

# The Salt Lake Tribune

MONDAY November 17, 2003

## Clarke had Utah dealings despite recusal

By Christopher Smith  
The Salt Lake Tribune

WASHINGTON -- U.S. Bureau of Land Management Director Kathleen Clarke, former director of the Utah Department of Natural Resources, told federal investigators that to avoid potential ethical violations, she removed herself from participation in any issues involving Utah and the BLM upon taking office in January 2002.

But her appointment calendar tells a different story.

Clarke participated in more than two dozen meetings on Utah issues as BLM director, including briefings on the scandal-plagued San Rafael land exchange, according to copies of her official schedule released to The Salt Lake Tribune.

Whether Clarke properly recused herself from Utah issues under the code of ethics for federal employees has become the subject of an investigation by the Department of Interior's Office of Inspector General, spawned by an earlier probe that found the failed San Rafael land deal was a potential \$100 million rip-off of U.S. taxpayers.

Clarke declined to be interviewed for this story and did not respond to questions submitted to her in writing. However, her spokesperson, Selma Sierra, issued a statement saying Clarke has honored her recusal and will withhold comment until the pending investigation is complete.

"Throughout her career in public service, Kathleen Clarke has been firmly committed to the highest standards of ethical conduct and continues to uphold those standards" as BLM director, said Sierra.

Agents from the inspector general's regional office in Lakewood, Colo., recently interviewed Utah BLM employees as part of the Clarke probe, adding to her embattled status as head of the federal office that oversees 264 million acres of public lands, including 23 million in Utah. Last week, Clarke issued an apology to the agency's 10,000 employees for critical comments she made of BLM staff during a speech to an oil and gas industry conference in Nevada, when she said the agency had "lost some discipline, lost some accountability, did a lot of freelancing."

Yet her own ethical discipline and accountability are now the focus of an internal investigation that could lead to administrative, civil or criminal proceedings, or may find no wrongdoing. In the course of questioning participants in the San Rafael deal earlier this year, federal auditors wrote that their investigation "raised several concerns related to the recusal in this matter" of Clarke, prompting a separate investigation.

Clarke told agents for the Inspector General's Office that she had orally recused herself from participating in "any official matters involving BLM and the State of Utah," and she had also filed a written recusal with the Office of Government Ethics that excused her from "all Utah matters," including the San Rafael exchange.

Her office calendar, however, includes 27 meetings on Utah issues, from her first week on the job in January 2002 until a visit from the inspector general agents working the San Rafael case in December of last year. Clarke spent about two months of her first year on the job visiting Utah, with her calendar indicating at least 61 days spent in the state in 2002.

Sierra said Clarke's official calendar includes numerous personal trips she made to Utah at her own expense on her own time.

Clarke told federal investigators she could "only recall two occasions when she had brief discussions" about Utah's San Rafael exchange with BLM staff. She characterized those as merely accidental hallway encounters twice in the same day with BLM Utah Director Sally Wisely and BLM's chief negotiator on San Rafael, Terry



Layers of sandstone tower near the Wedge in the San Rafael Swell in Emery County. The BLM and Utah agreed to swap federal and state land to create a San Rafael Swell National Monument, but the deal later died. (Al Hartmann/Salt Lake Tribune file photo)

Catlin.

But Clarke's calendar for that day, March 14, 2002, shows a 15-minute meeting in her office with Wisely, who later told investigators the appointment with Clarke was specifically to address her concerns on the San Rafael exchange. Clarke's appointments also include notations of a briefing on San Rafael during a visit to the Utah BLM office on Sept. 5, 2002.

While most top-level federal bureaucrats avoid including personal notations on their official calendars -- which are regularly released to the public under the Freedom of Information Act -- Clarke's official calendar includes such nonbusiness asides as a reminder to get allergy medication before one of her trips to Utah to special arrangements she made for a private dinner Oct. 10, 2002, with her former boss, Utah 1st District Rep. Jim Hansen, at the time chairman of the House Resources Committee and the political muscle behind the San Rafael exchange legislation.

"'Quiet booth' has been reserved and 3 artichoke appetizers will be awaiting our party!" reads the entry for their dinner at The Caucus Room, a popular Washington eatery about which Newsweek magazine once observed, "At this restaurant, it's who you meet, not what you eat."

Clarke also has been questioned by investigators about an April 16, 2002, dinner at Les Halles, a French bistro near the White House, that she had with former Utah colleagues who were directly involved with the San Rafael exchange. They included John Harja, who was the chief negotiator of the San Rafael swap for the state of Utah and the State Institutional and Trust Lands Administration (SITLA), as well as SITLA Director Steven Boyden and SITLA lobbyist Alan Freemyer, Hansen's former chief of staff on the resources committee. Clarke told investigators no business was discussed at the dinner and "the topic of San Rafael did not come up."

Sierra said that at Clarke's Senate confirmation in December 2001, Clarke agreed to recuse herself from matters involving the Utah Department of Natural Resources and the Utah Quality Growth Commission and "there are many BLM issues and activities in Utah, however, that these state government entities have no involvement in and therefore warrant no recusal."

But besides the Les Halles dinner, Clarke's calendar shows another Feb. 4, 2002, meeting with San Rafael negotiator Harja, who is a member of the Utah Quality Growth Commission and is referred to by investigators as a Utah Department of Natural Resources official.

Salt Lake City attorney Pat Shea, who served as BLM director in the Clinton administration, said he had two ethics officers on staff during his tenure who vetted his schedule on a daily basis, nixing even golf games with Utah colleagues out of fear of potential conflicts. Investigators found Clarke never consulted with Interior's ethics officers on any potential conflicts involving Utah issues.

"Kathleen is basically an honest person but I suspect she thought in the context of this transaction, this was politics as usual as she had seen it practiced in Utah, where in the Legislature, if somebody has a conflict on an issue they are allowed to vote on it as long as they stand in the well of the House or Senate and announce it," said Shea. "That's part of the ethos of Utah and that was her ethical guidance system."

Christopher Krupp, an attorney for the Western Land Exchange Project in Seattle, which aided BLM whistle-blowers in exposing the San Rafael scandal, said it is beyond "the bounds of plausibility" that Clarke's repeated interactions with exchange participants were mere coincidence.

"After looking at the entries in her calendar, I'm disappointed that Clarke continues to claim she recused herself from the San Rafael negotiations," said Krupp. "I'm not sure whether she thinks the public is really that naive, or just jaded to agency wrongdoing."

The focus on the woman who began her career in public service as a receptionist to then-U.S. Sen. Wallace Bennett of Utah is part of the agencywide fallout from the San Rafael land trade. The Office of the Inspector General's investigation into the defunct swap of 108,000 acres of Utah school trust lands inside a proposed San Rafael Swell National Monument for 139,000 acres of federally owned lands in Utah validated a BLM whistle-blower's charge that it was a \$100 million rip-off to U.S. taxpayers.

The nexus of the scandal was an agreement over the federal-state split of royalties from parcels of BLM land to be given to SITLA in the trade for the San Rafael trust lands. BLM appraisers estimated the tracts to be worth as much as \$128 million because of huge reserves of oil shale deposits estimated to yield 1.8 billion barrels of oil if it could be extracted economically. Although BLM negotiators were supposed to protect taxpayers' interest in those publicly owned resources, investigators found that during negotiations June 5-6, 2002, in Washington, the standard 50-50 split of any future oil shale royalties was changed to 40 percent federal, 60 percent state. Additionally, a hidden provision in the exchange legislation gave Utah half of the federal share of royalties, resulting in a true split of 20 percent federal, 80 percent state.

"You just screwed us," Wisely whispered to an Interior Department attorney when he agreed to the lopsided deal during the negotiations, according to the inspector general's report. Later, she told investigators the secret provision was an attempt to "hide the ball" from Congress with "smoke and mirrors." Harja, SITLA's negotiator, told the same investigators when asked about the skewed split: "So they're trying to hide it, that doesn't mean it's not fair."

Clarke's role, if any, in these negotiations is unclear.

Her calendar shows that on June 5, the same day the San Rafael oil shale negotiations began, she met with Wisely in her office for an hour early in the morning. Later the same day, Clarke met with Hansen, who brought along Jack Savage, the president of Oil-Tech Inc., a Utah firm that claims to have a unique method of extracting oil from oil shale deposits. Savage had told BLM officials his company wanted to get leases to extract oil from the oil shale tracts that were part of San Rafael exchange.

In correspondence since the report by the Office of Inspector General report on San Rafael was delivered to Congress, Interior Inspector General Earl Devaney has revealed investigators found additional troubling behavior by both federal and state negotiators of the deal that was not included in the report. Responding to criticism by Kevin Carter, SITLA's new director, that the inspector general's findings presented an unfair portrait of the state's role in the scandal, Devaney replied in a Sept. 3, 2003, letter that "had we opined" about the conduct of SITLA employees, the inspector general would have noted such improprieties as Harja conducting "several lengthy negotiations" on the San Rafael exchange at BLM negotiator Catlin's home in the Wasatch Front foothills "because it was quiet and had a pool."

Devaney also told Carter the inspector general did not weigh in on the ethical propriety of the direct participation in the San Rafael negotiations by Freemyer, SITLA's paid lobbyist in Washington.

"We will, however, suggest the obvious to [Interior Secretary Gale Norton] as she considers reforms to the Land Exchange process -- that a lobbyist for any state has no business whatsoever participating in the actual land exchange negotiations," Devaney wrote.

The inspector's findings of the San Rafael deal -- which died in the Senate after passing a nearly empty U.S. House late at night on a voice vote Oct. 1 when Hansen moved to suspend the rules -- drew the attention of members of Congress who believe they were hoodwinked by Interior and BLM employees.

In an Aug. 6, 2003, letter to Norton, Senate Finance Committee Chairman Sen. Charles Grassley, R-Iowa, called the inspector general's report a "jaw-dropping account" of what appears to be "a troubling culture of cover-up and conceal at Interior" and "only the tip of a very big iceberg." Although Grassley said he was concerned over Clarke's conduct in the matter, he would not comment on her job performance until the current investigation into Clarke is complete.

[csmith@sltrib.com](mailto:csmith@sltrib.com)



© Copyright 2003, The Salt Lake Tribune.

All material found on Utah OnLine is copyrighted The Salt Lake Tribune and associated news services. No material may be reproduced or reused without explicit permission from The Salt Lake Tribune.