, but its description would be more appropriate if it more clearly summarized market attitudes towards the likelihood of economically feasible production. As presented, the material reflects some engineering information but does not relate it to a basis that can be used for real property valuation. If discoveries would constitute "a breakthrough for the basin," it would seem that the market does not expect them to occur. This level of implicit speculation pervades the entire report, but is never fully dealt with by MMS in factual or market terms.

e. The General Modeling Approach mentions "CRC's net mineral estate interests," but does not define the term. This becomes a crucial shortcoming because it later develops

that the report never made specific identification of the real property rights involved in the proposed exchange. We understand that UASFLA and U.S. laws generally would prohibit compensation for business interests without Congressional approval. This report does not make sufficient distinctions to allow readers to recognize the difference between real property or business elements or to calculate their differing impacts upon the "value" to be used for exchange purposes. The last two sentences of the lead paragraph in this section are particularly revealing of high speculation when they say that volumes are tested as they "may occur in nature" and incorporate chance that they may not exist and/or that they may not be economic to produce. *From the information presented, it would appear more appropriate to disclose that models should be viewed as speculative probabilities that the minerals do exist and that, if they exist, they would be economic to produce.*

There is a statistical probability that a meteor will fall on a particular building at some time, and even that it will hit the building at a given time. Should we vacate the building at the appointed time, or should it be generally abandoned, because there is some probability of disaster? This is the flip side of saying that there is some probability that economically feasible of production minerals exist where oil and gas have not yet been discovered. One may argue the percentages to be used for probabilities, but each is only speculation until there is some form of evidence. *This is why the lack of market information as to how real property rights would be valued given these probabilities is a fatal flaw of this report, even if oil and gas are discovered later.*

The minerals industries have generally accepted norms in mineral evaluations, but the analyses primarily apply at the entire business or industry levels. Real property issues require local market data and property-specific considerations. Note that even the last paragraph on page v discusses uncertainty in the absence of factual information, but the level of discussion focused on production fails to recognize that it is market behavior related to these uncertainties that is to be used in market valuation.

Monte Carlo simulation can be a powerful decision tool, but it is not a generally accepted valuation tool for

developing a market value opinion. The discussion on page vi is considered misleading in a market value context. *The considerable extent of speculative assumptions that are necessary to analyze undiscovered oil and gas do not change speculation from being speculation, even if mathematical processes are "objective."* MMS has stated that CRC provided inputs for, and perhaps participated in, the analyses, but has not stated (or demonstrated) that THIS market has participants that would use the same Monte Carlo (or other analysis) inputs or rely upon the results in the way they were produced by MMS.

f. The evaluation's results are summarized beginning on page vii, which begins by saying that "45 prospects that were adequately supported…" formed the basis for their evaluation. "Prospects" are defined in a footnote as, "an untested geologic feature having the potential to be an oil or gas field." What is "adequate support" for something that is "untested?" Yet the term "prospects" denotes some degree of likelihood that belies the speculative nature of what is being analyzed.

On the same page, a diagram illustrates "Risked Recoverable Oil." The mean value of 139 million barrels of oil is shown to have a standard deviation of about 122 million barrels. The text does not explain that in terms of statistical significance, there is a 2/3 chance that the calculation represents a range of 17 million to 461 million barrels. At the 95 percent probability the range is minus 105 million barrels to 383 million barrels. This is the "risk adjusted" result. Again, the valuation question is, what would the market do under these circumstances—if it agreed with the numbers to begin with?

The term "risk adjusted" is not defined and is misleading in this context. There has been no discussion of permitting and licenses, EIS studies, exploration, discovery, drilling, completion, production, transportation, marketing, pricing, market changes, technological changes, or the like, so the term may be understood "in house," but USPAP standards require that the report be understandable by its intended users.

There is no attempt on our part to say that Monte Carlo or other statistical models cannot or should not be used in the

evaluation of oil and gas prospects, resources, or reserves. We do say, however, that they cannot substitute for the "market" of market value. *Statistical models should aid in describing and simulating market behavior, not as a substitution.*

The "Net Present Worth" calculations are not capable of review because they are not presented in this report. Only portions are shown, and those depend upon generalizations and absences of input disclosures that are necessary to generate net cash flow forecasts. In any event, MMS appears to ignore the fact that it is real property that is to be valued, not a business. If all cash flow forecasts were properly generated, they would still be speculative and there is a significant issue related to the extent of risks that were considered, let alone properly dealt with.

A lack of independence, and likely loss of objectivity, is evidenced in MMS' handling of the issue of a tax-free exchange. *A tax-free exchange could only benefit the particular owner of the property, but would not be available to another party except as a matter that is external to the valuation of these particular interests. This clearly violates the definition of market value and should not be a factor in this analysis.*

The Table on page ix is misleading by its insertion in the Executive Summary. (See discussion above relating to "risked recoverable oil.")

g. Page 28 begins a discussion of the assessment of MMS' data and analyses by MMS. The explanation candidly discloses that there was no consideration of the economic viability of what they hypothesized to be "discovered volumes." Less candid is the implicit fact that they are dealing with hypotheses as to minerals that are *not yet discovered*. Monte Carlo cannot change facts – it can only deal with their speculations and hypotheses.

h. A discussion of PRESTO V (modeling system) inputs is contained on pages 33 through 35. We will not critique line items individually, but we can succinctly report that we did not find explanations that indicate that MMS conducted the necessary research to quantify many of the inputs and none are included with their report. It can be seen,

however, that several areas of risk or uncertainty mentioned above are not shown as parts of their model.

i. The bottom of page 38 and top of page 39, dealing with economic presumptions, are especially troubling. First are the close participation of CRC in the calculations and the lack of evidence of MMS' research or validation efforts. Second is that MMS processed the entire speculative income stream rather than to focus on a valuation or evaluation of the rights that are compensable. Third is that no attempt has been made to relate the cash flow projections to any reasonable market basis. And fourth, MMS uses a 7-percent discount rate to value the entire business income for oil and gas that is not even known to exist. *This is an inordinately low discount rate for the risks involved and serves to inflate the value indication.*

USPAP contains a "Competency Rule" as follows: "Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently." There are specified means by which competency may be attained. *The MMS report clearly fails to meet the USPAP competency rule as a real property valuation matter.*

j. From a standpoint of the public trust, we are concerned about Evaluation Results, discussion of which begins on page 39. Conclusions include a discussion of economically recoverable resources, which should as a minimum have been termed "hypothetical recoverable resources deemed to be economic for production" or words to that effect. Instead, the discussion is misleading because it attempts to justify the results as a valid indication of some form of value, but has failed to produce an indication of market value of the real property rights involved. *This attempt at explanation or justification raises serious questions related to the competency and objectivity/independence requirements for appraisers.*

k. The statement of conclusions beginning on page 42 should by itself tell a reader that, even without the necessary market data by which to judge the analysis, the conclusions were highly speculative and intuitively unsupported.

Fourteen oil fields had been discovered over more than a half-century in the South Florida Basin, but only one for the last 11-years and that was a minor field. The modest level of geological and geophysical exploration activity in "recent years" had poor results, and were accompanied with market concerns about politics and the environment. Collectively these "dampened industry enthusiasm." ***Dampened industry enthusiasm*** *may be the closest the MMS came to a market analysis, but in USPAP terms is insufficient to reliably conclude that the market would proceed with a purchase of CRC's rights at a mean value of $155-million to $221-million.*

l. Page 45 contains a mention of differences in the "specific geologic states of nature." The focus should have been on differing results from analyses that were deemed sufficiently valid to merit representation and discussion in the MMS report. The mention of these states of nature is endemic to the entire report in that it substitutes either scientific or pseudo-scientific jargon where fact and proper analyses are required. Here, there is no reconciliation of the differences in the models. Had a reconciliation been applied, the MMS might have found that they failed a series of market value and related appraisal requirements, including failure to identify the rights that were to be appraised.

m. *The 1996 MMS report is not a market value of CRC's real property rights and is misleading because it offers either an opportunity to be misleading or to foster abuse where market value principles are to be applied.*

n. *As the 1996 MMS report was written it is essentially unreviewable as an appraisal report and should not be taken to be an appraisal of real property rights in any context of which we are aware*. In the context of appraisal standards, it does not meet the standards in sufficient fashion to be judged as an appraisal, but we can conclude that the absence of a proper review process in which the report's lack of qualification as a standards-compliant appraisal would be discovered is a serious organizational and operational error.

o. *The Appraisal Foundation's report in the BLM study recommended that minerals appraisers be moved to the*

BLM's appraisal staff. The MMS report is a prime example of why this move is so critically needed.

2. MMS Report – 27 October 2000

   a. Three of the four authors were coauthors of the 1996 MMS report discussed above.

   b. A significant policy question exists in the Notice statement. If such policy exists it may be at odds with USPAP and UASFLA. This Notice indicates that the report is based in part on confidential information that is not in the public domain. *The policy question is, can or should an appraiser (or other analyst) meet ethical and performance standards by agreeing to use information furnished by a participant in a land acquisition or exchange without offering opportunity for the public to have access to this information at least subsequent to the accomplishment of the transaction/exchange.*

      This issue becomes especially important when assertions such as those made in the preceding Memo become a part of the process and when the information furnished by the private party is apparently not verified by the use of appropriate market information. Under the ethical rules of USPAP and the related requirements of UASFLA, such a confidentiality agreement places both an appraiser and an appraisal reviewer in the position where certain of the agreements may not be capable of verification or validation because of the terms of "confidentiality." In this instance we have no evidence that a competent and experienced mineral interest real property appraiser was ever involved.

   c. The preceding question is made even more relevant when the confidential non-public data provided by the private party is proffered under the statements made in Appendix 2 to this report, CRC's Confidentiality Agreement, which the U.S. executed. In addition to obvious questions of propriety and possible abuse of public trust, this situation is also subject to CRC's explicit statement, "CRC makes no warranty, expressed or implied, as to the accuracy, correctness or completeness of the above listed proprietary data." (Appendix 2) *This raises the question of why the agreement would be signed in the first place if the data could or would not be warranted.*

d. This MMS report's Notice, unlike the previous MMS report, contains the words "might be generated," giving some indication of its speculative character. It also states that the MMS report does not represent an estimate of possible fair market value. Also new is the recognition of a difference between business income and real property income. The NPS advisory upon which this report is in part conditioned appears headed a correct direction, but was either confused or garbled in the translation. MMS says they are to develop estimates of potential royalty receipts, "but not bonuses or annual rental payments." Royalties may be paid in a form of rentals, so this statement is unclear.

It should be emphasized that the appraisal development of market value of real property rights for mineral interests is not developed from final adjustments to geological and/or geophysical studies. *Technical minerals studies are a part of the appraisal, but the appraisal must incorporate a complete understanding of these studies as an element of the appraisal if such studies are to be incorporated into required market analyses and quantifications. Simply said, the professional appraisal is not an appendage to minerals studies.*

e. An early MMS report reader question is whether the current report is a new report or an update of the previous MMS report. Although page 1 states that this report "represents a complete re-evaluation of the area," and the report contains new considerations that attempt to deal with real property rather than business incomes as its focus, the report is clearly an update. *The MMS dependence upon CRC data and opinions embodied into the earlier report was carried forward to 2000 report to a substantial extent, rendering the claim of a complete re-evaluation misleading.*

f. Background comments in the Executive Summary suggest that the MMS did not seek important market data either for primary analysis or for validation of information given to them by the NPS, CRC, or any other sources. The absence of market data renders this report a continued mathematical exercise that is without market support. As such, *the 2000 MMS report cannot be used directly in market valuation;*

significant additional research, analysis, and validation are necessary in an appraiser were to use this work and to rely upon it in developing a market value opinion.

g. As stated in the final paragraph of the Background statement (page 1), the MMS updated its geologic models. As a practical matter, this simply changes the speculation and hypotheses constructs to an undefined extent.

h. It is disappointing that, given an opportunity to update its previous report with one that could stand robust and appropriate review, the MMS chose to use such explanations as the following, appearing at the bottom of page i: "A very modest level of geological and geophysical exploration has continued in the area in recent years; however, the combination of generally poor results and political and environmental concern has dampened enthusiasm. The majority of the fields and reserves were discovered between 1964 and 1978…." *Although a similar statement was made in the earlier study, four years have passed and there should be opportunity to explain any new discoveries, the extent of exploration, and other area-specific activities during the elapsed time.* We do not know what "modest" is and the remainder of the explanation is dated and too general for detailed understanding. Most importantly, these disclosures do not dampen the enthusiasm of the MMS later in the report in reporting economic projections as though an assumed market would pay some millions of dollars for their speculations as to royalty potentials related to undiscovered oil and gas.

i. The last paragraph of the Introduction section on page ii discusses application of the PRESTO V model. *We consider the statement, "These volumes are tested as they may occur in nature" misleading; the volumes "tested" cannot be* ***physically tested*** *because* ***they are not known to physically exist.*** The structure of the sentence followed by a statement that "these hydrocarbon resources may not exist…," admits that they are speculative without saying so, but a typical reader is likely to take this as a softening of a fact of the existence of hydrocarbons rather than the basis for how hypothetical notions were mathematically processed.

j. The first sentence of the Results summary (page ii) refers to "CRC's non-producing net mineral interest…." This is a continuation of language in both of the MMS reports that implies the existence of minerals to be produced and that they are simply not being produced at the time of the report. This is not a nit-pick inference; it is an example of how the speculative and hypothetical nature of undiscovered oil and gas is played down by first granting that the authors cannot be 100-percent sure that minerals are present, and then proceed to use mathematical models that *assume* a probability that they *do exist*.

At best this report deals with a factual unknown: no one knows that economically viable oil and gas exists on the real estate to which CRC's mineral interests apply. Once a geologic and geophysical study is independently and objectively completed, and some form of acceptable speculation is defined (the term "speculation" is a term of art in exploration for mineral interests), a qualified real property appraiser with minerals training and experience can then perform market research to see what price, if any, the market would pay for the speculation. If sufficient information can be gathered to support the estimate, an opinion of market value can then be developed and expressed in accordance with USPAP and UASFLA standards. This is not what happened in this MMS report or in any of the other reports analyzed by the Foundation.

k. *We continue to question the assertion that MMS "distribution of estimates are "fully risked" from a valuation perspective.* (Results, page ii) As we stated for the earlier MMS report, there is no indication that all issues of importance from a valuation perspective have been considered. Second, to the extent that each risk item has been "fully risked," there is a question as to how that process was performed and supported. What the MMS does not appear to understand, there is risk in the r*isking exercise itself*, which must be fully understood before a market value opinion can be developed. Analytical concepts, software programs, and analysis inputs vary from analyst to analyst. *The MMS is badly mistaken if they believe without support that their analyses, the CRC analyses, or a combination, necessarily express market behavior as expressed in the market value definition.*

l. *The second paragraph of the Executive Summary's Background section led us to believe that this update report was independent of the earlier reliance upon CRC and its confidential data. This reading proved to be incorrect when we read the Background section that begins on page 1 of the report.* Here we learn that CRC has new data that has been supplied to the MMS and that they had met with CRC and its consultants to discuss matters of importance to the update report. This continues to provide grounds for questioning the independence and objectivity of the report, particularly as it is expressed. The MMS statement on page 2 that they began a completely independent reevaluation of the area seems to contradict the statement that they relied upon CRC's "additional information."

m. The update report discusses more historical detail about oil exploration and geological or geophysical considerations than the original report. Although some specific references such as US Capital Energy's re-entry in the original discovery well in the lake Trafford field resulted in a "modest production test," we are not given the particulars of this activity, when it occurred, or even what a modest production *test* means when the MMS is still dealing with hypotheses and speculation. We question why issues such as the extent of production from the cited fields was not discussed in a way that provided some basis for judgment as to whether the fields may have been substantially depleted, whether secondary or other recovery means might be economically feasible, and the relationship between these issues and the speculative issues dealt with by MMS.

n. A graph appears on page 4 as Figure 3. Discussion indicates that it purports to show a mean field size of 19.4 million barrels. Elementary statistics would indicate that only three of the fields were any notable distance were above the trend line. Four were relatively close to the trend line. The remaining seven fields showed no (4) or minimal (3) reserves. Use of a mean is a misleading indicator given these data and the existence of at least one significant outlier. *Objective analysis of this report would raise a question as to how the MMS applied statistical concepts in other areas of their statistical analyses.* However, we know of no true review of the MMS report that was performed.

o. *We are at a considerable loss of understanding as to why MMS felt it was appropriate to rely on CRC information for their analysis, absent direct orders from DOI officials to do so.* It appears that an independent and objective analysis would have first proceeded without the CRC information, but with more research performed by the MMS. Once the MMS had its own preliminary indications, they could then process the models including CRC information. In any event the issues that CRC may have suggested (such as the impact of tax free exchange considerations and the use of full business income) should have been discarded and an attempt to validate information supplied by CRC should have been performed. T*here is no evidence that these steps, or this approach, were undertaken, raising significant questions of MMS independence and objectivity in this matter.*

p. The final paragraph on Geological and Geophysical Evaluation (page 8) illustrates our concern about the issues of independence and objectivity. CRC is identified as a source of data analyzed, but there is no evidence that MMS took steps to independently verify the information. Literature research is an element of such verification, but were no other steps even attempted. *At the least ANY conclusions reached in the report should have referenced a condition that the findings are based upon speculative and hypothetical assumptions, many of which are based upon unwarranted information from CRC, the entity with whom the U.S. is dealing in land matters.* It is also important to note that the MMS did not disclose that the USGS study was *preliminary*, not final.

q. The Sunniland and Deep Basin Formation Plays (pages 12 and 13) each have high risks associated with the MMS discussions, but the MMS reaches a conclusion that "The geologic risk for the area encompassed by the proposed exchange" is 0.012, or virtual certainty. This conclusion appears contrary to the independent data disclosed in their report, but is not sufficient explained or discussed to have support. This is an intermediate conclusion that would be focused upon if a competent review of the MMS report had been conducted, but again we know of no such review.

r. The MMS report refers to stipulations explained in the [ ] report that have the greatest environmental (natural and

cultural resources) impact on MMS' minerals *evaluation*. Who [ ] is/was is not explained. Also not explained are any changes or confirmations of these stipulations that had occurred over the previous nine years. It appears that this reference is included to substitute for more detailed analyses and determinations such as those that would be included in Environmental Impact Statements, applications for licenses or permits, or other administrative/regulatory requirements that would precede exploration or further minerals activities. In any event, *we believe that the risks and requirements associated with minerals activity permissions and entitlements are not satisfactorily defined, analyzed, or property concluded.*

s. The MMS economic evaluation applies a number of "assumptions," but we are not convinced that all important assumptions have been disclosed in the MMS report. Regardless, *there is no evidence that market data were gathered and analyzed to support crucial assumptions upon which the conclusions are based.*

t. *In discussing the Results of their study the MMS cites two scenarios that were "tested." (Page 15) Neither has sufficient development to assure that it is independent and objective.* Further, there is insufficient information to either judge which scenario might be the better even if either of them were not already speculative and hypothetical exercises dealing with undiscovered oil and gas. Here again we see the identification of "CRC's non-producing net mineral interest," rather than a straight forward statement of hypothetical exercises conducted on speculations of the existence of oil and gas in as yet undiscovered areas.

u. From the information presented, we do not understand why the 95th percentile results for the two scenarios presented by MMS produce nearly equal indications. The related text is incomplete and potentially misleading, and the analysis should have been more carefully and fully explained.

v. Table 6 (page 16) purports to illustrate the "fully risk adjusted" nature of the MMS report, but we see no evidence of factual consideration of construction, completion, production, transportation, marketing, price, and other risk factors that are fundamental elements of a

market value opinion. *The absence of these types of disclosures not only renders the MMS report as less than complete for engineering purposes, but leave the report incomplete as a basic document for later appraisal analysis.* This is only one of many examples of this problem.

w. MMS' statement that, "Pursuant to the NPS guidance concerning Uniform Appraisal Standards, these estimates should be augmented by estimates of bonus and annual rental receipts that would accrue to the owner of the mineral estate," is unintelligible and it renders the report as either misdirected or incomplete on its face. *It appears that the MMS did not understand UASFLA or USPAP requirements, instead appearing to apply the language and certain requirements supplied by the NPS as they interpreted them.*

x. *We conclude that this report includes discussions and disclosures that somewhat exceed those of the MMS' earlier report, but the report is not sufficient as a document that could be confidently or reliably utilized as a report by other experts relied upon by an appraiser in performing a USPAP or UASFLA conforming market value appraisal of real property rights.*

3. USGS 2000 Open File Report 00-317

a. This report states on its face that it is a "preliminary report." At least portions of its content have apparently not been reviewed. We have no evidence that the report was ever completed in a final form.

b. Page 4 states that it was the USGS' mission to apply the best geological information and scientific theory available. It further states that seismic survey data were not available. With these disclosures, the work may be well performed, but it is still even more speculative because of the absence of data. The end result is still constituted of hypothetical opinions about undiscovered oil.

c. From at least a valuation perspective it is necessary to define and distinguish between "resources" and "reserves." Some argue that undiscovered oil and gas do not even

qualify for the already speculative category of "resources," but certainly do not constitute reserves.

d. Despite the preceding comment, the USGS report includes a definition for "undiscovered petroleum resources." *It is especially important to any reader of this report, or who would rely upon the preliminary report for further analysis, to recognize that the USGS definition of* ***undiscovered petroleum resources*** *clearly states that the term applies to a "theory."* This is further confirmation of the speculative nature of the report, even if it is mathematically accurate.

e. Monte Carlo methods such as those used by USGS were discussed above. *Discussions by the USGS may be misleading to lay readers because they imply that because two models produced relatively similar results, those results must be accurate representations of fact. That is not the case.* The discussion discloses that resources (estimates of actual oil and gas) were made and were used in the models. Thus, the models are subject to the accuracy of these assumptions and it is possible that the same assumptions may have been made as foundations for each of the models. Full review of their report was apparently not undertaken. Even as a preliminary report, it should have considered the sources of data and assumptions applied by the USGS, and should have stated any verifications that might have been made.

6. Page C2 displays a summary of statistics from the USGS Monte Carlo analyses. After 50,000 hypotheses were processed, a mean quantity of about 273 million barrels of oil was calculated, with a standard deviation of 181-million barrels. See discussion of statistical significance above. Also note that *this exercise was for hypothetical total production, but the speculation neither proceeded to a royalty level for real property valuation applications nor dealt with market attitudes regarding the hypotheses and speculations included in the USGS report.*

g. *This report apparently does not intend to relate to market value or be offered as an appraisal.* It does not deal with a series of economic issues that are crucial to conversion of the report's findings to a framework that can be useful for valuation purposes.

4. Letter Report from John Grace, Ph.D., Earth Science Associates, April 22, 2002

a. Dr. Grace's letter indicates that the purpose of his report is to analyze the volume of undiscovered oil that may be covered by mineral rights associated with "land the Department of Interior is seeking to acquire in Florida." He states an overall opinion that the methodology employed by the MMS in their analysis was sound and correctly applied. Unfortunately, *it is not clear whether Dr. Grace refers to the MMS estimates of volumes or the entire methodology of their report which includes the MMS' estimates of "present worths" of "fully risked royalties." The latter, we believe, is beyond Dr. Grace's established area of expertise.*

b. We note that Dr. Grace disclosed that CRC was involved in a conference call with unknown others, but presumably representative of the DOI or its agencies, on February 19, 2002. Although Dr. Grace's representations of portions of this discussion are too general for specific review, they establish that there were differences of opinion he was to consider. *We question why those positions were not stated in writing by the MMS and posed to Dr. Grace on an independent and objective basis rather than to include him in what appears to be a continuing dialog.* It appears that a portion of the answer to this question may have been MMS' own failure to discriminate between its views and those of CRC, as reflected in the 2000 MMS report.

c. *Dr. Grace's comments about tax treatment for evaluation purposes indicates that his point of reference may have been on the hypothetical and speculative issues relating to the business of oil and gas production rather than a focus on a determination of real property market value for the CRC interests.*

d. In Dr. Grace's discussion of theoretical uses of a mean and measures of variance, there is no specific mention of means and variance of market behavior, only of statistically produced model results under the assumptions used in engineering and/or geological modeling. Thus, *there is no linkage that Dr. Grace adds to market determinations.* Further, Dr. Grace does not mention that model variance also indicates a probability range of the distribution about

the mean which, in this instance, shows that even the hypothetical results have a relatively low confidence interval for statistically significant reliance upon the calculations.

e. Most of Dr. Grace's analysis relates to mechanical functions of the MMS analysis, differing views expressed by CRC, and the general processes applied to volumetric quantifications. He does not deal with an analysis of the market effects of undiscovered oil and gas, but does state that the analyses apply to "undrilled oil." However, statements such as "The net impact on the risked amount of oil in place is unknown," make it appear that he too begins with a hypothetical assumption that oil is present even though undiscovered and undrilled.

f. Dr. Grace's discussions of OCS blocks in the Gulf of Mexico between 1951 and 2001 does not contain sufficient information for a reader to understand whether the bids pertained to oil and gas reserves or to far more speculative undiscovered oil and gas that might be comparable to the CRC interests. It does not explain changes in markets over the 50-year period, changes in technology, new geologic and geophysical information that may have been developed over time, or how any of these compare with the property interests that were the subject of the MMS report. *As presented, the Gulf of Mexico information is interesting but of no significant assistance from our perspective.* Dr. Grace's data apparently apply to business income analyses rather than the royalty analyses that the MMS report correctly states should be the subject of appraisal analysis. *Further, there is no attempt to compare the technical or market issues of the Gulf of Mexico with those of the on shore matters pertaining to all of the CRC properties.*

5. General Accounting Office. Land Exchange – New Appraisals of Interior's Collier Proposal Would Not Resolve Issues. GAO/GGD-88-85. Washington, D.C. May 1988.

a. This report was solicited at the request of the Chairman, Committee on Interior and Insular Affairs, House of Representatives. The study involved a review of DOI real estate appraisals relating to a proposed exchange of the Phoenix, AZ Indian School land for approximately 118,000 acres of land near the Big Cypress National Preserve in

Florida owned by Collier. The purpose was to determine whether DOI's real estate appraisals of both properties were reasonable and reliable enough to provide a basis to proceed with the proposed exchange or whether other appraisals would be advisable.

b. The GAO determined that, despite certain deficiencies in the appraisals for the Florida properties resulting in a possible overvaluation of $3- to $4-million, the magnitude of the transaction did not merit reappraisals of these properties.

c. The GAO also determined that the two Phoenix appraisals varied because of widely divergent assumptions, but because of the lack of decisions by the City of Phoenix on what it would allow to be built on the site, there was no basis to proceed with the exchange as it was proposed and that new appraisals would not resolve these issues.

d. *Although the GAO report does not discuss the rights appraised, distinguishing between surface rights and any reserved mineral interests, it does state that all three of the appraisers in Florida agreed that the highest and best use of the properties would be for recreational use and speculative holding.* "This is because the land is predominantly what a layman would call a 'swamp' and has practical as well as regulatory restrictions on commercial or residential development."[27]

e. Without access to all of the Florida appraisals that were the subject of GAO analysis, or others that were performed in connection with right-of-way eminent domain proceedings of Collier properties, we are uncertain as to the extent to which the market value conclusions were based upon analysis of the economic feasibility of oil and gas production, if any such analysis was considered necessary by the appraisers.[28] Under existing UASFLA standards at the time, highest and best use of the fee simple ownership

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[27] GAO report. p. 13.

[28] Each of the appraisals furnished to us by the OIG in connection with the Foundation's study stated that the objective of the appraisal was to estimate the market value of the real property owner's "fee simple rights," which would have included oil and gas or other minerals potentials. None of the appraisals indicated that oil and gas or other minerals potential was a highest and best use of the properties to which they applied.

rights should have considered the economic feasibility (and all other highest and best use tests) of oil and gas use of the land before concluding that recreational use and speculative holding were the optimum uses.

f. Assuming that oil and gas uses of the land were considered by the appraisers, their reported market values would likely stand on their own. Separate valuation of oil and gas interests and the addition of any market values that one might project for these interests would be subject to the prohibited summation or cumulative appraisal problems discussed earlier in our report. *Thus, if compensation for the properties by cash, exchange, or combinations were based upon these fee simple appraisals, mineral interests would have been included in the appraised values and there would be no market value basis for additional consideration for minerals interests.*

6. Memo, Chief, Geologic Resources Division, Natural Resource Program Center to Director, Natural Resources Stewardship and Science, Special Assistant to the Director – 20 August 2000

a. This memo is dated less than a week after the date of the USGS preliminary report. The preliminary nature of the USGS report was not disclosed in this memorandum, leaving its recipients with a possible false impression of the USGS report's status. There is also no identification of any reviews that were made of the USGS preliminary report.

b. The memo concludes, "…that the likely market value of the Collier mineral estate in the Big Cypress National Preserve is between $5 million and $20 million dollars [sic] excluding royalties from existing production in the Preserve." *There is no identification of the "Collier mineral estate" in terms of real property rights. Further, the USGS preliminary report is used as though it were an appraisal, which it was not. These statements are highly misleading.* There is no mention of the hypothetical and speculative nature of the studies undertaken by the USGS or of the earlier study by MMS. In particular, there is no disclosure that only undiscovered oil and gas is the subject of the various studies, and of the USGS in particular.

c. In its Background discussion the Memo states that similar studies have been used in previous government land

activities. This suggests that a review of each should be undertaken to see the extent to which studies have been used as real property appraisals in compensation or exchange situations in which the original report was not so intended. *The USGS report does not meet the requirements for an appraisal, so there is serious question as to why, at an administrative level, the report which was only preliminary should be used as though it were a market value appraisal, especially without competent appraisal review.*

e. *Discussion of the "Collier Mineral Estate" is highly misleading. Whatever the rights may be, the USGS report dealt only with projections for a business, not for real property rights that the DOI should be identifying and valuing.* There is no disclosure of this very significant difference in the Memo.

e. *"Mineral Estate Value Considerations" is a serious misstatement and inflates the conclusions beyond their proffered support.* The USGS report may have been objective, but it is still speculative and based upon a series of hypotheses and assumptions. The Collier's mineral estate was not identified in real property terms in the earlier report, but at a higher level the USGS report is used as though it relates to real property rights. Although there is explicit disclosure that the USGS did not perform an appraisal, the Memo's author states that the USGS findings "may serve to demonstrate a value range that would likely result from a mineral estate appraisal performed by an independent qualified oil and gas mineral appraiser." The latter statement is unfounded and, although stated as "may serve," the statement serves as permission to serve rather than to raise the question or whether the findings may or *may not* serve as a proxy for an appraisal. A reasonable reading of the statement is that it is reasonable to use the USGS report as an appraisal for the "Collier's mineral estate," which it clearly is not.

f. *In its "Cautionary Note on Cash Flow Analysis," the Memo actually not only discards the sales comparison approach (which is preferred by UASFLA) without mention that there was no known attempt to even develop one, but also obscures the fact that there was no explained attempt to gather market information regarding the market's use of*

cash flow analysis for the valuation of real property oil and gas interests. Without evidence of market, there is no market. To assume that a market exists is not consistent with any applicable appraisal standards or our understandings of the requirements of federal law relating to land acquisitions and exchanges. Assumption of a market where none exists can lead to unwarranted compensation and unjust enrichment at the public's expense. By the same token, the same laws require that private parties be paid "just compensation" or its equivalent, usually determined to be market value of the real property rights. *This Memo makes unwarranted statements based upon unsupported conclusions and assertions and leaves at risk both the public and the private rights to be valued.*

g. *It is our opinion that explanations of the factors for the Division's application of cash flow analysis as they are set forth in the Memo are misleading and premature.* Independent and objective analysis would conclude that all studies performed were speculative and essentially without market support as to any value conclusion. To avoiding misuse of the USGS report and confusion of reality with speculation, the Memo properly should have concluded that there was not sufficient evidence of market value to proceed. The conclusions superimposed upon the USGS preliminary report by this Memo are based upon "mean volumes of undiscovered oil reserves," which for persons of responsibility should clearly indicate speculation and hypotheses. *The addition of cautionary statements that are not heeded even by the author lead one to question whether there is intent of this Memo to mislead.*

h. *The various adjustments to USGS findings that are superimposed in this Memo are stated without support or valid justification and compound the misleading nature of the Memo by their seeming precision.*

i. The use of a 7-percent discount rate for cash flow discounting was discussed above. It is still improper as it fails to be supported by any credible market evidence in this Memo.

j. *It is beyond our comprehension that the Memo concludes without stated support that the oil and gas industry applies*

discounts of 60-percent to 90-percent for calculated oil and gas cash flows for proven and producing sites, and then applies the same discounts (whether accurate or not) to hypotheses involving ***undiscovered and potentially never producing sites.*** The results of the Memo do not evidence that any competent appraisal reviews were applied or make a series of disclosures that would immediately reveal the speculative and unsupported nature of the Memo's conclusions.

k. It should be noted that the dollar "values" concluded in this memo are far below those of earlier report indications, even though the earlier reports were not appraisals and did not purport to qualify as such. *The fact that the reported "values" are lower does not make them accurate or appropriate.*

l. This Memo raises significant issues regarding the bypassing of appraisals, the failure to apply market values processes in valuation activities, the reliance by DOI on staff opinions where independence, competency, and objectivity are not assured in an appraisal sense, and the like. *This Memo clearly purports to substitute for a valid appraisal, but inappropriately cites the USGS report, the "industry," and other generalizations as bases for its unqualified results.*

7. Memo from [ ] and [ ] to [ ] dated 25 September 2000

a. This memo is included as Appendix 1 to the 2000 MMS report.

b. We note that the National Park Service is not one of the authors of the memo, although it was involved in earlier correspondence.

c. *The subject line of this memo cites a "preliminary valuation," which is misleading.*[29] No such valuation was

[29] Even if one or more of the various reports had been intended as a preliminary appraisal report, USPAP would require compliance with all ethical and standards requirements; further UASFLA recognizes that "preliminary appraisal reports" are sometimes prepared for internal agency use, but their intent as an aid to preliminary feasibility of one or more actions under review should not be confused with the purposes of a UASFLA compliant appraisal, and are not to be substituted for such an appraisal.

performed to the best of our knowledge, but the MMS report that is cited in the report was clearly neither intended as an appraisal nor qualified to meet the requirements of a market value appraisal.

d. We saw no evidence that indicates that the MMS produced a preliminary valuation of the CRC oil and gas interests in 1995, and any such statement appears misleading.

e. This memo indicates that "oil and gas development…has the potential to harm park resources." This intuitive position was not clearly or definitively discussed in any of the MMS reports. *The risk of obtaining necessary permits or other forms of entitlement for mineral activities on or off particular sites, not to mention a myriad of related permitting issues, could be the single most important risk factor that MMS should have dealt with, but, like the existence of any oil or gas in economically viable quantities, MMS left this issue as highly speculative and ill defined*. It appears that if the strength of this statement is considered in a market value appraisal, a clear determination of permitting needs, and related risks, timing, and costs, are crucial unknowns at the time of the MMS report.

f. *According to the memo, "The purpose of the (MMS) update will be to develop ranges of estimates for the value of (CRC's) resources based upon your analysis of the proprietary new data made available to MMS by the Collier Resources Company." This is at odds with the basic explanations in MMS' 2000 report. Further, that report cites "evaluations," but makes no claim to be an appraisal or to deal with market value.*

g. We call your attention to the Foundation's previous BLM study for further discussion of DOI staff and management practices with regard to the appraisal function. *Processes applied by the DOI and its agencies in our current study were strongly reminiscent of what we observed in the BLM study.*

h. The various reports and correspondence reviewed in connection with this engagement provide evidence that underscores why competent and experienced mineral property appraisers should be involved in minerals interest

land exchanges and transactions. *The statement in the memo's closing paragraph that, "(we have) found that the appraisal process has the potential for developing into an essentially adversarial proceeding that can be counter productive to our ability to protect the underlying resources," can be interpreted as an "ends justify the means" statement.*

The seriousness of public trust and possible legal implications of this attitude (and statement) is enormous. *What the memo obscures and fosters as a substitute for independent, objective, and competent appraisal studies is the process we have discussed above: one that may include misrepresentations, hypothetical conditions, assumptions, lack of objectivity and independence, mischaracterizations, and even a failure to consistently deal with the legal rights and processes associated with land valuations involving mineral interests under applicable valuation standards.*

8. Memo, November 21, 2001, [ ], Associate Director, Natural Resource Stewardship & Science to Joseph Doddridge, Acting Assistant Secretary, Fish & Wildlife and Parks

   a. This memo is entitled "MMS Valuation in BICY." It states the author's understanding that DOI had "requested MMS to estimate potential oil and gas reserves [sic] in BICY and develop comparable estimates for offshore leases and/or bidding rights with the possibility of structuring an exchange agreement with the Collier Corp. for their mineral holdings in BICY."

   b. Park management's strong support for an exchange to acquire "Collier's mineral rights" within BICY was expressed. The rationale was that this would reduce the potential for future oil and gas development in the park with "its attendant impacts on the ecosystem and hydrologic resources."

   c. *This memo distinguishes the proposed MMS study as an "evaluation of mineral reserves, not a formal mineral appraisal."* Because of MMS expertise, the author states there was no reason for NPS to be involved.

   d. *The author further states that cash flow models have been used to generate figures that allow "relative comparisons*

of oil and gas properties," and states that such models do not represent market value even if the industry uses similar models to evaluate "the relative economic merits of prospects."

e. The memo provides clear evidence that at least some DOI staff recognized that the MMS report was not intended to be an appraisal, but does not reflect why the MMS report was styled in such a way as to erroneously give the appearance of one.

9. Staff email, Barry Dickerson, February 20, 2002 and response of [the former Deputy Regional Supervisor, Resource Evaluation Division], February 21, 2002

a. The Dickerson message conveyed a series of topics that the author asked David Marin to discuss with CRC in a teleconference. The topics included price parameters, Federal income taxes, state income taxes and severance taxes, tangible and intangible costs, and cost depletion. There was also a mention of the PRESTO analysis model, which was identified as an "assessment model."

b. The [ ] response [of the former Deputy Regional Supervisor, Resource Evaluation Division,] states, "Since the direction from DOI is to assume CRC is both owner and operator it would appear to me that any consideration of bonus or rental payments is inappropriate."

c. This "direction" under UASFLA would constitute instructions from the "client," and would constitute a required disclosure in a qualified appraisal. As mentioned elsewhere, no such disclosure was made. Even so, the parties were apparently dealing with attempts to derive net income, but there was no demonstrated attempt to distinguish between business and real property income.

10. Staff Memo, unnamed person, February 22, 2002.

a. This memo appears to be a file memorandum from an unnamed DOI or agency staff person who made notes on a February 21, 2002 telephone discussion with CRC. It reviews a series of points discussed, primarily focusing on federal income tax, depletion, interest rate, and related cash flow issues.

b. The author of this memo states, "I am not clear as to why we are evaluating this based on Collier's value. What the government should pay for this is more closely tied to what a buyer would pay than what Collier would sell for." This statement succinctly encapsulates one of the principal conclusions that we draw from our reviews: *There is clear evidence of direction of the analysis efforts by some influencing party within the DOI, accompanied by an essentially open door policy for CRC in an intended federal land exchange.* The analysis does not have the characteristics of independence and objectivity, instead having some form of pressure or direction to develop a price that would be satisfactory to CRC whether it factually represents market value or not.

c. We are uncertain as to the concluding comment, but it appears that there was a response from another party who agreed with the original author's conclusions and asserted what appears to be a lack of objectivity and fair representation on behalf of CRC in terms of what is required of the federal government.

11. Staff email, Barry Dickerson, February 22, 2002 and response of [the former Deputy Regional Supervisor, Resource Evaluation Division], February 22, 2002

a. This email sequence begins with Barry Dickerson's report that he attended a "telecom with Collier" the previous day and provided "most of the discussion on economic topics." He concluded, "My impression is that these people are just throwing topics into the air to see what they can get us to jump at."

b. The email summarizes elements of the telephone discussion, but does not indicate there was any discussion relative to the consideration of real property rights and associated market value separate from the business.

c. Mr. Dickerson's final statement was, "I am not clear as to why we are evaluating this based on Collier's value. What the government should pay for this is more closely tied to what a buyer would pay than what Collier would sell for." This is further indication that the government's staff was operating under orders with which they did not agree.

d. [The former Deputy Regional Supervisor]'s response concurs with Mr. Dickerson's observations, adding in part, "There would be no lessee/lessor in [the situation of an owner/operator], therefore no bonus, rentals or royalties. Apparently in the Solicitors' minds this gets past the NPS Uniform Appraisal Standards questions. CRC has filed the 20+ exploration plans and recently had them approved. I believe this was a ploy to set up a takings case (if denied) or to increase pressure for a deal (if approved). I've repeatedly told the Solicitors that I don't believe CRC has any intention of drilling a well—they're just following the Coastal Petroleum paradigm."

e. The Conduct section of USPAP's Ethics Rule states, "In appraisal practice, an appraiser must not perform as an advocate for any party or issue….An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions….An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report." We see no reason why government staff and appraisers should not be held to these same standards.

12. Staff email, redacted and unnamed person, March 1, 2002

a. This e-mail is incomplete in that neither the writer nor the addressee is identified. The content indicates that there was continued internal evaluation of income tax and related considerations that were reflected in the memos discussed above.

b. This writer affirms that there were "instructions" that the evaluation was to be conducted "from the point of view that Collier is the owner and operator." This appears to be further confirmation that DOI instructions were instrumental to the premises applied in deriving "values" for CRC properties.

13. Various Public Laws and elements of legislative history pertaining to these laws. Also included were documents that were either used, or proposed for use, in the Collier exchange of Florida lands for the Phoenix Indian School Property in Phoenix, Arizona.

a. Our reviews of the documents furnished were principally directed towards matters pertaining to the Florida Collier properties and issues relating to oil and gas right valuations. The exchange of lands for the Phoenix Indian School property is essentially beyond the scope of our analyses except for the fact that it depended upon "values" that were established as the basis for the exchange (and or any other form of compensation associated with the transaction).

b. As discussed below, we attempted to follow an "audit trail" of value sources and amounts connected with the U.S. government – Collier exchange. Although there were a limited number of appraisals for the Florida lands that we were able to analyze, we found that each appraisal, whether performed for Collier or for the government, stated that it was a "fee simple" ownership appraisal of market value. None found a highest and best use for oil and gas or any other minerals. Thus, to the extent that these appraisals were used as a basis for the consideration to be used in the Florida portion of the exchange, any oil and gas potential would have been an element of the market value opinions and there would be no basis for any further compensation.

c. United States Public Law 100-301, 1988 S 90, April 29, 1988, 102 Stat 443, Sec. 8 provides that the Secretary of the Interior shall promulgate rules and regulations for potential exploration, development, and production of non-Federal interests in oil and gas within the Big Cypress National Preserve and the Addition. Authority was also granted to the Secretary to enter into interim agreements before such rules and regulations were finalized. There are other documents that pertain to the need for preservation, wildlife and environmental protections, and the like.

d. Because we do not have all applicable documents, we are unable to complete an analysis of the audit trail described above, but recommend that it be performed by the OIG or others. The best indication we have from the documents available indicates that at some point agreements and/or documents were prepared that would provide for a Quit Claim Deed by Collier of its property rights in Florida, excepting oil and gas rights, in return for mutual performances of their requirements and those of the Federal government in the exchange. If this occurred, we have no evidence that the

properties were reappraised subsequent to the ones we analyzed, and which were the subject of a portion of the 1988 GAO report. Thus, we are unable to verify that there was a valuation basis for any consideration being applied to the Collier's oil and gas rights, if any.

14. Appraisals of Collier land interests that we believe were considered by the General Accounting Office in the above referenced GAO report.

a. No attempt was made to perform an appraisal review for any of the appraisals submitted to us. Rather, they were considered historical documents that might shed light on the nature of oil and gas rights that had been identified for the Collier's Florida properties and how any such rights had been treated in prior appraisals.

b. Each of the reports analyzed specified that their purpose was to develop an opinion of market value for fee simple rights, the full "bundle of rights" that constitute the entirety of ownership in real property. If mineral interests of any sort had been reserved, extracted, or otherwise removed from the bundle of rights, none of the appraisals would have qualified as "fee simple" appraisals.

c. Each of the appraisals had discussions of markets for the appraised lands and considerations of each property's "highest and best use." None of the appraisals reported a market for oil and gas or other mineral interests, instead determining that other surface uses met the definition of highest and best use.

15. Collier Resources Company's Confidentiality Agreement

a. This agreement appears as Appendix 2 of the 2000 MMS report. *Although styled as a Confidentiality Agreement, the document is also CRC's disclaimer of the accuracy, correctness or completeness of the data furnished to MMS.*

b. The tenuous and apparently unreliable nature of CRC's involvement as a supplier of data for MMS consideration is indicated from the last paragraph of the CRC Confidentiality Agreement: "CRC makes no warrant, expressed or implied, as to the accuracy, correctness or completeness of the above listed proprietary data. This data is supplied for the convenience and information of the

Evaluator and any reliance on this data is at the Evaluator's sole risk." Our conclusion is not that CRC could not have supplied reliable information, but that in the form it was furnished and with the file disclosures by DOI staff comments, it is instead that the information should not have been considered reliable for valuation purposes.

Section 3
Final Conclusions and Reasoning

Introduction

The Purpose of the Foundation's engagement is detailed in the Executive Summary of this report. This report section addresses a series of findings developed from our analysis of the materials furnished to us, as well as additional research and analysis. We conclude the section by addressing the specific questions posed in the OIG's definition of our Scope of Work.

UASFLA cites United States policy in acquiring real property or any interest therein as impartially protecting the interests of all concerned.[30] It further states with regard to conjectural and speculative evidence:

> "In seeking to determine market value, there should be taken into account all considerations that might fairly be brought forward and reasonably be given substantial weight in bargaining between buyer and seller. However, the Supreme Court has stated that: *Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration*." [Citing *Olson v. United States*, 292, U.S. 246, 257 (1934); also, *United States v. 320.0 Acres of Land*, 605 F.2d 762, 814-820 (5th Cir. 1979).][31]

Principal Conclusions

The speculative nature of *undiscovered oil and gas* serves as a central focus for the series of issues and events analyzed by the Foundation Team. *The technical materials submitted to us indicated that that the existence of such minerals on the CRC properties may or may not have been out of the realm of possibility, but no evidence was provided to indicate that they were reasonably probable.* Even more important from a market value perspective, no evidence was presented that any buyers who may meet the market value definition as prospective purchasers of the rights appraised would pay any amount for the properties at issue. *Thus, there is no credible or reliable evidence that there was a market for the CRC's property rights or that they had any market value as of the dates for which it was incorrectly claimed that they had been valued.*

Beyond the central issues of speculation, there were additional issues regarding how the question of market value and proper compensation for CRC ownership rights were approached by the DOI and/or its agencies. The

[30] UASFLA 2000. Policy.

[31] UASFLA 2000. Sec. B-9.

record indicates that a management decision was made to by-pass a professional valuation of the CRC's property rights by a Qualified Appraiser, instead substituting a process in which false and misleading practices resulted. Under the apparent direction of a person or persons within the DOI unknown to us, staff personnel were given directions and/or adopted positions and practices that could not have fairly met the United States policy statement cited above. *Instead, steps were taken to control DOI staff work to the extent that required unverified and unwarranted information to be used as the basis for technical analyses. The results provided an apparent market value probability where no such probability was established.*

There was no record evidencing that any Qualified Appraisers were involved at any time in the development of opinions or in any review processes. Instead, the record indicates to the contrary: professional appraisers were consciously by-passed by management. Stated reasons appear more suited to an excuse that attempted to justify what was clearly an unwarranted decision, and thereby permit development and reporting of inflated "values." *The result was unsupported and knowingly incorrect reports that were not market value appraisals, but that were misleadingly represented and used by the DOI as though they were.*

Although documentation for our analysis was limited, it is possible that there have been "disconnects" or inconsistencies in the government's dealings with Collier lands. Initial acquisition appraisals furnished to us indicate that they were market value appraisals for fee simple ownership rights. If the numbers from those appraisals were relied upon by Congress, or other U.S. agencies, in acquisitions or exchanges, then the market value of any mineral rights that Collier might have possessed was accounted for in the original appraisals. Any further compensation would constitute a doubling of the compensation for their interests. This would call into question whether the provisions of the United States policy statement have been met.

General Findings and Reasoning

1. None of the reports reviewed by the Foundation were "appraisals" of market value.

Reasoning. References to MMS reports as "valuations" or "appraisals" by DOI entities or individuals were incorrect and misleading, especially in the light of the reports' disclosures that they were not appraisals. As a result, the DOI does not have a basis to conclude market value of the alleged CRC mineral interests from the materials furnished to us. Appraisals should have been performed and reviewed by Qualified Appraisers, particularly because of the nature of the interests involved and the government's previous history of involvement with the same or related property interests.

2. The principal conclusions reported by MMS in each of its reports are highly speculative, largely unsupported, and improper as foundations for market value determinations relating to the alleged mineral interests to which they refer.

Reasoning. The reports deal with the hypothetical presence of oil and gas in statistical exercises that, as presented, obscure the fact that no actual oil or gas has been discovered for any of the properties purportedly "appraised." Because the numbers supplied by the MMS in its 2000 report were apparently erroneously used by DOI as "appraisal" results, or their equivalent, what may be an interest with a zero market value was handled as an interest worth many millions of dollars.

3. MMS reports do not specifically deal with the identification of the "rights appraised" that is fundamental to market value opinions.

Reasoning. Because these identifications were not made, the nature and extent of the legal interests was not specifically identified (although generalizations were made) on a parcel specific basis. As a result, no user of their reports as they were presented can identify what CRC might or might not have owned, where the location of the rights may have been, or the nature of CRC's sub-surface rights. For that reason, we refer to any mineral interests CRC may or may not own as "alleged interests."

4. The MMS reports do not comply with the USPAP Ethics Rule or the USPAP Preamble.

Reasoning. For their apparent intended use as indicators of value (or more precisely "market value")[32] the MMS reports are misleading and are not meaningful. They also do not comply with the Conduct portion of USPAP's Ethics Rule in that they do not appear to be impartial, objective, and independent. Further, they do not meet USPAP's Competency Rule requirements for the acceptance of an assignment. In part these acts of non-compliance are evidenced in the MMS' own report text and in other parts by their attempt in the 2000 report to apply UASFLA guidelines presented to them by the National Park Service to comply with appraisal standards. The impact of their deviations from those required for standards-compliant appraisals was

[32] According to UASFLA, Policy: "It is the duty of the state, in the conduct of the inquest by which the compensation is ascertained, to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it."

to ascribe "values" to undefined but alleged CRC mineral interests that may overstate actual market value by many millions of dollars.

5. Both USPAP and UASFLA are available not only to the MMS, but to the staff of DOI and its agencies.

Reasoning. Despite the clear language contained in these standards, the DOI and/or its agencies prepared memoranda, and may have taken subsequent actions, that they should have known were not supported by appraisals and appraisal reviews performed by Qualified Appraisers as they are defined by the federal government and in UASFLA.

6. The comments by the DOI's Acting Assistant Secretaries of Water and Resources, and Fish and Wildlife and Parks [sic] that they believed an appraisal of the CRC interests would be, in essence, counter-productive and that an update of its 1996 report by MMS would allow negotiations with CRC to proceed on a timely basis were erroneous and misleadingly implied that such review could substitute for a qualified appraisal and appraisal review.

Reasoning. The Foundation commented on similar practices by the BLM in its 2002 report[33] and continues to emphasize that such views and actions are ill-advised, improper, incorrect, and may be contrary to applicable law. In the instance we reviewed they led to an ill-fated attempt by MMS to either perform an appraisal or to have their report provide the appearance of having met UASFLA requirements. Neither was accomplished and the result was misleading and subject to abuse.

7. There was no evidence that Qualified Appraisers were involved at any stage of the reporting and related correspondence that we reviewed. This includes the consulting report of Dr. Grace, d/b/a ESA.

Reasoning. The question may be raised, why is this important since the DOI avoided the use of an appraisal? We respond that considerable effort was undertaken to shape the 2000 MMS language into a form that would imply that the substance of their report was an appraisal. Separate representations were made by the DOI that the results were "value" figures that could be used for the purpose of a purchase or exchange of CRC interests, and they apparently were ultimately relied upon for such purposes. Thus, the process itself was misleading and, in our opinion, prejudicial to the DOI's obligation to uphold the public trust. Although the DOI may assert that the 2000

[33] 2002 BLM study by the Foundation.

MMS report was more in the vein of a "preliminary estimate," in our view such an assertion would only compound the fault.[34] Dr. Grace's report does not indicate any appraisal education, training, experience, or other appraisal qualifications.

8. The MMS reports refer to CRC data and involvement in their text, but do not include any disclosures regarding instructions, assumptions and limiting conditions upon which their reports are based. This is a particularly important omission in the 2000 report because it was the "updated report" upon which the DOI finally relied.

Reasoning. Distinctions among the terms *assumption, extraordinary assumption*, and *hypothetical condition* were discussed earlier. Failure to make full disclosure of each element can, and commonly does, develop a less than credible and reliable report that misleads. This disclosure failure is generally compounded when some or all of these elements are applied as the result of undisclosed client instructions. In this instance, MMS' client can be interpreted as those who generated the request for their report and who were in a chain-of-command position to influence its results. The existence and propriety of instructions can only be known and judged with proper disclosure. Records furnished for our review indicated that undisclosed instructions had been given to the MMS and were applied in the completion of their analyses and reporting. Reliance upon the instructions without disclosure would violate appraisal standards for the 2000 MMS report.[35]

9. Because of the absence of information that would have been in a standards-complying appraisal report, but was not contained in the MMS materials furnished, it is possible that full compensation may have already been paid for Collier interests in the Everglades[36] where the alleged mineral rights are involved.

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[34] A "preliminary estimate" is, for example, provided for in the BLM's Exchange Handbook which defines the term as, "…a short oral or written report estimating a value or a range of values for properties….Because preliminary estimates are brief they should be used for internal purposes only." UASFLA points out that such an estimate is a Jurisdictional Exception to USPAP, where the process would require compliance with USPAP standards. UASFLA explains, however, "The preliminary estimate is generally not an appraisal but shall be prepared by a qualified appraiser." (UASFLA, Sec. D-7.)

[35] See, for example, UASFLA, Sec. D-3. UASFLA indicates that instructions should not only be disclosed but that written instructions should be included with the report.

[36] This statement refers to the absence of historical title information in the MMS report. The absence of such discussion made it infeasible for our Team to attempt an audit of prior title acquisitions of Collier properties in the Everglades. The term "Everglades"

Reasoning. If this is true, further compensation or allowance of a market value basis for an exchange would compound their compensation. In part this conclusion is based upon the fact that for any earlier appraisals to have complied with applicable appraisal standards, they must have applied the unit rule[37] and must have identified the contributory value of CRC mineral interests, if any. Further, the appraisals we were able to study indicated that they were market value appraisals of fee simple ownership rights.

10. The role of USPAP is equally important within the public sector as it is within the private sector and provides a foundation for fairness, transparency, objectivity, independence, competency, and other ethics and standards matters associated with generally accepted valuation principles.

Reasoning. USPAP was developed to protect the pubic interest as well as the interest of private individuals and entities. As such, it is recognized in the courts, in Congress, and in a wide spectrum of private market transactions, especially including mortgage lending, and the purchase and sale of real property rights. UASFLA serves as an important set of supplemental standards to allow for the minimal number of special differences that occur in the federal jurisdiction and to assure that UASFLA is otherwise applied in government land acquisitions.

11. Although USPAP is updated on an annual basis and UASFLA's 2000 revision post-dated at least some of the reports discussed herein, general principles and provisions of the current versions are not generally considered different than those that applied as early as 1996.

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was used in the context of the GAO report which we also reviewed. In short, there is no basis to know whether the property included in the MMS study overlaps or does not overlap prior acquisitions of Collier properties regardless of the reservation of mineral interests issue.

[37] In the federal jurisdiction the *unit rule* has two aspects; one relating to the interests, or estates, into which ownership of real estate may be carved, and the second relating to the various physical components of real estate. The first requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved, such as surface and subsurface rights. One may preclude the other or, in some instances, allocations may be made consistent with market information and generally accepted valuation principles. The second requires that different components of a tract of land cannot be valued separately and then added together, the latter resulting in a prohibited *summation* or *cumulative* appraisal. (See UASFLA, Sec. B-13.) We were unable to find any MMS discussions of the rights appraised, previous allocations or compensation, or even the extent, nature, and location of the alleged CRC rights.

Reasoning. USPAP and UASFLA are built upon long-established valuation principles, particularly those relating to identifications of property rights and the subject of valuations, ethical requirements for appraisers, the concept of market value, and other generally accepted valuation principles.

12. The value of appraisals and the proper direction of appraisers and review appraisers are frequently overlooked or ignored in program and management functions of the DOI. These problems were particularly evidenced in the materials we reviewed for this report.

Reasoning. Our involvement with DOI agencies leads us to believe that they have a competent group of staff appraisers and, in general, good leadership within the appraisal function. When considering the staff appraisers as one of the more valuable assets of the DOI, one must question whether this asset is fully and properly managed when program staff and/or management take it upon themselves to avoid the use of appraisals and review appraisals in support of sound fiscal management of public resources, and assurances of objectivity and fairness to the private sector. The situation we reviewed in the current study is an example of significant problems that were created in large part by an apparent attempt to totally bypass professional development of market value opinions by professional appraisers. These actions, and the eagerness of staff to overlook errors and to make misrepresentations and/or misstatements of fact, raise questions of staff intent to push through a program they may have realized would not stand the independent and objective study of appraisal professionals.

DOI staff has used excuses and have made damning assertions about the problems they claim that appraisers bring to the DOI's ability to accomplish program goals. We must pose the question of whether program goals are in all instances identical to the obligations of law and the public trust or whether they are based upon other motivations of those who raise these arguments. Regardless, it is clear that the DOI's assertions through its staff regarding appraisers' lack of value are simply incorrect. The appraisal asset may lay dormant through lack of proper application and/or be mismanaged, but market value is too important to the fundamental programs of land acquisitions and exchanges for the DOI to fail to consistently call upon and rely upon qualified professional appraisers and review appraisers within the DOI or, when necessary, available from contractors.

Conclusions: Questions Posed by the OIG

In addition to the broader statement of findings and conclusions summarized in the Executive Summary, the following is a direct response to the questions raised by the OIG in the Foundation's Scope of Work.

Question 1: "What evaluation methodologies and appraisal practices are utilized by the federal government, in particular the DOI, in determining the value of subsurface oil/gas mineral rights? Include a discussion of the role of the Uniform Standards for Professional Appraisal Practice (USPAP)."

Response 1: Agencies within the DOI, and the DOI itself, sometimes apply practices that are not in accord with either USPAP or UASFLA. In general the practices involve program and/or administrative staff substitutions of technical, engineering, or other studies or opinions produced by non-appraisers for conclusions of value of real property interests which are within the province of Qualified Appraisers. Certain DOI agencies have developed internal guidelines or policies that facilitate an avoidance of the use of Qualified Appraisers even when such appraisers should be a part of the processes in order to protect the public trust.

When such incorrect and improper policies or practices are applied, the individuals and agencies substitute evaluations by non-appraisal staff that do not meet the requirements of USPAP or UASFLA even though the conclusions purport to determine "values." Further, our research indicates that as a general matter, the value opinions developed by non-appraisers are not likely to be reviewed by Qualified Appraisers prior to their adoption by the DOI for exchanges or transactions with individuals or entities in the private sector. We are aware of instances in which, when reviews of non-appraiser opinions was performed by Qualified Appraisers, the reviews were ignored and the non-appraisal "values" were adopted by the DOI.

In the CRC matters we evaluated for the Everglades[38] minerals interests, agencies of the DOI sought and procured minerals studies by the USGS and the MMS. They apparently steered a second MMS report by first requiring that the MMS incorporate data furnished by CRC, the entity involved in the potential exchange, despite the tenuous nature of CRC's information that even CRC would not warrant as true and correct. Second, they furnished information to the MMS that encouraged MMS to restate its already highly speculative conclusions involving undiscovered oil and gas into explanations that, on face, gave the appearance of UASFLA-compliant market value

[38] This statement refers to the MMS and related report studies. As stated above, we did not know the specific geographic or legal boundaries of properties in the MMS study, but used the colloquial term "Everglades" to denote the probable location and nature of the majority of the "lands." The principle applies, however, to the lands included in the GAO study.

opinions. At no time did MMS, the DOI, or any DOI agency, ever define the exact legal interest, if any, held by CRC. Neither did they explain the locations of any such interests. Instead, generalizations and averages were used in such a way that the MMS reports were not sufficient for full technical review, let alone as a basis for a Qualified Appraiser to reach a competent opinion of market value.

These practices do not meet the competency and ethics requirements of USPAP by which Qualified Appraisers are bound. Such practices can fraudulently provide the appearance that the evaluations produce valid opinions of market value, which they do not. The role of USPAP, and of UASFLA as supplemental standards to USPAP, is to provide standards not just for the performance of appraisals by Qualified Appraisers, but to establish business and governmental recognitions and understandings that will aid in the avoidance of fraud and abuse, and will lead to better documented and reasoned financial decisions.

It is our opinion that any exchange or transaction based upon the figures reported in the 2000 MMS report or any of the other documents reviewed by the Foundation was not based on credible or reliable information by which to judge the market value of purported (and undefined) CRC property interests.

Question 2: "Determine whether the processes employed in the 1996 and 2000 MMS evaluations, and the 2002 review conducted by Earth Science Associates (ESA), of the Collier mineral estate were valid and appropriate. Identify whether, in general, the processes constituted a valid methodology for use by the federal government in determining onshore mineral values. Review includes the following documents:

MMS Valuations:

- *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve*, [ ], -US DOI MMS, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, LA (March 1, 1996)
- *Evaluation of Collier Resources Company's Mineral Estate in Big Cypress National Preserve and the Florida Panther National Wildlife Refuge*, [ ], -US DOI MMS, Gulf of Mexico Region, Office of Resource Evaluation, New Orleans, LA (October 27, 2002)

Others:

- Dr. John Grace's (d/b/a ESA) independent review of the methodology employed by MMS, and subsequent development of a range of values using statistical models (April 22, 2002).
- National Park Service valuation study of BCNP."

Response 2. Portions of the technical processes employed in the 1996 and 2000 MMS evaluations were mechanically valid and appropriate as a part of minerals studies, but they were not valid and appropriate, nor properly supported, as representations of the markets from which market values of CRC's purported mineral interests should be derived.

Each of the MMS reports were highly speculative. There was no market support for their eventual conclusions in either report that the market would ascribe a market value to undiscovered oil and gas located in a National Preserve setting, and with the particular set of hypotheses, subjectively assigned probabilities, and conjectures applied by the MMS. Although the MMS recognized in the text of their reports that there were significant risks and uncertainties associated with their analysis, these admissions did not deter the MMS from rationalizing that a mathematical exercise involving probabilities, and apparently unvalidated data upon which the exercise relied, could substitute for market data. Their reports evidence a lack of independence, bias, and loss of objectivity. The 2000 MMS report is particularly misleading because of its improperly developed attempt to restate its revised estimates as though they constituted indicators of market value. This effort resulted in stated opinions that are contrary to USPAP and UASFLA, and facilitated an improper and possibly fraudulent use of their report.

The Earth Sciences Associates (ESA) report was too general and misdirected to be of assistance as an appraisal review, and in our opinion was inadequate as a technical review of the 2000 MMS report. It appears that ESA attempted to apply off-shore information that may or may not have been comparable or otherwise applicable, but did not attempt to explain or justify the extent to which such data or experiences were other than background observations. The ESA report was not a rigorous technical review of the MMS work.

For example, It did not appear to evidence any attempt at crucial verifications of the work such as (a) the locations of the properties involved, (b) the nature and extent of CRC's legal interest for each, (c) the paucity or absence of market activities and/or market data that would have been useful in the light of *the intended use* of the MMS report, (d) the derivation of probabilities and quantifications applied in MMS' statistical models, (e) the ascribing of any market value from a model that, on the main, indicated there was limited probability of oil and gas production, (f) the absence of more definitive information regarding the probability and costs of permits that would be required for exploration, development, completion, production, pipe line locations, and (g) other important verifications.

The ESA report did not reliably support the notions that the MMS processes were valid or that ESA's own use of off-shore information or experiences were appropriate or meaningful. Instead, a robust review of MMS' data, data sources, analyses, and reasoning was required. This should have included validations of the data inputs and the derivation of independent information by which an independent and objective review could be performed. This would also require the development of market data, since such data was lacking in the MMS report, or statements by MMS regarding the lack of documentation and support, and the effect of such deficiencies on both the technical and the valuation aspects of the MMS report.

Question 3. "State whether an appraisal is necessary in cases involving the purchase or exchange of subsurface oil/gas mineral rights.

> ▪If an appraisal is necessary, what part of the USPAP applies and what part of the Uniform Appraisal Standards of Federal Land acquisitions apply?
> ▪ If an appraisal is not required, state why not, and identify the range of options by which a federal entity, specifically the DOI, has for valuing the purchase or exchange of subsurface oil/gas mineral rights."

Response 3. Market value appraisals by Qualified Appraisers and reviewed by other Qualified Appraisers should be recognized as necessary in all land acquisitions and exchanges by the federal government. These incorporate the entirety of USPAP except for the Jurisdictional Exceptions of UASFLA, and an overlay of UASFLA with its Exceptions. This fundamental step has the advantage of assuring that, in keeping with United States policy, the public and the government that constitutional rights are upheld, that public funds or their equivalent (in the instance of exchanges) are managed fairly and accountably, and that fraud and program abuses are eliminated or minimized. Without competent appraisals performed and reviewed by Qualified Appraisers, there is no audit trail by which to assess or judge the actions of program officials such as those in DOI.

The September 25, 2000 Memorandum from [ ] to [ ] states in part, "Overall, the Department's experience in various large land acquisition projects over the years has found that the appraisal process has the potential for devolving into an essentially adversarial proceeding that can be counterproductive to protect the underlying resources. In the present case, we believe that an update of [the MMS] study will allow interagency discussions and negotiations for a potential exchange to proceed on a timely basis." In lay terms this statement equates to children who say, "I don't ask Dad if I can go to town because he might say no. Instead, I only ask Mom." In professional terms it implies that the DOI does not care about market value requirements

and is willing on occasion to seek other methods that will produce inflated figures to accomplish program goals. These goals would trump properly founded financial decisions that can stand public
scrutiny or the reviews that must accompany competent appraisals. We strongly disagree with the spirit and accuracy of the statement, especially because Qualified Appraisers must be objective and independent. Is it those qualities that create "adversarial proceedings?" Further, examples such as this foster individual and agency abuses of office and opportunity for failures to uphold the public trust.

When purchase or exchange of oil/gas mineral rights is involved, it is especially important that a standards-compliant appraisal and appraisal review be performed. A classic example is involved with the Collier's Florida Everglades[39] properties. Under the unit rule and the principle of consistent use, real estate of the entirety of an ownership is normally to be valued at its highest and best use and in such a way as to avoid what is called a summation or cumulative appraisal.[40] In lay terms, it is possible that oil and gas activities, if feasible, could be performed in conjunction with certain surface uses of the land, but it is also possible that they might not. If only a surface use was determined to be economically feasible, an acquisition or exchange for the market value of the surface rights might extinguish any potential market value contribution of the subsurface rights. These and related considerations are crucial to the economics surrounding market value and require analysis by competent and experienced Qualified Appraisers and reviewers.

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[39] This statement refers to the lands included in the GAO study. The principle applies, however, in the MMS and related studies. Notably, before concluding highest and best use (HABU), an appraiser must consider all reasonably probable legal uses of land and consider the elements of the highest and best use definition. The legal uses require distinction between surface and subsurface rights if they are actually owned separately because an owner of one does not have control over the other. If the rights are combined into a single ownership, HABU reflects whether use of the surface constitutes HABU or, alternatively a use of subsurface rights through development of minerals potentials. If the rights are divided, there are questions of the *dominant estate* that must be answered before either estate can be valued. It is possible that a combined use could constitute HABU, but this requires significant analysis and support in view of the unit rule and other UASFLA considerations. The appraisals studied in relationship to the GAO report indicated that they pertained to fee simple title and found HABU other than for production of minerals. The MMS report property was less than fee simple, requiring that an appraiser ascertain that the rights were factually owned and determine the nature of the rights. There was no evidence that this was done. It is our position that an appraisal is particularly necessary in situations such as this because USPAP and UASFLA standards require these analysis, and supporting documentation, to assure that the government's actions with private individuals and entities are conducted consistently, appropriately, and in keeping with established legal and procedural standards.

[40] See, for example, UASFLA 2000, Sec. A-10, and discussions in Sec. B-13.

There have been mistaken notions within DOI agencies that the appraisal function can, and in some instances should, be bypassed because (among other reasons) the process of negotiations between the government and private sector individuals or entities requires an accommodation of interests on both parties. Although statutory authority may be given to the Secretary of the Interior to make decisions that are not necessarily based on market value, we see no rationale that supports the failure of the DOI and its entities to procure reliable and competent market value appraisals from Qualified Appraisers as a part of these processes. How else can negotiators or program officials know that constitutional rights of the private sector have been met? How else can either DOI or Congress know what the marginal difference is between market value and the price or effective value of an acquisition or exchange?

These issues were brought to government's and the nation's attention during the savings and loan scandals and banking crises of the 1980s. The Foundation, the USPAP standards developed and promulgated by the ASB, and appraiser qualifications and standards enforcement activities relegated to the states surely must have equal weight within the federal jurisdiction. UASFLA, like USPAP, serves as a guide to appraisers and to users of appraisal services.

Minerals are only one example of the many technical issues that must be considered by Qualified Appraisers. The special nature of scientific or technical inquiry and analysis do not ultimately render the appraisals of properties with mineral interest issues as significantly different than many other types of appraisals. To the extent that they are more complex or technical than some appraisals, properties with mineral interests still must be valued at market value and the expertise of a minerals engineer or qualified scientist are elements of such an appraisal, but not a substitute.

Question 4. "If the evaluation methodology used by DOI is deemed to be outside of acceptable industry practices, identify and describe generally the impacts to the valuations."

Response 4. The evaluation methodology used by DOI is decidedly outside of industry practices when they do not seek market value opinions from Qualified Appraisers. Simply stated, none of the DOI reports furnished to the Foundation met the most crucial and fundamental requirements of a market value appraisal, even though the 2000 MMS report was styled in such a way that it could be on face misinterpreted as reporting a market value conclusion. It was, therefore, misleading at the least.

One of the principal impacts of DOI's methodologies in the subject matter evaluated was that 1996 report significantly overstated even a highly speculative market value potential for the interests involved by including

business value components. Once MMS became aware that this was egregiously improper, their attempt to apply adjustments in the 2000 report were improperly founded, especially because the new analysis was still hypothetical and not based upon reliable market data. The impact of all reports in general is that they overstate any supportable basis for any finding of market value whatsoever for the alleged CRC mineral interests. We did not find any support for a market value of the undefined mineral interests.

Question 5. "Identify any acceptable deviations to the evaluation and valuation methodology utilized by MMS and describe generally the impact of the deviations."

Response 5. In the context of their reports and their intended uses, we did not find any acceptable deviations to the evaluation methodology utilized by MMS. Their reports did not contain valid valuation methodologies.

If the MMS were to take an alternative approach that did not purport to develop a market value conclusion, they could have identified their reports as hypothetical reports that were conditioned upon an acceptance of confidential data from CRC which was not warranted by CRC as true and correct. They should have identified the absence of supporting market data in any event, but as an alternative they could have performed sensitivity tests that would show some range of the impact on their conclusions that would be produced within a range of variance. This is separate from the technical probability analysis that was performed for geological issues. They should distinguish between geologic risking in their model and the risk analysis that applies to other analyses, particularly those elements that are within the purview of Qualified Appraisers. Even if these steps were taken in conjunction with a preliminary valuation analysis as it is defined within the DOI, it would not have been proper because of the many omissions, particularly the absence of credible market information.

In final analysis, all of the materials we evaluated were implicitly based upon the presumption *that oil and gas are present where CRC mineral interests exist*, even if that probability is minimal. Without market support for their conclusions, they apply a series of hypotheses (many of which are not disclosed or explained), consider statistical probabilities of hypotheses, and conclude opinions as to how the market would act based upon the MMS analysis. In doing so, they reflect significant weaknesses in the technical analysis and fail to derive competent or reliable market value opinions or indications.

Question 6. "In light of the above considerations, review the following document: GAO Report entitled: *Land Exchange-New Appraisals of*

Interior's Collier Proposal Would Not Resolve Issues, May 1988. GAO Report No. GAO/GCD-88-85."

Response 6. The May 1988 GAO report is well founded, but does not contain the detail necessary for a full review of the MMS reports and associated issues pertaining to CRC's alleged mineral interests.[41] The GAO report indicated that the "highest and best use" of the properties appraised by the National Park Service and by Fish and Wildlife Service were for "recreational use and speculative holding." It did not, however, explain the importance of the rights appraised in each of those appraisals. As reported earlier, our studies of the provided appraisals indicated that each was a "fee simple ownership" appraisal, thus including any consideration of the market value contribution of mineral interests.

Some weaknesses in the various appraisals reviewed were observed and there was a general indication of overvaluation on the part of the state of Florida's appraisal of a remainder value for the Big Cypress Addition. However, the GAO indicated that the negotiated value of the Florida properties was close to the value agreed by negotiation and found little potential benefit to the government from reappraising the Florida property. The owner's appraisals were not discussed.

We note that the GAO report does not have a legal description or an explicit recitation of the rights appraised for all interests involved, but does cite Collier's agreement to provide a quitclaim deed for land that was submerged in a dispute (for the 10,000 Islands tract). We believe that the Phoenix Indian School property valuations are not directly an issue for the Foundation's current report.

[41] One of the Foundation team members was a consultant to the GAO in the preparation of their 1988 report and was chosen in part because of his familiarity with issues involved.

EXHIBIT 1

UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS

APPRAISAL REPORT DOCUMENTATION CHECKLIST

The Appraisal Foundation Report to the
U.S. Department of Interior, Office of the Inspector General
May 28, 2004

EXHIBIT 2

COLLIER RESOURCES COMPANY

CONFIDENTIALITY AGREEMENT

EXHIBIT 3

USPAP STANDARDS RULE 2-3

REAL PROPERTY APPRAISAL REPORT CERTIFICATION

Exhibit 3
USPAP Real Property Report Certification
Standards Rule 2-3

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- no one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)

EXHIBIT 4

USPAP STANDARDS RULE 3-3

APPRAISAL REVIEW REPORT CERTIFICATION

Exhibit 4
USPAP Appraisal Report Review Certification
Standards Rule 3-3

I certify that, to the best of my knowledge and belief:

- the facts and data reported by the reviewer and used in the review process are true and correct.
- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have (or have not) made a personal inspection of the subject property of the work under review. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the subject property of the work under review.)
- no one provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification. (If there are exceptions, the name of each individual(s) providing appraisal, appraisal review, or appraisal consulting assistance must be stated.)

EXHIBIT 5

USPAP STANDARDS RULE 5-3

REAL ESTATE APPRAISAL CONSULTING REPORT CERTIFICATION

Exhibit 5
USPAP Real Property Appraisal, Consulting Certification
Standards Rule 5-3

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, conclusions, and recommendations.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to any property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this certification, the certification must clearly specify which individuals did and which individuals did not make a personal inspection of the property).
- no one provided significant real property appraisal or appraisal consulting assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal or appraisal consulting assistance must be stated.)