

Project On Government Oversight

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March 2, 2011

The Honorable Ken Salazar
Secretary, Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Bob Abbey
Director, Bureau of Land Management
1849 C Street, NW, Rm 5665
Washington, DC 20240

Dear Secretary Salazar and Director Abbey:

The Project On Government Oversight (POGO) wants to bring to your attention our continued concerns about the state of ethics at the Bureau of Land Management (BLM). POGO recently obtained two Department of the Interior Inspector General (DOI OIG) reports released under the Freedom of Information Act, one from 2006 and another from 2009, that raise serious questions about the cozy relationship between management in BLM's Casper, Wyoming, Field Office and a particular company the field office is charged with overseeing. Furthermore, we are concerned by details in the 2009 report that seem to indicate a lax attitude towards ethics compliance continued after the Secretary's revised ethics guidance, and that perhaps there is even a lack of understanding of basic ethics rules by an ethics official—the authority employees rely on to interpret the rules and provide guidance and advice—at BLM's headquarters in Washington, D.C.

Our findings suggest that BLM ethics enforcement needs to rise higher to meet the principles outlined in the Interior Secretary's 2009 memo "Enhancing and Promoting an Ethical Culture within the Department of the Interior,"¹ and that ethics reforms focused on offshore regulation at the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) need to be extended onshore to BLM. BLM manages about 13 percent of the total land surface of the United States, and more than 40 percent of all land managed by the federal government.² As the federal government faces significant budget constraints,

¹ Department of the Interior, Secretary of the Interior, "Enhancing and Promoting an Ethical Culture within the Department of the Interior," August 31, 2009. http://elips.doi.gov/app_SO/act_getfiles.cfm?order_number=3288 (Downloaded February 25, 2011)

² Bureau of Land Management, "About the BLM," last updated August 19, 2010. http://www.blm.gov/wo/st/en/info/About_BLM.html (Downloaded February 25, 2011)

Interior should seriously assess whether BLM is adequately collecting revenue on these lands.

Both reports concern allegations that BLM's then-Casper, Wyoming, Field Office manager James Murkin improperly favored Neil McMurry and the McMurry Ready Mix Company. A timeline created by the DOI OIG shows that McMurry and Murkin cultivated a friendship almost as soon as Murkin took over as Field Office manager.³ Several BLM insiders and local property owners believe that under Murkin's watch there was weak enforcement of allegedly illegal trespassing and improper removal of materials by McMurry. As BLM consistently chose to resolve rather than seek criminal fines and penalties for trespassing allegations against McMurry that might more effectively deter future trespasses, a perception developed inside and outside of BLM that this friendship improperly influenced the integrity of BLM decisions.⁴

The 2009 OIG report substantiated many allegations, including that Murkin failed to disclose gifts he accepted from McMurry, and describes Murkin's unusually active role in a proposed land exchange. Specifically, Murkin facilitated a meeting with McMurry and the Office of the Solicitor in 2007 after the Solicitor initially determined that cultural artifacts found on two archeological tracts could prevent those tracts from being included in the exchange. One BLM employee told the OIG that they "could not recall any previous instance when a Field Manager facilitated such a meeting."⁵ Additionally, the OIG found that Murkin circumvented the "established process" for approval by sending the feasibility report for the land exchange directly to the Solicitor without seeking recommendations and approval from the BLM Wyoming State office.⁶ The OIG's timeline indicates that Murkin and McMurry had begun discussions about the land exchange in 1998, one year after Murkin joined the Casper office.⁷ The meeting did not successfully overcome the Solicitor's opposition, but Murkin did approve the land feasibility report and signed an Agreement to Initiate a Land Exchange.⁸ Murkin's approval came despite concerns from BLM geologists that the exchange might jeopardize BLM's ability to oversee leasing and removal of substantial limestone deposits before the exchange.⁹

According to the 2006 OIG report, Murkin said he would have to be "felony stupid" to take anything of value or use his position to advance McMurry,¹⁰ but the 2009 OIG report found that Murkin's financial disclosure forms failed to disclose the extent of his relationship with McMurry as he advocated for a land exchange to benefit McMurry. Specifically, Murkin failed

³ Department of the Interior, Office of the Inspector General, "BLM Casper Field Office Employees," November 3, 2009, p. 2. <http://www.pogoarchives.org/m/nr/doi/murkin-report-ocr-20101006.pdf> (hereinafter "BLM Casper Field Office Employees")

⁴ The DOI IG lists five cases of McMurry trespasses, four of which resulted in McMurry paying fines, fees, or royalties. Department of the Interior, Office of Inspector General, "McMurry Ready Mix," May 23, 2006, Appendix A. <http://www.pogoarchives.org/m/nr/doi/barnunn-ocr-20060628.pdf> (hereinafter "McMurry Ready Mix") POGO sources allege that there are additional trespass allegations that BLM management has refused to pursue because of this close relationship.

⁵ "BLM Casper Field Office Employees," p. 4.

⁶ While the names are redacted, the title is Murkin's, and the proposed land exchange was with McMurry, leading POGO to the logical conclusion that the redacted name in the timeline is McMurry. "BLM Casper Field Office Employees," p. 4.

⁷ "BLM Casper Field Office Employees," p. 1.

⁸ "BLM Casper Field Office Employees," p. 1.

⁹ Department of the Interior, Bureau of Land Management, "McMurry Mineral Report," p. 18.

¹⁰ "McMurry Ready Mix," p. 3.

to disclose two dinners worth \$140, and also received a loan of \$916.55 worth of patio materials from McMurry Ready Mix Company—all while determining whether to approve a land exchange to benefit Neil McMurry and his family.¹¹ While it is redacted from the OIG investigation, sources familiar with the investigation confirmed that the proposed land exchange was for 2,072.95 acres of BLM land for 30.10 acres owned by McMurry’s Eagle Creek Ranch.¹² “Murkin subsequently admitted that accepting dinners from [redacted, but POGO has confirmed that it is McMurry] while the land exchange was being processed was ‘probably wrong’ under the ethics rule, although he continued to rationalize his ongoing actions by saying it was difficult to say no to the free meals,” according to the OIG report.¹³

Perhaps even more concerning than Murkin’s actions is that it seems that ethics officials at BLM headquarters may not be as aggressive in fostering an ethical culture or as knowledgeable as they should be. The 2009 OIG report recounts the troubling responses given by a Deputy Ethics Counselor at BLM’s Washington, DC, headquarters after being presented with the facts of the Murkin investigation by a DOI OIG investigator. The report states that the DC Deputy Ethics Counselor “was asked if [redacted; POGO has confirmed that the name is Murkin] had violated any laws, regulations, or DOI instructions in regard to this matter. [The ethics official], however, was unable to provide us with a definitive answer...[and] stated that ethics and ethical conduct is largely a self-policing matter and it is up to the individual to uphold specific standards.”¹⁴

As in the case of Steve Henke, a former manager at the BLM-Farmington, New Mexico, field office whom we have previously written to you about,¹⁵ Murkin took annual ethics training on receiving gifts from prohibited sources.¹⁶ The fact that in both of these cases the BLM managers took ethics training only adds to their culpability; they should have known better because they were presumably trained to know better. In contrast to the ethics counselor’s inability to provide the DOI OIG special agent with a definitive answer, even Murkin seems to believe that he violated ethics rules. He admitted to the agent that McMurry “was probably a prohibited source” and that he “probably should have removed [redacted] from the decision-making process regarding the land exchange.”¹⁷ “I goofed,” Murkin told the agent. “Not my finest hour, I screwed this one up.”¹⁸

According to the 2009 OIG report, “this matter was discussed with an Assistant United States Attorney for the District of Wyoming, who requested a copy of this report for review.”¹⁹ However, a search of the federal Public Access to Court Electronic Records database and

¹¹ “BLM Casper Field Office Employees,” p. 1.

¹² Department of the Interior, Bureau of Land Management, “Land Exchange Proposed Between BLM and Eagle Creek Ranch: Public will gain access to 30 acres along North Platte River,” January 26, 2007. http://www.blm.gov/wy/st/en/info/news_room/2007/01/26cfo-eaglecreek.print.html (Downloaded February 25, 2011)

¹³ “BLM Casper Field Office Employees,” p. 6.

¹⁴ “BLM Casper Field Office Employees,” p. 8.

¹⁵ Project On Government Oversight, “POGO Letter to Secretary Salazar Regarding Bureau of Land Management and the Revolving Door,” October 12, 2010. <http://www.pogo.org/pogo-files/letters/natural-resources/nr-doi-20101012.html>

¹⁶ “BLM Casper Field Office Employees,” p. 8.

¹⁷ “BLM Casper Field Office Employees,” p. 8.

¹⁸ “BLM Casper Field Office Employees,” p. 10.

¹⁹ “BLM Casper Field Office Employees,” pp. 1-2.

Department of Justice website yields no evidence of any attempted prosecution or civil action against Murkin by the U.S. government.²⁰ Nor can we find evidence that Murkin was ever administratively reprimanded for this ethical failure. In fact, at some point he was promoted to the Deputy Director of National Landscape Conservation System and Community Partnerships for BLM.²¹ POGO sources believe that the OIG uncovered additional improprieties that have also been redacted from the attached report, and that Murkin's coziness extends beyond the documented impropriety. If the Justice Department declines to prosecute in cases where allegations of ethics violations are substantiated, BLM and Interior still need to punish employees administratively—by not doing so, they send the wrong signal. Unless the department holds employees accountable for violating the public trust, it cannot cultivate a culture that deters misconduct.

POGO also questions what legacy Murkin might have left in the Casper, Wyoming, office. Even the perception of favoritism can be corrosive to an office's culture and undermine the credibility of BLM enforcement actions.

Trespass Allegations

In 2006 the OIG investigated allegations that McMurry Ready Mix Company trespassed on BLM lands and removed sand and gravel base for a nearby housing development. The report did not substantiate allegations that McMurry Ready Mix Company improperly removed material owned by BLM at the Bar Nunn site to use in a housing development, but the report noted how difficult it is for BLM to detect split-estate trespasses (where different entities own the surface and mineral rights of the same land), particularly on private land.²² The OIG investigation did reveal, however, a pattern of McMurry trespassing instances on "split-estates" that resulted in fines, fees, or royalties for improperly removing federal minerals. POGO is concerned that BLM challenges detecting split-estate trespasses could result in significant lost revenue for the federal government.

When allegations of the Bar Nunn trespass surfaced, the Solicitor's office claimed that they could find "no evidence" that material had been removed, but a study by a BLM geologist and a GPS reading conducted by BLM estimated that \$388,158.54 worth of fees were owed for sand and gravel base removed. POGO worries that the OIG investigator, Solicitor's office, and BLM management ignored scientific evidence of a trespass and theft. The OIG investigator who wrote the 2006 report did not detect Murkin's close relationship with McMurry (which was substantiated in the 2009 report by another OIG special agent), and POGO questions whether the 2006 investigation was thorough enough to accurately detect a split-estate trespass and theft.

²⁰ "Public Access to Court Electronic Records." <http://www.pacer.gov/> (Downloaded February 25, 2011) and <http://www.google.com/search?q=murkin+site%3Ausdoj.gov> (Accessed February 25, 2011)

²¹ It appears that Murkin was employed as recently as May 2010. Department of the Interior, "Nominations for the Bureau of Land Management's 2010 'Excellence in Interpretation or Education' Awards," May 28, 2010. http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_information/2010/IB_2010-080.html (Downloaded February 25, 2011) Currently, the Interior Department's directory indicates that he is no longer an employee of the Department. Department of the Interior, "Directory." <http://www.doi.gov/public/Directory.cfm> (Downloaded February 25, 2011)

²² "McMurry Ready Mix," pp. 3-4, Appendix A.

Interior should investigate, as well as ask the DOI IG to consider revisiting the findings, of the alleged Bar Nunn trespass to determine if fees or fines should be recouped.

Several former BLM employees told POGO that when trespasses were found under Murkin, BLM seemed more inclined to dismiss violations rather than pursue processes that would level penalties to both discourage future violations and generate revenue for the government. The OIG found that a BLM employee did not follow BLM trespass procedures for two trespass allegations—later assessed to be enough material to warrant a trespass fine of \$35,387.77 paid by McMurry—“because he was not getting the support of his management.”²³ Private claims owners have confirmed to POGO that this is an ongoing problem and allege that BLM officials have threatened them with punitive regulatory action when they reported trespassing allegations to BLM. After BLM geologist Tom Durst publicly raised concerns about McMurry’s trespasses, he was suspended for five days for “unprofessional and discourteous conduct towards the public” an action he believes to be retaliation.²⁴

To POGO, this retaliatory action echoes the punitive actions Minerals Management Service (MMS) managers regularly took against auditors pursuing oil and gas royalty underpayments.²⁵ As the Government Accountability Office (GAO) recently noted, Interior’s management of royalty revenue is a High-Risk area for the federal government, since Interior “does not have reasonable assurance that it is collecting its share of billions of dollars of revenue from oil and gas produced on federal lands and it continues to experience problems in hiring, training, and retaining sufficient staff to provide oversight and management of oil and gas operations on federal lands and waters.”²⁶ BLM seems to be experiencing similar problems, and these OIG reports demonstrate that while most public scrutiny has been focused on BOEMRE’s problems, BLM may be failing to collect taxpayers’ fair share of fines and royalty revenue for material removed from public lands.

The GAO also recently found that BLM cannot accurately calculate the variety of illegal activities occurring on federal lands. Our sources, composed of both private claims owners and former BLM employees, suggest that this may be deliberate to the extent that management purposely ignores allegations of theft or threatens regulatory action against claims owners that complain about trespassing. The 2006 OIG investigation found that trespass problems have been an acknowledged “sideline” issue for the agency.²⁷ As BLM reevaluates its law enforcement priorities, POGO urges the agency to consider emphasizing loss of resources that deprives taxpayers of their fair royalty and rental revenue.

²³ “McMurry Ready Mix,” p. 2.

²⁴ “McMurry Ready Mix,” p. 2.

²⁵ Project On Government Oversight, “POGO Disgusted by Reports of Retaliation Against Interior Department Auditors,” September 21, 2006. <http://www.pogo.org/pogo-files/alerts/natural-resources/nr-ogr-20060925.html>; Edmund L. Andrews, “Suits Say U.S. Impeded Audits for Oil Leases,” *New York Times*, September 21, 2006. <http://www.nytimes.com/2006/09/21/business/21royalty.html?hp&ex=1158897600&en=6a768e6c6f4a155a&ei=5094&partner=homepage> (Downloaded February 25, 2011)

²⁶ Government Accountability Office, *GAO’s 2011 High-Risk Series: An Update* (GAO-11-394T), February 17, 2011. <http://www.gao.gov/new.items/d11394t.pdf> (Downloaded February 25, 2011)

²⁷ “McMurry Ready Mix,” p. 4.

We regret that this is the second time we have had to write concerning BLM's inaction or seeming indifference to BLM managers' coziness with industry. While we applaud Director Abbey for asking for the OIG to investigate former BLM regional manager Steve Henke's walk through the revolving door to join the New Mexico Oil and Gas Association,²⁸ BLM should be more responsive to these findings. We urge you to take action to ensure that all Interior employees have an appropriate arm's length relationship with the industries they oversee.

Therefore, POGO strongly recommends that Interior:

- Extend the restrictions for BOEMRE's offshore inspectors issued last year to the rest of BLM and to all of Interior, especially bureau Directors and the Secretary
- Ensure new and existing ethics restrictions are strictly enforced
- Ask the OIG to determine if other BLM Casper office employees have inappropriate relationships with companies or associations with a stake in BLM's operations, and to evaluate BLM Casper's actions for favoritism
- Ask the OIG to determine if geologists or other employees in the Casper office have been retaliated against for raising concerns about trespassing or theft on federal or private lands
- Certify that Interior has pursued appropriate fines and fees for lost taxpayer revenue
- Assess whether more BLM resources should be devoted to preventing theft of federal property and resources, and whether regulations or policies need to be amended to better address split-estate concerns
- Take action against employees who have violated revolving door and other ethics rules

Please contact Nick Schwellenbach or Mandy Smithberger at (202) 347-1122 if you have any questions or need further information or evidence to aid your efforts. Thank you for your consideration of this very important matter.

Sincerely,



Danielle Brian
Executive Director

CC: Senator Jeff Bingaman
Senator Lisa Murkowski
Senator Jack Reed
Representative Doc Hastings
Representative Edward Markey
Representative Mike Simpson
Representative James Moran

²⁸ Project On Government Oversight, "POGO Letter to Secretary Salazar Regarding Bureau of Land Management and the Revolving Door," October 12, 2010. <http://www.pogo.org/pogo-files/letters/natural-resources/nr-doi-20101012.html>