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DEPARTMENT OF THE INTERIOR

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Memorandum

To: Chief, Division of Operations, ASO

From: Field Solicitor

Subject: Land Sales and Exchanges and Surveys within the Gila Project Area

The Bureau of Reclamation (USBR) is in the process of making land exchanges within the Gila Project, Arizona, under the authority of the Act of July 30, 1947, 61 Stat. 629, 43 U.S.C. §613b and the Act of June 24, 1974, 885 Stat. 266, 43 U.S.C. §1571(f). USBR has requested the Bureau of Land Management (BLM) to perform cadastral surveys of the parcels to be exchanged in order to obtain legal descriptions of the exchanged lands and to note the public land records after the transactions are completed. The requested surveys largely involve resurveys of work done previously by the General Land Office or BLM and in some cases by USBR. You have asked whether USBR may perform the required surveys itself.

The Act of July 30, 1947 authorizes the Secretary

to the extent, in the manner, and on such terms as he deems appropriate for the protection, development, or improvement of the Gila Project to sell, exchange, or otherwise dispose of the public lands of the United States within said project^{1/}

^{1/} The Salinity Control Project Act of 1974, 43 U.S.C. §1571(f) provides:

Regulations implementing the 1947 Act have been adopted. 43 CFR §402. Those regulations specifically address small tract sales but are silent as to surveys. With respect to the functions of the BLM it is provided in §402.5(b) that when reclamation withdrawn lands within specified projects are to be sold:

(1) The Commissioner should notify the State Supervisor of the Bureau of Land Management in whose state the lands are located, (2) a report showing the status of the land should be obtained from the Manager of the appropriate office of the Bureau of Land Management, and (3) a report should be obtained from the Geological Survey with respect to the mineral resources of the lands. A copy of the report to the Geological Survey should be furnished to the Manager of the appropriate land office of the Bureau of Land Management for his use in preparing the final certificate.

Consistent with this regulation, a Memorandum of Understanding was entered between BLM and USBR on August 6, 1953. It is there provided that prior to the disposition of any withdrawn public lands within the Gila Project area, USBR will request a status report from BLM. Further, upon the filing of a final farm unit plat in connection with

1/ Continued

(f) For the purpose of reducing the return flows from the division to one hundred and seventy-five thousand acre-feet or less, annually, the Secretary is authorized to:

* * *

(2) Acquire, by purchase or through eminent domain or exchange, to the extent determined by him to be appropriate, lands or interests in lands to reduce the existing seventy-five thousand developed and undeveloped irrigable acres authorized by the Gila Reauthorization Act

the sale of withdrawn public land farm units or in connection with a proposed sale of small tracts within the project area, USBR would furnish BLM with a print of the plat so that BLM could update its Tract Books. Moreover, after execution of the land sales contracts, USBR agreed to furnish copies of the contracts to BLM so that it could note its records. Disposition of land within the Gila Project is unique in that USBR issues quitclaim deeds rather than accomplishing the conveyance by BLM patents. E.g., Reno Field Solicitor's Opinion of July 25, 1960; Acting Regional Administrator's instructions to the Manager, Phoenix Land and Survey Office of August 20, 1953.

Although the Memorandum of Agreement contemplates that USBR will furnish the plats to BLM, it is unclear whether these plats were prepared pursuant to USBR survey or whether they were prepared without actual field work being undertaken by USBR. A memorandum of November 20, 1968 from the Regional Director, Boulder City, USBR to the Manager, Land Office BLM provides some historic perspective. The memorandum was a follow-up to a meeting concerning requirements for preparing supplemental plats of irregular-shaped parcels of Reclamation-withdrawn lands proposed for sale in the Wellton-Mohawk Division, Gila Project and the Yuma Project. It was noted there that there were as many as 100 tracts, many irregular in shape, requiring surveys. It was expected that the survey work and supplemental plats would take two or three years to accomplish. The memorandum concluded that "the supplemental plats can be prepared if procedures can be agreed upon, we can conduct the surveys and prepare the plats under your direction similar to the arrangements we followed several years ago."

The Departmental Manual does contemplate the performance of surveys by departmental agencies other than BLM. 751 DM 2.7 pertains to cadastral survey and designates BLM as the lead bureau for the Public Land Survey System (PLSS) and specifies that BLM is authorized by 43 U.S.C. §773 to perform PLSS surveys for other federal departments and agencies, state and local governments, and certain private interests. Interior bureaus are directed to coordinate their cadastral surveying needs with BLM and to report to BLM "all actions taken which serve to change the official PLSS records. The Bureau of

Reclamation has specific authority to conduct cadastral surveys on certain public lands withdrawn for reclamation purposes under BLM instructions and with BLM approval"
It is further provided that "In those cases where BLM authorizes other agencies to perform the actual survey work, BLM will provide the necessary instructions, guidance, and official approval of records."

While the BLM has general survey authority (235 DM 1.1)^{2/} USBR has the limited authority to perform surveys in certain situations. The Commissioner of Reclamation has the delegated authority to implement the Reclamation Laws (255 DM 1.1A); in the exercise of this authority, "[t]he concurrence of the Bureau of Land Management shall be obtained before final action is taken to:

- (a) Survey, subdivide, or sell public lands withdrawn for townsite purposes; and
- (b) Effect exchange involving public lands, except public lands within the Columbia Basin Project and the Gila Project."

255 DM 1.4a. While the exception contained in 235 DM 1.4A(b) does not explicitly authorize USBR to perform surveys incidental to such exchanges without BLM supervision, the inference is necessarily implicit. Thus, USBR could conduct the surveys, quitclaim the land, and notify BLM of the transfer.

^{2/} The Associate Solicitor, Branch of Realty concluded in a Solicitor's Memorandum of December 21, 1981 to the Director, Bureau of Land Management that the BLM may resurvey federal acquired land under the following conditions: (1) If a federal statute authorizes or directs BLM, or the Secretary acting through BLM, to resurvey the acquired land; (2) If the acquired land is, by law, denominated public land under the management of BLM; (3) If the Secretary lawfully delegates to BLM the authority of the Secretary to resurvey acquired land under the Secretary's jurisdiction; or (4) If another federal agency having management authority over acquired land requests BLM to resurvey the land.

Part 557 of the Reclamation Instructions recognizes the primacy of BLM's authority to survey public lands. §557.1.2. It is there explained that the authority of USBR to perform cadastral surveys is limited by the Act of June 27, 1906 authorizing subdivision surveys required for the formation of farm units of fewer than 40 acres and to resurvey reclamation townsites. §557.1.26. That same Reclamation Instruction specifies that "Resurveys on the Columbia Basin Project are covered by the Columbia Basin Project Act of March 19, 1943, and the Memorandum of Understanding between the Bureau of Land Management, made pursuant to the Act, dated June 1, 1950."

The Columbia Basin Project Act of 1943, like the Gila Project Reorganization Act of 1947, authorizes the Secretary to sell or exchange project lands without respect to the law governing the patenting of public lands and is silent as to surveys. As there is no distinction between the two Acts, as recognized in the above-quoted Departmental Manual section (225 DM 1.4A), the presently requested resurveys should be accomplished in the same manner as those prescribed in Reclamation Instruction 557.1.2C pertaining to subdivision and townsite surveys and those undertaken pursuant to the Columbia Basin Project Act. Accordingly, BLM may perform the surveys if USBR so requests and the request can be accommodated within the required time frame. In that case, the surveys would become official government plats; otherwise, USBR can perform the necessary work under the terms of the 1953 Memorandum of Agreement although the surveys would not be formally approved by BLM. See, Reclamation Instruction 557.1.3.

If this latter course is followed, care must be taken to reconcile the language contained in the quitclaim deeds which indicates the legal descriptions therein contained are subject to modification after "a cadastral survey performed pursuant to Supplemental Special Instructions (3rd Supplement), Group 517 Arizona, dated October 20, 1980" It may be necessary to issue corrective quitclaim deeds.

If you have any further questions, please advise us.

Fritz L. Goreham
Field Solicitor

Deborah Oseran

Deborah Oseran
For the Field Solicitor

cc: Regional Director, Attention: LC-420, Lower Colorado
Region, Bureau of Reclamation