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FEDERAL LAND MANAGEMENT

Challenges to Implementing the Federal Land Transaction Facilitation Act

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Natural Resources and Environment



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Highlights of [GAO-10-259T](#), testimony before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

The U.S. Department of the Interior's Bureau of Land Management (BLM), Fish and Wildlife Service, and National Park Service, and the U.S. Department of Agriculture's Forest Service manage about 628 million acres of public land, mostly in 11 western states and Alaska. Under the Federal Land Transaction Facilitation Act (FLTFA) of 2000, revenue raised from selling BLM lands is available to the agencies, primarily to acquire nonfederal land within the boundaries of land they already own—known as inholdings. These inholdings can create significant land management problems. To acquire land, the agencies can nominate parcels under state-level interagency agreements or the Secretaries can use their discretion to initiate acquisitions. FLTFA expires in July 2010.

This testimony discusses GAO's 2008 report: *Federal Land Management: Federal Land Transaction Facilitation Act Restrictions and Management Weaknesses Limit Future Sales and Acquisitions* (GAO-08-196). Specifically, the testimony discusses (1) FLTFA revenue generated, (2) challenges to future sales, (3) FLTFA expenditures, (4) challenges to future acquisitions, and (5) agencies' implementation of GAO's recommendations. Among other things, GAO examined the act, agency guidance, and FLTFA sale and acquisition data, interviewed agency officials, and obtained some updated information.

View [GAO-10-259T](#) or [key components](#). For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

FEDERAL LAND MANAGEMENT

Challenges to Implementing the Federal Land Transaction Facilitation Act

What GAO Found

- *BLM raised most FLTFA revenue from land sales in Nevada.* As of August 2009, BLM reported raising a total of \$113.4 million from sale of about 29,400 acres. Since FLTFA was enacted in 2000 through August 2009, about 78 percent of the revenue raised, or about \$88 million, has come from land transactions in Nevada.
- *BLM faces challenges to future sales under FLTFA.* In particular, BLM state and field officials most frequently cited the limited availability of knowledgeable realty staff to conduct sales. We identified two additional issues hampering land sales activity under FLTFA. First, while BLM had identified land for sale in its land use plans, it had not made these sales a priority during the first 7 years of the FLTFA program. Furthermore, BLM had not set goals for sales or developed a sales implementation strategy. Second, some of the additional land BLM had identified for sale since the act would not generate revenue for acquisitions because the act only allows the deposit of revenue from the sale of lands identified for disposal on or before the date of the act.
- *Agencies had purchased few parcels with FLTFA revenue.* In 2008, we reported that between August 2007—7 years after FLTFA was enacted—and January 2008, the four land management agencies had spent \$13.3 million of the \$95.7 million in revenue raised under FLTFA: \$10.1 million using the Secretaries' discretion to acquire nine parcels of land and \$3.2 million for administrative expenses to prepare land for FLTFA sales. More recently, as of November 2009, BLM reported spending a total of \$43.8 million to acquire 28 parcels, including \$24.6 million for 12 parcels through the state-level interagency process.
- *Agencies face challenges to completing additional acquisitions.* BLM state and field officials GAO interviewed most commonly cited the time, cost, and complexity of the land acquisition process as a challenge to completing land acquisitions. Furthermore, the act's requirement to spend the majority of funds in the state in which revenue was generated has had the effect of making little revenue available for acquisitions outside of Nevada. The agencies also had not established procedures to track the implementation of the act's requirement that at least 80 percent of FLTFA revenue raised in each state be used to acquire inholdings in that state or to track the extent to which BLM is complying with agreed-upon fund allocations among the four participating agencies.
- *BLM has taken steps to implement GAO's recommendations.* Specifically, BLM established FLTFA sale goals for fiscal years 2009 and 2010 and established a sales incentive program providing seed funds to state and field offices to identify and pre-screen properties for possible sale under FLTFA. As of November 2009, six states have agreed to participate in the program.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our February 2008 report on the implementation of the Federal Land Transaction Facilitation Act (FLTFA) of 2000 as you consider the act's reauthorization.¹ As you know, Congress enacted FLTFA, in part, to enhance the efficiency and effectiveness of federal land management by allowing four land management agencies—the U.S. Department of the Interior's Bureau of Land Management (BLM), Fish and Wildlife Service, National Park Service, and the U.S. Department of Agriculture's Forest Service—to use revenue generated through BLM's sale or exchange of its lands to primarily acquire inholdings in order to improve resource management.² (Inholdings are nonfederal lands within the boundaries of federal lands and can create significant management problems in maintaining boundaries, protecting resources and providing security, among other things.) In 2005, the agencies estimated there were at least 70 million acres of inholdings within the lands they manage.

My testimony today will address (1) the extent to which BLM generated revenue for the FLTFA program, (2) challenges BLM faces in conducting future sales, (3) the extent to which agencies spent funds under FLTFA, (4) challenges the agencies face in conducting future acquisitions, and (5) the current status of the agencies' implementation of our recommendations.

To address these issues, we examined the act, agency guidance, and FLTFA sale and acquisition data, interviewed agency officials, and obtained some updated information, among other things. This testimony is based on our report for which audit work was performed between November 2006 and February 2008, as well as follow-up work conducted in September 2008 and November 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit

¹GAO, *Federal Land Management: Federal Land Transaction Facilitation Act Restrictions and Management Weaknesses Limit Future Sales and Acquisitions*, [GAO-08-196](#) (Washington, D.C.: Feb. 5, 2008).

²Pub. L. 106-248 (2000) (codified as 43 U.S.C. § 2301 et seq).

objectives. App. I of our 2008 report provides detailed information on our scope and methodology.

Background

The four major federal land management agencies administer approximately 628 million acres, or about 28 percent of the land area in the United States. These public lands are mostly in Alaska and the 11 western states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Alaska is not currently participating in the FLTFA program because of its priority to settle Alaska Native land claims.

BLM is authorized to sell or exchange land identified in its land use plans; the other three land management agencies have limited or no sales authority. Once BLM has sold land, FLTFA directs BLM to deposit the revenue generated from these sales into a special U.S. Treasury account created by FLTFA. However, the act limits the revenue deposited into this account to that generated from sales or exchanges of public lands identified for disposal in a land use plan in effect as of July 25, 2000—the date of FLTFA’s enactment.³ Money in the new account is available to BLM and the other three agencies to purchase inholdings, and in some cases, land adjacent to federally designated areas that contain exceptional resources.

The federal land management agencies have two methods for identifying land to acquire under FLTFA. First, the agencies can nominate parcels through a process laid out in state-level implementation agreements that were developed under the direction of a national memorandum of understanding (MOU). Second, the Secretaries can directly use a portion of FLTFA revenue to acquire specific parcels of land at their own discretion. The national MOU laid out the expectation that most acquisitions would occur through the state-level process.

FLTFA places several restrictions on using funds from the new U.S. Treasury account. Among other things, FLTFA requires that (1) no more than 20 percent of the revenue can be used for BLM’s administrative and other activities necessary to carry out the land disposal program; (2) of the amount not spent on administrative expenses, at least 80 percent must be expended in the state in which the funds were generated; and (3) at least

³S. 1787 and H.R. 3339, pending in the current Congress, would amend this limitation.

80 percent of FLTFA revenue required to be spent on land acquisitions within a state must be used to acquire inholdings (as opposed to adjacent land) within that state. In addition, the national MOU sets the allocation of funds from the FLTFA account for each agency—60 percent for BLM, 20 percent for the Forest Service, and 10 percent each for the Fish and Wildlife Service and the Park Service, but the Secretaries may vary from these allocations by mutual agreement.

BLM Has Raised Most FLTFA Revenue from Land Sales in Nevada

At the time of our review, BLM had raised \$95.7 million in revenue, mostly from selling 16,659 acres. As of May 2007, about 92 percent of the revenue raised, or \$88 million, came from land sales in Nevada. Revenue grew slowly during the first years of the program and peaked in fiscal year 2006, when a total of \$71.1 million was generated. BLM's Nevada offices accounted for the lion's share of the sales because (1) demand for land to develop had been high in rapidly expanding population centers such as Las Vegas, (2) BLM had a high percentage of land in proximity to these centers, and (3) BLM had experience selling land under another federal land sales program authorized for southern Nevada. During the period we reviewed, BLM offices covering three other states—New Mexico, Oregon, and Washington—had raised over \$1 million each, and the remaining seven BLM state offices—Arizona, California, Colorado, Idaho, Montana, Utah, and Wyoming—had each raised less than \$1 million. Most BLM field offices had not generated revenue under FLTFA. As of August 2009, BLM reported raising a total of \$113.4 million in revenue for the FLTFA account from the sale of about 29,400 acres. According to these revised BLM data, Nevada still accounted for the majority of FLTFA sales revenues—about \$88 million, or 78 percent of the total revenue.

BLM Faces Challenges to Future Sales Under FLTFA

BLM faces several challenges to raising revenue through future FLTFA sales, according to officials in the 10 BLM state offices and 18 BLM field offices we interviewed for our 2008 report. Many of these challenges are likely to continue if FLTFA is reauthorized. The following lists, in order of most frequently cited, the challenges officials identified and provides examples:

- *The availability of knowledgeable realty staff to conduct the sales.* BLM staff said realty staff must address higher priority work before land sales. For example, Colorado BLM staff said that processing rights-of-way for energy pipelines takes a huge amount of realty staff time, 100 percent in some field offices, and poses one of the top challenges to carrying out

FLTFA sales in Colorado. In Idaho, staff also cited the lack of realty staffing, which was down 40 percent from 10 years ago.

- *Time, cost, and complexity of the sales process.* Much preparation must be completed before a property can be sold. For example, several offices cited the cost and length of the process to ensure that a sale complies with environmental laws and regulations. In addition, obtaining clearances from experts on cultural and natural resources on a proposed sale can be time-consuming.
- *External factors.* BLM officials cited such factors such as public opposition to a sale, market conditions, or lack of political support as challenges. For example, Colorado BLM officials said that they have faced strong local opposition to sales, and the El Centro Field Office staff in California cited the lack of demand for the land from buyers as a challenge.
- *Program and legal restrictions.* The Arizona State Office staff and the Elko, Nevada Field Office staff cited the sunset date of FLTFA, less than 3 years away at the time of our review, as a challenge to the disposal of land under FLTFA because the sunset date might not allow enough time to complete many more sales. Other offices said the MOU provision requiring a portion of the land sale proceeds to be used by the three other agencies reduces BLM's incentive to conduct land sales because BLM keeps only 60 percent of the revenue. Another challenge, especially in Nevada, has been the enactment of land bills for Lincoln and White Pine counties.⁴ In total, BLM staff estimated that, once mandated land use plan amendments were completed, these two acts would result in the removal of about 148,000 acres from FLTFA eligibility.
- *Land use planning.* Some offices cited problems with the land use plans. For example, the Idaho Falls District Office staff said that specific land for sale is hard to identify in old land use plans. Nevada's Elko Field Office staff said that some lands that could be offered for sale were not available because they were not designated in the land use plan at the time of FLTFA's enactment.

We identified two additional issues hampering land sales activity under FLTFA. First, while BLM had identified land for sale in its land use plans, it

⁴Pub. L. 106-298: Lincoln County Land Act Of 2000, as amended by Pub. L. 108-424 (2004) and Pub. L. 109-432, Title III, White Pine County Conservation, Recreation, and Development Act of 2006.

had not made the sale of this land a priority during the first 7 years of the program. Furthermore, BLM had not set goals for sales or developed a sales implementation strategy. Second, some of the additional land BLM had identified for sale since FLTFA was enacted would not generate revenue for acquisitions because the act only allows the deposit of revenue from the sale of lands identified for disposal on or before the date of the act.

Agencies Had Purchased Few Parcels with FLTFA Revenue

At the time of our review, BLM had reported that the four land management agencies had spent \$13.3 million of the \$95.7 million in the FLTFA account. More specifically:

- The four agencies spent \$10.1 million to acquire nine parcels totaling 3,381 acres in seven states—Arizona, California, Idaho, Montana, New Mexico, Oregon, and Wyoming.
- BLM spent \$3.2 million for administrative expenses between 2000 and 2007 to conduct FLTFA-eligible sales, primarily in Nevada.

The agencies acquired these lands between August 2007 and January 2008—more than 7 years after FLTFA was enacted. These acquisitions were initiated using the Secretaries' discretion, and most had been identified but not funded for purchase under another land acquisition program. As of October 2007, no land had been purchased through the state-level interagency nomination process that was established by the national MOU and state agreements. Acquisitions had not yet occurred under the state-level process because it took 6 years to complete the interagency agreements needed to implement the program and because relatively little revenue was available for acquisitions outside of Nevada, owing to FLTFA requirements.

As of November 2009, BLM reported the following:

- The Secretaries had approved \$66.8 million for the acquisition of 39 parcels since FLTFA's enactment in 2000.
- Of the \$66.8 million, agencies spent a total of about \$43.8 million to acquire 28 parcels totaling 16,738 acres and the remainder of the approved acquisitions was being processed.
- \$48.6 million of the \$66.8 million in acquisitions for 22 parcels had been nominated through the state-level interagency process rather than through

Secretarial discretion. Of the \$48.6 million nominated through the state-level process, the agencies have acquired 12 parcels with \$24.6 million in FLTFA funding.

- \$5.1 million has been spent on FLTFA administrative expenses to conduct land sales overall.

Agencies Face Challenges in Completing Additional Acquisitions

BLM state and field officials we interviewed for our 2008 report cited several challenges to completing additional acquisitions under FLTFA. Many of these challenges are likely to continue if FLTFA is reauthorized. The following lists, in order of most frequently cited, the challenges officials identified, and provides examples of these challenges.

- *Time, cost, and complexity of the land acquisition process.* To complete an acquisition under FLTFA, four agencies must work together to identify, nominate, and rank proposed acquisitions, which must then be approved by the two Secretaries. Officials at two field offices estimated the acquisition process took about 2-1/2 to 3 years. BLM officials from the Wyoming State Office and the Las Cruces, New Mexico, Field Office said that, with this length of time, BLM must either identify a very committed seller willing to wait to complete an acquisition or obtain the assistance of a third party in completing an acquisition. In terms of cost, some offices noted that they did not have the funding required to complete all of the work involved to prepare land acquisitions. In terms of complexity, a Utah State Office official said BLM has more control over the process for submitting land acquisitions under the Land and Water Conservation Fund than FLTFA because FLTFA requires four agencies in two departments to coordinate their efforts.
- *Identifying a willing seller.* Identification of a willing seller can be problematic because, among other things, the seller might have higher expectations of the property's value. For example, an Ely, Nevada, Field Office official explained that, because of the then-high real estate values, sellers believed they could obtain higher prices from developers than from the federal government. Furthermore, an Idaho State Office official said that it is difficult to find a seller willing to accept the appraised price and wait for the government to complete the purchase.

Even when land acquisition nominations are approved, they may not result in a purchase. For example, in 2004, under FLTFA, two approved acquisitions for inholdings within a national forest in Nevada were terminated. In one case, property values rose sharply during the nomination process and, in an effort to retain some of his land, the seller

decided to reduce the acres for sale but maintain the price expectation. Furthermore, the seller decided not to grant the Forest Service access through the parcel he was retaining, thus eliminating the opportunity to secure access to an inaccessible area of the national forest. In the other case, during the course of the secretarial approval process, the landowner sold portions of the land included in the original transaction to another party, reducing the land available for the Forest Service to purchase. According to Forest Service officials, in both cases the purchase of the remaining parcels would not fulfill the original purpose of the acquisitions owing to reductions in resource benefits. Therefore, the Forest Service terminated both projects.

- *Availability of knowledgeable staff to conduct acquisitions.* BLM officials reported that they lacked knowledgeable realty staff to conduct land acquisitions, as well as other BLM or department staff to conduct appraisals, surveys, and resource studies. Staff were occupied working on higher priority activities, particularly in the energy area.
- *Lack of funding to purchase land.* BLM officials in some states said they lack adequate funds to acquire land under FLTFA. For example, according to a field office official in Burns, Oregon, just one acquisition in a nearby conservation area would have nearly drained that state's FLTFA account.
- *Restrictions imposed by laws and regulations.* BLM officials said that legal and other restrictions pose a challenge to acquiring land. For example, officials in the BLM Arizona State Office and the Grand Junction, Colorado, Field Office said that some federally designated areas in their jurisdictions were established after the date of FLTFA's enactment, making the land within them ineligible for acquisition under the act. In terms of regulations, BLM Carson City, Nevada, Field Office officials told us that the requirements they must follow regarding the processing of title, survey, and hazardous materials issues posed a challenge to conducting acquisitions.
- *Public opposition to land acquisitions.* According to BLM officials from the Elko and Ely Field Offices in Nevada, the public did not support the federal government's acquisition of federal land in their areas, arguing that the government already owned a high percentage of land and that such acquisitions resulted in the removal of land from the local tax base.

We also found that the act's restriction on the use of revenues outside of the state in which they were raised continues to limit acquisitions. Specifically, little revenue was, and still is available for acquisitions outside of Nevada. Furthermore, progress in acquiring priority land had

been hampered by the agencies' weak performance in identifying inholdings and setting priorities for acquiring them, as required by the act. Finally, the agencies had yet to develop effective procedures to fully comply with the act and national MOU. Specifically, the agencies—and primarily BLM, as the manager of the FLTFA account—had not established a procedure to track the act's requirement that at least 80 percent of funds allocated toward the purchase of land within each state must be used to purchase inholdings and that up to 20 percent may be used to purchase adjacent land. And with respect to the national MOU, BLM had not established a procedure to track agreed-upon fund allocations—60 percent for BLM, 20 percent for the Forest Service, and 10 percent each for the Fish and Wildlife Service and the Park Service.

Report Recommendations and Agency Actions

In 2008, we concluded that 7 years after FLTFA had been enacted, BLM had not taken full advantage of the opportunity the act offered. We recognized that a number of challenges prevented BLM from completing many sales in most states, which limited the number of possible acquisitions. Many of the challenges that BLM cited are likely faced in many public land sales because FLTFA did not change the land sales process. However, we believed that BLM's failure to set goals for FLTFA sales and develop a sales implementation strategy limited the agency's ability to raise revenue for acquisitions. Without goals and a strategy to achieve them, BLM field offices did not have direction for FLTFA sales. Moreover, the lack of goals made it difficult to determine the extent of BLM's progress in disposing of unneeded lands to raise funds for acquisitions. As with sales, progress in acquiring priority land had been hampered by weak agency performance in developing an effective mechanism to identify potential land acquisitions and set priorities for inholdings and adjacent land with exceptional resources, which FLTFA requires. Moreover, because the agencies had not tracked the amounts spent on inholdings and agency allocations, they could not ensure compliance with the act or full implementation of the MOU.

Our report contained two matters for congressional consideration and five recommendations for executive action. We said that if Congress decided to reauthorize FLTFA in 2010, it might wish to consider revising the following two provisions to better achieve the goals of the act:

- *FLTFA's limitation of eligible land sales to those lands identified in land use plans in effect as of July 25, 2000.* This provision excludes more recently identified land available for disposal, thereby reducing opportunities for raising additional revenue for land acquisition.

- *The requirement that agencies spend the majority of funds raised from eligible sales for acquisitions in the same state. This provision makes it difficult for agencies to acquire more desirable land in states that have generated little revenue.*

Our report also contained five recommendations for executive action to improve FLTFA implementation. BLM has taken several actions to implement our recommendations. Table 1 shows the recommendations from our 2008 report and the actions the agencies reported as of November 2009.

Table 1. GAO Recommendations to Improve FLTFA Implementation and Agency Actions, as of November 2009

GAO recommendation	Agency actions
BLM develop goals for land sales	<ul style="list-style-type: none"> • <i>August 2008.</i> BLM established FLTFA land sale goals for fiscal years 2009 and 2010 of \$25 million each, according to agency officials. To set these goals, a BLM headquarters official contacted each of the BLM state offices to determine the amount of eligible land sales that could be conducted in the final 2 years of FLTFA. • <i>Fall 2009.</i> BLM revised its land sales goal for fiscal year 2010 to \$20 million.
BLM develop a strategy for implementing its land sales goals	<ul style="list-style-type: none"> • <i>August 2008.</i> BLM developed a sales incentive program that provides seed money for planning and carrying out FLTFA-eligible land sales. Specifically, the program makes available up to \$300,000 to eligible state and field offices for activities necessary to identify and pre-screen properties for possible sale under FLTFA. At a minimum, offices are to prepare a list of specific tracts for sale, with legal descriptions and a copy of the respective land use plan that supports the potential sale. As of November 2009, six states—Arizona, California, Colorado, Idaho, Montana, and New Mexico—had agreed to participate in the program, according to BLM officials.
Secretaries of Agriculture and of the Interior improve the procedures to identify and set priorities for acquiring inholdings	<ul style="list-style-type: none"> • <i>May 2008.</i> USDA stated that its Land Acquisition Prioritization System, generally used for land acquisitions under the Land and Water Conservation Fund, also satisfies the land acquisition prioritization requirements under FLTFA. USDA further stated that Forest Service would continue working with BLM to identify and set priorities for acquiring inholdings and that the Forest Service would coordinate with BLM to formalize the use of a single process to set priorities for land acquisitions. • <i>November 2009.</i> The Forest Service FLTFA program lead said that Forest Service has coordinated with BLM to formalize the use of a single process to set priorities for land acquisitions. She said that the agencies meet regularly to discuss FLTFA nominations. • <i>April 2008.</i> Interior agreed to continue to improve the procedures to identify and set priorities for acquiring inholdings. • <i>November 2009.</i> BLM officials said that the current Land and Water Conservation Fund system works well for FLTFA acquisitions and no changes have been made to this system. BLM has, however, intensified its efforts to educate state-level FLTFA implementation teams on the FLTFA land acquisition process. For example, the FLTFA lead said he has attended numerous state-level interagency team meetings to educate team members about the availability and use of FLTFA funds.

GAO recommendation

BLM establish a procedure to track the percentage of revenue spent on inholdings and on adjacent land

Agency actions

- *November 2009.* BLM officials reported that BLM gathers and maintains data on each transaction and tracks whether the parcel is an inholding or adjacent land. Officials also reported that BLM is directing field staff to note in BLM's automated land status tracking system (LR2000) whether a parcel is an inholding or adjacent land.
- *May 2008.* USDA stated that BLM is responsible under FLTFA for tracking the sales, proceeds, and disbursement of funds and that USDA will continue to assist BLM in tracking these funds.
- *November 2009.* The Forest Service FLTFA program lead reiterated USDA's May 2008 statement that BLM is responsible for tracking the use of FLTFA funding. She said that the Forest Service is merely a recipient of FLTFA funding. She added that the national MOU allocations are only targets and that they do not necessarily represent a limit on how much funding an agency can receive.
- *November 2009.* The BLM FLTFA program lead reported that BLM is gathering data on each FLTFA transaction by agency and will prepare a final report in compliance with the MOU at FLTFA's sunset if not reauthorized. He added that the allocations established in the MOU are goals only, and that, while the agencies will try to adhere to them, they ultimately will not be held to those allocations. As of November 2009, BLM reports that of the \$66.8 million approved by the Secretaries, 60 percent is for BLM, 30 percent is for the Forest Service, 5.5 percent is for the Park Service, and 4.5 percent is for the Fish and Wildlife Service.

Secretaries of Agriculture and of the Interior establish a procedure to track the fund allocations for land acquisitions by agency as provided in the MOU

Source: [GAO-08-196](#), USDA and Interior letters documenting planned agency actions in response to GAO recommendations, and information provided by BLM and Forest Service officials.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

Contacts and Acknowledgements

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. For further information about this testimony, please contact Robin M. Nazzaro at (202) 512-3841. Individuals making key contributions to this testimony were Andrea Wamstad Brown, Assistant Director; Rich Johnson; Mark Keenan; Paul Kinney; Emily Larson; John Scott; Rebecca Shea and Carol Herrnstadt Shulman.

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