



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, DC 20240

OCT 2 - 2009

## Memorandum

To: Robert Abbey  
Director, Bureau of Land Management

From: Mary L. Kendall *Mary L. Kendall*  
Acting Inspector General

Subject: Report of Investigation – National Landscape Conservation System

The Office of Inspector General has concluded an investigation based upon a complaint from Bureau of Land Management (BLM) officials alleging that managers with the BLM's National Landscape Conservation System (NLCS) were engaged in inappropriate relationships with advocacy groups and possibly violated anti-lobbying statutes and policies.

Our investigation determined that numerous activities and communication took place between NLCS officials and nongovernmental organizations (NGO), including discussions about the NLCS budget and BLM employees' editing brochures and producing fact sheets for a specific NGO. Our investigative efforts revealed that communication between NLCS and certain NGOs in these circumstances gave the appearance of federal employees being less than objective and created the potential for conflicts of interest or violations of law. We also uncovered a general disregard for establishing and maintaining boundaries among the various entities.

We presented our findings to the U.S. Attorney's Office who told us that 18 U.S.C. § 1913, "Lobbying with Appropriated Monies," has no criminal sanctions associated with the it, and thus, declined to prosecute in lieu of administrative action.

We are providing this information to you for whatever administrative action you deem appropriate. Please send a written response to this office within **90 days** advising us of the results of your review and actions taken. Also attached is an Accountability form. Please complete this form and return it with your response. Should you need additional information concerning this matter, you may contact me at (202) 208-5745.

Attachments



# Investigative Report

*National Landscape Conservation System Advocacy*

Report Date: September 29, 2009  
Date Posted to Web: October 2, 2009

This report contains information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6), and (b)(7)(C) of the Freedom of Information Act. Supporting documentation for this report may be obtained by sending a written request to the OIG Freedom of Information Office.

## **RESULTS IN BRIEF**

On September 5, 2008, the Office of Inspector General (OIG) received a complaint from the Bureau of Land Management (BLM) Deputy Director Henri Bisson and a Deputy Ethics Counselor. The complaint alleged that managers with the BLM National Landscape Conservation System (NLCS), particularly Elena Daly, Director of NLCS and Community Programs, and Jeff Jarvis, NLCS Division Chief, were potentially engaged in inappropriate relationships with advocacy groups and possibly violated anti-lobbying statutes and policies.

Bisson and the Deputy Ethics Counselor identified two specific e-mails that they questioned as potentially crossing the line of legitimate and acceptable communication. The first e-mail discussed a budget presentation that Jarvis was scheduled to give to nongovernmental organizations (NGOs). BLM officials explained that this caused concern because employees were precluded from discussing budget information with nonfederal entities prior to release of that information in the President's budget. The second e-mail involved Jarvis requesting that an NGO representative change NLCS legislation. BLM explained that this was potentially problematic because BLM employees were prohibited from influencing the legislation.

Our investigation determined that numerous activities and communication took place between NLCS officials and NGOs, including the following: (1) Jarvis' discussion of the budget, (2) Jarvis' interaction with an NGO representative, (3) Daly's interaction with the same representative, (4) NLCS employees' editing a brochure for an NGO, and (5) NLCS employees' development of a fact sheet for the same NGO. Our investigative efforts revealed that communication between NLCS and a few specific NGOs in these circumstances gave the appearance of federal employees being less than objective and created the potential for conflicts of interest or violations of law. We also uncovered a general disregard for establishing and maintaining boundaries among the various entities.

We presented our findings to the Chief, Public Corruption, U.S. Attorney's Office, District of Columbia. He said that 18 U.S.C. § 1913, "Lobbying with Appropriated Monies," was a violation, but there were no criminal sanctions associated with the violation, and thus, declined to prosecute in lieu of administrative sanctions. We are forwarding this report to the BLM Director for any administrative action deemed appropriate.

## **BACKGROUND**

### **NLCS**

The Department of the Interior (DOI) administratively established the NLCS under BLM in 2000 to "conserve, protect and restore nationally significant landscapes recognized for their cultural, ecological and scientific values," according to BLM's Web site. The NLCS is composed of over 850 federally recognized areas and approximately 27 million acres of national conservation areas, national monuments, wilderness areas, wilderness study areas, wild and scenic rivers, and national historic and scenic trails.

Since the NLCS was administratively recognized, as opposed to being congressionally

recognized, it meant that the System could be dissolved at DOI Secretarial discretion. Congressional recognition would remove the fate of the NLCS from secretarial discretion and, instead, make it a permanent system within the BLM. Consequently, efforts to make the System permanent were initiated and resulted in introduction of the National Landscape Conservation System Act in the US Senate on April 18, 2007 and in the US House of Representatives on April 24, 2007. The House bill, H.R. 2016, was passed on April 9, 2008. The Senate version of the bill, S. 1139, failed to be approved before the close of the 110th Congress.

The bill was reintroduced in the House as H.R. 404 on January 9, 2009. On March 30, 2009, President Barack Obama signed the Omnibus Public Lands Management Act of 2009 into law. The measure put into law the 26-million-acre National Landscape Conservation System within the Bureau of Land Management.

### Lobbying Prohibition

According to DOI 'Guidelines on Prohibited Lobbying Activities,' there are two statutes that prohibit government employees from engaging in substantial grass roots lobbying campaigns using telegrams, letters, or other forms of communication that directly or indirectly encourage the public to contact members of Congress in support of, or in opposition to, legislation: 18 U.S.C. § 1913 and Interior Appropriations Acts.

18 U.S.C. § 1913 prohibits the use of appropriated funds for activities that directly or indirectly are intended to influence members of Congress or to "favor, adopt, or oppose" any legislation or appropriation. Section 402 of the 2006 Interior Appropriations Act prohibits the use of appropriated funds "for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete."

These anti-lobbying laws do not apply to activities of presidentially appointed, Senate-confirmed officials. According to DOI guidelines on prohibited lobbying activities, employees in the Senior Executive Service and General Schedule can provide information about pending legislation, but their activities are limited by the anti-lobbying statutes. Factors that affect whether employee activity violates the anti-lobbying laws include the type of activity, the audience, the timing relative to the status of legislation, and the nature of the forum. Violation of anti-lobbying law does not have to be explicit. DOI ethics guidelines state, "Where an appeal for public support or opposition can be readily inferred from the context of the activity, even though words like 'write your congressional representative to express outrage about this' are not used, the activity may be a violation."

As noted in the departmental Partnership Legal Primer, however, DOI does engage in partnerships, in which its bureaus work with nonfederal entities to "foster" the mission of both groups. These relationships are often established by contracts, personnel assignments, or volunteering. DOI may engage in these partnerships when acting in accordance with authorities provided by Congress. Congress has enacted statutes that limit what DOI can do in this regard and how it must act within certain guidelines. Partnering activities must also conform with ethics requirements, and funds must be spent consistent with their intended purpose.

## **DETAILS OF INVESTIGATION**

We opened this investigation based on a complaint from BLM managers that Jeff Jarvis, Division Chief, NLCS, may have disclosed proprietary budget information to NGOs and went through the National Wildlife Federation (NWF) to lobby Congress, in violation of 18 U.S.C. § 1913, “Lobbying with Appropriated Monies.”

On July 17, 2008, Congressman Rob Bishop sent a letter to BLM requesting documents and correspondence from key NLCS officials in an effort to “better understand the operation and purpose” of the agency. The following September, Congressman Bill Sali also requested documents concerning the NLCS.

While BLM was reviewing the documents responsive to Congressman Bishop’s request, the BLM Public Affairs Office identified two e-mails it believed evidenced misconduct by Jeff Jarvis, Division Chief, NLCS. BLM Deputy Director Henri Bisson consulted with Deputy Ethics Counselor and then referred this matter to the Office of Inspector General for investigation.

While investigating this complaint, we identified several additional issues associated with the NLCS program: possible disclosure of proprietary information by Elena Daly, Director, NLCS, to NGOs concerning the California Desert Conservation Area and assistance provided to the groups by NLCS officials for a hunting and fishing brochure and a fact sheet.

Over the course of our investigation, we reviewed cooperative agreements, financial documents for over 25 entities, and over 174,000 e-mails. We also interviewed over 30 department-, bureau-, and program-level officials and representatives from non-governmental organizations.

### **Disclosure of Budget Information**

On May 31, 2006, a representative from the Wilderness Society, a nonprofit based in Washington, D.C., sent an e-mail to Jarvis informing him that he was scheduled to speak about BLM’s budget process at an NLCS Coalition meeting on June 6, 2006, as part of NLCS Outreach Week.

***Investigator’s Note:** The NLCS Coalition eventually became known as the Conservation System Alliance, which is composed of various groups engaging in historic preservation, education, and recreation, with the aim to “protect, restore and expand” the NLCS, according to its Web site.*

We interviewed Bisson, who said Jarvis confirmed to him that he gave a presentation at a Wilderness Society meeting. He said Jarvis told him he provided attendees with a summary of the budget process but left immediately after. Bisson said that if Jarvis stayed for the budget discussion that followed or other parts of the meeting, this would have been inappropriate because BLM employees could not engage in conversations with outside entities about specific aspects of the bureau’s budget. They could, however, explain how the budget process worked, he said.

We interviewed Jarvis, who stated that he did not recall the June 6, 2006 meeting but said he routinely discussed the BLM budget with NGOs. Jarvis said he was aware that there were very specific rules governing what could and could not be discussed concerning the President's budget. He said that whenever he attended meetings with these types of groups to discuss the BLM budget, he did not participate in any other portions of the meeting.

### **Lobbying Congress through the National Wildlife Federation**

On November 28, 2007, Jeff Jarvis e-mailed a legislative representative for the NWF, a nonprofit based in Reston, VA, stating: "I am in Northern New Mexico. We are looking at some protected archaeological sites protected by law in Galisteo. The managers and staff want to be added to NLCS. I don't want to complicate anything, but what would it take to add a few small areas to the legislation?" On December 5, 2007, the NWF legislative representative e-mailed Jarvis asking him to contact her "off line" concerning the Galisteo Basin.

We interviewed the NWF legislative representative who worked for BLM as the special assistant to the Director for five years. In 2006, she started working at NWF as the legislative representative, she said, and she was responsible for advocating for public lands policy and wildlife. She said her work included NLCS, mining reform, oil and gas reform, wildlife habitat, and oil shale issues. She first met Jeff Jarvis and Elena Daly when she worked for BLM, she said.

*Agent's Note: The NWF legislative representative left the NWF in October 2008 and began working for the National Trust for Historic Preservation, a nonprofit in Washington, D.C., in November.*

The NWF legislative representative stated that NLCS issues accounted for approximately 60 percent of her workload. She said some of her lobbying responsibilities included educating Congress and congressional staff, advocating for the NLCS Permanence bill, and advancing the NLCS legislation through the committee process. She said NWF was part of the Conservation System Alliance, which was a "loose alliance" of 80 organizations, including recreation, faith-based, friends groups, and others that endeavored to make the NLCS permanent. She said the House of Representatives version of the Permanence bill was passed in April 2008, and the Senate bill was in an omnibus package made up of about 150 bills.

*Agent's Note: The Senate bill was reported by Committee to the floor on May 23, 2007, but was never voted on.*

The NWF legislative representative said Jarvis' apparent request to "add a few small areas to the legislation" occurred when the Conservation System Alliance was talking to "the Hill" about the Permanence bill. She said she could not recall why Jarvis requested that the units be added to the legislation. She said that when she received his e-mail, she referred it to the NGO point of contact regarding the NLCS Permanence bill. The NWF legislative representative said she did not talk to the NGO point of contact about Jarvis' request.

The NWF legislative representative said she was annoyed by Jarvis' request, that she was very busy and did not want to consider changing the legislation. She would not comment on whether or not it was appropriate for a federal employee to ask her about adding to, or otherwise influencing, legislation. She said that in the end, Jarvis' requested changes were not made in the draft legislation. She said that "just because a BLM employee requested adding something to the legislation doesn't mean NWF would do it." The NWF legislative representative said BLM had no role in developing the Permanence bill.

The NWF legislative representative said she e-mailed Jarvis and asked him to contact her "off line" regarding the Galisteo Basin because talking on the phone was easier than having a discussion via e-mail.

We interviewed the NGO point of contact. When asked about the e-mail from Jarvis asking whether an area could be included in the NLCS legislation, she said that although she now considered Jarvis' question to have been regarding procedure, at the time of the e-mail, she was not sure. "But any time for me that there's any doubt in my mind, my rule of thumb is to not engage in that type of dialogue," she said. She said she did not think Jarvis was asking her to forward legislation on his behalf but knew his question pertained to legislation and wanted to be on the "safe side" and not answer. She said she later talked to the NWF legislative representative about Jarvis' e-mail at a meeting and told her she did not respond to him because she wanted to "stay within the parameters of what's proper."

We interviewed Elena Daly, Director, NLCS, who told us that she asked Jarvis about the November 27, 2007 e-mail. She said Jarvis told her that when he wrote it, he was "in the middle of nowhere" and could not reach Daly or Pat Gubbins, then-Acting Deputy Director for NLCS. Daly said that had Jarvis contacted her, she would have told him that it was not appropriate to add anything to the legislation. Daly said Jarvis told her, "It was felony stupidity. I admit it. But it was nothing more than that."

We interviewed Jarvis, who said he e-mailed the NWF legislative representative to obtain information about the process for adding a piece of land to the NLCS Permanence bill. He said he was not asking her to add any units to the legislation and that "It's not my legislation. I didn't draft that legislation. I wasn't working with anybody on it." Jarvis said that before he e-mailed the NWF legislative representative, he attempted to contact someone in the BLM Office of Legislative Affairs and Correspondence, but he was unable to reach her. He said the NWF legislative representative did not answer his question, so he recommended that the Galisteo Basin managers put together a proposal to add the Basin to the NLCS and submit it to the BLM New Mexico State Office for consideration.

Jarvis said that when he spoke to the NWF legislative representative "offline," she told him that the New Mexico managers needed to write a proposal to add the units to the Permanence bill and submit the proposal to the BLM New Mexico State Office. Jarvis said the proposal was never submitted.

Jarvis recalled having discussed his November 27, 2007 e-mail with Daly and conceded that he may have told her that his sending it was "felony stupidity," referring to the potential appearance

problems of the e-mail when read by others. He denied that this characterization was an admission that he was asking for units to actually be added to the legislation. While he was aware of the prohibitions regarding lobbying activities by federal employees, he said, he did not know whether a request to add units to the legislation would be an ethics violation.

## **NLCS Assistance Provided for Hunting and Fishing Brochure and Fact Sheet**

### Hunting and Fishing Brochure

On November 27, 2007, the NWF legislative representative sent an e-mail to numerous NLCS and BLM officials, stating, "I've attached my first version of the detailed descriptions of the NLCS units I hope to include in my brochure on opportunities for hunting and fishing in the National Landscape Conservation System....If you have other strong recommendations, let me know. I'll happily consider....You all are my peer review, so I'm counting [on] your help....Please get me your comments by COB on Friday [November 30, 2007]."

Dwight Fielder, Chief, Division of Fish, Wildlife, and Plant Conservation, BLM, forwarded the NWF legislative representative's e-mail to his staff and directed them to review and comment on the brochure before Friday.

Bob Ratcliffe, Chief, Division of Recreation, BLM, also committed to have his staff review and edit the document.

On November 28, 2007, NLCS Deputy Director David Hunsaker provided the NWF legislative representative with detailed edits and feedback on her draft brochure. Two weeks later, the NWF legislative representative e-mailed Daly, Jarvis, and Fielder, stating, "The brochure is moving along....Everyone in the field and DC office has been wonderful about giving me very helpful feedback....Dwight, I'd like to talk to you about how many copies you think you'll need for the conferences where you plan to distribute. Elena – what about our visitor centers and public rooms?...I have a budget that is limited by my grant. Is there any hope of BLM printing extras out of the Denver service center?..."

On March 4, 2008, the NWF legislative representative e-mailed several BLM officials regarding the "Final of Hunting and Fishing in the System." She wrote, "Hey all, we are done – finally! My mini-print job is at the printer for my hill work, so let me know what you need to send to the BLM printing folks. My designer is happy to work with you." Fielder replied that evening, "Thanks ... We look forward to distributing this. I also challenge anyone to keep an accurate count of how many copies get made...."

On March 11, 2008, the NWF legislative representative sent an e-mail to Bisson informing him that the hunting and fishing brochure had been completed and was helping her effort: "I'll send you a hard copy of this after the insanity is over, but my long awaited Hunting and Angling in the National Landscape Conservation System booklet is finally done – all 36 glorious and well researched pages are out there and helping me lobby. I've attached the pdf."

Twenty-five hundred copies of the brochures were purchased from EcoPrint. NWF paid for

1,000 copies, and BLM paid for the remaining 1,500, plus overnight shipping costs to Arizona, at a cost of \$4,328.

When interviewed, Daly said she did not have any consternation about the NWF legislative representative's request to have the NWF brochure vetted by BLM employees. She said reporters regularly called and asked for facts to be verified. When asked if BLM's response could have been viewed as assisting her with her lobbying efforts, Daly said BLM did not participate in, or produce, the brochure. She said that would have involved sitting down with the NWF legislative representative and writing it collaboratively and helping her with funding. She said BLM employees only assisted her with fact-checking her draft. Daly said they needed to ensure the information that got to the public was accurate and current. "I can't control what other people think," she said. "You know, I can only tell you what I know. And if somebody on the outside wants to take a look at that and judge me on that in isolation, I don't care, because that's not reasonable." She added, "I do not believe that is an appearance of impropriety. That is my staff doing the job they were told to do."

Daly averred that she did not know what the NWF legislative representative did for the NWF and that she was not aware that her title was "Legislative Representative." Daly agreed that "Legislative Representative" meant lobbyist; she reiterated that the Conservation System Alliance was an advocacy group that had the Permanence bill as part of its goal, including increasing knowledge on the Hill and increasing the budget.

***Investigator's Note:** In her statement provided on September 24, 2008, Daly explained that the NWF legislative representative was a core group member of the Conservation System Alliance, which she described as "an advocacy group" that she dealt with "cautiously."*

Daly stated that the NLCS did not pay any printing costs associated with the hunting and fishing brochure. She added that the bureau's public affairs office would be responsible for reviewing the brochure before it was printed.

During his interview, Jarvis said BLM had provided other NGOs the same document review and fact-checking service that was provided to the NWF legislative representative for the hunting and fishing brochure; however, he could not provide an example. Instead, Jarvis said he always made the same offer to anyone who was writing about the NLCS, whether it was an NGO, the media, a researcher, or someone else. He said, "My job is to make this information available to people. If it's the true story of the Conservation System, I make that information available. I don't distinguish between types of groups or individuals." Jarvis said the fact-checking service was not provided routinely or weekly but "from time to time." He said, "I don't lobby, but if people ask me, I answer the questions. I think that's one of my jobs as a public servant... I want to make sure they have the right [information]. My job. And I don't care, I do it for anybody. I don't make a distinction between what they're going to use the documents for."

Dwight Fielder, Chief, Division of Fish, Wildlife, and Plant Conservation, BLM, stated that the NWF legislative representative wanted the brochure reviewed to ensure the information in the guide was factually correct and relevant information was not excluded. Fielder said he sent the guide to BLM employees to look at particular NLCS units to ensure the information was

accurate. Fielder said he was excited about the development of the guide because BLM could also benefit from communicating the opportunities for hunting and fishing in the NLCS. Fielder explained that Executive Order 13443 directed federal agencies to “do a better job of promoting hunting and fishing on the public lands.” He said the Executive Order established a clear interest and government purpose for developing the brochure, and the NWF legislative representative’s brochure was a perfect vehicle for fulfilling a legitimate government purpose. Fielder said his division paid to have copies of the brochure printed and that BLM received copies of the final brochure.

Fielder said he did not know that the NWF legislative representative worked in a lobbying capacity or that she used the hunting and fishing brochure to lobby for congressional support for the NLCS. Fielder said he could not control whether the guide was used to lobby Congress.

When interviewed, the NWF legislative representative said she sent the hunting and fishing brochure to BLM employees that she knew from working at BLM. She said she knew the level of expertise of the employees and wanted their insight to help shape the document.

The NWF legislative representative said the NWF paid the entire balance owed for the printing costs, then BLM reimbursed NWF for the copies it received. She explained that BLM manager Dwight Fielder requested to use some of the brochures for BLM informational uses, so BLM reimbursed the NWF for those it received. She further explained that the brochures were designed to highlight the NLCS system and appeal to sportsmen, and they were distributed to members of Congress to educate them about the hunting and fishing opportunities in the NLCS. She described the brochure as an “educational piece,” differentiating it from a “lobbying piece,” which would contain legislative efforts and include language such as “Please pass HR 1196.”

We interviewed Celia Boddington, Assistant Director for Communications, BLM. Boddington said the NLCS did not send the hunting and fishing brochure to the Public Affairs Office for review. She said it was the Public Affairs Office’s responsibility to review and approve all publications where BLM coordinated with an external group. According to Boddington, the hunting and fishing brochure was not the only circumstance in which NLCS failed to follow the proper procedures established by the Office of Congressional Affairs and the Office of Public Affairs. Boddington said NLCS “routinely ignored” the communications plans and long-standing bureau policy.

Boddington provided the BLM policy concerning review and approval for publications, Instruction Memorandum No. 2005-015. Published November 2, 2004, the policy emphasized that it was “critical” that BLM employees followed the formal approval process that was developed for all of the bureau’s written and electronic published products. Among numerous elements that made up the BLM publication approval process, the policy stated, “Public Affairs (WO-610) must review any publication or exhibit that is Bureauwide in scope, regardless of the cost of that publication or exhibit. This review is in addition to the State-level review.”

### Hunting and Fishing Fact Sheet

On March 28, 2008, the NWF legislative representative sent an e-mail to key BLM and NLCS

officials, stating, “I Need help ... So, the [National Rifle Association] has decided to remove their support from the [Permanence bill]...I’d like to put together a fact sheet on what kind of hunting and recreational shooting is allowed in the System...Can we pull together the brightest in the bureau to help me with this? Make it a joint fact sheet?...Rumor has it the bill might go to the floor for a vote on April 22 in the House as the sexy Earth Day bill, so we have to be quick.”

Three days later, the NWF legislative representative sent Jarvis an e-mail with the subject line “Hunting Fact Sheet beginnings”. Attached to this e-mail was a document titled, “Fact Sheet on Hunting and Angling HR 2016.doc.” Shortly thereafter, Jarvis sent the document to a BLM wilderness specialist. This began a series of exchanges of versions of the “Fact Sheet on Hunting and Angling HR 2016.doc” between Jarvis and the wilderness specialist.

On April 1, 2008, The NWF legislative representative e-mailed Jarvis, saying, “Jeff, thank you again for being such a big help and whipping a team together yesterday for the fact sheet. It seemed like old times – and that is a good thing!” Jarvis replied, “Making progress, I look forward to seeing improvement this evening, and yes that was fun.” The next day, she wrote, “The document is evolving very well. It is very important that we know all of the exceptions to the rule ....We have to provide reassurances that making the NLCS permanent is not about the politics of shutting down hunting. You do that systematically by destroying their argument. They argue that the Secretary can limit hunting. Ok, so lets [sic] go back in time and determine if Babbitt or Bush have closed off hunting in the BLM and in the NLCS. Make sense?”

On April 2, 2008, the NWF legislative representative sent an e-mail to Jarvis, stating, “I talked to Henri [Bisson]. He knows the situation and said all Elena needs to do is walk it down to him to get it done. Also, he said that the challenge was getting it through Celia’s folks. I remarked that Celia has always been supportive and helpful. He said yes. I don’t think I need to say any more. He is aware of what is going on and how this will help BLM’s position : )”. Later that day, Mali sent a revised version of the fact sheet to Jarvis.

Also on April 2, 2008, the NWF legislative representative e-mailed several BLM and NLCS officials, including Jarvis, a wilderness specialist, Bisson, Daly, and Pat Gubbins, then-Acting Deputy Director for NLCS, to inform them that the NLCS bill was going to the floor of the House for a vote on April 9. To Daly and Gubbins, she wrote, “One week from today the big showdown at the Congressional corral. Strap on your six shooters, friends. We need a brief chat.”

On April 7, 2008, the NWF legislative representative sent an e-mail to Jarvis, asking, “What is the status of our project?” Jarvis replied that it was “Done” and going to receive final review the next morning. He asked her to call him.

On April 9, 2008, the House version of the NLCS Permanence bill (HR 2016) passed.

On April 12, 2008, the NWF legislative representative e-mailed Daly and Jarvis a copy of the Hunting and Fishing Fact Sheet. The NWF legislative representative wrote the following:

Greetings! We are on for our regular Wednesday meeting this week at 12:30. You can expect us to be getting ramped up for the Senate fight and less inclined towards the serious policy stuff right now. But given the way things are moving, we should also be thinking about making sure Kempthorne and Caswell are on board to getting Bush to sign this bill. I'd hate to move this across the finish line and get disqualified for the race. I think the meeting will be at the Wilderness Society again. If you don't hear from me, assume that is the case. I've attached the fact sheet we used for the last minute hunting and fishing amendment that was offered on the bill. It essentially inoculated [sic] us against that motion to recommit that could have killed the bill.

***Investigator's Note:** The advanced document properties of this attachment indicated that the company was "US Senate." The advanced document properties also indicated that the document had been created on Monday, March 31, 2008, at 9:43 a.m. Following more than 17 revisions of the fact sheet, the NWF final PDF version of the fact sheet was almost exactly the same as the version sent on April 2, 2008, from the wilderness specialist to Jarvis.*

Investigators showed the NWF legislative representative this document, which she described as direct lobbying materials, and she verified that she wrote it. She could not recall whether she sent the document to NLCS managers but stated, "I can lobby them."

When interviewed, Daly said BLM did not create a hunting and fishing fact sheet in response to the NWF legislative representative's request. She recalled that BLM was considering doing one-page fact sheets on several topics, including hunting in the NLCS while, at the same time, the NWF legislative representative wanted to educate hunters and anglers about recreation opportunities in the NLCS.

Daly said she did not believe NLCS pulled together a team to respond to the NWF legislative representative's request. Investigators showed Daly the April 12, 2008 e-mail in which the NWF legislative representative told her and Jarvis that the hunting and fishing brochure was used to inoculate against a last-minute amendment to the NLCS Permanence bill. Daly said the BLM fact sheet was public information. She speculated that BLM provided the information to the NWF legislative representative just as it would provide it to any member of the public. Daly said that as long as the information was noncontroversial, did not involve budget, did not involve personnel, and was not Freedom of Information Act exempt or precluded, the NLCS employees answered NLCS-related questions upon request.

When interviewed, Jarvis stated that the NLCS did not create a hunting and fishing fact sheet in response to the NWF legislative representative's request. He said he had developed hunting and fishing fact sheets, but none of them were released to the public. Investigators showed Jarvis a copy of the hunting and fishing fact sheet that she e-mailed to him on April 12, 2008.

Jarvis said his division had started working on fact sheets before the NWF fact sheet was developed, but the BLM fact sheet on hunting and fishing was not developed until after the NWF fact sheet. Jarvis said he used external documents, such as the NWF fact sheet, to assist him in developing the BLM hunting and fishing fact sheet. Jarvis said that explained why some of the

ideas and sentences in the BLM fact sheet were similar to the NWF fact sheet.

Jarvis could not explain why the April 2, 2008 version of the fact sheet sent to him from the wilderness specialist was nearly the same as the NWF fact sheet that the NWF legislative representative admittedly used to lobby congressional members and less similar to the BLM fact sheet. He also could not explain why the NWF legislative representative thanked him for “whipping a team together.”

### **NLCS Partnerships**

NLCS officials told investigators that their relationships and communication with NGO representatives supported an agency-wide initiative to develop and maintain partnerships with these entities.

Daly stated that former DOI Secretary Bruce Babbitt wanted to create the NLCS similar to the National Park Service, Forest Service, and the refuge system, but with a “twist.” Daly explained that the “twist” was that BLM would continue to provide multiple uses on the lands, but with conservation as the driving force. Daly said Babbitt emphasized working with local communities and providing for sustainability of natural resources, local economies, and local cultures.

During the George W. Bush administration, she said, then-Assistant Secretary Lynn Scarlett was interested in partnership development and the Secretary’s “Four-C’s:” communication, cooperation, and consultation in the service of conservation. Daly said partnership development became part of her duties and responsibilities.

Daly said she distinguished partners from advocacy groups. “[A]dvocacy groups are those groups that go to the Hill and lobby Congress,” she said. “They may come here and talk to the Secretary; they may talk to the Director of BLM; they may do a variety of things to put their cause forward.” Daly described partners as “those people who do the on-the-ground stuff, who work with our local offices, who come in here and will talk to me about problems that they’re encountering, sometimes within their organization.” Daly added that some partners had advocacy roles. She said the difference rested in the type of work they did and how NLCS approached the relationships. Daly elaborated that advocacy groups were generally national in scope, where partners generally focused on a certain geographic place.

She said the partnerships were usually memorialized in a written agreement, such as a memorandum of understanding, cooperative agreement, assistance agreement, or similar document. The agreements usually outlined a specific goal or task to be achieved by the partnership, she said.

According to Daly, government employees could not engage in activities to further legislation. She said that when working with partners that had an advocacy component, employees focused on the parameters of the partnership. When a partner raised a topic that was off-limits for federal employees, such as issues concerning the budget, she said, NLCS employees left or otherwise ended the discussion. Daly said she had never had an NGO push a topic that was beyond the parameters of the partnership.

Daly said DOI had rules regarding employee interaction with partners. She said she had extensive experience with ethics rules and guidelines related to lobbying activities, partner relationships, and DOI efforts to clearly define the rules for partnerships. She had provided two training sessions for BLM employees, she said, and the training included an ethics component and a partnership component. “We talk about this stuff a lot,” Daly said. Moreover, she said she recently directed a member of her staff to pull together definitive protocols for working with partners. She said these protocols would be based on the career Senior Executive Service protocols, which Daly described as “the strictest protocols the Department has.”

Jarvis stated that he did not work with any advocacy groups. He said he dealt primarily with education partners. He said that not all NLCS partners were advocates, and not all the advocates that NLCS worked with were partners. He defined an advocacy group as being involved in political lobbying and said partners assisted in education, restored trails, and sponsored conferences. Jarvis said some of the partnerships were formal and others were informal; mostly his arrangements with partners were informal agreements derived by conversation or e-mail.

Jarvis stated that he had been recently appointed as Division Chief in early 2008, and he was tasked with a new role of managing partnerships. However, Jarvis said, he had been responsible for all components of the NLCS “back and forth” for the past 5 years. He said he did not receive any formal training for handling partnerships but said repeatedly that he received ethics training relating to partners and advocacy groups. He said he relied on his many years of experience to guide him through his decision-making process. He added that he had not had formal training in many areas but was considered an expert in some of those areas.

Jarvis said that in the past, when dealing with a potential conflict, he sought advice from the Designated Agency Ethics Official. Jarvis said that if there was an issue that concerned him, he also sought advice from Elena Daly or NLCS Deputy Director Jim Murkin. Jarvis stated, “I’ve had some training in ethics. I don’t think I’ve ever done anything with a partner that made me uncomfortable. I don’t think I’ve ever crossed the line.”

Bisson said NLCS employees and BLM managers developed relationships with NGOs, and this was a requirement for senior executive managers. Bisson said Performance Element No. 1 of Elena Daly’s Employee Performance Appraisal Plan mandated that an employee “[u]ses collaborative techniques and tools, such as adaptive management or structured decision making, to foster partnering and collaboration.” The plan also mandated that an employee “communicates to employees the importance of results and customer focus as a critical component of the organization’s mission” and “build trust and cooperative working relationships with stakeholders both within and outside the organization.” Bisson said Performance Element No. 1 was mandatory department-wide for all executive managers.

Janine Velasco, Assistant Director for Human Capital Management, BLM, said Performance Element No. 1 was not intended to involve external groups (NGOs) in BLM internal processes. Velasco said the performance element was not intended to provide an avenue to go above and beyond BLM’s authority in developing partnerships. She said she did not believe the performance element was intended to place priority on developing partnerships.

We interviewed an Associate Solicitor, Division of General Law, Solicitor's Office, and an Assistant Solicitor, Branch of General Legal Services, Division of General Law, Solicitor's Office. The associate solicitor said the Department's "push on partnerships is perilous; there are lots of traps, [which is why employees] need to have an understanding of the legal landscape." He said that while the Department promoted partnership development, employees could not forget about other rules.

The Associate Solicitor explained that there were three DOI offices that provided partnership guidance: the Office of Partnership Initiatives, the DOI Ethics Office, and the Solicitor's Office. He stated that at least one bureau, NPS, provides extensive partnership training that was developed in consultation with the Solicitor's Office and the Ethics Office. At the Departmental level, training was provided to employees by the Office of Partnership Initiatives and the DOI Ethics Office in an effort to educate employees on how to legally navigate relationships with partners. However, he said, the training stressed ethics issues; lobbying issues were deferred to the Solicitor's Office, Division of General Law.

The Associate Solicitor said there was a gap in employee training regarding partnerships and lobbying activity because the ethics training did not address lobbying issues in detail. He said there was not a "holistic approach" to educating employees about partnerships. He said the Ethics Office used to cover lobbying activities in its partnership training. He said that beginning in 2005, the Designated Agency Ethics Officer and the Associate Solicitor for General Law developed and led a week of executive decision-making training to help rising executives identify potential problems and know where to turn for advice.

According to the associate solicitor, despite the information void regarding partnerships, the partnership concept should not be abandoned but needed strong management. He said partnership training needed to include rigor and procedures and emphasize transparency in partner relationships.

We interviewed the deputy ethics counselor, BLM. She characterized the relationship between NLCS and the NWF legislative representative as "incestuous." She described the two e-mails that initiated this investigation as "extremely embarrassing" and stated that NLCS "probably crossed the line" in its contacts with the advocacy groups.

The deputy ethics counselor said BLM had not maintained an "arms-length" relationship with the advocacy groups and appeared to have a "really cozy, cozy relationship" with grassroots lobbying groups. She said she did not know if anti-lobbying laws were violated, but the contacts presented an appearance of an inappropriate relationship.

The deputy ethics counselor said she had provided training for BLM managers for years. Consequently, she said, none of the NLCS managers could claim that they did not know the limits and prohibitions regarding partnership relationships or lobbying activities. She said no one from NLCS consulted with her relating to contacts or relationships with advocacy groups.

Although the OIG requested records dating back to 2005, documents provided by the BLM deputy ethics counselor show that Daly received mandatory ethics training that included partnerships and/or collaboration on April 26, 2007, June 11, 2007, and June 26, 2008. The

BLM records also indicated that Jarvis attended similar training on November 17, 2006, April 26, 2007, and June 26, 2008, even though he was not subject to the mandatory training.

The deputy ethics counselor pointed out, “Regardless of whether employees are required to take annual ethics training due to their identification as financial filers, employees bear some responsibility for ensuring that they are aware of the ethics rules and regulations... ignorance is no excuse.”

*Investigator’s note: The deputy ethics counselor retired from BLM on March 1, 2009.*

**SUBJECT(S)**

Elena Daly, former Director, NLCS  
Jeff Jarvis, Division Chief, NLCS

**DISPOSITION**

We presented our findings to the Chief, Public Corruption, U.S. Attorney’s Office, District of Columbia. He said that 18 U.S.C. § 1913, “Lobbying with Appropriated Monies,” was a violation, but there were no criminal sanctions associated with the violation, and thus, declined to prosecute in lieu of administrative sanctions. We are forwarding this report to the BLM Director for any administrative action deemed appropriate.