United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

December 19, 2014

VIA E-MAIL and U.S. MAIL

Martha L. King, Esq.
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, Colorado 80027

Richard J. Zack, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799

Re: U.S. Department of the Interior, Office of the Inspector General Report of Investigation U.S. Bureau of Reclamation ARRA Funds–Case No. 01-CO-13-0243-I (Blatt-St. Marks)

Dear Ms. King and Mr. Zack:

Pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1553, 123 Stat. 115, 297-302 (2009) (ARRA), this constitutes the determination of the U.S. Department of the Interior (Department) regarding Kenneth Blatt-St. Marks' allegation that the Chippewa Cree Tribe (CCT) subjected him to a prohibited reprisal as a result of making a protected disclosure. Based upon our consideration of the May 27, 2014 U.S. Department of the Interior, Office of Inspector General (OIG) Report of Investigation No. OI-CO-13-0243-I (ROI), we find that CCT engaged in a prohibited reprisal against Mr. Blatt-St. Marks.[1] A redacted version of the OIG ROI and relevant attachments are included here as Exhibit 1.

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[1] It is important to note that, pursuant to the ARRA provisions governing this matter, the agency head's role is to determine both whether a prohibited reprisal occurred and what the appropriate remedy for that prohibited reprisal should be. Accordingly, the Department has not revisited any of the findings contained in the ROI. The Department also has not examined the merits of the actions of any party other than the CCT. In addition, the Department has not examined the merits of any new allegations brought by the CCT Business Committee against Mr. Blatt-St. Marks in connection with its removal of him from the Tribal Chairman position on December 1, 2014. *See* CCT Resolution No. 190-14 (Dec. 1, 2014)(authorizing and approving the decision by the CCT Business Committee to expel Mr. Blatt-St. Marks for neglect of duty and gross misconduct pursuant to Article V § 2 of the CCT Constitution).

I. ARRA Standards and Applicability

A. Pertinent ARRA Procedures, Standards, and Remedies

Much like long-standing statutory whistleblower protection for federal employees with respect to the activities of federal agencies, Congress prohibited ARRA funding recipients (*i.e.*, "non-Federal employers") from taking reprisals against their own employees for making protected disclosures with respect to "covered" (*i.e.*, ARRA) funds or ARRA-funded activities. *See* ARRA §§ 1553(a); 1553(g)(4)("Non-Federal employer"); *compare* 5 U.S.C. § 2302(b)(8). When an individual submits a complaint alleging that he or she was subjected to a prohibited reprisal, the appropriate Office of Inspector General of the government agency having jurisdiction with respect to the covered funds must investigate it. ARRA § 1553(b)(1).

After receiving the Inspector General's findings, the agency head must determine whether a sufficient basis exists to find a prohibited reprisal by the "non-Federal employer" related to a protected disclosure.[2] *Id.* § 1553(c)(2). While a complainant carries the burden of demonstrating that the protected disclosure was a "contributing factor" in the reprisal, ARRA permits the complainant to prove the prohibited reprisal by circumstantial evidence, including the use of evidence of the employer's knowledge of the disclosure and the timing of the reprisal relative to the disclosure (with respect to timing, this is addressed in ARRA as "evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal"). *Id.* § 1553(c)(1)(A). The employer has the opportunity to rebut a complainant's showing that the disclosure was a contributing factor in the reprisal by demonstrating "by clear and convincing evidence that the employer would have taken the action constituting the reprisal in the absence of the disclosure." *Id.* § 1553(c)(1)(B).

If the agency head finds that there was a prohibited reprisal by the employer, the agency head shall either issue an order denying relief in whole or in part or take "1 or more of the following

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[2] ARRA defines a "non-Federal employer" as:

> [A]ny employer (i) with respect to covered funds— (I) the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and (II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds . . .

ARRA, § 1553(g)(4). Likewise, Mr. Blatt-St. Marks comes within the broad definition of "employee" found in ARRA, § 1553(g)(3)(A): "an individual performing services on behalf of an employer . . . ." Moreover, it appears from the record that Mr. Blatt-St. Marks received a paycheck from CCT. *See* ROI at 13; Att. 67. In addition, CCT by contract expressly agreed to be subject to ARRA's whistleblower provisions. *See* discussion *infra* at 3-5.

actions:" (a) order that the employer "take affirmative action to abate the reprisal," (b) order the employer to "reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply . . . if the reprisal had not been taken," or (c) order that the employer pay the complainant's "costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant" in bringing the complaint of reprisal. *Id.* § 1553(c)(2).

B. ARRA Section 1553 Applies to CCT

In September 2009, CCT and the Department's Bureau of Reclamation (USBR) entered Modification No. 6 to CCT's Annual Funding Agreement No. 06NA602127 (ROI Att. 6) pursuant to P.L. 93-638. Under Modification No. 6, CCT received $19,860,000 in ARRA funding for the Rocky Boy's Rural Funding Water System. Modification No. 6 expressly incorporated ARRA §1610(b), summarizing that section as follows:

> The American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, requires the Secretary to identify all projects to be conducted under the authority of Public Law 93-638 and other relevant Tribal contracting authorities. Pursuant to Section 1610(b) of ARRA, in each funding agreement that transfers ARRA funds to Tribes pursuant to self-determination contracting authorities, the Secretary "shall incorporate provisions to ensure that the agreement conforms with the provisions of this Act regarding timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act."[3]

Att. 6 at 2 (unless otherwise noted, further "Att." references are to attachments to the ROI).

Modification No. 6 also states that the "Tribe and Reclamation acknowledge that obligation and expenditure of ARRA funding under this modification is subject to the additional terms and conditions contained in Attachment No. 1 hereto, entitled 'Addendum to Tribal Contracting Agreement to Transfer Funds Pursuant to the American Recovery and Reinvestment Act of 2009.'" *Id.* at 3.

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[3] The actual statutory language provides, "All projects to be conducted under the authority of the Indian Self-Determination and Education Assistance Act, Tribally-Controlled Schools Act, the Sanitation and Facilities Act, the Native American Housing and Self-Determination Assistance Act and the Buy-Indian Act shall be identified by the appropriate Secretary and the appropriate Secretary shall incorporate provisions to ensure that the agreement conforms with the provisions of this Act regarding timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act." ARRA § 1610(b).

Attachment No. 1 includes the following language:

> 10. Prohibition of reprisals against contractor whistleblowers
>
> No employee of the Contractor or any subcontractor shall be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of the employee's duties, to the Recovery Accountability and Transparency Board, the Inspector General, the Comptroller General, a member of Congress, a state or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, a Federal agency head, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of this addendum/contract; (2) a gross waste of funds awarded pursuant to this addendum/contract; (3) a substantial and specific danger to public health or safety related to the implementation or use of funds awarded pursuant to this addendum/contract; (4) an abuse of authority related to the implementation or use of funds awarded pursuant to this addendum/contract; or (5) a violation of law, rule, or regulation related to this addendum/contract (including the competition for or negotiation of the addendum/contract). This prohibition is enforceable pursuant to processes set up by ARRA. Other provisions of section 1553 also apply.[4]

Id. at 9 (emphasis added).

The "Definitions" section of the Addendum identified "Recipient," "Contractor," or "Tribe" to mean the "Chippewa Cree Tribe, Chippewa Cree Construction Corporation, a federally-recognized Indian Tribe or Tribal Organization, as defined at 25 USC 450b." *Id.* at 7.[5] Finally,

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[4] This language tracks closely to ARRA § 1553(a), which provides: "An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of the employee's duties, to the [Recovery Accountability and Transparency] Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of – (1) gross mismanagement an agency contract or grant relating to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds." (material in brackets added).

[5] The "Definitions" found in the Addendum to Modification No. 6 closely track the "Definitions" in ARRA. See *supra* n.2.

the Addendum provided that "in the event of a conflict between ARRA and any other provisions of law including the Indian Self-Determination and Education Assistance Act, the provision of ARRA and its objectives control." *Id.* at 11.[6]

For these reasons, and as further borne out in the following factual discussion, we conclude that ARRA's whistleblower provision, §1553, applies to the actions that CCT took with respect to Mr. Blatt-St. Marks that were the subject of the OIG ROI.

II. Findings of Fact

In issuing this determination, we rely on the following evidence set forth in the May 27, 2014 ROI, as well as recent public developments:

1. CCT through USBR has been receiving funding for construction of a pipeline to provide sustainable water to residents of the Rocky Boy's Reservation. ROI at 2.

2. On September 15, 2009, through Modification No. 6 to the Title IV Annual Funding Agreement between USBR and CCT (No. 06NA6002127), USBR provided CCT an additional $19,860,000 in ARRA funding. Att. 6.

3. CCT agreed that ARRA's whistleblower provisions would apply to the "obligation and expenditure of ARRA funding" provided under the obligation. Att. 6 at 3 and 9.

4. CCT awarded a contract to the Chippewa Cree Construction Company (C-4), a tribally-owned company to carry out work contemplated by Modification No. 6. Att. 4. Under Modification No. 8, dated September 9, 2010, USBR provided CCT with an additional $7,666,000 in ARRA funding to cover payments under the agreement for that fiscal year. Att. 5.

5. On April 10, 2010, C-4 entered into a subcontract with Mr. Blatt-St. Marks (d/b/a/ Arrow Enterprises) to excavate, install water lines, and bond all joints as specified by pipeline project plans and specifications. Att. 8.

6. On August 14, 2012, Mr. Blatt-St. Marks contacted the OIG alleging the CCT Business Committee's questionable expenditure of tribal and federal funds, including ARRA funds provided to C-4. ROI at 2; Att. 9.

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[6] Similarly, Modification No. 8 to Annual Funding Agreement No. 06NA602127, dated September 9, 2010, obligated an additional $7,666,000 in ARRA funds to the Rocky Boy's project. Att. 5. It contained substantially identical language with respect to ARRA as found in Modification No. 6. *See* Modification No. 8 at 2, 3 (reference to "Attachment No. 1"), 7 (reference to § 1610(b)), and 9-10 ("Prohibition of reprisals against contractor whistleblowers").

7. On November 6, 2012, Mr. Blatt-St. Marks won a tribal election and became Chairman of the CCT Business Committee. ROI at 2; Att. 10.

8. On December 27, 2012, Mr. Blatt-St. Marks submitted a letter to USBR's Deputy Regional Director indicating that Mr. Blatt-St. Marks' office would continue to investigate potential conflicts of interest and ethical violations. ROI at 2-3; Att. 11.

9. In his December 27, 2012 letter to USBR, Mr. Blatt-St. Marks advised of the impending termination of the C-4 CEO, Mr. Tony Belcourt, who was suspected of embezzling ARRA funds. ROI at 3.

10. On January 23, 2013, Mr. Blatt-St. Marks met with USBR, advising that C-4 had submitted false Quarterly Financial Reports to USBR and that the CCT Business Committee had held an emergency meeting to "replenish $3.5 million in federal funds" provided by USBR for the CCT tribal water project. Att. 9.

11. As a result of Mr. Blatt-St. Marks' disclosures, OIG issued an audit report on December 16, 2013, and identified $12,914,545 in questioned costs, $4,379,460 of which was related to ARRA-funded contracts. Att. 15.

12. On March 5, 2013, Mr. Blatt-St. Marks issued an open letter to CCT members announcing his cooperation with federal agencies investigating the misuse of ARRA and non-ARRA federal funding. ROI at 3; Att. 16.

13. On March 9, 2013, Mr. Blatt-St. Marks requested whistleblower protection from the U.S. Attorney's Office, District of Montana. The U.S. Attorney forwarded the request to the OIG. OIG initiated an investigation on April 18, 2013. ROI at 15; Atts. 23 and 24.

14. On March 15, 2013, the CCT Business Committee held a closed door meeting and voted to suspend Mr. Blatt-St. Marks as CCT Chairman. The letter of suspension was signed by the following Business Committee members: Vice-Chairman Rick Morsette, John "Chance" Houle, Ted Whitford, Harlan Baker, Ted Demontiney, Dustin Whitford, Ted Russette III, and Gerald Small. ROI at 6; Att. 25.

15. On March 25, 2013, the Business Committee removed Mr. Blatt-St. Marks from the Chairman position for neglect of duty and gross mismanagement in violation of Article V, § 2 of the CCT Constitution.[7] ROI at 7; Att. 32.

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[7] Subsequently, the charges that the Business Committee brought as its basis for removing Mr. Blatt-St. Marks from his position were that: (1) in allegedly acting without Business Committee approval, Blatt-St. Marks violated tribal law by knowingly and willfully appointing the Chief Judge in violation of the Chippewa Cree Tribe's Constitution; (2) Blatt-St. Marks violated tribal by-laws, by allegedly voting to hire a prospective employee, although he was not permitted to do so unless in the event of a tie vote by the remaining members of the Business Committee; (3)

16. On April 18, 2013, based on the OIG's investigation, including information provided by Mr. Blatt-St. Marks, a federal grand jury in Billings, Montana, returned an indictment against six individuals, including CCT Business Committee member John "Chance" Houle and C-4 CEO Tony Belcourt and his wife Hailey Belcourt. The indictment alleged a conspiracy to embezzle $311,000 in ARRA funds intended for the Rocky Boy's/North Central Montana Regional System. The charges included violations of federal statutes ranging from conspiracy to defraud the United States and theft from a program receiving federal funding to money laundering. A superseding indictment, filed on September 20, 2013, dropped the charges against Houle and amended the charges to include bribery for the remaining individuals.[8] ROI at 3; Atts. 19 and 20.

III. CCT Engaged in a Prohibited Reprisal

A. Mr. Blatt-St. Marks' disclosures were protected and were a contributing factor in his removal.

Based on an examination of the facts in the OIG ROI and Section 1553 of ARRA, we find that Mr. Blatt-St. Marks has met the burden of demonstrating under ARRA's whistleblower provision that, on March 25, 2013, he was subjected to a prohibited reprisal by CCT. A complainant may

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Blatt-St. Marks violated tribal law by allegedly verbally assaulting numerous employees; (4) Blatt-St. Marks violated tribal law by allegedly making inappropriate comments of a sexual nature to an employee; (5) Blatt-St. Marks violated the tribe's by-laws and code of ethics by allegedly trading in two cars belonging to the Tribe in order to purchase a $68,000 Cadillac Escalade for his own personal use and enjoyment; (6) Blatt-St. Marks allegedly released thousands of dollars to various members of the tribal community after he was sworn into office; and (7) Blatt-St. Marks as Chairman banned the use of tribal credit cards and allegedly knowingly and willfully used and continues to use a tribal credit card for unauthorized expenses. *See* ROI at 10-13; Atts. 25 and 58.

[8] C-4 CEO Tony Belcourt was convicted on federal corruption charges, including charges directly involving ARRA-funds, of embezzlement using a nominee vendor, Leischner, for pipe vending, "bribery/accepting" from a company called Hunter Burns Construction (HBC), and a $100,000 fraudulent mobilization payment to HBC. On August 15, 2014, Belcourt was sentenced by the federal district court, Billings, Montana, to seven and half years in prison and ordered to pay $667,183 in restitution, including $330,000 to CCT as related to the Rocky Boy's Reservation. *See United States v. Tony James Belcourt*, Judgment in a Criminal Case, U.S. District Court, District of Montana at Great Falls, 04:13-cr-00082, 4:13-cr-00039 and 4:13-cr-00099 (Aug. 15, 2014). On June 24, 2014, John "Chance" Houle, former CCT Business Committee member, was arrested and indicted on ten felonies. Houle pled guilty to four felonies, including one of bribery from HBC, directly involving ARRA funds. *United States v. John Chance Houle et al.* Indictment, U.S. District Court, District of Montana, Great Falls Division CR-14-45-GF-BMM (June 19, 2014), CR 14-50-GF-BMM (June 19, 2014) and CR 14-67-GF-BMM (December 1, 2014).

successfully demonstrate a violation of ARRA § 1553 if he can show that his protected disclosure was a "contributing factor" in his employer's reprisal against him. ARRA § 1553(c)(1)(A)(i). ARRA expressly permits a complainant to make such a showing by use of circumstantial evidence, including (1) evidence that the employer "knew of the disclosure;" or (2) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal." *Id.* § 1553(c)(1)(A)(ii).

As an initial matter, Mr. Blatt-St. Marks became Chairman of CCT's business committee on November 6, 2012. ROI at 2; Att. 10. CCT was a recipient of well over $20 million in ARRA funds, through USBR, to fund the construction of infrastructure for a pipeline to provide sustainable water to residents of the Rocky Boy's Reservation. ROI at 2; Atts. 4 and 6. CCT awarded the contract to C-4 and, on April 10, 2010, C-4 entered into a subcontract with Mr. Blatt-St. Marks (d/b/a Arrow Enterprises) to excavate and install water lines and bond all joints as specified by the project's plans. ROI at 2; Att. 8.

Mr. Blatt-St. Marks' disclosures to Department officials were protected under ARRA because they related to "gross mismanagement of an agency contract or grant relating to covered funds" and "gross waste of covered funds." ARRA § 1553(a)(1) and (2). On August 14, 2012, Mr. Blatt-St. Marks contacted the OIG regarding the CCT Business Committee's alleged questionable expenditures of tribal and federal funds—including ARRA funds provided to C-4. In addition, on December 27, 2012, he wrote a letter informing USBR's Deputy Regional Director of a possible conflict of interest and ethical violations in performing ARRA-funded work by C-4 CEO Tony Belcourt. ROI at 3; Att. 11. On March 5, 2013, Mr. Blatt-St. Marks sent a letter to CCT members, announcing his intention to cooperate with and provide information to federal agencies in the investigation of misuse of federal funds on the Rocky Boy's Reservation. ROI at 3; Att. 16. These communications fit soundly within the category of disclosures that ARRA §1553 was enacted to protect.

Mr. Blatt-St. Marks has also demonstrated that his disclosures were a contributing factor in his removal. A complainant can demonstrate that a protected disclosure was a contributing factor in a prohibited reprisal action by showing that one or more individuals with actual or constructive knowledge of the disclosure took or influenced those taking the retaliatory action. *See, e.g., Aquino v. Department of Homeland Security*, 2014 M.S.P.B. 21, 121 M.S.P.R. 35, 2014 MSPB LEXIS 3374 at **17-18 (2014). Even assuming no one affiliated with CCT was aware of Mr. Blatt-St. Marks' disclosures to the Department in 2012 at the time he made them, then certainly by virtue of his CCT-wide letter of March 5, 2013, CCT members generally and CCT Business Committee members specifically knew of his intention to cooperate with OIG. Att.16. On March 25, 2013, in evident response to Mr. Blatt-St. Marks' letter, the Business Committee removed him from his Chairman position. ROI at 7; Att. 32. Thus, we conclude that the CCT Business Committee's removal of Mr. Blatt-St. Marks was influenced by persons having either actual or constructive knowledge of his protected disclosures.

Even if this evidence were not enough to find a § 1553(a) violation, the temporal proximity between Mr. Blatt-St. Marks' protected disclosures and his removal creates a sufficient basis for concluding that his protected disclosures were a contributing factor in his removal. *Aquino, su-*

pra, 2014 LEXIS 3374 at **19-21 (citing *Dorney v. Department of the Army*, 117 M.S.P.R. 480 at 11 (2012))("only days after learning about the appellant's disclosures, the appellant's supervisor reported to upper-level management his concerns about the . . . appellant's work performance, which was then exclusively relied upon . . . in proposing and effectuating the appellant's removal") (ellipses added). Mr. Blatt-St. Marks was removed within 20 days after issuing an open letter to the CCT membership concerning alleged misuse of ARRA funds. This is clearly "evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal." ARRA § 1553(c)(1)(A)(i)(II). Accordingly, Mr. Blatt-St. Marks has met the required burden.

B. CCT has failed to rebut by clear and convincing evidence Mr. Blatt-St. Marks' showing that his disclosure was a contributing factor in his removal.

Despite the showing made by the complainant, the Department may not find that CCT committed a prohibited reprisal against Mr. Blatt-St. Marks if CCT can demonstrate by "clear and convincing evidence" that it would have removed Mr. Blatt-St. Marks had he not made protected disclosures to OIG and USBR. ARRA § 1553(c)(1)(B). We find that CCT has failed to meet that standard.

CCT's documentary evidence of its basis for removing Mr. Blatt-St. Marks, provided in the form of a letter with exhibits purporting to show that CCT would have removed Mr. Blatt-St. Marks in the absence of the disclosures because of his various alleged misdeeds, is not persuasive. Not until August 25, 2013 —*five months* after Mr. Blatt-St. Marks' removal— did CCT provide this information to the OIG special agent investigating Mr. Blatt-St. Marks' complaint of prohibited reprisal. Even though OIG requested interviews with members of CCT's Business Committee, CCT submitted only written documentation in support of its allegations against Mr. Blatt-St. Marks. ROI at 13; Atts. 58 and 59. Accordingly, the evidence lacks both foundation and authentication, which greatly lessens its weight. *See generally* Federal Rules of Evidence 104 and 401. Moreover, CCT's documentary evidence fails conclusively to establish that Mr. Blatt-St. Marks acted improperly regarding the various transactions he is alleged to have conducted without authority. For the majority of the irregularities allegedly justifying Mr. Blatt-St. Marks' removal, we have found there to be at least equal evidence of full disclosure and/or tribal approval related to the transactions in issue.

Perhaps most tellingly, CCT undertook to remove Mr. Blatt-St. Marks only *after* he made his disclosures. Prior to that time, there is no indication of any CCT or Business Committee investigation or other activity with respect to any of the alleged misconduct offered as reasons for Mr. Blatt-St. Marks' removal. Further, as noted above, Mr. Blatt-St. Marks' removal appears so close in time to when his protected disclosures were made openly to the CCT membership, that a reasonable person could conclude that those disclosures were a contributing factor in his remov-

al. Accordingly, CCT has failed to show by "clear and convincing evidence" that it would have taken this action against Mr. Blatt-St. Marks in the absence of his protected disclosures.[9]

IV. Ordered Remedy

ARRA prescribes that if the agency head finds that there was a prohibited reprisal by a non-federal employer, then the agency head "shall take 1 or more of the following actions:"

(a) "Order the employer to take affirmative action to abate the reprisal,"

(b) "Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken," or

(c) "Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant" in bringing the complaint of reprisal. ARRA § 1553(c)(2).

Recently, the Appellate Court of the Chippewa Cree Tribe, Rocky Boy's Indian Reservation issued a final opinion regarding the validity of an election protest challenging the results of the Special Election for Chairmanship held on July 30, 2013, wherein Mr. Blatt-St. Marks received the most votes. On November 19, 2014, the Appellate Court upheld the Tribal Court's ruling that the Election Board's validation of the protest was null and void and remanded the matter to the Election Board, stating that "[o]n the whole, the Election Board performed well in carrying out the special election, and the Tribe and Tribal membership have reason to be confident in the election results."[10]

Having found that CCT engaged in a prohibited reprisal, the Department is authorized to order relief consistent with the terms of ARRA, although we would prefer that CCT independently re-

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[9] "Clear and convincing evidence" is that degree of evidence that "produces in the mind of the trier of fact a firm belief as to the allegations sought to be established." Aquino v. Department of Homeland Security, 2014 M.S.P.B. 21, 121 M.S.P.R. 35, 2014 MSPB LEXIS 3374 at **10.

[10] We have learned that the CCT Business Committee has once again removed Mr. Blatt-St. Marks from his position as Tribal Chairman on December 1, 2014, based upon two new allegations of neglect of duty and gross misconduct under Article V, Section 2 of the Constitution for the Chippewa Cree Tribe (*see* Resolution No. 190-14 of CCT Rocky Boy's Reservation dated December 1, 2014). Our determination in this case, however, is limited only to consideration of the removal of Mr. Blatt-St. Marks by the Business Committee on March 25, 2013, and of the facts in the OIG ROI. This determination is a legal determination only with respect to whether a prohibited reprisal based upon a protected disclosure occurred. It should not be construed as an endorsement of any particular action or position taken by Mr. Blatt-St. Marks, nor a position regarding pending tribal leadership and election disputes.

solve this issue in accordance with the ARRA remedies set forth above. Based upon the record to date, including correspondence received from the complainant since July 2014 when the Department notified the parties of its engagement in this determination, we are not aware of specific relief sought by Mr. Blatt-St. Marks in connection with his ARRA complaint. Accordingly, no later than January 12, 2015, Mr. Blatt-St. Marks shall detail the relief, if any, that he seeks consistent with the terms of ARRA. We also will consider any submission by CCT, which should be submitted to the Department within fifteen (15) days after Mr. Blatt-St. Marks' submission is due. If the parties wish to enter into discussions or negotiations in an effort to settle this matter, they shall promptly notify the Department.

V. Right of Review

ARRA provides a right of appeal for "any person adversely affected or aggrieved by an order issued under [§ 1553(c)(2)]." ARRA § 1553(c)(5). Any such person may obtain review of this decision by petitioning the United States Court of Appeals for the circuit in which the reprisal is alleged to have occurred. *Id.* A petition seeking review of this decision must be filed no more than 60 days after issuance of the order." *Id.*

VI. Resolution of Issues Arising from December 16, 2013 Audit

Apart from this determination on Mr. Blatt-St. Marks' request for whistleblower protection, we understand that CCT has yet to resolve with USBR the issues arising out of OIG's December 16, 2013 audit report, *see* Att. 15, despite USBR's efforts to bring that matter to a close. Although USBR and CCT had a series of meetings during 2014 and made significant progress to address the audit findings, we understand that discussions have stalled in recent months. Notwithstanding the determination made here concerning Mr. Blatt-St. Marks' whistleblower status and any other issues currently facing CCT arising out of recent election and leadership disputes, we strongly encourage CCT to continue working with USBR to resolve as soon as possible all outstanding questions around the findings of the audit.

Sincerely,

Hilary Tompkins
Solicitor

Enclosure: Exhibit 1
(a) Report of Investigation No. 01-CO-13-0243-I (redacted)
(b) ROI Attachments 4, 5, 6, 8, 9, 10, 11, 15, 16, 19, 20, 23, 24, 25, 32, 58 and 59 (some attachments redacted)

cc: LeAnn Montes, Esq.