



**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

**Hector H. Balderas, State Auditor**

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**Auditor Balderas Releases State Land Office Special Examination Report**

*\$15 million in state land proceeds given to developers and private business; Institutional and campaign finance reporting reforms required; Beneficiaries not properly notified of transactions*

(Santa Fe, NM)—State Auditor Hector Balderas released the State Land Office (SLO) Special Examination report today. The Office of the State Auditor’s (OSA) examination scope included a population of a sample of over 100 state trust land transaction samples (sales, land exchanges and planning and development leases) for the time period from January 1, 2002 through March 11, 2010. These land transactions occurred between the Land Commissioner and various other parties, including private individuals, businesses, and governmental entities. The OSA uncovered numerous troubling financial, operational and contractual practices that require reform.

“The questionable practices of the State Land Office were brought to my attention by concerned legislators two years ago,” Balderas said. “After nearly two years of careful review, we found a complex financial operation that didn’t have adequate documentation to substantiate major financial transactions and arbitrary appraisal and improvement value credits. This speculative practice has led to New Mexicans losing millions of dollars of valuable land that was benefiting the trust.”

The Commissioner is the trustee of New Mexico trust lands and has numerous statutory duties under federal and state law. Under the federal Enabling Act, passed by the United States Congress prior to New Mexico gaining statehood, the federal government granted certain lands to New Mexico to be held in trust by the state “for the support of common schools.” The Act placed certain restrictions on the disposition of trust lands. Among other restrictions, the Act requires that trust lands cannot “be sold or leased . . . except to the highest and best bidder at a public auction,” except that trust lands may be leased for a term of five years or less without public auction. The Act also requires that trust lands be “appraised” and disposed of “at their true value,” and mandates that legal title to trust lands cannot be conveyed until consideration is paid. The Enabling Act also provides that the proceeds from the disposition of the trust lands or its “natural products” only be used in accordance with the provisions of the Act: “Every sale, lease, conveyance or contract

of or concerning any of the lands hereby granted or confirmed . . . not made in substantial conformity with the provisions of this act shall be null and void.” New Mexico consented to the provisions of the Enabling Act pursuant to Article XXI, Section 9, of the Constitution of New Mexico.

The examination of SLO files resulted in numerous key findings. During the test work of business leases, the OSA noted all planning and development lease contracts require the SLO to pay an improvement value credit (IVC) to the private developer upon the subsequent sale, lease or exchange of the land. The IVC split ratios between the SLO and the developers vary significantly between each business lease. The SLO has no formal policies or procedures that are used to determine the IVC split between the SLO and each developer.

Per SLO records, from November 2006 through July 2010, payments to developers from IVCs are \$15,495,148 of the total sales proceeds of \$25,063,637. This amounts to a total developer split of total proceeds of approximately 62%. One business lease included a developer IVC split as high as 86% for a total of \$8,457,055 that the developer received of a total sales amount of \$10,130,000. We also noted other lease IVCs varying by the following percentages to developers; 40%, 50%, 66.67%. There is no documentation within the business lease contracts containing an IVC that indicates how the SLO determined the IVC ratio.

Furthermore, the OSA noted a large number of certain sampled items in which the applicant, who was subsequently awarded the exchange, sale or lease, made campaign contributions to the Commissioner in close temporal proximity to the awards. In certain cases, the OSA noted that an exchange party or a purchaser of trust land made significant contributions that occurred near the date of application or closing of the agreement.

“Currently, state law does not provide for contribution disclosure requirements relating to trust land transactions or prohibit contributions during the Commissioner’s negotiation process for the exchange or lease trust lands,” Balderas added. “The legislature should strongly consider disclosures for the State Land Commissioner.”

Another key finding in the report included the SLO’s failure to notify beneficiaries during the sales process and several instances where they were not notified in a timely manner during certain exchange transactions. The SLO’s failure to promptly notify beneficiaries forecloses their participation in the process and it is not transparent to those who are required to benefit from the trust.

The additional key findings for single transactions listed in the report include the following deficiencies:

- **Bowlin Travel Center Land Exchange**

The Commissioner executed a land exchange agreement with Bowlin Travel Center on August 29, 2008. The Commissioner conveyed 30.07 acres of state trust land to Bowlin in exchange for 1 acre of Bowlin land. The state trust land of

30.07 acres was valued at \$225,600 and the 1-acre of Bowlin land was valued at \$240,000. Therefore, the exchange resulted in a net gain of \$14,400 in value of land exchanged. However, the SLO relinquished six leases on the trust land, which brought in \$14,644 in annual revenue, because of the exchange.

1. Land valuation not determined according to true value requirements
  - a. Increase in acreage and value without support
2. Prior business lease income not considered during exchange (no financial analysis)
3. Misleading beneficiary notice language

- **Lea County Land Sale**

The Commissioner sold state trust land to Lea County in February of 2008. The sale resulted in a conveyance of 26.33 acres of state trust land to Lea County for a sales price of \$71,500 (\$2,716/acre). In the sale, the County acquired a portion of state trust land (14.33 acres) it had leased from the SLO since 1993 under BL-629.

1. Appraisal was over 5 years old at time of transaction, was not “caused by commissioner” and appraisal value per acre was more than the final transaction
2. No support for increases in acreage and decrease in final price per acre
3. No financial analysis performed that would have analyzed prior business lease income and County sublease revenue
4. Allowing County to forgo past due payments and failure to charge penalties and interest
5. Beneficiary letter not transparent (omitted relinquished lease, sent late)

- **Rio Rancho/Lionsgate Land Sale**

The SLO sold 40 acres of state trust land to Lions Gate (conjunctive agreement with The City of Rio Rancho) for \$1,408,000 in November of 2006.

1. Land to be sold not based on appraisal (negotiated between CPL and Lionsgate per many SLO documents) (rejected appraisal for 2<sup>nd</sup> round/sale)
2. Bid process circumvented (SLO documents indicate transaction with Lionsgate versus City of RR)
3. Incorrect calculation of IVC split to developer (derived from sales proceeds instead of second appraised value)
4. No support for “reasonable project” costs

5. First round appraisal amount used for BAV was rejected, but still used – may have resulted in erroneous IVC split to developer
6. Termination of agreement and failure by SLO to enforce Lionsgate’s contractual obligations. Loss of revenue in contractual/contingency penalties
7. Misleading beneficiary notice – stating increased perm fund by \$1.408M and indicated “none” for prior business lease income

“The Land Commissioner has a fiduciary responsibility to the beneficiaries of state trust land,” Balderas continued. “The SLO should take the greatest of care when determining whether or not certain transactions are in the best interest of the trust and make every effort to maximize returns for New Mexicans.”

The SLO interfered throughout the audit process, which had the effect of delaying the final completion of the report. The SLO employed obstructionist tactics to delay the audit, including withholding documents requested by OSA auditors. The SLO also redacted information from documents before providing them to OSA auditors. The Land Office blacked out SLO employee recommendations against executing certain land transactions.

“The Land Office blacked out significant portions of documents, including documents that included critical statements from Land Office employees who reviewed proposed transactions,” Balderas said.

The OSA has referred the report to various agencies, including the New Mexico Legislative Finance Committee and the New Mexico Attorney General. Also, due to concerns about the violations of the Enabling Act, the State Auditor has referred the report to the U.S. Attorney General’s office and the Attorney General’s office.

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