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**Analysis of Disclosures, Agency Investigation and Reports,
Whistleblower Comments, and Comments of the Special Counsel**

OSC File No. DI-06-2427

Summary

George Kalba, former General Supply Specialist with the Department of Interior (DOI), Bureau of Reclamation (BOR), Lower Colorado Region, Boulder City, Nevada, disclosed to the Office of Special Counsel (OSC) that in August 2003, he completed an inventory of buildings owned by BOR in the Lower Colorado Region, and specifically in the Yuma, Arizona area. During the course of this inventory, Mr. Kalba discovered that 27 BOR-owned buildings previously existing as improvements to real property had been removed or demolished without approval or compensation, by local utilities who were in possession of the buildings pursuant to Operation & Maintenance Agreements with BOR. Mr. Kalba contended that the improper removal or demolition of these buildings constituted violations of 41 CFR §101-47, which establishes the procedures for reporting unused, or underused, real and related personal property to the General Services Administration (GSA) for disposal. Mr. Kalba further alleged a violation of 18 USC §641, a criminal statute prohibiting the theft of public money, property or records.

DOI investigated Mr. Kalba's allegations and found them to be substantiated. The agency determined, however, that due to the passage of time, criminal prosecution is not possible and administrative sanctions are not viable.

OSC finds that the agency's report contains all the information required by statute, and that the agency's finding that neither administrative action nor criminal action is viable due to the passage of time and lack of existing documentation, is reasonable. Irrespective of this conclusion, OSC urges BOR to take steps to improve its system of property accountability, inventory and disposal to protect against further violations. OSC further urges BOR to reevaluate the manner in which it responds to disclosures of wrongdoing.

The Whistleblower's Disclosures

Mr. Kalba, who consented to the release of his name, was tasked in July, 2003, with performing a physical inventory of BOR, Lower Colorado Region, real property and buildings. He was appointed as a Traveling Survey Officer to conduct a survey of buildings and housing which were parts of the Gila Project located within the boundaries of the Wellton-Mohawk Irrigation and Drainage District. Mr. Kalba discovered that there was limited background information available, as exact dates for prior inventories had not been recorded. Mr. Kalba's inventory revealed inconsistencies in the BOR database, known as Foundation Information for Real Property Management (FIRM). In some cases, Mr. Kalba was able to confirm that certain buildings listed as existing and belonging to BOR had been

demolished and rebuilt, or demolished as a result of flooding and not rebuilt. Other properties had been transferred from BOR ownership but still appeared in the FIRM database as owned by BOR. Mr. Kalba was able to identify these discrepancies and recommend corrections to the records. After conducting the inventory, he prepared a Report of Survey, YAO-03-0004, to document the inconsistencies. In two cases, however, he was unable to reconcile the discrepancies, and became concerned that buildings had been improperly removed or demolished by the local utilities holding possession.

First, Mr. Kalba identified two buildings which he described as “losses of a suspicious nature.” Building 3-50-0001 and 3-50-0026, located in Wellton, Arizona, were not found during his physical inspection. Mr. Kalba obtained documentation from the local utility, Wellton-Mohawk Irrigation and Drainage District (the District), stating that the two buildings had been removed from the site. One building, 30-50-0001, was given to an employee of the District, known only as “Mr. Leyva,” relocated to 28757 Pacific Avenue, Wellton, Arizona, and used as an income producing property for his benefit. The other building, 30-50-0026, was donated to a church in the town of Wellton, Arizona. In both instances, the recipients of the buildings bore the cost of removal and relocation.

Second, during his inventory, Mr. Kalba identified 25 buildings located on corresponding lots in the Riverside County area of California. These buildings, which were originally built as temporary residences to house employees during the construction of the All American Canal, were owned by BOR but were in the possession of the Coachella Valley Water District (CVWD), a local utility. Upon inquiry, Mr. Kalba was advised by CVWD that the properties had been demolished. CVWD could not produce any documentation relating to the destruction of the buildings, nor could Mr. Kalba find any documentation of a title transfer or approval for the demolition of the buildings. He did, however, find documentation indicating that in 1975, CVWD had requested to acquire the properties, but the request was denied. Mr. Kalba concluded that this, combined with the lack of paperwork documenting the demolition of the buildings, is evidence of the suspicious nature of the property disappearance.

BOR manages federally owned real and personal property in accordance with the Federal Property Management Regulations, codified at 41 CFR 101, along with DOI and BOR manuals and regulations. Specifically, the Utilization and Disposal of Real Property is governed by 41 CFR §101.47, which establishes the procedures and forms for reporting unused, or underused, real and related personal property to the General Services Administration for disposal. GSA’s Office of Property Disposal (OPD) regulates the disposal of real property that is no longer mission-critical to Federal agencies. Together, these laws, rules and regulations ensure accountability of federally owned property and mandate the process by which such property is handled when no longer needed by the federal government.

Mr. Kalba asserted that the gifting of two properties by the District and the apparent demolition of 25 buildings in the CVWD, did not comply with any of the DOI, BOR, or other federal laws, rules or regulations referenced above. He alleged that the disposal of these properties was unlawful and represented gross mismanagement of BOR assets and a gross

waste of funds. Mr. Kalba reported the inventory discrepancies to his supervisors and included references to the Wellton properties in his Report of Survey. He also reported the discrepancies to the DOI Office of Inspector General, who forwarded the matter to BOR management for review with no reporting requirement. Mr. Kalba also reported this as a loss of a suspicious nature to the Federal Bureau of Investigation (FBI) pursuant to the Interior Department Manual, Interior Property Management Directives (410 DM Addition to IPMD, Section 114-60 Personal Property Management, Survey Procedures) governing losses of personal property. After making his disclosures, Mr. Kalba was removed from the real property management area and reassigned to unrelated duties away from his previous office location. On July 7, 2007, Mr. Kalba accepted an early retirement based on "an involuntary separation due to abolishment of position" and is no longer employed by the federal government.

Department of Interior Investigation and Report

A DOI Office of Inspector General report was completed by Special Agent Megan E. Wallace on May 14, 2007. The report was approved by OIG Director Alan Boehm and forwarded to BOR Commissioner, Robert W. Johnson on June 29, 2007. The completed report was forwarded to OSC by DOI Secretary Dirk Kempthorne's designee, Kameran L. Onley, Assistant Deputy Secretary, on August 15, 2007. In response to questions raised by OSC regarding the report, the agency responded by letter dated January 3, 2008. For purposes of OSC's analysis, the January 3 response is considered to be a supplemental report.

Propriety of the Disposition of Buildings

The DOI OIG investigation substantiated Mr. Kalba's disclosures. The investigation concluded that in January, 1992, the District donated one building to an employee and the building was, at the time of the investigation, being used by that employee as an income producing residential property. The second building was donated to a local church in Wellton and, according to the report, "may be demolished soon." The report substantiated Mr. Kalba's assertion that the District did not hold title to the two properties at the time they were donated and that they had not received authorization to dispose of the properties. With respect to the BOR buildings in the possession of the CVWD, the report concluded that these buildings were improperly demolished in the mid- to late 1980's. The report established that, like the District, CVWD did not hold title to the 25 properties and had not received authorization to dispose of the properties. The report substantiated Mr. Kalba's finding that by letter dated December 22, 1975, CVWD requested title to the 25 buildings in their possession and that, on January 16, 1976, the government denied CVWD's request. The OIG investigation concluded that the donation of the buildings by the District and the demolition of the buildings by CVWD constituted violations the United States Code, the Code of Federal Regulations, and the terms of the Operations & Management contract between DOI and the utilities.

Environmental Concerns Raised Due to the Disposition of Buildings

In addition to issues surrounding the legality of the disposition of the 27 properties, the report addressed concerns about the potential Environmental Protection Agency (EPA) violations inherent in the disposal of the buildings. Citing findings by the DOI Office of General Counsel, the report concluded, with respect to the 25 demolished CVWD buildings, that because no environmental testing was done in 1985, no absolute determination could be made as to whether the “waste streams generated during the demolition” contained regulated amounts of asbestos or lead. Consequently, the agency could not make a finding as to whether the demolition violated the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants (NESHAP) or the Resource Conservation and Recovery Act (RCRA). With respect to the two donated buildings, the OIG concluded that they “are likely the type that could generate asbestos and lead contaminated waste streams if demolished.”

OIG Findings Regarding Penalties and Recommendations

Irrespective of these findings, the agency declined to pursue criminal, civil or administrative penalties. Initially, the agency asserted that further action was “not viable” citing the statute of limitations with respect to the criminal action and the time that elapsed between the date of the violations and the finding of wrongdoing with respect to civil or administrative remedies. Upon further inquiry by OSC on the issue of recourse, the agency, in a supplemental response, added that the “book value” of the 25 CVWD buildings at the time of demolition was \$0. The “book value” was calculated based on the acquisition cost of the buildings less depreciation over the useful life of the asset. The agency further asserted that even if CVWD had followed the procedures set forth at 41 CFR §102-75 and obtained permission to dispose of the buildings prior to demolition, they would only have been responsible for the cost of demolition (which they paid) and not for reimbursement of the actual value of the buildings (which again, the agency calculated as \$0 at the time of demolition). Finally, the agency maintained that although CVWD did not hold title to the 25 buildings in question, they did essentially finance the construction of the buildings through the repayment of their construction contracts which, according to the report, incorporated the original construction cost of the temporary residence buildings.

The OIG did, however, make the following three recommendations to DOI/BOR as a result of their findings:

- 1) Implement a record keeping system that accurately records and tracks property inventory and disposition;
- 2) Develop and publish guidelines or regulations to govern the disposal of other Reclamation property similar to these 27 buildings;
- 3) Reclamation officials should consult both the Solicitor’s Office and Reclamation/Departmental environmental staff: (1) to determine the status of the transfer; (2) to determine whether the building currently inhabited by a District employee or other private citizen poses any health risk; and (3) to determine whether the district’s disposition of these buildings was in keeping with the requirements of

the Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act.

In response to these recommendations, OSC was informed of BOR's intention to address, 1) inventory property management issues required in the President's Federal Real Property Asset Management Executive Order 13327; 2) any potential health risks and potential liability associated with lead paint and asbestos in the remaining unauthorized transferred buildings; and 3) Mr. Kalba's concerns regarding the actions needed to correct BOR's inventory.

The Whistleblower's Comments

Mr. Kalba's initial comments to the DOI OIG report, dated November 20, 2008, focused less on the report itself and more on his frustration that his allegations were ignored until OSC became involved in 2007. Mr. Kalba further commented upon the lack of documentation regarding the disposition of the 25 CVWD houses, a deficiency fully acknowledged by the report. Finally, the bulk of Mr. Kalba's response addressed his early retirement and resulting loss of income. He requested a "monetary reward" in recognition of his contribution to the establishment of a better property accountability system and improved "stewardship over the tax payers' [sic] money."

Mr. Kalba again offered comments on the DOI OIG report by letter dated January 26, 2009. In his amended comments, he reiterated his frustration that no action was taken with respect to his disclosures until OSC became involved in 2007 and expressed skepticism about the OIG's findings regarding the disposition of the 25 CVWD houses. With respect to the 25 houses, Mr. Kalba objected to the agency's position that it lacked the ability to assess the value of these residences and stated his belief that the agency was remiss in not investigating the possibility that the houses were transferred and "turned into personal income property." In addition, Mr. Kalba expressed his belief that his original Report of Survey was altered. This belief is based on Mr. Kalba's recollection of the document which dates back more than five years. A comparison of the Report of Survey originally submitted to our office by Mr. Kalba and the copy of the Report of Survey included in the DOI OIG report indicates that no such alterations were made. Mr. Kalba also stated his dissatisfaction with the agency's finding that the statute of limitations bars criminal prosecution and the non-viability of administrative sanctions due to the passage of time since the infraction.

In his final set of comments dated February 16, 2009, Mr. Kalba again principally took issue with the agency's claims regarding the 25 CVWD houses. Mr. Kalba disputed the agency's position that the houses were probably demolished and that the current value of those 25 houses, were they still standing, would have been \$0. Mr. Kalba's disagreement with the agency's findings regarding the value of the houses is based on his belief that there are many buildings in the Boulder City, Nevada area which, despite expiration of their useful life, retained their value. Mr. Kalba believes these buildings could have and should have been sold and that the government, through its unwillingness to hold CVWD accountable for the loss of the buildings, is passing up the chance to be appropriately compensated for the loss. Mr. Kalba further believes, as he has stated previously, that the OIG investigation

should have included interviews with former residents of the CVWD buildings to verify whether or not the buildings were, in fact, demolished or whether they were, like the District buildings, moved and converted into private income producing properties.

Acting Special Counsel's Comments and Conclusions

I have determined that the agency's report contains all of the information required by statute and the agency's finding that further administrative or criminal action is not viable is reasonable. The agency has fully acknowledged the impropriety of the actions taken with respect to the 27 properties in question by both the District and CVWD. It has determined, however, that given the passage of time, further action is impractical. The government expense inherent in pursuing such action is outweighed by the likelihood that, due to the passage of time and the unavailability of documentation and witnesses, a sufficient basis for further action will not be established. The agency has acknowledged that problems, particularly in the area of property accountability and inventory, do exist and the OIG has recommended that these problems be addressed. Yet this outcome, while practical from a government resource perspective, is not necessarily the right outcome and Mr. Kalba's frustration is understandable. CVWD requested and was denied title to the 25 buildings. In direct defiance of this denial, they destroyed the buildings. I urge the agency to honor its commitment to move forward in good faith to improve its systems of accountability, inventory and disposal to ensure that violations of this nature do not occur in the future.

I further urge the agency to reevaluate how it responds to disclosures of wrongdoing. Given BOR's stated mission of managing our nation's water and water related resources in an "...economically sound manner in the interest of the American public," the information brought to light by Mr. Kalba should have been received and acted upon as expeditiously as possible. BOR has an opportunity to chart a different course in the future and it is my hope that BOR will embrace its stewardship responsibilities and respond more productively and efficiently to future disclosures of wrongdoing.