



Office of Inspector General
Office of Investigations
U.S. Department of the Interior

Exemptions
6 & 7(C)

Report of Investigation

Case Title McMurry Ready Mix Company	Case Number OI-CO-05-0625-I
Case Location Lakewood, CO	Related File(s) None
Report Subject Closing Report of Investigation	Report Date June 28, 2006

SYNOPSIS

In November 2005, the Office of Inspector General (OIG) received allegations that McMurry Ready Mix Company of Casper (McMurry), WY, trespassed onto Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), lands and removed sand and gravel base for use in a nearby housing development project. The estimated value of the material removed in this matter is approximately \$388,158.54. It was further alleged that BLM management overlooked the trespass because McMurry is a big company with political ties.

The investigation failed to substantiate allegations that McMurry removed material to use in the housing development. The investigation also failed to substantiate allegations that the trespasses were overlooked because McMurry had political ties. On May 23, 2006, this matter was referred to the United States Attorney's Office, District of Wyoming.

On June 26, 2006, First Assistant United States Attorney [REDACTED] after reviewing OIG's Prosecutive Summary of Investigation, declined to prosecute.

DETAILS

The details of this investigation were provided to AUSA Green in the Prosecutive Summary of Investigation, dated May 23, 2006.

SUBJECT(S)/DEFENDANT(S)

Name: W.N. McMurry Construction Company
Address: P.O. Box 1710, Casper, Wyoming 82602
5880 Enterprise, Casper, Wyoming 82609
Charter No./Corporation ID: 200200441540CC

Reporting Official/Title [REDACTED] Special Agent	Signature [REDACTED]
Approving Official/Title for Jack L. Rohmer, Special Agent in Charge	Signature Joseph D. [REDACTED], ASAC

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Exemptions 6 & 7 (C)

DISPOSITION

The complainant informed OIG during the investigation that he had no direct knowledge of corruption within BLM or the DEQ and what he did hear was based on rumor and internet research. In addition, the BLM Geologists and the BLM Ranger interviewed during the investigation failed to provide proof that materials were being removed by McMurry at the Bar Nunn site.

Based upon the declination by AUSA [REDACTED] and a lack of evidence in the comprehensive review of documents provided by witnesses, BLM trespass files, and multiple key witness interviews, this matter will be closed.



Office of Inspector General
Office of Investigations
U.S. Department of the Interior

Exemptions (B)5, (B) 6 & 7 (C)

Report of Investigation

Case Title McMurry Ready Mix	Case Number OI-CO-05-0625-I
Case Location Casper, Wyoming	Related File(s)
Report Subject Prosecutive Summary	Report Date May 23, 2006

SYNOPSIS

In November 2005, the Office of Inspector General (OIG) received allegations that McMurry Ready Mix Company of Casper (McMurry), WY, trespassed onto Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), lands and removed sand and gravel base for use in a nearby housing development project. The estimated value of the material removed in this matter is approximately \$388,158.54. It was further alleged that BLM management overlooked the trespass because McMurry is a big company with political ties.

The investigation failed to substantiate allegations that McMurry removed material to use in the housing development. The investigation also failed to substantiate allegations that the trespasses were overlooked because McMurry had political ties.

DETAILS OF INVESTIGATION

On April 6, 2006, [REDACTED] was interviewed and told OIG Special Agents [REDACTED] of McMurry Ready Mix in the Wyoming construction and mining industry. [REDACTED] said that there are a lot of other contractors in the State that are afraid to come forward and report McMurry. Allegedly, McMurry is bypassing the normal mining permitting process and violating State and Federal land use laws. [REDACTED]

[REDACTED] McMurry operate on a 5% profit margin. McMurry gets around the requirements for National Environmental Policy Act (NEPA) and Cultural Studies by intentionally trespassing and paying minimal fines, thereby increasing their profitability. In addition, there is a 10 acre exemption to the surface mining rules, which allows companies to avoid NEPA studies. In the past, McMurry has filed for 10 acre exemptions and then violated the rule and expanded their operations, without penalty for DEQ or BLM. [REDACTED] has been involved in efforts to get the laws changed to eliminate the 10 acre exemption.

Reporting Official/Title [REDACTED] Special Agent	Signature [REDACTED]
Approving Official/Title for Jack Rohmer, Special Agent in Charge	Signature [REDACTED]

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[REDACTED]

████ further alleged that McMurry trespassed onto the McMurry addition of the Bar Nunn Community, Natrona County, WY, and removed BLM material to use in a housing development project. █████ learned of the trespass from a document █████ received from a BLM employee, who found the document in a copier machine at the BLM office in Casper, WY. The document outlined a BLM Ranger's report about the trespass. █████ also alleged corruption by BLM and Wyoming State officials. A copy of the Ranger's report, provided by █████, estimates \$388,158.54 in loss to the government. The loss was based upon an estimate of material removed and investigative costs by the Ranger.

████ stated that █████ had no evidence of corruption by BLM or Wyoming Department of Environmental Quality (DEQ) officials, but he has heard "rumors" from others in the industry. █████ said that other than the instance of trespassing on the McMurry addition of the Bar Nunn Community, █████ is not aware of any other trespasses by McMurry (Exhibit 1).

On April 5, 2006, Tom Durst, Geologist, BLM, DOI, was interviewed by OIG Special Agents in reference to a complaint reported to OIG. Durst said that he is responsible, in part, for Geological assessments of mining operations on BLM controlled land. He investigates trespassing claims and calculates volume of materials, measured in tons, which may have been illegally removed by mining companies. On March 18, 2005, Durst created and sent an e-mail entitled Anatomy of a Trespass. Durst describes four trespass situations which occurred on split-estate land owned by McMurry. Durst claims that McMurry has developed a pattern of avoiding BLM and DEQ requirements for surveys, thereby saving the company as much as \$50,000.

Durst stated that his management, in particular █████ are responsible for the "worst examples of blatant favoritism" that he has seen in his 33 year career in the Federal Government. On July 25, 2005, Durst received a Letter of Reprimand for "making irresponsible and disrespectful statements against other employees, supervisors, and officials of the BLM." On December 16, 2005, █████ notified Durst that he would be suspended for 5 calendar days for "Unprofessional and discourteous conduct towards the public." In a January 17, 2006, response to a decision on his proposed suspension, Durst accused █████ of "A matter of standards of conduct, ethics and providing an unfair advantage to a member of the public." Durst stated that he has no direct evidence of corruption, but he over heard a conversation that █████ asked █████ to clear the e-mails from his computer system (Exhibit 2).

On April 5, 2006, █████ BLM, told OIG Special Agents that he has been employed with BLM for 22 years and has been assigned to the Casper Field Office for the last █████. On March █████ began the investigation of McMurry in the Bar Nunn Community; BLM case# WYW 163117. █████ determined that McMurry had violated 43 CFR 3601.71, which allows the surface owners, in this case McMurry, to use a minimal amount of federally controlled materials within the boundaries of their surface owned estate.

████ said that █████ did not follow the trespass procedures as outlined in BLM Manual H-9235-1, Mineral Material Trespass Prevention and Abatement, dated April 15, 2003, because he was not getting the support of his management. █████ did not issue a Trespass Citation and McMurry was not issued a Notice of Trespass (Form 9230-1). █████ explained that neither the Bar Nunn nor the Grey Quarry trespasses are "Criminal Trespass" situations based upon the elements described in H-9235-1. Specht said that there have only been five or six split-estate trespass investigations by BLM, where Notices of Trespass were issued in the last 15 years. Only three of those investigations resulted in fines

and restitution paid to BLM. The McMurry Company paid fines for the Grey Quarry investigation and was issued two of the six Notices of Trespass. [REDACTED] has no direct evidence of corruption by [REDACTED] management; [REDACTED] has just overheard rumors, which suggest corruption when matched with the leniency extended to McMurry in the trespass situations (Exhibit 3).

[REDACTED] produced a time line of events beginning on November 28, 2004, through May 31, 2006, regarding [REDACTED] actions and [REDACTED] management's handling of McMurry trespasses (Exhibit 4).

On April 6, 2006, [REDACTED] BLM, was interviewed as a potential subject in the investigation. [REDACTED]

Regarding the allegations that he has been corruptly influenced by McMurry, [REDACTED] stated that it was not true. Murkin stated that he would have to be "felony stupid" to take anything of value or use his position to benefit McMurry. Murkin said, "It would be stupid for me to do anything that has been alleged, I'm just too visible". All contractors are treated the same by his office and McMurry is no different.

With regard to the alleged Bar Nunn trespass case, [REDACTED] there was no evidence that material was being removed from the site. [REDACTED] asked [REDACTED] for evidence of the trespass on this split-estate land. McMurry owned the land and BLM owned the mineral rights. This case was adjudicated by the Solicitor's office and closed due to a lack of evidence. [REDACTED] said that if a file is lacking information, the geologists may not have completed the work. [REDACTED] stated that [REDACTED] will continue to cooperate with the investigation and professed that [REDACTED] has done nothing wrong (Exhibit 5).

On April 6, 2006, [REDACTED] BLM, was interviewed. [REDACTED] was advised that he was being interviewed as a potential witness and to provide additional information. [REDACTED] consented to the interview and provided substantially the following information:

[REDACTED]

Regarding the allegations, [REDACTED] stated that the thorough adjudication of trespass cases is a challenge. [REDACTED] said that the Bar Nunn issue involves a split-estate situation where McMurry owned the land but not the mineral rights. This matter was closed on July 27, 2005, after thorough consultation with Solicitor-Attorney Lyle Rising, Office of the Solicitor (SOL), DOI, Denver, CO. The material in question was essentially a sand dune. [REDACTED] in the discussion, [REDACTED] said that he discussed the matter extensively with [REDACTED] and passed all relevant information to the SOL. [REDACTED] stated that [REDACTED] was part of the meeting with the Solicitor and was not [REDACTED] The Solicitor based his decision on the fact that there was [REDACTED]

no proof that McMurry removed material from the site for use in the Bar Nunn development. The BLM Ranger's report was included in the file.

██████████ no information regarding corruption on the part of BLM officials and Wyoming State officials. ██████████ concluded that BLM deals with 8-9 million acres of split-estate land in Wyoming. In the larger picture of issues handled by BLM, mineral problems have been a "sideline" issue (Exhibit 6).

On April 7, 2006, ██████████ BLM, told OIG Special Agents that ██████████ has been employed with BLM for 27 years and has been an ██████████ receives and receipts money that comes into BLM, usually through the mail. The payments are usually for material, measured in tons, removed from BLM controlled land. ██████████ matches the dollars received with the tonnage removed by comparing purchase order reports and receipting the amount into the BLM's collection and billing system. The collections and billings system generates a running total that the Geologists use for their reports.

██████████ stated that McMurry pays its fines and fees. ██████████ has not noticed any instances where they are being treated in a preferential way and said "mistakes can be honest." Lindahl has no knowledge of inappropriate activity in the Bar Nunn case or evidence of corruption on the part of State or BLM officials (Exhibit 7).

On June 1, 2006, ██████████ U.S. Bureau of Land Management (BLM), was interviewed. Weiner was interviewed because of his observations at the McMurry addition of the Bar Nunn Community. ██████████ was contacted by ██████████ BLM, regarding an alleged trespass on federal minerals by McMurry. This is a split-estate issue where McMurry owned the land but not the mineral rights. ██████████ stated that ██████████ did not observe materials being removed from the site containing federally controlled materials. ██████████ encountered a large loader operated by ██████████ who claimed to be employed by a contract company working on the adjacent Capri Homes project. ██████████ was on ██████████ way to lunch, but stated that ██████████ would be moving sand from a large stock pile to the Capri Homes project when he returned.

██████████ believed that protected federal materials were being moved off site, but ██████████ did not issue a citation to ██████████ had no proof of who owned the land when ██████████ encountered ██████████ ██████████ said that ██████████ prepared a short report regarding his observations and will provide a copy to OIG. ██████████ said that ██████████ observed the loader came from the Capri Homes project to the large sand stock pile, so ██████████ believed that the materials were being used at Capri Homes. The material from the sand stock pile appeared to have come from the McMurry addition, located within federally protected minerals.

██████████ said that he knows of only two trespasses where a citation was issued in the last 8 years, one for McMurry and one for a private individual named ██████████. ██████████ said that it difficult to detect split estate trespasses since it is on private land, which he does not patrol. The overall percentage of split estate land in Wyoming is high and it is difficult to prove a trespass. ██████████ stated that he has not detected any preferential treatment of the McMurry Company by BLM. ██████████ was never advised to look the other way or grant any exceptions to McMurry. In addition, Weiner has no knowledge of corruption on the part of State and Federal BLM officials (Exhibit 8).

Record Reviews

OIG Special Agent [REDACTED] conducted a review of the McMurry files that were maintained at the BLM Casper Field Office. The files represent the investigative efforts of the BLM Geologists and contained the information used in the adjudication of the trespass cases. The review disclosed that McMurry had a total of three trespass issues involving BLM lands that occurred between February 2001 and March 2005.

SUBJECT(S)/DEFENDANT(S)

Name: W.N. McMurry Construction Company
Address: P.O. Box 1710, Casper, Wyoming 82602
5880 Enterprise, Casper, Wyoming 82609
Charter No./Corporation ID: 200200441540CC

DISPOSITION

This Report of Investigation will be provided to Assistant U.S. Attorney [REDACTED] Casper, WY, for review and a prosecutive decision. The investigation failed to substantiate allegations that McMurry removed material to use in the housing development. The investigation also failed to substantiate allegations that the trespasses were overlooked, because McMurry had political ties.

EXHIBITS

1. IAR Interview of [REDACTED] dated April 6, 2006
2. IAR of Interview of Tom Durst, dated April 5, 2006
3. IAR of Interview of [REDACTED] dated April 5, 2006
4. Timeline of events [REDACTED]
5. IAR of Interview of [REDACTED] dated April 6, 2006
6. IAR of Interview of [REDACTED] dated April 6, 2006
7. IAR of Interview of [REDACTED] dated April 6, 2006
8. IAR or Interview of [REDACTED] dated June 1, 2006

Appendix AA Record of McMurry trespasses on BLM lands

<u>Case</u>	<u>File Number</u>	<u>Date Initiated</u>	<u>Fines or Fees</u>	<u>Adjudication/Issue</u>
Grey Quarry	WYW-152384	2/6/2001	Trespass Fine Paid \$35,387.77	Trespass Resolved Title 23 Site
Eagle Ranch Quarry	WYW-151537	10/3/2002	Royalty Paid	Authorized/ Underpayment Royalty
Eagle Canyon Boulder Pit/Old Highway	WYW-160698 WYW-158723	6/4/2004	Royalty & Fees Paid	Authorized Permit /Initial Trespass
Alcova Limestone Quarry	WYW-148836 WYW-156982	11/28/1994	Royalty & Fees Paid \$100,000	Approved Application No Issue
Bar Nunn	WYW-163117	3/18/2005	No Fees Paid	Trespass Closed / Incomplete Process

Source: BLM files maintained at Casper Field Office, Casper, WY.

INVESTIGATIVE ACTIVITY REPORT
(INTERVIEW)

DATED

APRIL 6, 2006

2 PAGES

WITHHELD IN THEIR ENTIRETY

PURSUANT TO EXEMPTIONS (B)(5),(B)(6)&(7)(C)



Exemptions (b)(6)
& 7 (C)

Office of Inspector General
Office of Investigations
U.S. Department of the Interior

Investigative Activity Report

Case Title McMurray Ready Mix	Case Number OI-CO-05-0625-I
	Related File(s) OI-CO-05-0458-R
Case Location Casper, Wyoming	Report Date April 5, 2006
Report Subject Interview of Tom Durst	

DETAILS

On April 5, 2006, Special Agent Robert Julian, U.S. Department of Interior (DOI), Office of Inspector General (OIG), interviewed Tom Durst, Geologist, U.S. Bureau of Land Management (BLM), DOI, in reference a complaint reported to OIG. The complaint alleged that McMurray Ready Mix Company (McMurray) of Casper, Wyoming trespassed onto the McMurray addition of the Bar Nunn Community, Natrona County, WY, and removed Bureau of Land Management (BLM) material to use in a housing development project. The complaint referenced a BLM Ranger's report about the trespass; however, BLM is overlooking it because McMurray is a big company with political ties. The complaint further alleges corruption on the part of State and Federal BLM officials. Durst was advised that he was being interviewed as a complainant and potential witness. Durst consented to the interview and provided the following information:

Durst provided the following identifying information:

Residence:

6655 Westland Road, Casper, WY 82604
H) (307) 237-1334, (W) (307) 261-7662

Durst has been employed with BLM for 33 years and has been assigned to the Casper Field Office since 1989. Durst is responsible, in part, for Geological assessments of mining operations on BLM controlled land. He investigates trespassing claims and calculates volume of materials, measured in tons, which may have been illegally removed by mining companies. On March 18, 2005, Durst created and sent an e-mail entitled Anatomy of a Trespass. Durst describes four trespass situations which occurred on split-estate land owned by McMurray. Durst claims that McMurray has developed a pattern of avoiding BLM and State Department of Environmental Quality (DEQ) requirements for surveys, thereby saving the company as much as \$50,000. The surveys required include National Environmental Protection Act (NEPA), Cultural, Geologic/Paleontology, and Threatened or Endangered species surveys, which are required by DEQ and BLM prior to issuing a permit for mining operations. Durst claims that by avoiding the \$50,000 expense of the surveys, McMurray gains an unfair advantage over their competitors (Attachment 1).

Reporting Official/Title [Redacted], Special Agent	Signature [Redacted]
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Distribution: Original – Case File Copy - SAC/SIU Office Copy – HQ Other?

Durst stated that his management, in particular [REDACTED], are responsible for the "worst examples of blatant favoritism" that he has seen in his 33 year career in the Federal Government. Durst accused [REDACTED] of "A matter of standards of conduct, ethics and providing an unfair advantage to a member of the public", McMurry, in a January 17, 2006, response to a decision on his proposed suspension. On December 16, 2005, Field Manager [REDACTED] notified Durst that he would be suspended for 5 calendar days for "Unprofessional and discourteous conduct towards the public." (Attachment 2). In addition, on July 25, 2005, Durst received a Letter of Reprimand for "making irresponsible and disrespectful statements against other employees, supervisors, and officials of the BLM."

Durst stated that the Letter of Reprimand and the 5-Day Suspension were reprisals against him for reporting the blatant favoritism of BLM management towards McMurry. Durst stated that Murkin is attempting to gather "clout" from McMurry and Wyoming's three Congressmen for the purpose of gaining a BLM State Director Position. Durst described a "Good old boy network" between the management of BLM, [REDACTED], and McMurry. Durst said that the entire problem started in 1994, when McMurry applied for a permit to mine the Alcova Limestone Quarry. The permit was approved after McMurry paid approximately \$50,000 for all appropriate studies. [REDACTED] and time that it took to permit the site, approximately 5 years. [REDACTED] Durst said that [REDACTED] began taking the word of McMurry instead of the observations and opinions of his Geologists Durst and [REDACTED]

Durst said that the system for reporting mining operations and the volume of materials removed from a quarry is the "Honor System." There are very few scales to weigh trucks and very few people watching what companies like McMurry do. Usually, private citizens like [REDACTED] a competitor of McMurry's, alerts BLM to trespass situations. Durst said Veal owns and operates Timberline Land and Minerals and produced a news letter in December 2002 called the Contractors Critic, which reports on Safety, Productivity, and Honesty in the Construction Industry. The December 2002 edition is dedicated to unveiling the "wrong doing" of McMurry and identifies them as the "Neighbor from Hell." (Attachment 3).

[REDACTED]

Durst said that he enjoys a good relationship with almost every company that does business with BLM, except McMurry and his own management. [REDACTED]

[REDACTED]

Durst stated that he has no direct evidence of corruption, [REDACTED] Durst said that he is qualified for retirement so he does not care if his management is advised of anything he has said. Durst has made these issues clear to [REDACTED] in writing and in person.

Durst said that he will forward any information that may assist in this investigation, to include legal research on split-estate land cases.

ATTACHMENTS

- 1) E-mail from Durst entitled "Anatomy of a Trespass", dated March 18, 2005.
- 2) January 17, 2006 response to Proposed Suspension of Durst
- 3) Contractor's Critic News Letter, dated December 2002

Tom Durs/CFO/WY/BLM/DOI

03/18/2005 04:04 PM

To

Jim Murkin/CFO/WY/BLM/DOI@BLM, Patrick
Moore/CFO/WY/BLM/DOI@BLM, Bob
Bennett/WYSO/WY/BLM/DOI@BLM, Don
Whyde/CFO/WY/BLM/DOI@BLM

cc

governor@state.wy.us

bcc

Roger Haskins/WO/BLM/DOI

Subject

Anatomy of a Trespass

Gentlemen:

Trespass #1: A stone contractor files an ET (10-acre exemption gravel site) with the DEQ. He checks the box on the form indicating that the surface and minerals are private. He gets the DEQ's okay. No one from DEQ checks out the legal description. Sometime later, a private citizen turns in the site as a trespass on Federal Minerals (i. e., the Gray Quarry Site just north of the Glendo State Park). The BLM and the contractor settled on the trespass, and the BLM fully intends to legalize the trespass by issuing the contractor a Minerals Material Sales Permit. He would then be able to mine legally right on the State Park Boundary. The DEQ works to legalize the quarry also after the fact. A mining claim gets staked on the site and this action brings the Mineral Material Sale to a halt. The BLM begins an internal witch hunt, and which continues to this day.

Trespass #2: The same contractor wants a Mineral Materials Permit on some Wind River Sediments from a BLM parcel within his ranch boundary. Before the paper work begins (i. e., an EA, Cultural- and T/E Surveys could be made), the contractor entered the site with a backhoe and dug up the site checking the depth of the sediments. No letter of trespass, etc. was issued by the BLM. The BLM issued him a Sales Permit.

Trespass #3: Same contractor is now removing Federal Minerals from a site Northeast of Bar Nuun. A BLM employee lives out there, and this employee determined that Federal Minerals were being removed without a permit. The BLM got the DEQ involved. The DEQ also had no Permits for this area. Will both the BLM and the DEQ now rush to legalize this trespass as they have others in the past?

Trespass #4: The same contractor enters upon State Lands near Guernsey without a Permit from the DEQ, SHPO, etc. Portions of the Oregon trail were reportedly destroyed. I understand that the State agencies involved are busy 'legalizing' this mess, again after the fact.

Is there a pattern developing here?

Are you being used?

This contractor has always complained about the \$50,000 that the cultural and other surveys cost him for the BLM Alcova Limestone Permit Area (directly north of the town of Alcova). Has he figured out a way to get around paying for the surveys? It has to be obvious to him that both the BLM and the DEQ will not stop him if he is found out. At best, if they catch him, all he would have to pay is for the materials removed from the site, and he profits from not doing the surveys. The thousands of dollars he saves via bypassing Federal and State laws allows him a competitive advantage over his competitors who obey the laws.

When does 'innocent trespass' mature into 'willful trespass'?

In the mean time he makes a mockery of these agencies and of the laws that they are to uphold.

These four trespasses are all I know about, but it would be safe to assume that there are more statewide.

Please advise if I'm out-of-line reporting this.

Tom Durst



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

1400-752 (060)

Casper Field Office
2987 Prospector Drive
Casper, Wyoming 82604-2968

Memorandum

To: Tom Durst, Geologist

From: Jim Murkin, Field Manager

Subject: Decision on Proposed Suspension

By letter dated December 16, 2005 you were notified of a proposal to suspend you without pay for 5 calendar days. The reason for the proposed suspension was your unprofessional and discourteous conduct towards the public.

You were afforded the opportunity to respond to the proposal in orally or in writing, or both, within 10 calendar days of receiving the proposal. I extended this deadline to January 17, 2006 due to the holidays, vacations, etc. You presented a written response to me on January 17, 2006.

In your response you offer no mitigating circumstances surrounding your proposed suspension or the reasons behind it. You did, however state that "I probably said too much to Ms. Lorenz" and that "I could probably use some 'anger-management' training."

In your response you also brought up issues that were irrelevant to your proposed suspension, but were very accusatory and derogative in nature towards myself and other managers of the BLM. I find this to be yet another example of your discourteous and unprofessional conduct.

I have carefully reviewed the case file, interviewed your supervisor, and considered your response and all factors relevant to penalty selection, including the fact that you received a letter of reprimand on July 26, 2005 for making irresponsible and disrespectful statements against other employees, supervisors, and officials of the BLM. I believe that the preponderance of the evidence supports the reason for this suspension. I believe that a 5-day suspension is warranted and will promote the efficiency of the service. The exact days of your suspension will be from February 13, 2006 through February 17, 2006.

Your behavior in this instance is unacceptable. It undermines the confidence the public and other employees have in our ability to manage the public programs entrusted to us. Any subsequent incidents of this behavior will not be tolerated and may result in further disciplinary actions being taken against you, up to and including removal from service.

You have the right to formally grieve this decision within 15 calendar days after your receipt of this memorandum, in accordance with Departmental Manual 370 DM 771, Employee Grievances. A formal grievance must be addressed to the Acting Associate State Director (910) who will be the Deciding Official, but must be forwarded through the Personnel Officer (953) for

2/3/06

In my answer to your 'proposed suspension' letter dated 1/17/06 I thought that I had addressed many mitigating matters. I will repeat here, I was not disrespectful or discourteous to Ms. Lorenz on 11/8/05. Robin Morrison the BLM Front Desk Receptionist could have over heard the entire conversation that I had that day with Ms. Lorenz. I would like to have her called on as a witness.

You mention that I brought up issues in my 1/17/06 response that were "accusatory and derogative in nature towards you" and others. Why is it discourteous and unprofessional of me to discuss what I believe to be unethical practices being conducted in this office? Every year we must take Ethics- and Whistleblower Training wherein they tell us that it is 'our duty to report' unethical behavior on 'waste, fraud, and abuse'. Supposedly, the 'No Fear Act' is also in place to protect us from retaliation and intimidation.

Isn't it true that you are currently being investigated by the Dept. of Interior's Office of the Inspector General (OIG)?

You have told me that you believe that I am the one who turned you in to the OIG. Does the severity of this 'proposed suspension' have anything to do with that assumption?

You mention 'anger management' – isn't it true that after you and I met on 1/17/06 that you opened a door here in the office with such force as to break a large hole in the wall? Was that an act of anger out of control?

My prior reference to anger management was in reference to my belief that the 'public trust' is being violated in this office. It's very intimidating when the alleged violator is also the boss.

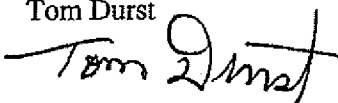
You have also talked to me about my retiring several times. Again, is the severity of this proposed suspension also a form of intimidation to get me to retire?

You mentioned the letter of reprimand dated 7/26/05. Again, I thought that I was reporting 'waste, fraud and abuse' when I e-mailed authorities that I thought that you were 'wiring' a forestry position by having the vacancy announcement open for only seven days and over the Fourth of July Holiday to boot. Again, where was the No Fear Act?

How do I defend against inferences and assumptive statements made by Ms. Lorenz? Perhaps the only witness to our discussion can be of some help here.

In summary, I believe that the timing and severity of this proposed suspension are all about intimidation and retaliation. There is not any win-win in here.

Tom Durst



1/17/06

As I told Pat Moore on 12/16/05 when he showed me the 'proposed suspension' papers at work, I could vaguely recall the incident and I certainly never thought that I was out of line with her.

First, I did not give her any false information. Plus, I probably appear aggressive to a lot of people because of my size and straight forward nature. I do not believe that I was disrespectful or discourteous to her. It's my nature to give the walk-in public more information than they expected to receive.

Damage to the BLM's professional image-I'll return to this later.

I believe that the penalty is very severe and that the Mitigating Circumstances section is very short and incomplete for 35 years of service.

You recently asked me 'what is the burr under your saddle'. The short answer all relates back to your preferential dealings with Mr. McMurry. In the BLM it's hard to find a manager that commands respect. Up until your questionable (in my opinion at least) dealings with McMurry, I had you in that rare category, i. e., a true leader. It all started with the McMurry Trespass in the Grey Quarry. As you know, this Quarry is right on a boundary of a popular State Park and it is also highly visible from I-25. When a member of the public informed the BLM that the Mr. McMurry was trespassing on Federal Minerals, your reaction was not to require him to reclaim the site and leave, but you wanted to permit him to continue to mine. Then a mining claim was staked on the subject lands, you assumed that I had something to do with it and you initiated the investigation against me by Special Agent Donald Gordon. This questioning of me under oath occurred on 7/20/04. To my knowledge, this case has never been closed and the case file still resides in the WSO.

Mr. McMurry appears to have little regard for any laws, rules, or regulations. It's this along with the charge that he is the 'neighbor from hell' in a recent publication that many on your staff are wondering about your 'ethics or professionalism'. It's clear that he never intends to permit another quarry the right- and proper way. It's much more cost effective to open a pit in trespass, therein destroying or removing any archaeological- or cultural materials or Threatened and Endangered (T&E) species that might occur on the site. If caught at best the BLM will charge him for the materials removed and require him to reclaim the site or not. Rumor has it that you have saved him several hundreds of thousands of dollars over his competitors. The BLM has no idea what cultural or T&E species may have been effected by his trespasses.

Most of the Resources and Lands & Minerals staffs are aware of this alleged 'preferential treatment'. Many believe that he must have something on you or that you are on the take.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

January 5, 2005

In Reply Refer To:
1400-735 (700) I

EMS TRANSMISSION 01/10/2005
Information Bulletin No. 2005-041

To: All Employees
From: Deputy Director, Operations
Subject: Policy for Zero Tolerance of Violation of Ethical Standards

It is the policy of the Bureau of Land Management (BLM) that each BLM employee will uphold the highest standards of ethics and integrity in their work. The mission of the BLM cannot effectively be accomplished unless ethical standards are integrated into the core of all BLM business practices and decision-making processes. I expect all BLM employees to make every effort to avoid even the "appearance" of a conflict of interest or impropriety. Willful violations of Governmentwide, Department of the Interior, and BLM laws, statutes, regulations, and policies may have serious consequences. To this end, I expect each BLM employee to adhere to these principles:

- Remember that "Public Service is a Public Trust." Adhere to the highest standards of conduct to ensure that every citizen can have complete confidence in the integrity of the BLM.
- Be mindful of the values of the BLM: "To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference." Value, respect, and support our employees, our stakeholders, and our customers.
- Refrain from using your BLM position, title, Government equipment, or BLM proprietary information in a manner that gives the appearance that you are using your "public office for private gain." Do not use your Government position or title to endorse any product, service, or enterprise.
- Conduct Government business without showing preferential treatment to any organization or individual. Transactions involving the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.
- Avoid all actions that are illegal or that otherwise might cause embarrassment to the BLM, including using Government property, time, and equipment to: access pornography; use drugs and alcohol (alcohol can be used under limited approved circumstances); gamble; or use Government vehicles and property for other unauthorized purposes.
- Be responsible for using your Government charge card only for official travel and purchasing Government-related products and services within authorized spending limits. Your account may not be used for personal purchases under any circumstances. No one other than you may use your account.
- In contracting situations, avoid or mitigate conflicts of interest, and take prompt actions to resolve them, in particular; (1) prevent situations that might bias a contractor's judgment; and (2) prevent creating an unfair competitive advantage for a contractor by avoiding the disclosure of contractor bid, proposal, or source selection information to anyone other than those authorized by the contracting officer.

The Contractors Critic

Reporting on Safety, Productivity, and Honesty in the Construction Industry.

RISSLER & MCMURRY COMPANY, INC.

THE NEIGHBOR FROM HELL

RISSLER & MCMURRY ATTACK AGAINST BESSEMER MOUNTAIN; THE COURT SUITS FLY OVER A FEW TONS OF LIMESTONE

The rugged peaks of Bessemer Mountain bite a jagged silhouette out of the skyline near Casper, Wyoming. Many of the folks in Casper look around Mt. Bessemer and see eagles' nests a mile away along the North Platte River. The State of Wyoming looks at Bessemer Mountain and sees the source of the pure natural water that bubbles forth from Speas Spring, which nourishes a nearby fish hatchery, the largest in Wyoming. But Rissler & McMurry looked at Bessemer Mountain and saw a place to mine limestone. It was a scheme that was destined to ignite a public relations war in Casper and it did.

Rissler & McMurry won the first round, but their tactics only maddened their opposition. Rissler & McMurry began by filing paperwork with the Wyoming environmental agencies, claiming that their mine would disturb less than ten acres. This was a very clever maneuver, because of a loophole in Wyoming mining law that allowed permits to be issued without any public hearings for mines of less than ten acres. However, as far as Rissler & McMurry's potential neighbors were concerned, Rissler & McMurry's tactics were the actions of the neighbor from hell. The neighbors of the proposed mine formed their own group, the Friends of Bessemer Mountain and recruited the Powder River Basin Resource Council, a

regional environmental group, to seek repeal of the 10-acre exemption rule. The Resource Council, in light of Rissler & McMurry's exploitation of the rule, called it "a most destructive piece of legislation which should be targeted for extinction."

The local papers begin to fill up with letters to the editor, which strongly condemned Rissler & McMurry. One letter said, "...we must allow the destruction of this scenic area because of a special law which evades any environmental or public concern due to the 10-acre exemption.... The whole thing has been a classic case of the rich railroading the poor in order to get richer. True, the letter of the law has been followed and moral rights and wrongs are something the rich need to be concerned with."

However, Rissler & McMurry forged ahead. They quietly garnered land leases

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RISSLER-MCMURRY-- THE NEIGHBOR FROM HELL

Some folks have the impression that the only people who criticize mining are the effete latte-sipping elitists in the urban northeast and that the solid citizens of the west support mining. But the truth is that some of the staunchest opponents of mining are residents of places like Wyoming, who have seen first hand that mining can be done very badly.

For instance, the mining operations of Rissler & McMurry over the last several years have single-handedly created scores of mining opponents by their heavy-handed tactics. Rissler & McMurry's comparatively small mining operations, sited in the wide open spaces of Wyoming, with only farmers and ranchers for neighbors, would seem an unlikely candidate for alienating the citizens who live near

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BESSEMER MOUNTAIN

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brought by one party to muzzle the opinions of another.”

The six ranchers and farmers promptly filed their own legal motions to dismiss the suit, claiming, “it failed to state a claim that McMurry had in fact been libeled or slandered.” The farmers and ranchers also objected that their statements in opposition to Rissler & McMurry were constitutionally protected free speech and that the sole purpose of Rissler & McMurry’s suit was to squelch public opposition to the company’s activities.

In the midst of all of this, Rissler & McMurry began taking its final actions to open its mine. Those final steps proved to be the most controversial. First, despite Wyoming DEQ’s statements to Rissler & McMurry’s prospective neighbors, that Rissler & McMurry would have to obtain permission to get an easement for a road right of way, Rissler & McMurry instead filed an action to condemn a portion of a rancher’s 1,000 acre pasture, for their road to the mine.

Then, in stark conflict with Rissler & McMurry’s earlier assurances that they would mine with a dozer and vibrating ripper tooth, Rissler & McMurry announced that instead, they would begin blasting. The first of 45,000 pounds of dynamite was then fired at the Rissler & McMurry mine site on the face of Bessemer Mountain.

The onslaught of blasting dismayed many, most notably the Wyoming State employees who managed the nearby fish hatchery that was fed by an underground spring.

“I wish I shared the same encouragement as Rissler & McMurry that the blasts will not affect [Speas] Spring,” said the superintendent of the Game and Fish Department Hatchery. The superintendent also voiced his sentiment that he, “would have liked to see more real research done on possible damage from the blasting... Once lost [the Spring] is lost forever.”

Rissler & McMurry started blasting and mining. By now, their reputation as the mining “neighbor from hell” was secured. One letter to the editor said, “The [Speas] Spring started forming sediment deltas covering and killing vegetation on the Spring floor!... The dust from the mine site was the most extreme anyone has witnessed and it is impossible to control because of strong winds and the dust generating activities. In 60 days of mining there have been over 7,000 mine haul trucks traveling on 20 miles of haul road with [school] bus stops on the Haul Road during that period. This is a recipe for disaster. All of the properties that the owners have tried to sell on the mine Haul Road have had very poor results; people do not want their families, homes and livestock exposed to the danger of this activity. The blasting, back up alarm devices and constant groaning of large crushers can be heard from homes and all the [mine] expansion moves the activity closer to the homes and the river.”

The angry neighbors of Rissler & McMurry’s new mine had a few tactics of their own to employ. They went to the State of Wyoming Environmental Quality Council and had Bessemer Mountain designated a “Very Rare and Uncommon” area. That “designation increases the standards for mining operations in the designated area,” according to a Wyoming DEQ memorandum.

As public opposition continued, Rissler & McMurry only ended up mining at the site for a single year. Their correspondence to Wyoming DEQ stated, “Due to past and pending litigation and past and pending decisions by the Environmental Quality Control, the remaining life of the mining operation is uncertain.”

After Rissler & McMurry abandoned the mine, they asked Wyoming DEQ to release their reclamation bond. However, when DEQ inspected the site in August 1999 they found, “...problems with (1) apparent instability in the remaining high walls (2) a nonvegetated “hardpan” area... (3) reclaim vegetation still appearing in obvious “drill rows” and (4) some significant erosion channels across the reclamation. Of these problems, the erosion channels were considered to be the most significant and the reclamation was determined to be unsuitable for bond release.”

LITIGATION

LEE ANN BARELA V RISSLER & MCMURRY COMPANY, INC.

On a summer morning in 1997, Lee Ann Barela was walking near 5th and West Cedar Streets in Rawlins, Wyoming. At this same location, Rissler & McMurry had begun a sidewalk, curb and gutter repaving job. Rissler & McMurry had strung guide wires through the site to guide the cement placement machine that would be used later. Rissler & McMurry had failed to plainly mark those wires, according to Ms. Barela’s civil complaint. Subsequently, Lee Ann tripped and fell over these wires and suffered injuries resulting in medical expenses. (Case # CV-98-0172)

LITIGATION

CONTINUED FROM PAGE 4

was unaware of Rissler & McMurry's drastic change in the road's path. His vehicle left the paved road and plummeted into an unmarked ditch that Rissler & McMurry had constructed.

Davis was critically injured in the accident suffering from a respiratory distress, a collapsed lung, a crushed throat and congestive heart failure. His hospital bills alone totaled almost \$19,000. He sued for the costs of his medical bills and another \$300,000, according to court complaint. (Case #58561)

DEL KINCHELOWE V RISSLER & MCMURRY COMPANY, INC.

Del Kinchelowe was driving on Highway 287 in Carbon County, Wyoming when a Rissler & McMurry company semi-truck that was improperly passing other vehicles and was driving in the left lane struck her vehicle head-on. As a result Kinchelowe suffered serious injuries to her legs, spine, chest and head. Her medical bills exceeded \$21,000. According to the court suit, she demanded that Rissler & McMurry pay the costs of her medical bills, lost wages and other damages. (Case #84C-25)

MARK A. SCHULTZ V VERN RISSLER, W. N. MCMURRY, HARRY RISSLER, CHARLES CONATSER, OTHERS

Mark Schultz was an employee of Rissler & McMurry Company, Inc. when the company was operating rock screening and crushing equipment on a Wyoming highway job in Carbon County. While on the job Schultz' arm was caught between a swiftly moving conveyor belt and a spinning roller causing his entire body to be jerked between the rollers. He suffered massive and permanent injuries, including permanent scarring and disfigurement. He also suffered the crushing, ripping and tearing of his muscles, skin and tissues.

According to his court complaint he charges that the named officers of Rissler & McMurry failed to provide him with a safe work place, required him to work under dangerous conditions and refused to give him adequate and proper safety equipment. In addition, Schultz charges that Rissler & McMurry improperly instructed and failed to supervise him, failed to provide first aid and emergency services, including the use of automatic shut-off and/or release devices and failed to operate the rock screening and crushing device without installing a safety screen. (Case #54167)

RICHARD AGUIRRE, ADMINISTRATOR OF THE ESTATE OF GUADALUPE AGUIRRE V RISSLER & MCMURRY COMPANY, INC.

Guadalupe Aguirre was a passenger in a car on Interstate Highway 80 near Rawlins, Wyoming. According to the court complaint, the vehicle she was in struck a Rissler & McMurry company semi-truck that was slowed on the Interstate to make a turn, at a Rissler & McMurry construction site. Guadalupe and the car's driver were both killed.

The court suit charged that Rissler & McMurry was negligent in failing to make the construction area safe for the traveling public, in failing to provide flag men, in failing to regulate traffic and in permitting the construction vehicles to be covered with asphalt and road materials so that its tail lights and turn signals were not visible. (Case #52213)

REYNOLD LEWIS SMITH V RISSLER & MCMURRY COMPANY, INC., OTHERS

Reynold Lewis Smith was driving on Highway 387 in Johnson County, Wyoming, when a semi-truck at a Rissler & McMurry road construction site struck his vehicle. The court documents charged that Rissler & McMurry was negligent for failing to direct traffic properly and safely through the construction area. As a result of the accident, Smith suffered serious injuries and lost wages. His medical bills were almost \$8,000. His court suit demanded that Rissler & McMurry pay the costs of his medical bills, lost wages and other damages. (Case #52062)

RISSLER & MCMURRY COMPANY, INC. V GEORGE AND PHYLLIS SNODGRASS, STATE OF WYOMING FARM LOAN BOARD, OTHERS

There is a lot of talk these days about the government unfairly "taking" private lands, for instance through restrictive zoning, without properly compensating the landowner. In this court case, it was Rissler & McMurry who improperly "took" some of the Snodgrass' land for an easement. Rissler & McMurry also sued the State of Wyoming and the

LITIGATION CONTINUED ON PAGE 6

LITIGATION

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RISSLER & MCMURRY COMPANY, INC. V BOEING CONSTRUCTION EQUIPMENT COMPANY AND WESTERN STATES MACHINERY

Rissler & McMurry had a large asphalt job with the State of Wyoming that required application of asphalt with an oil content of 6 percent. However, Rissler & McMurry's materials lacked that 6 percent oil content. The State of Wyoming demanded that they tear up the defective asphalt and replace it with conforming asphalt.

In the court complaint, Rissler & McMurry blamed Boeing Construction for the problems and claimed that the Boeing supplied asphalt plant had produced the defective materials. (Case #54574)

Source Notes

LITIGATION:

Lee Ann Barela V Rissler & McMurry Company, Inc. Case # CV-98-0172, Filed in 2nd District Court of Carbon County, Wyoming on 9/2/98

Mooney's Electric Service, Inc. V Rissler & McMurry Company. Case #71958, Filed in 7th District Court of Natrona County, Wyoming on 8/10/94

Dr. David A. Schwietert, Others V Rissler & McMurry Company, Others: Case #94CV-204, Filed in U.S. District Court of Wyoming (Casper) on 8/8/94

Systems by Moltec, Inc. V Rissler & McMurry Company. Case #69976, Filed in 7th District Court of Natrona County, Wyoming on 4/13/93

Oren Scott V Rissler & McMurry Company. Case #93CV-1006J, Filed in U.S. District Court of Wyoming (Casper) on 2/25/93

Deucalion Research, Inc. V Rissler & McMurry Oil Company, Others: Case #66211, Filed in 7th District Court of Natrona County, Wyoming on 7/16/90

Robert W. Davi V Rissler & McMurry Company, Inc. Case #58561. Filed in 5th District Court for Natrona County, Wyoming on 3/11/85

Del Kinchelowe V Rissler & McMurry Company. Case #84C-25, Filed in 2nd District Court of Carbon County, Wyoming on 5/2/84

Mark A. Schultz V Verne Rissler, W. N. McMurry, Others: Case #54167, Filed in 7th District Court for Natrona County, Wyoming on 11/25/82

Richard Aguirre V Rissler & McMurry Company. Case #52213, Filed in 2nd District Court of Natrona County, Wyoming on 11/30/81

Reynold Lewis Smith V Rissler & McMurry Company, Others: Case #52062, Filed in 7th District Court of Natrona County, Wyoming on 11/2/81.

Rissler & McMurry Company V George and Phyllis Snodgrass, Others: Case #66411 & #66669, Filed in 7th District Court of Natrona County, Wyoming on 6/29/92 & 10/15/90

Rissler & McMurry Company V Scott R. Wenzel: Case #67828, Filed in 7th District Court of Natrona County, Wyoming on 9/30/91

Rissler & McMurry Company V Concrete, Inc., Others: Case #67029, Filed in 7th District Court of Natrona County, Wyoming on 2/25/91

Rissler & McMurry Company V Continental Insurance Company: Case #64429, Filed in 7th District Court of Natrona County, Wyoming on 3/17/89

Rissler & McMurry Company V Carstens Construction, Others: Case #54646, Filed in 7th District Court of Natrona County, Wyoming on 2/23/83

Rissler & McMurry Company, Inc. V Boeing Construction Equipment Company, Others: Case #54574, Filed in 7th District Court of Natrona County, Wyoming on 2/8/83.

ARTICLES:

"No Ruling in McMurry Lawsuit." Hugh Jackson. *Casper Star-Tribune.*

"Rissler & McMurry Will Blast at Bessemer Mountain." Hugh Jackson. *Casper Star-Tribune.*

"Supreme Court Hears Bessemer Appeal." Joan Barron. *Casper Star-Tribune.*

"Rissler & McMurry Co. Seeks 110-Acre Permit." Emily Harrison. *Casper Star-Tribune.*

"No Way to Block Bessemer Quarry." Joan Barron. *Casper Star-Tribune.* 7/6/00.

"Commissioners to Decide Fate of Proposed Limestone Quarry." *Casper Star-Tribune.*

"Survey Error Prompts Mine Trespass Fine." Brodie Farquhar. *Casper Star-Tribune.*

"Bessemer Bend Faced Catch-22." Dan Whipple. *Casper Star-Tribune.* 6/15/00.

"Contact Legislators, Prevent Bessemer Quarry Expansion." Dave & Lisa Ackerman. Editorial. *Casper Star-Tribune.* 12/17/00.

SOURCE NOTES CONTINUED ON PAGE 8

Investigative Activity Report
(Interview)

Dated

April 5, 2006

7 Pages

Withheld in their entirety

Pursuant to exemptions (b)(5), (b)(6) &
(b)(7)(C)

Investigative Activity Report
(Interview)

Dated

April 6, 2006

2 Pages

Withheld in their entirety

Pursuant to exemptions (b)(5), (b)(6) &
(b)(7)(C)

Investigative Activity Report
(Interview)

Dated

April 6, 2006

2 Pages

Withheld in their entirety

Pursuant to exemptions (b)(5), (b)(6) &
(b)(7)(C)

Investigative Activity Report
(Interview)

Dated

April 7, 2006

2 Pages

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Pursuant to exemptions (b)(5), (b)(6) &
(b)(7)(C)

Investigative Activity Report
(Interview)

Dated

June 1, 2006

2 Pages

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Pursuant to exemptions (b)(5), (b)(6) &
(b)(7)(C)