



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Bureau of Land Management Official Did Not Comply With the Federal Ethics Pledge

This is a revised version of the report prepared for public release.



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REPORT OF INVESTIGATION
OI-SI-21-0728-I

I. EXECUTIVE SUMMARY

We investigated an allegation that a Bureau of Land Management (BLM) Official did not comply with ethics obligations by attending a meeting in an official capacity with a former employer. We also investigated allegations that the BLM Official worked on public land orders (PLOs) and assisted with litigation against the BLM that involved the BLM Official's former employers.

We determined that the BLM Official did not comply with paragraph 2 of the Ethics Pledge under Executive Order 13989 (Ethics Pledge) by participating in a meeting with Former Employer 1 within 2 years of the date of the BLM Official's appointment. In making this finding, we acknowledge that the Departmental Ethics Office (DEO) did not identify Former Employer 1 as one of the BLM Official's former employers for purposes of the Ethics Pledge under the interim ethics guidance it issued and that this contributed to the violation. We further recognize that the BLM Official disclosed the meeting with the former employer to the DEO after receiving updated ethics guidance that correctly identified Former Employer 1 as a former employer for purposes of the Ethics Pledge. The BLM Official did not have any other meetings with former employers that violated the Ethics Pledge once the BLM Official received the updated ethics guidance.

We determined that the BLM Official did not violate the Ethics Pledge by participating in the PLOs or the BLM lawsuits because they were not "particular matters involving specific parties that were directly and substantially related to a former employer or former clients" as those terms are defined under the Ethics Pledge. Further, we did not find evidence that the BLM Official violated the relevant ethics regulation concerning the appearance of impartiality by participating in the PLOs because they are not particular matters involving specific parties within the meaning of that regulation. Finally, we found that the BLM Official did not violate that same ethics regulation by participating in the BLM lawsuits because the BLM Official did not have a "covered relationship" that would trigger application of the regulation with respect to the lawsuits.

We are providing this report to the Director of the BLM for any action deemed appropriate.

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II. RESULTS OF INVESTIGATION

In 2021, the BLM Official began their employment with the U.S. Department of the Interior (DOI) and was appointed as an official at the BLM later in 2021. The BLM Official told us that they worked on issues related to BLM policy and programs and helped translate the administration's priorities into the BLM's work. Consistent with that role, the BLM Official acted as a liaison in contacts with other DOI bureaus and offices, Congress, State and local governments, and other organizations, including environmental and conservation organizations, that had an interest in BLM programs. As a political appointee, the BLM Official was subject to the Ethics Pledge¹ as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct).²

A. Facts

1. *The BLM Official's Pre-Government Employment and Federal Ethics Training and Guidance*

Before the DOI appointment, the BLM Official served as a senior official for Former Employer 1 and worked as a senior official at Former Employer 2.

In 2021 before joining the DOI, the DEO conducted a preliminary ethics review with the BLM Official. As a part of that review, the BLM Official responded to questions from the Alternate Designated Agency Ethics Official (ADAEO) about financial interests and former employment. The day the BLM Official joined the DOI, they received an hour of initial ethics training from a DOI ethics official. The ethics training provided general guidance on the Ethics Pledge and the Standards of Ethical Conduct, including restrictions on an employee's participation in matters involving the employee's former employer, and the employee's duty to recuse themselves from official matters in which the employee's impartiality might be questioned. On the same day, the BLM Official signed the Ethics Pledge.

In addition to this initial ethics training, the day after joining the DOI, the BLM Official received an email from the Designated Agency Ethics Official (DAEO) that provided an overview of the public financial disclosure report required to be filed within 30 days of the BLM Official's appointment.³ The DAEO's email explained that while the BLM Official was completing the public financial disclosure report, the DEO would issue interim ethics guidance and a draft recusal document that would be updated after the DEO reviewed and certified the BLM Official's public financial disclosure report. The email from the DAEO provided general ethics reminders, including a summary of the Ethics Pledge requirements and the Standards of Ethical Conduct.

In early 2021, the ADAEO developed draft interim ethics guidance using the information the BLM Official provided to the DEO before joining the DOI. The information the ADAEO used included the BLM Official's resume, which listed former employers and dates of employment. A few days later, the ADAEO provided the BLM Official with the draft interim ethics guidance for review. This guidance advised the BLM Official on the recusal obligations with respect to former employers. The guidance stated that, for purposes of paragraph 2 of the Ethics Pledge, the BLM Official's former employer was

¹ Exec. Order No. 13989, 86 Fed. Reg. 7029 (issued January 20, 2021).

² 5 C.F.R. § 2635.102(h).

³ See 5 C.F.R. § 2634.201(b) (requiring individuals occupying a public filer position to file a public financial disclosure report within 30 days of assuming the position); see also 5 C.F.R. § 2634.202 (defining "public filer").

Former Employer 2. The draft interim ethics guidance did not list Former Employer 1 as a former employer for purposes of the Ethics Pledge. The BLM Official acknowledged receipt of the draft interim ethics guidance, telling the ADAEO that it “look[ed] good.” In 2021, the DAEO and the ADAEO signed and issued the interim ethics guidance to the BLM Official.

2. The BLM Official’s Participation in a Public Meeting on a DOI Program and an Official Meeting Involving Former Employer 1

In 2021, the DOI hosted a public meeting related to one of its programs. The BLM Official represented BLM at this meeting. During the meeting and public comment period thereafter, the DOI sought information from and met with private companies, conservation groups, Indigenous organizations, academics, and others. The material gathered by the DOI would be used to inform a DOI interim report setting forth recommendations for the DOI and Congress.

In 2021, Former Employer 1 submitted comments to the DOI on proposed changes to the Federal Government program. After the meeting and as part of their official duties, the BLM Official participated in meetings with industry members and other groups who submitted comments during this process.

Later in 2021, the BLM Official and two other officials from the DOI attended a meeting with three representatives from Former Employer 1. During the meeting, Former Employer 1 presented its views on proposed changes to the Federal Government program and provided information on its work. Former Employer 1 also presented analysis and research that it had performed on the DOI’s programs, but the information was not specific to a particular project. The BLM Official told us that they did not attend any other meetings where Former Employer 1 was in attendance that did not involve at least “five or six other groups,” and we found no evidence to the contrary.

3. The BLM Official’s Public Financial Disclosure Report and Disclosure of the Meeting With Former Employer 1 to the DEO

In accordance with the ethics rules, in 2021, the BLM Official submitted a public financial disclosure report, which the DEO received and reviewed. The BLM Official’s submission included a list of former employers—namely, Former Employer 2 and Former Employer 1—along with the dates of employment.⁴ This corresponded with the information that appeared on the BLM Official’s resume. After reviewing the BLM Official’s public financial disclosure report, the DAEO provided the BLM Official with updated interim ethics guidance on recusal obligations. This updated guidance added Former Employer 1 as a former employer for purposes of the Ethics Pledge.

Over the following weeks, the BLM Official discussed the public financial disclosure report and ethics recusals with the DAEO and the ADAEO. The BLM Official stated to us that at some point during these discussions, the BLM Official recalled the meeting with Former Employer 1 and contacted the DEO to report that meeting. At the suggestion of the DEO, the BLM Official stated in an email to the DEO that they met with Former Employer 1 a couple of weeks earlier and was unaware that they were prohibited from doing so at the time. Later in 2021, the DEO issued an additional update to the interim ethics guidance to the BLM Official, which replaced the interim ethics guidance it had issued

⁴ 5 C.F.R. § 2634.201(b) (requiring individuals occupying a public filer position to file a public financial disclosure report within 30 days of assuming the position); *see also* 5 C.F.R. § 2634.202 (defining “public filer”).

previously. This updated guidance listed both Former Employer 2 and Former Employer 1 as the BLM Official's former employers for purposes of paragraph 2 of the Ethics Pledge.

The DAEO told us that not including Former Employer 1 as a former employer on the BLM Official's interim ethics guidance was "a mistake on our part" but also stated that the DEO relies on an employee's review of the guidance to identify any errors or omissions the DEO may have made. When we asked the BLM Official about the DEO's omission of Former Employer 1, the BLM Official stated that they were "not an ethics expert" and "deferred to the experts and followed the direction [they were] given" in the interim ethics guidance issued earlier in 2021. The BLM Official also said that they did not consider at the time whether Former Employer 1 was a former employer for purposes of the Ethics Pledge because the BLM Official had shared their resume with the DEO, which listed Former Employer 1 as a former employer, and, notwithstanding that information, the DEO had identified only Former Employer 2 as a former employer in its guidance.

4. *The BLM Official's Work on PLOs*

The BLM Official reviewed some of the BLM's PLOs. Specifically, the BLM Official's work involves consulting with Indigenous communities, scoping environmental reviews under the National Environmental Policy Act, and ensuring that the BLM fulfills its obligations under Federal law. In 2021, before the BLM Official joined the DOI, five PLOs were signed by then DOI Secretary David Bernhardt, which, if implemented, would have opened millions of acres of BLM lands to mineral development and for other purposes.⁵ In 2021, before the PLOs were effective and BLM lands opened, the BLM announced it was pausing the implementation of the PLOs to reevaluate the BLM's proposed release of the land. The BLM Official stated that, although they participated in the BLM's review of the PLOs by consulting with Indigenous communities and scoping environmental reviews under the National Environmental Policy Act, they did not interact with Former Employer 2 or Former Employer 1 during their work related to the PLOs. We did not find any evidence to the contrary.

5. *Current Lawsuits Involving the BLM*

Two Federal lawsuits involving the BLM occurred during the BLM Official's tenure. The evidence showed that the BLM Official participated in discussions related to these lawsuits. We reviewed the available court filings in these cases, however, and found that Former Employer 1 and Former Employer 2 are not parties in either lawsuit and that they do not represent any other parties. Additionally, we did not find evidence that the BLM Official met or communicated with Former Employer 2 or Former Employer 1 regarding these lawsuits.

B. Analysis

We concluded that the BLM Official violated paragraph 2 of the Federal Ethics Pledge when participating in a meeting with Former Employer 1 in 2021. We did not, however, substantiate the allegations that the BLM Official violated 5 C.F.R. § 2635.502 or the Ethics Pledge by participating in the PLOs or the Federal lawsuits; we drew this conclusion because the PLOs were not particular matters involving specific parties and because neither Former Employer 1 nor Former Employer 2

⁵ For this report, we refer to these matters as the "PLOs."

were parties to or represented other parties to the Federal lawsuits. We also found that the BLM Official’s participation in the PLOs and the Federal lawsuits did not violate the Ethics Pledge because we did not identify evidence that they met or communicated with Former Employer 1 or Former Employer 2 regarding these matters.

1. *The BLM Official Violated the Ethics Pledge When Meeting With Former Employer 1*

We found that the BLM Official violated paragraph 2 of the Ethics Pledge by participating in an official capacity in a meeting with Former Employer 1 in 2021.

Under paragraph 2 of the Ethics Pledge, the BLM Official committed that they “[would] not for a period of 2 years from the date of [the] appointment participate in any particular matter involving specific parties that is directly and substantially related to [the] former employer or former clients, including regulations and contracts.”⁶ According to the Ethics Pledge, to “participate” means to “participate personally and substantially.”⁷ Ethics guidance further provides that to “participate” means “to take an action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.”⁸ To participate “personally” means to participate “directly, either individually or in combination with other persons; or through direct and active supervision of the participation of any person [the employee] supervises, including a subordinate.”⁹ To participate “substantially” means that “the employee’s involvement is of significance to the matter.”¹⁰ The regulations explain that “[p]articipation may be substantial even though it is not determinative of the outcome of a particular matter” and that “the single act of approving or participating in a critical step may be substantial.”¹¹

A “particular matter involving specific parties” is defined under the Ethics Pledge to cover specific proceedings that affect the legal rights of the parties or an isolatable transaction between identified parties, such as a specific contract or court case.¹² It also includes “any meeting or other communication relating to the performance of [an employee’s] official duties with a former employer or former client, *unless* the communication applies to a particular matter of general applicability *and* participation in the meeting or other event is open to all interested parties.”¹³ In determining whether a meeting is “open to all interested parties,” the Office of Government Ethics explained that meetings need not “be open to every comer, but should include a multiplicity of parties.”¹⁴ A meeting involves a multiplicity of parties if “five or more stakeholders” are in attendance, “even if one of the stakeholders is a former employer.”¹⁵ Notably, both parts of the rule must be satisfied for the exception to apply,

⁶ Exec. Order No. 13989, 86 Fed. Reg. 7029, § 1 ¶ 2 (issued January 20, 2021).

⁷ *Id.* § 2 (n).

⁸ 5 C.F.R. § 2641.201(i)(1).

⁹ *Id.* § 2641.201(i)(2).

¹⁰ *Id.* § 2641.201(i)(3).

¹¹ *Id.*

¹² *See* 5 C.F.R. § 2641.201(h), which defines matter involving a specific party or parties and referenced in the Ethics Pledge.

¹³ Exec. Order No. 13989, 86 Fed. Reg. 7029, § 2(j) (issued January 20, 2021) (emphasis added).

¹⁴ OGE Memorandum (DO-09-011), “Ethics Pledge: Revolving Door Ban—All Appointees Entering Government” (issued March 26, 2009).

¹⁵ *Id.*

i.e., the communication must involve a particular matter of general applicability, *and* the meeting must be attended by “a multiplicity of parties.”¹⁶

Here, we found that the exception did not apply. The BLM Official met with Former Employer 1 in an official capacity in 2021, which was within 2 years of the date of the BLM Official’s appointment earlier in 2021. We determined that the BLM Official’s participation in this meeting was both personal and substantial. The BLM Official was a high-ranking official at the meeting. The purpose of the meeting was to allow Former Employer 1 to review with the BLM Official and the other BLM attendees the comments on proposed changes to a Federal Government program that it submitted after a public meeting—this was the same meeting in which the BLM Official had played a significant role. This meeting, like other similar meetings, was a critical component of the DOI’s review process, and the DOI considered the comments, recommendations, and reforms proposed by these parties in developing its report recommending changes to the Federal Government’s program. Because the BLM Official participated personally and substantially in a meeting related to official duties with the former employer within 2 years of the date of the BLM Official’s appointment, and because the BLM Official’s involvement in this and other similar meetings was significant to the DOI’s review of the program, this meeting was permissible only if it included “a multiplicity of parties,” which it did not. The evidence showed that the only non-Federal attendees at the meeting were representatives from Former Employer 1. We therefore concluded that the BLM Official’s participation in the 2021 meeting violated the BLM Official’s obligations under paragraph 2 of the Ethics Pledge.¹⁷

We recognize that there are facts mitigating the significance of our finding of an Ethics Pledge violation in this case. First, the DEO provided the BLM Official with inaccurate interim ethics guidance that failed to identify Former Employer 1 as one of the BLM Official’s former employers for purposes of the Ethics Pledge, and the BLM Official stated that they relied on this ethics advice before the meeting with Former Employer 1.¹⁸ We further recognize that the BLM Official self-disclosed the meeting with the former employer to the DEO after receiving updated ethics guidance correctly identifying Former Employer 1 as a former employer for purposes of the Ethics Pledge. Moreover, we identified no other meetings the BLM Official attended with former employers that did not include a multiplicity of parties after receiving the updated and corrected ethics guidance from the DEO.

2. *The BLM Official Did Not Violate the Ethics Pledge or 5 C.F.R. § 2635.502 When Participating in the PLOs or BLM Litigation*

We found that the BLM Official’s participation in the PLOs or the BLM litigation did not violate the BLM Official’s commitments under the Ethics Pledge for three reasons: (1) the PLOs were not

¹⁶ Because we determined that the BLM Official did not satisfy the second prong of the exception, we need not address whether the DOI’s review of the Federal program is a particular matter of general applicability.

¹⁷ 5 C.F.R. § 2635.502 was not implicated with respect to the BLM Official’s meeting with Former Employer 1 because the meeting did not involve a “particular matter involving specific parties” as that term is defined under the regulation, and because the BLM Official did not have a “covered relationship” with Former Employer 1 within 1 year of the date of the meeting. *See id.* § 2635.502(b)(3) (defining particular matter involving specific parties); *id.* § 2635.502(b)(1)(iv) (“An employee has a covered relationship with . . . [a]ny person for whom the employee has, *within the last year*, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”) (emphasis added).

¹⁸ The safe harbor provision of the Standards of Ethical Conduct, 5 C.F.R. § 2635.107(b), which states that “[d]isciplinary action . . . will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official,” does not apply to violations of the Ethics Pledge. However, mitigating facts such as these may still be taken into account by the agency when deciding the severity of the offense and any resulting discipline. *See Department of the Interior, DOI Department Manual Table of Offenses and Penalties*, 370 DM 752, Appendix A.

particular matters involving specific parties, (2) the BLM Official's former employers and clients were not parties and did not represent parties in the BLM litigation, and (3) the evidence did not show that the BLM Official participated in meetings or communications with former employers or clients regarding the PLOs or the BLM lawsuits.

We also found that the BLM Official did not violate 5 C.F.R. § 2635.502 by participating in the PLOs or the BLM litigation. This regulation which requires an employee to consider the appearance of their participation in a "particular matter involving specific parties" where the employee "knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question [their] impartiality in the matter."¹⁹ Regarding the PLOs, we determined that these are not particular matters involving specific parties as that term is defined under the ethics regulations, and thus, 5 C.F.R. § 2635.502 is not implicated. With respect to the BLM litigation, as noted above, we determined that the BLM Official's former employers were not parties to the lawsuits and did not represent parties. Thus, the BLM Official did not have a "covered relationship" that would trigger application of 5 C.F.R. § 2635.502 with respect to the lawsuits.

C. Conclusion

We concluded that the BLM Official's meeting with Former Employer 1 violated paragraph 2 of the Ethics Pledge and that the DEO's initial failure to identify Former Employer 1 as a former employer contributed to the BLM Official's Ethics Pledge violation. We also determined that the BLM Official did not violate either the Ethics Pledge or 5 C.F.R. § 2635.502 when participating in the BLM's review of the PLOs or the lawsuits involving the BLM.

III. SUBJECT

A BLM Official.

IV. DISPOSITION

We are providing this report to the Director of the BLM for any action deemed appropriate.

¹⁹ See 5 C.F.R. § 2635.502.



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