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Analysis of Disclosure, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

OSC File No. DI-08-0145

Summary

Gregg Wilkerson, Geologist, Department of the Interior, Bureau of Land Management (BLM), Bakersfield Field Office, Bakersfield, California, disclosed that BLM employees violated a law, rule, or regulation and engaged in gross mismanagement. Specifically, Mr. Wilkerson, who consented to the release of his name, alleged that employees were directed to report their time worked using subactivity codes and program elements that did not accurately reflect the work they performed.

The Honorable Dirk Kempthorne, Secretary of the Interior, tasked the Honorable C. Stephen Allred, Assistant Secretary, Land and Mineral Management, to investigate Mr. Wilkerson's allegation. Mr. Allred, in turn, tasked the Human Resources Office of the Minerals Management Service (MMS) to conduct the investigation. The U.S. Office of Special Counsel (OSC) received a report dated May 28, 2008. The report found no evidence to support Mr. Wilkerson's allegation that employees were directed to miscode program elements but did not address how it arrived at that conclusion. OSC requested a copy of the MMS report on which the May 28, 2008, report was based. This supplemental report was received on June 9, 2008. OSC requested a second supplemental report, which was received on February 2, 2009. Mr. Wilkerson declined to comment on the first supplemental report, but commented on the original report and second supplemental report. OSC finds that the agency's reports contain all of the information required by statute and that their findings appear to be reasonable.

The Whistleblower's Disclosure

Mr. Wilkerson disclosed that employees at the Bakersfield Field Office have been instructed to input inaccurate subactivity codes and program elements into the QuickTime computer system for several years. QuickTime is BLM's time and attendance system, which is used to track accumulated personnel costs as a product of time charged to activities. This inaccurate reporting generally occurs in the second half of the fiscal year. At the start of the fiscal year, when subactivity budget accounts are full, employees are able to accurately report the work they have done. However, as certain categories of funds, or subactivities, are used up, employees are told to enter their time under subactivity codes where funds are still available even though the codes do not accurately reflect the work that was performed. Mr. Wilkerson provided OSC with a copy of a spreadsheet that purports to instruct employees as to which subactivity codes to use when entering their time into QuickTime. The spreadsheet contains the hand-written notation, "[e]ffective [Pay Period 8], these [hours] should be used when entering your time worked." Mr. Wilkerson alleged that the miscoding violated BLM Instruction

Memorandum No. 2006-240, which requires "diligence and accuracy in the coding of costs to subactivities and program elements."

Report of the U.S. Department of the Interior

The agency's May 28, 2008, report explained that the investigation was conducted by the MMS Human Resources Office. The report did not say which employees were interviewed. As such, it did not indicate whether Mr. Wilkerson was interviewed as part of the investigation. The investigation found no evidence to support Mr. Wilkerson's allegation that employees were directed to miscode program elements or report incorrect subactivity codes. The report stated that the spreadsheet provided by Mr. Wilkerson was distributed to employees to inform them as to where their annual workload measures are budgeted. The report concurred with recommendations by MMS to have management at the Bakersfield Field Office ensure that employees understand that the spreadsheets are distributed as guides and have management conduct an annual employee awareness session detailing the office's budget and methodology for funding office expenditures. The report also stated that a request has been made to have written guidance accompany the distribution of these spreadsheets that clearly explains that coding of time must be in accordance with applicable laws, rules, and regulations.

Mr. Wilkerson's Comments

Mr. Wilkerson provided comments on the agency's report on June 15, 2008. Mr. Wilkerson stated that the agency's claim that the spreadsheets are intended to be a guide to inform employees how their workload is budgeted is incorrect. He explained that the information contained in the spreadsheet is available any time through on line websites. The spreadsheets were given to him with direction from management to code the subactivities contained in the spreadsheet regardless of the type of work employees actually did during the pay period. Mr. Wilkerson had hoped that the investigators would interview other employees in the Bakersfield Field Office and the other offices throughout California. He believed such interviews would have helped to uncover the pattern of miscoding.

Mr. Wilkerson stated that an investigator during his interview told him that BLM management claimed miscoding was necessary to avoid laying off personnel. If BLM were to adhere to laws and regulations, it would have to lay off personnel. Miscoding was used, according to the investigator, as a technique to keep people employed. Mr. Wilkerson believed the report and its recommendations are based on false information and consequently cannot fix the problem. Mr. Wilkerson opined that the current system cannot provide correct information to decision makers, because miscoding is too easy for BLM managers to do. He suggested spreadsheets no longer be used, because they decrease accuracy.

First Supplemental Report of the U.S. Department of the Interior

Based on Mr. Wilkerson's comments, OSC requested the MMS Investigative Report upon which the May 28, 2008, agency report was based. On June 10, 2008, OSC received the five

page MMS Investigative Report. The agency consented to treating the MMS Investigative Report as a supplemental report on July 8, 2008. The supplemental report was forwarded to Mr. Wilkerson, but he declined to comment on it.

The supplemental report was written before the May 28, 2008, report and served as its basis. The investigative review included interviews with employees of the local and state offices as well as a review of timesheet data, BLM guidance, appropriation documentation, and Fiscal Year 2008 (FY08) tracking documents. The investigation included interviews of Mr. Wilkerson, Field Office Manager Tim Smith, Associate Field Manager John Skibinski, Assistant Field Manager, Minerals, Gabe Garcia, and Program Analyst Joann Nunn. None of the interviewees made statements which supported Mr. Wilkerson's allegation.

During his interview, Mr. Wilkerson acknowledged that he has never been directly ordered to record time to a project that he did not work on, he has never had a supervisor adjust a timesheet he submitted, and he has never been instructed to change a timesheet after it had been submitted. Additionally, Mr. Wilkerson's supervisors have never refused to process a timesheet he submitted, and Mr. Wilkerson admitted that he was not always aware of the program receiving the benefits from the work he performed.

None of the supervisory employees stated that they told employees to charge time to a project on which the employee did not perform work. The spreadsheets were intended to be used as a guide to inform the employees where their workload measures are budgeted. Employees do not always understand the connection between the work they perform and the project that benefits from that work.

Several telephonic interviews were conducted. Rob Nauert, Budget Chief, BLM California State Office's Branch of Fiscal and Business Service, stated that he was unaware of any situation where employees were directed to charge their time to projects on which they had not performed work. Such actions would contradict the annual guidance for proper timesheet coding. Tim Moore, Hollister Field Office, and Andy Suppiger, Redding Field Office, both have heard employees claim that they were told to code their timesheets to projects on which they did not perform work, but they have not seen documentation to support those claims.

Mr. Wilkerson's direct labor data was examined for the period between October 1, 2006, and March 15, 2008. Because Mr. Wilkerson alleged that miscoding is done in the second half of the fiscal year, his time was broken down into three segments, first half of FY07, second half of FY07, and first half of FY08. The investigators noticed a variance between the subactivities charged during the first halves of FY07 and FY08 and those charged in the second half of FY07, as shown in the following table.

Table of Subactivity Codes Charged vs. Time Spent on Activity (in hours) for Gregg Wilkerson

	First Half of FY07	Second Half of FY07	First Half of FY08
1310/1311	4	325	21
1330	341	180	324
1610	4	254	0
1640	155	0	78
1990	338	274	385

The report found no noticeable peaks in the hours Mr. Wilkerson charged to subactivities 1330, 1640, and 1990 but did notice a skewed pattern for subactivities 1310/1311 and 1610. The report acknowledged that these numbers appeared to support Mr. Wilkerson's allegation, but noted that Mr. Wilkerson was unable to provide any documented evidence to show that he did not actually perform work that benefitted subactivities 1310/1311 and 1610 during the second half of FY07. The supplemental report concluded that there was no tangible evidence to support Mr. Wilkerson's allegation. The report recommended that BLM ensure that employees understand that the worksheets are distributed as guides and not as instructions on how to record direct labor hours. The report also recommended that the Bakersfield Field Office conduct an awareness session detailing their office budget and methodology for funding office expenses.

Second Supplemental Report of the U.S. Department of the Interior

On November 12, 2008, OSC submitted a list of questions to the Department of the Interior based on the agency's initial report, its first supplemental report, and Mr. Wilkerson's comments. These questions addressed the topics related to the March 27, 2007, spreadsheet, Mr. Wilkerson's hours recorded in QuickTime, and Mr. Wilkerson's claim that he was told by an investigator that miscoding is necessary to avoid laying off personnel. OSC received the answers to these questions in the form of a second supplemental report on February 2, 2009, from Richard T. Cardinale, Chief of Staff to the Assistant Secretary, Land and Minerals Management. OSC's questions were copied verbatim into the second supplemental report. The answer to each question appears directly below the question.

The report noted that Mr. Wilkerson told the investigators that he had never been directly ordered to record time to a project on which he did not work. The handwriting on the March 27, 2007, spreadsheet was written by Program Analyst Joann Nunn, a non-supervisory employee, for informational purposes and was to be given only to the four Division Managers. Ms. Nunn prepares two such spreadsheets during each fiscal year, one at the beginning and one at mid-year. Ms. Nunn, who is not in Mr. Wilkerson's chain of command, indicated that the handwritten notation at the top of the spreadsheet was intended to inform Division Managers of the remaining

projected labor hour balances as of pay period 8. The spreadsheet was not intended to be distributed to employees or to be interpreted as an order to employees to miscode time in QuickTime.

Three of the four Division Managers who received the spreadsheet were interviewed. All three said that they do not instruct their employees to miscode time and that their employees are to record their time in QuickTime based on the projects on which they worked. Ten employees from the Bakersfield Field Office were randomly chosen to be interviewed about the spreadsheet, but only eight were available. These ten employees' hours worked were also examined. Each employee stated that he or she received a copy of the spreadsheet from their supervisor. Seven of the eight employees viewed the spreadsheet as a guide while only one viewed it as a directive. The employee who viewed the spreadsheet as a directive stated that he received a spreadsheet in the last month of the fiscal year, but acknowledged that he only charged his time worked to a single subactivity code during that time period.

Gabe Garcia, who has been Mr. Wilkerson's supervisor since September 2007, stated during his interview that when a project consumes its funding for a year but the project has not yet been completed, employees on that project are directed to work on other outstanding projects. Work on the uncompleted project resumes when additional funding becomes available.

In his March 26, 2008, interview, Mr. Wilkerson explained that he had found the March 27, 2007, spreadsheet on the corner of his desk one morning. He did not know who gave it to him. He believed that he worked on different projects than those allocated to him on the spreadsheet. However, Mr. Wilkerson never challenged the recording of hours under the subactivities allocated to him on the spreadsheet.

The first supplemental report stated that the hours Mr. Wilkerson reported as working appeared to support his allegation, but Mr. Wilkerson was unable to provide any documented evidence to show that he did not actually perform work that benefitted subactivities 1310/1311 and 1610 during the second half of FY07. OSC asked what type of documented evidence did the investigators seek from Mr. Wilkerson and was that type of information required to be retained. OSC also inquired how many other employees' hours were examined for patterns similar to Mr. Wilkerson's. BLM expected Mr. Wilkerson to have reports, e-mails, proofs of studies performed, analysis review documentation and other work-related documents. Mr. Wilkerson was unable to produce any of this information in each of the three times he was asked. There was no standard operating procedure regarding the retention of such information.

The investigators examined the hours recorded in QuickTime of ten randomly chosen employees to determine the extent of any difference between their reported labor hours and the hours listed by their name in the March 27, 2007, spreadsheet. If employees were following the spreadsheet as a basis for entering their labor hours, it was expected that there would be little difference between these sets of data. The report concluded that the recorded hours varied sufficiently enough from those on the spreadsheet that the actual labor hours were recorded into QuickTime. In contrast, there was little variance between Mr. Wilkerson's recorded labor hours and the projected hours from the spreadsheet.

OSC also requested that the agency provide a response to Mr. Wilkerson's assertion in his earlier comments that he was told by an investigator that BLM management miscodes to avoid laying off personnel. The investigators who interviewed Mr. Wilkerson were SES Human Resources Officer Jim Burckman and MMS Senior Staff Accountant Robin Robinson. Mr. Wilkerson was never told that miscoding is used to avoid laying off personnel. In addition, the propriety or impropriety of miscoding program elements or subactivity codes was not discussed. The interview of Mr. Wilkerson was neither recorded nor transcribed.

In addition to answering OSC's questions, the report also noted the agency's responses to the allegation. Assistant Secretary Allred issued a memorandum on May 13, 2008, to James Caswell, Director, BLM, requesting that written guidance containing the intended use of the spreadsheets accompany the distribution of the spreadsheets and that an annual employee awareness session is to be conducted detailing the office's budget and methodology for funding office expenditures. Director Caswell reiterated these concerns in a June 12, 2008, memorandum to Michael Pool, BLM State Director, California, and requested that Mr. Pool take Assistant Secretary Allred's requested actions.

Mr. Wilkerson's Comments on the Second Supplemental Report

Mr. Wilkerson submitted comments on the second supplemental report on February 25, 2009. While the report stated that he was never ordered to record time to a project on which he did not work, Mr. Wilkerson claimed that he was verbally instructed by his former supervisor Patty Gradek to use the spreadsheets to record his time in QuickTime. Mr. Wilkerson stated that these spreadsheets were distributed monthly, not biannually, to all employees in the minerals division, not just the four Division Managers. Mr. Wilkerson contended that if budget allocations matched expenditures within 2%, managers would get annual bonuses.

Mr. Wilkerson disagreed with Mr. Garcia's statement that employees are assigned to different projects when funding is exhausted. He has not seen evidence of such reassignments. Mr. Wilkerson also denied the report's assertion that he never challenged recording the hours under the subactivities allocated to him on the spreadsheet. Mr. Wilkerson claimed to have spoken about the miscoding with Ms. Gradek, who was not interviewed during the agency's investigation. Mr. Wilkerson noted that the employee who viewed the spreadsheet as a directive received a similar spreadsheet in the last month of the fiscal year. Mr. Wilkerson believed this statement contradicted Ms. Nunn's assertion that the spreadsheets are prepared only at the beginning and middle of the fiscal year. Mr. Wilkerson said the spreadsheets are prepared monthly during the third quarter of the fiscal year and as often as weekly in the fourth quarter.

Mr. Wilkerson responded to the report's claim that he did not provide additional information to investigators by stating that he had already provided all of his documentation to the Office of Special Counsel. Mr. Wilkerson referenced various documents attached as exhibits to his comments. These attachments included documents showing changes to a timesheet in 2005, allegations of prohibited personnel practices, a log of his disclosures, the March 27, 2007,

spreadsheet, and an e-mail from August 27, 2007, directing employees to use the same coding as a previous pay period.

Mr. Wilkerson expressed disapproval with the methodology used in comparing the time recorded in QuickTime versus the time listed for employees in the March 27, 2007, spreadsheet for the ten randomly selected employees. He suggests that the methodology used faulty assumptions, such as failing to consider sick or annual leave usage. He therefore considered the findings invalid. Regarding his earlier claim that the investigators told him that miscoding was necessary to avoid laying off personnel, Mr. Wilkerson explained that he was asked by the investigators, "[i]f you had a choice between coding exactly as required by the Washington Office directives, and laying off employees, what would you do?" That question led to his assumptions that the interviewers spoke with management, and that management told them miscoding was necessary in order to avoid layoffs.

Special Counsel's Findings

Based on my review of the original disclosure, the agency's report, first supplemental report, and second supplemental report, and the whistleblower's original and second supplemental comments, I have determined that the agency's reports contain all of the information required by statute and the findings appear to be reasonable.