



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



The Honorable William E. Reukauf  
Acting Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

MAR 05 2010

Re: OSC File No. DI-08-2659

Dear Mr. Reukauf:

On March 24, 2009, the Office of Special Counsel (OSC) sent a letter to Secretary of the Interior Ken Salazar (Secretary) concerning a whistleblower disclosure alleging that officials at the Bureau of Land Management Las Vegas District Office and Red Rock Canyon National Conservation Area (RRCNCA) were engaging in conduct that might constitute a violation of a law, rule or regulation, gross mismanagement, a gross waste of funds and a substantial and specific danger to public health (OSC File No. DI-08-2659). By letter dated April 30, 2009, Secretary Salazar informed the OSC that the responsibility for investigating the allegations was delegated to DOI's Inspector General, and that the responsibility to determine appropriate responsive actions was delegated to the Assistant Secretary-Land and Minerals Management (ASLM). As required, the Inspector General (OIG) conducted an investigation in accordance with 5 U.S.C. 1213, and completed its report summarizing the results of the investigation on September 25, 2009 (OIG Report No. PI-PI-09-0370-1). The OIG submitted its Report of Investigation (ROI) to the Secretary on September 28, 2009, which is attached for your reference.

Consistent with 5 U.S.C. 1213 (c) and (d), this memorandum summarizes the results of the Department's investigation of the allegations contained in OSC File No. DI-08-2659, and sets forth the responsive actions that have been initiated, or will be undertaken, to address concerns raised by the allegations.

## Summary

The OIG's ROI concluded that no further investigative activity is warranted since mitigation measures to address the lack of grid utilities at RRCNCA have been implemented or are currently being explored. It further noted that a management advisory would be sent to BLM regarding compliance with BLM's National Environmental Policy Act Manual Handbook H-1790-1, which states that monitoring activities adopted in a decision record must be implemented.

In light of the results of the OIG investigation, the Inspector General determined that referrals to the Attorney General due to evidence of a criminal violation [5 U.S.C. 1213(d)(5)(C) and (D)] were not warranted. Restoration of an aggrieved employee [5 U.S.C. 1213(d)(5)(B)] also is not

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at issue here. We have determined, however, that changes to agency practices [5 U.S.C. 1213(d)(5)(A)] are necessary to improve management controls of the relevant procurement and construction processes, and ensure adherence to environmental regulations. We have also determined that breaches of environmental compliance requirements, together with inadequate management oversight, warrant disciplinary action. To that end, I will direct that appropriate disciplinary action be taken against the responsible BLM employees.

### **Background**

The initial investigation began when Randolph "Randy" August, Special Agent (SA), Office of Law Enforcement Security, BLM Nevada Branch, contacted the OSC alleging that the BLM committed wrongdoing in connection with the construction of a ranger station, a fire station, and a new visitor center at RRCNCA. Specifically, SA August alleged that the ranger station and fire station were constructed with the absence of safe and reliable water and electric supplies; the ranger station was unusable because it lacked telephone and Internet service; the existing RRCNCA Visitor Center used twice the agency's groundwater allowance; and the construction of the new visitor center resulted in the destruction of local vegetation without adherence to appropriate environmental safeguards.

Based on the allegations, the OIG's investigation focused on four areas of inquiry: (1) extension of utilities to the RRCNCA; (2) safety of potable water; (3) whether the BLM's water usage exceeded its water rights; and (4) whether vegetation was destroyed in violation of environmental regulations. The investigation consisted of interviews of project managers and contracting officers responsible for construction of the facilities at issue, field visits, and review of project-related documents and applicable BLM policy.

The OIG found that the scope of the project initially included providing municipal or commercial water, electricity, and telecommunications services to the ranger station, fire station, and visitor center at RRCNCA. This initial scope of the project was approved in June, 2004 and funded for \$8,883,025 via the Southern Nevada Public Lands Management Act (SNPLMA). According to various project managers and contracting officers interviewed during the investigation, however, later construction estimates and public utility agreements or contracts proved cost prohibitive and the proposed expansion of the commercial grid utilities to RRCNCA was never completed. As such, the ranger station and fire station were constructed without grid utilities in that electricity, communications, and water were not being provided from municipal or commercial sources.

The investigation further revealed that the environmental assessment (EA) on the construction of the RRCNCA visitor center was completed on January 8, 2008. The EA indicated that cacti and yucca would be salvaged prior to construction; however, the investigation confirmed that this aspect of the EA was not incorporated into the construction contract due to initial inadvertence, and a later determination that compliance with the vegetation salvaging requirement was too costly. In February 2008, construction of the visitor center commenced.

## OIG Findings

### Extension of Utilities to the RRCNCA

SA August alleged that the BLM constructed the fire and ranger stations at the RRCNCA without electricity, communications, or a safe and reliable water supply which rendered these facilities unusable.

The OIG's investigation revealed that the RRCNCA facilities were constructed without electricity, communications, or water being transmitted from municipal or commercial sources. Rather, electricity was provided by a generator, and a tank was the source for safe and reliable water. Interviews with project managers and contracting officers revealed that, because of unresolved debates over the appropriate procurement vehicle to complete the project (e.g., a "construction" versus "service" contract), a 2004 project to expand commercial grid utilities to RRCNCA was never completed. Although the BLM Nevada will continue to transport water to the facility, it is conducting ongoing discussions with Southern Nevada Water Authority regarding the cost and feasibility of piping water to the facility.

The investigation also confirmed that the BLM-Nevada is using American Recovery Reinvestment Act funds to install solar panels at the facility. In addition to the current generator, this improvement is expected to meet the electrical needs of both the ranger station and the fire station. Additionally, satellite telecommunication capabilities were recently installed in the building.

### Excess Water Usage at the Visitor Center

SA August alleged that the existing RRCNCA Visitor Center drew twice the amount of the agency's water allocation of ground water. The OIG's investigation found that the evidence proffered to support this allegation was inconclusive because water meters were not installed until late 2008.

However, the investigation did not reveal any evidence disputing the assertion that visitation at the RRCNCA is steadily increasing, resulting in a corresponding increase in water usage. This trend is expected to continue for the foreseeable future. Consequently, BLM Nevada is currently working to acquire more water rights and continues to closely monitor its water usage at the RRCNCA.

### Destruction of Local Vegetation

SA August further alleged that the BLM Nevada violated National Environmental Policy Act (NEPA) by not complying with a November 2006 environmental assessment (EA) of the Visitor Center construction, which concluded that no adverse impacts to cacti and yucca at the site would occur because "most of these plants would be salvaged prior to construction." In fact, the OIG's investigation revealed that the BLM-Nevada did not salvage vegetation during construction of the visitor center.

The project manager explained that the salvage plan in the EA was inadvertently omitted from the contract, and that a later determination was made that compliance with the vegetation salvaging requirement was too costly.

The investigation did confirm, however, that an alternative plan to restore the vegetation is underway. The BLM contracted with the College of Southern Nevada and the Nevada Division of Forestry to have vegetation grown from seeds collected from the project area. The new plants will be transferred to RRCNCA upon completion of the construction in the third quarter of FY10.

### **Responsive Actions**

In addition to the ongoing actions described above to address the specific allegations, the BLM will initiate changes in agency practices [5 U.S.C. 1213(d)(5)(A)] such as improvement of management controls, as well as efforts directed at ensuring environmental compliance on similar projects. Specifically, the BLM Nevada has implemented comprehensive management changes to safeguard against procurement and construction lapses in the future. Effective contract management will help ensure that contracts adhere to engineering and design standards, and that environmental mitigation measures are included in the contract and carried out during construction.

To implement these improvements, the BLM Nevada is undertaking the following specific changes to agency practices:

- The BLM Las Vegas District Manager and Appropriate Field Manager will review the Statement of Work for each construction project to ensure appropriate provisions are included in the contract and will be briefed bi-weekly on any issues.
- The District Manager will assign a Special Project Manager to oversee large construction projects. The Special Project Manager will be a BLM resource specialist.
- The Special Project Manager will interface with BLM contracting, architectural, and engineering staff to ensure appropriate measures are included in the contract and carried out during construction.
- The BLM Nevada Engineer will review designs and contract documentation to ensure all construction projects comply with engineering standards.
- The BLM Nevada will provide employees further direction on the requirements for compliance with established engineering manuals and handbooks.
- The BLM Nevada will provide employees with training on compliance with NEPA and associated environmental requirements.

- The BLM Nevada has prepared and adopted a Standard Operating Procedure that requires the Landscape Architect and Special Project Manager to flag all plants to be salvaged or protected during proposed projects.
- With regard to completion of the RRCNCA Project, the District Manager will assume direct oversight. The BLM Nevada recognizes the benefits of consistent management and that there were too many individuals involved in various components of the project.
- To ensure adequate and safe drinking water, findings of the BLM's internal Compliance Assessment Safety Health Environment (CASHE) audits will be addressed immediately and all appropriate safeguards will be implemented in accordance with the Federal and state drinking water standards.

Together with the reliable "green" power from the new solar panels being installed and the addition of the satellite communication system to enhance communication capabilities as discussed earlier, these measures will ensure that the concerns raised in the complaint and during the investigation will be meaningfully addressed. In addition, water use at the visitor center will continue to be monitored to determine if the allocation of water is within acceptable limits.

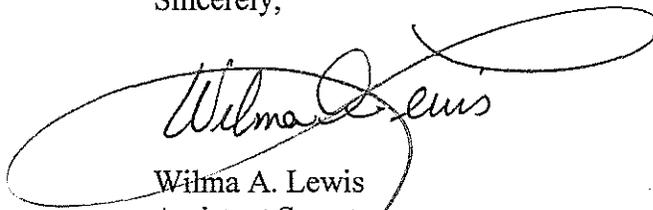
Finally, I will direct that appropriate disciplinary action be taken against the responsible BLM employees.

### **Conclusion**

This memorandum constitutes the agency response as required by 5 U.S.C. 1213. We believe that the described measures will effectively address the issues at RRCNCA identified in the OSC letter and subsequent OIG Report and improve overall management in BLM Nevada.

If you have additional questions or concerns, please contact me at (202) 208-6734.

Sincerely,

A handwritten signature in black ink that reads "Wilma A. Lewis". The signature is written in a cursive style with a large, sweeping flourish at the end.

Wilma A. Lewis  
Assistant Secretary  
Land and Minerals Management

Attachment



# Investigative Report of Red Rock NCA (BLM)



United States Department of the Interior  
Office of Inspector General

REPORT OF INVESTIGATION

Case Title RED ROCK NCA (BLM)	Case Number PI-PI-09-0370-I
Reporting Office Program Integrity Division	Report Date September 25, 2009
Report Subject Closing Report of Investigation	

SYNOPSIS

Through a referral letter from the U.S. Office of Special Counsel (OSC) to the U.S. Department of the Interior (DOI), Special Agent Randy August, Bureau of Land Management (BLM) alleged that BLM constructed a ranger station and a fire station at the Red Rock Canyon National Conservation Area (RRCNCA) without a safe and reliable water supply to support those facilities. Further, the ranger station is unusable because it does not have phone or internet service and the existing RRCNCA Visitor Center is drawing twice the amount of the agency's allocation of ground water. According to August, these acts pose a threat to public health and safety and/or represent a gross waste of funds.

Our investigation revealed that the ranger station and fire station were constructed without electricity, communications, or water being transmitted or provided from municipal or commercial sources. Rather, electricity was provided by a generator and a tank was the source for safe and reliable water. Because of unresolved debates over which procurement vehicle to use to support the project, a 2004 project to expand commercial grid utilities to RRCNCA was never completed. The OIG was informed that BLM is procuring a vendor to design a solar power system for both the ranger and fire stations and that satellite telecommunication capabilities were recently installed in the buildings. The allegation that BLM was exceeding water rights at the visitor center could not be substantiated. Until late 2008, the visitor center well did not have a meter on it by which to measure water usage, so allegations that water rights were being exceeded were anecdotal estimates and improperly based on high-season usage versus an annual average.

August also alleged that BLM destroyed cacti, yucca, and other vegetation during construction of a new visitor center, thus violating the National Environmental Policy Act. We learned that BLM did not salvage vegetation during construction of the visitor center. Instead, BLM contracted with vendors to collect seeds native to RRCNCA, then grow and replace vegetation at the impacted area.

Reporting Official/Title Traci L. Taylor / Senior Investigator	Signature <i>Traci L. Taylor</i>
Approving Official/Title Scott L. Culver / DAIGI	Signature <i>Scott L. Culver</i>

Authentication Number: 1729D954E0E7E5C78D7663D6179386DA

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OI-002 (06/08)

## BACKGROUND

On June 25, 2004, a project funded via the Southern Nevada Public Lands Management Act (SNPLMA), # BL27, *Red Rock Campground and Fire Station Complex*, was approved, authorizing \$8,883,025 for, among other things, construction of a utilities project that would provide safer, more reliable sources of municipal or commercial water, electricity, and telecommunications to the ranger station, fire station, and visitor center (**Attachment 1**).

According to BLM documents, the water line, in particular, would end the reliance upon trucked in and tank-stored water at the fire station and future ranger station, while alleviating the volume of water used from the visitor center well. As a result of several years of unresolved debates about the appropriate procurement vehicle to use to support the project, the utilities expansion project was never completed.

The ranger station and fire station were constructed without grid utilities. That is, electricity, communications, and water were not being transmitted or provided from municipal or commercial sources. Instead, the fire station was constructed with a generator designated as its primary power source and a water tank as the primary water source. The ranger station, which was later constructed adjacent to the fire station, was also to benefit from the same generator and water tank near the fire station.

Construction of a new visitor center at RRCNCA began in February 2008, following the completion of an environmental assessment (EA) (#NV-050-2007-63) on January 8, 2008. The EA stated that cacti and yucca would be salvaged prior to construction.

## DETAILS OF INVESTIGATION

On March 24, 2009, the Secretary of the DOI received a letter from OSC, referring OSC File No. DI-08-2659 to the Department for investigation. The referral related to disclosures made by Bureau of Land Management (BLM) Special Agent Randall August that: BLM constructed a ranger station and fire station at RRCNCA without a safe and reliable water supply to support those facilities; the existing RRCNCA Visitor Center was drawing twice the amount of the agency's allocation of ground water; the ranger station was unusable because it did not have phone or internet service, and construction of a new visitor center was accomplished without proper environmental safeguards in place, resulting in the destruction of local plant life.

Our investigation revealed that a project to expand utilities was planned and approved for funding in 2004. The utilities project was to supply safer, more reliable sources of municipal or commercial water, electricity, and telecommunications to the ranger station, fire station, and visitor center at RRCNCA, while reducing the volume of water used from the visitor center well. Because of unresolved debates about the appropriate procurement vehicle to use to support the project, the utilities expansion project was never completed.

The failed completion of the utilities project is at the core of August's assertion that (1) the transporting to and storage of water at RRCNCA poses a threat to public health and safety, and (2) the limited use of the ranger station, because of the lack of telecommunications capabilities, is a gross waste of funds.

An enclosure accompanied the OSC referral letter consisting of a draft memo that August had provided in support of the allegations he made (**Attachment 2**). The draft memorandum, dated June 26, 2007, from former BLM Las Vegas Field Office (LVFO) Manager Juan Palma to BLM Nevada (BLM-NV) State Director Ron Wenker, urged continued efforts to be taken to extend a water line from Las Vegas to RRCNCA (**Attachment 3**).

The draft memo, in relevant part, stated that BLM was working with the Las Vegas Valley Water District to provide municipal water service to the campgrounds, fire station and visitor center, but had experienced delays in getting an agreement/contract in place.

In addition, the memo read:

“The water line project is crucial to the Campgrounds, Fire Station, and visitor center projects for numerous reasons. Two of the most important are as follows:

1. The water needs for the Red Rock Fire Station (and almost completed ranger station) is (*sic*) currently provided through water trucked to and stored on-site. The Clark County Health Department has determined that this method is unsafe and asked BLM to make modifications to ensure health standards are met. BLM staff informed the Health Department that a water line was coming to provide municipal water to the site and were told that in light of this development, the Health Department would not act on any finding as long as the water line was imminent.
2. As a part of the visitor center project, the water needs were researched for the increased facility. In completing this study, it was discovered that BLM uses almost twice as much water from their well at the Visitor Center as is allowed through the water rights at this location...” (See Attachment 2).

August said that he initially filed a complaint consisting of multiple allegations with the OSC in July 2008 (**Attachment 4**). Of the several allegations submitted, said August, OSC accepted for investigation only the issue(s) relating to the RRCNCA.

#### **Extension of utilities to RRCNCA**

Several officials from BLM-NV were familiar with the plan to extend utilities to RRCNCA and the subsequent failure to get the project initiated.

Kenda Tucker, Chief, Contracting Office, BLM-NV, stated that there was significant debate about whether to use a construction or service contract to complete the water line expansion project (**Attachment 5**). Tucker stated that her office elevated the issue to the BLM National Operations Center in Denver, CO.

Robert Taylor is currently the Special Projects Manager, LVFO, Southern Nevada District, BLM-NV and was previously the Field Manager, LVFO, BLM-NV, at the time of construction of the fire station and ranger station (**Attachment 6**). Taylor agreed that the debate about which procurement vehicle to use stalled the progress of the utilities project. He explained that a construction contract meant that BLM would have to design, build, maintain, and manage the water from beginning to completion of

the construction. Taylor said the bureau did not want to take on those responsibilities.

Taylor said that, if the project was to be completed via a service contract, BLM would have to amortize the \$4-\$6 million cost of developing the line over the life of the water line. The water companies objected to allowing BLM to amortize that amount of money for 25 years. Moreover, said Taylor, the water companies wanted BLM to construct the water line up front, and then transfer ownership of the water line to the water company. Taylor said that a transfer of a government-funded product like this was not possible.

Michael Reiland is currently the Assistant Deputy State Director (ADSD) for Natural Resources, Eastern States Office, BLM and was formerly the contract Project Manager for construction of the new visitor center (**Attachment 7**). He argued that each of the buildings actually had power and water capabilities, though not connected to a municipal or other "main [grid] system." Reiland said that the power was supplied by a generator and that water was trucked in and stored in tanks. Reiland did not know if the generators and tanks were planned to be long-term provisions for utilities. He said that he was aware that there were plans to bring municipal water, electricity, and phone/internet service out to the fire and ranger stations via a separate Southern Nevada Public Lands Management Act (SNPLMA) project that pre-existed during the time that they were constructing the ranger station.

Reiland added that, for the ranger station, there was no concern about the fact that the building was not "hooked up to the main grid" when it was constructed because the ranger station had water via tank and electricity via generator, and also because efforts were already being taken to procure "main grid" utilities via a separate SNPLMA project.

Reiland speculated that, at the time of construction of the fire and ranger stations, the generator and water tank were regarded as the long-term solutions to the utilities challenge presented by the remote location of the building sites. Reiland added that BLM officials must have made a determination that installation of utilities via main utility grids was a better ("more permanent and reliable") long-term solution.

Reiland opined that when BLM first nominated the utilities project for SNPLMA funding, no one had anticipated the complexities and challenges associated with getting the project going. Reiland said that the hope was to have the utilities project near completion about the time that the visitor center was completed, the fire station and ranger station having already been constructed.

When asked if it made sense to him that the ranger station was built without utilities, Reiland replied, "Given the fact that we had utilities out there that were satisfying the temporary need and that we would have this utility project done...to me, I felt it was fine to be doing it that way. If we had not had any utilities out there, meaning there wasn't even the generator or there wasn't the water...then it would seem kind of weird." Reiland stated, "It didn't seem weird or odd because we had this utilities project in place to be moving forward."

Reiland said that if you look throughout DOI, "here and there" structures are built with what most people term as "temporary utilities," such as a well and a generator because DOI bureaus like BLM, the U.S. Fish and Wildlife Service, and the National Park Service are entities that manage lands that are "in the middle of nowhere." Consequently, the bureau has to "find the best way to accommodate" the circumstances, said Reiland. Reiland said that in the circumstance of the RRCNCA ranger station, BLM made accommodation in constructing the building, considering that the location for constructing

the building was established, and the temporary utilities were employed as the “best way to accommodate” the situation.

Reiland added, “You do what you have to do...sometimes things change” and it becomes necessary to assess whether to pursue other solutions. Reiland said that this occurred with consideration of the utilities project. He said that over time they began adding up the costs to truck in the water and to maintain and fuel the generator for power, so the utilities project was pursued.

Reiland stated that, as an example, the visitor center was originally built in the 1980s without grid utilities. To get water, BLM drilled a well. Over time, visitation increased from 20,000 to over 1 million persons per year. In addition, the well’s pump was old and began malfunctioning. As the water usage by the visitor center increased, BLM began to explore other options to address its changing needs.

Juan Palma, State Director, Eastern States Offices, BLM, and former Field Office Manager, LVFO, BLM-NV, recalled discussions relating to the best procurement instrument to use to establish the utilities expansion project (**Attachment 8**). Palma said that the utilities project was supposed to be completed about the same time as the ranger station construction. Palma said that installation of the utilities was imminent, as the EA for the project had been completed and all that was needed was installation. He expressed surprise that the utilities project had not yet been completed.

Steve Tryon, Assistant District Manager for the SNPLMA, BLM-NV, said that the visitor center, ranger station and fire station were all constructed with the expectation that (grid) utilities would be installed (**Attachment 9**), however, Tryon said, the buildings were constructed before the details regarding the installation of (grid) utilities were worked out. Tryon said that it was “highly unusual” to plan to construct a building without all of the utilities costs worked out – whether temporary utilities, like a generator and water tank, or grid utilities provided by a commercial vendor.

Tryon questioned whether the generator and water tank were considered “stop gap” measures to bridge the period between premature construction of the buildings and extension of municipal utilities. Tryon conceded, however, that BLM occasionally constructs buildings that are in the “middle of nowhere” and are not near grid utilities.

Paul Peterson, State Engineer, BLM-NV, confirmed that the ranger station and fire station had been built without grid utilities; he said he did not know why it had been constructed that way (**Attachment 10**). He commented that it was foreseeable that other buildings could be built without grid utilities because “there’s always that potential when building in remote locations.” Peterson said that there are many considerations that go into the decision to install municipal utilities, such as how frequently a building will be staffed (i.e., seasonally or daily), economic feasibility, or whether any ground water or municipal water is present.

Peterson pointed out that neither the fire nor the ranger stations were initially intended to be full-use buildings. He said that the fire station is used seasonally, and the ranger station was to be used for periodic training. Consequently, the absence of municipal utilities and the use of the generator and water tank were not unreasonable.

Peterson said that, because the fire station and ranger station were not on a municipal water system, water was hauled in on a potable water truck and stored in a water tank near the fire station. Peterson

noted that BLM-NV was currently negotiating with an architectural engineering firm to design a solar voltaic power system for the buildings.

Nancy Christ is the current contract project manager for the visitor center construction project (**Attachment 11**). She stated that BLM frequently constructs buildings in remote locations where municipal grid utilities are not always available, thus necessitating installation of alternative utility sources, such as a generator and/or water tank.

John Baribault, Support Services Manager, LVFO, BLM-NV, said that he did not know how or why the buildings were constructed without utilities, but he said that currently BLM-NV is working on getting solar power installed at the fire station and ranger station (**Attachment 12**). Baribault stated that previously the ranger station was "hardly used at all" because there were no telecommunications. Baribault said satellite telecommunications capabilities were recently added at the ranger station, thus providing phones, computer, and internet access.

### **Safety of potable water**

August alleged that BLM constructed a ranger station and fire station at RRCNCA, but without a safe and reliable water supply to support those facilities. The OIG requested and received documentation of water quality reports taken at the RRCNCA Visitor Center well and fire station tank. The reports showed no indications of poor water quality at the ranger station or fire station; however, two lab reports completed by EFFEX (an environmental testing, laboratory, and consulting services company located in Las Vegas, NV) indicated the presence of unhealthy chemicals in the water at the visitor center well. A report dated June 19, 2007, showed the presence of chloroform, and a December 17, 2007 report showed the presence of nitrates at the visitor center well, not at the ranger station or fire station.

Rebecca Fuentes, Environmental Health Specialist, Southern Nevada Health District (SNHD), Las Vegas, NV, said that she was not aware of any citations or warnings being issued to BLM for the visitor center, fire station, and/or ranger station (**Attachment 13**). Fuentes stated that if there was a problem with water quality or safety, then her department, SNHD, would have been the entity to issue a citation.

Fuentes was informed that the OIG had received copies of the EFFEX water quality lab reports for the water storage tanks at the visitor center, fire station, and ranger station. Fuentes stated that she was familiar with EFFEX and that it was a state certified lab for water quality analysis.

Fuentes was informed that while the lab reports for the fire station and ranger station indicated normal readings and no problems with water quality, the visitor center lab reports showed the presence of chloroform (potentially unhealthy water) on June 19, 2007 (**Attachment 14**). Fuentes stated that she had received copies of the reports at the time that they were generated. She said that the lab result, in and of itself, was not a problem because it is "easy to get a positive total chloroform reading due to lab or sample error" by touching the inside of the cap or not following proper lab procedures. Fuentes explained that repeat tests were taken to negate or verify the reading and that follow-up tests showed no further indications of chloroform (See Attachment 13).

Fuentes was also informed that a lab report for the visitor center well, dated December 17, 2007, indicated that there were unsafe levels of nitrates in the water. Fuentes said that she also had a copy of

the nitrate report (**Attachment 15**). She said that the test that indicated a presence of nitrates was not concerning because tests had not indicated a presence of nitrate at the visitor center since before 2001. According to Fuentes, one positive test in that span of time was acceptable. Fuentes added that nitrate levels could spike following a big rain, which was likely the cause of the December 17, 2007 reading.

When asked if the levels of chloroform and/or nitrates as indicated on the EFFEX reports for the Visitor center posed an imminent threat to public health or safety, Fuentes responded, "No" (See Attachment 13).

The OIG also received copies of completed inspection reports for the potable water truck and the water tank used for the fire station and ranger station. The reports showed no indications of problems or threats to public health or safety (**Attachment 16**).

Peterson said that he was not aware of any citation or admonishment from SNHD or any other entity to RRCNCA regarding unsafe water (See Attachment 10). He stated that BLM complies fully with the Safe Drinking Water Act. Peterson added that any water system can occasionally have a showing of chloroform. Peterson also stated that upon any showing of chloroform, BLM retests for persistence to ensure that there is not an unhealthy presence of the chemical.

Taylor said that he had no knowledge about any citation or admonishment from SNHD or any other entity to RRCNCA regarding unsafe water (See Attachment 6).

Palma recalled his draft memo to Wenker and said that he was not sure if a final copy was sent out (See Attachment 8). Palma said that the assertions in the memo that the water was unsafe and that BLM had received a warning from SNHD regarding water quality were the sum of "logical conclusions" about the potential dangers, considering that the water was being trucked to the facility in the hot Las Vegas climate. Palma said that, to his knowledge, no formal actions had been taken against the bureau, and that the "anecdotal" assertions were made in an effort to prompt action toward the utilities project.

Baribault said that he was not aware of any citation or admonishment from SNHD or any other entity to RRCNCA regarding unsafe water (See Attachment 12). He said that, as the Support Services Manager, he likely would have known.

### **Exceeding Water Rights**

August also alleged that the existing RRCNCA Visitor Center is drawing twice the amount of the agency's allocation of ground water. Peterson said that he was aware that the visitor center was overusing its water rights allocation based upon his review of water rights certificates for the visitor center that had been recorded since November 2008 when meters were installed on the wells (See Attachment 10). Peterson said he found that the visitor center was using "about twice as much water" than the one acre-foot that it was allotted, but that the usage was based on peak season usage. He said that the average annual amount would likely not reflect overuse. Peterson said that prior to November 2008, there were no meters on the well, so there was no way to determine whether the water rights were being exceeded or not.

Palma said that the assertion that the visitor center was exceeding its water rights was also "anecdotal" and based on the constant increase in visitation to RRCNCA (See Attachment 8). Palma said that the

water line was needed to supplement the existing well. Palma did not recall any measurements being taken at the well to determine actual usage.

### **Destruction of Vegetation**

August stated that BLM violated the National Environmental Policy Act (NEPA) by not complying with an environmental assessment (EA), *Red Rock Canyon NCA Visitor Center*, during construction of the new RRCNCA Visitor Center (**Attachment 17**). He provided a copy of an EA dated "November, 2006" (no report number) to the OIG. August cited page 35 which read: "A total of 2,297 cacti and yucca were found within the Project Area during the survey. Impacts to these species would not likely be adverse, as most of these plants would be salvaged prior to construction."

*Investigator's note: August provided a copy of the aforementioned EA to the OIG. Robert Taylor later provided a more recent version of the EA to the OIG, dated January 8, 2008, #NV-050-2007-63. Page 35 of the January 8, 2008 EA also stated that the cacti and yucca would be salvaged prior to construction (Attachment 18).*

August said that he became aware of BLM's failure to salvage vegetation at the visitor center construction site after discussing it with his wife, Kathy August, who worked at RRCNCA. August said that he traveled to the construction site to see for himself and to take pictures of the destroyed vegetation.

*Investigator's note: August provided several copies of pictures showing uprooted cacti and other vegetation (Attachment 19). He averred that the photos were taken on or about May 12, 2009, at the construction site of the new RRCNCA Visitor Center.*

According to BLM's NEPA website, "NEPA establishes a public, interdisciplinary framework for Federal decision-making and ensures that agencies (BLM and all other agencies) take environmental factors into account when considering Federal actions (**Attachment 20**). NEPA does not mandate protection of the environment. Instead, it requires agencies to follow a particular process in making decisions and to disclose the information/data that was used to support those decisions." Moreover, NEPA mandates that each agency develop procedures for implementing the basic NEPA requirements. BLM issued its Manual Handbook H-1790-1 (the Handbook) in an effort to help BLM employees comply with NEPA, the Council on Environmental Quality's NEPA regulations (40 C.F.R. Parts 1500-1508), and the Department of the Interior NEPA regulations (43 C.F.R. 46 et seq.).

The Handbook explains that an EA is "a concise public document that provides sufficient evidence and analysis for determining the significance of effects from a proposed action and that serves as a basis for reasoned choice" (**Attachment 21**). It further explains that if the EA leads to the conclusion that there will be no significant impact if the proposed action is implemented, then a Finding of No Significant Impact (FONSI) will be prepared.

The Handbook explains that NEPA does not require a specific decision document regarding actions for which an EA has been completed, but emphasizes that neither the EA nor the FONSI are decision-making documents. Thus, BLM has designated the "decision record" (DR) to be used to document the action for which the EA was completed and the decision underlying the action to be taken. The decision cannot be implemented until the DR is signed.

Section 10.1 of the Handbook states, "The decision record on an EA may also impose requirements for mitigation and related monitoring and enforcement activities. Monitoring activities which are adopted in a decision record must be implemented as specified."

Despite verbiage in both the visitor center EA and DR that specifically stated that cacti, yucca, and other plants would be salvaged prior to construction, Taylor confirmed that few, if any, plants, cacti, and yucca were salvaged from the visitor center construction site prior to construction (**Attachment 22**) (See Attachment 6). He explained that the salvage plan in the EA had been inadvertently left out of the contract and the cost to add salvage to the contract was prohibitive, so the plants were not saved. Taylor explained that despite the disposal of the vegetation at the visitor center site, there would be native vegetation at the new site because BLM had contracted with the College of Southern Nevada to have vegetation grown from seeds that had been collected from the project area. The vegetation would be planted back at the project area upon completion of construction. Taylor provided the OIG with the contracts and inventory lists for vegetation that was going to be planted.

When Reiland was informed of the allegation that BLM failed to comply with the EA regarding salvage of vegetation during construction, he said he recalled that BLM attempted to save as much local vegetation as possible, but also put agreements into place with the local community college and another business to grow out vegetation from seeds that had originated from Red Rock (See Attachment 7). Reiland said that because of the project's scale, BLM specifically had people collect local seeds to grow replacement vegetation that would be transplanted to the visitor center once construction was completed.

Reiland said that lots of considerations were made regarding whether to salvage the plants and about which specific plants to salvage, such as conditions when construction started and when plants were dug up. Reiland said that certain plants do not survive replanting. Reiland did not know if there was a mandate in the EA to salvage local vegetation. He reasoned, however, that there could have been extenuating circumstances that may have warranted deviation from the EA.

Reiland was asked if the EA's vegetation salvage plan was transferred to the construction contract. Reiland said that he did not work on the contract and has never seen it, so he does not know if the contract contained the stipulations and assertions made in the EA.

Reiland was informed that the salvage provisions in the EA had been left out of the contract and that assertions were made that amendments to the contract, to include salvage of the vegetation, would have resulted in prohibitive increases in costs to the contract. Reiland said that the provisions should have been put in initially, but that details are commonly excluded during contract formulation. When that occurs, said Reiland, the efforts to rectify the exclusions could potentially cost the government a lot more money and cause more problems than it would to pursue alternatives that would provide the same outcome as if the provisions had been included in the first place. Reiland said that if efforts are taken to get the same outcome, while saving the government additional money, it "would be a perfectly acceptable resolution."

Lisa Christianson, then- RRCNCA Manager, confirmed that none of the vegetation at the visitor center construction site had been salvaged (**Attachment 23**). Christianson said that she and Kathy August attempted to flag as many plants as possible to identify them for salvage, but that none of them were salvaged. Christianson stated that, even if the plants were salvaged, the survival rates would have been very low. She added that the salvage plan was not included in the contract and the cost to add it would

have been expensive. Christianson pointed out that, as an alternative, BLM contracted with a couple of vendors to grow plants from seeds native to RRCNCA that would eventually be planted in the project area.

BLM did not salvage or relocate vegetation prior to construction, but contracted with vendors to grow plants from seeds that had been collected from the RRCNCA project area. Documents provided by BLM showed that agreements had been set up with the College of Southern Nevada and the Nevada Division of Forestry to grow plants for the new visitor center project area (**Attachment 24**). The new plants will be transferred to RRCNCA upon completion of construction.

*Investigator's note: In the March 24, 2009 letter from OSC to the DOI Secretary, SA Randy August is frequently referred to as a "whistleblower," that is, someone who has made a disclosure about illegal or improper government activities. Accordingly, as SA August is a covered employee (BLM special agent), who has made a disclosure to OSC that he reasonably believes is evidence of a violation of law, rule, or regulation, he is protected from having a personnel action taken in reprisal against him because of making the disclosure. SA August told the OIG that as of the date of his OIG interview (May 7, 2009), he had not suffered any retaliation as a result of making the disclosures to OSC. SA August stated that he expected that he would be subject to future acts of reprisal that would likely occur once the OIG began interviewing other witnesses in relation to the investigation, however, he has not been subject to any personnel actions or other forms of retaliation thus far.*

#### SUBJECT(S)

Las Vegas Field Office, Nevada State Office, Bureau of Land Management

#### DISPOSITION

Since mitigation measures to address the lack of grid utilities at RRCNCA have been implemented or are currently being explored by BLM-NV, no further investigative activity is warranted. A management advisory will be sent to BLM regarding compliance with directives stipulated in the BLM National Environmental Policy Act Handbook H-1790-1 as it relates to environmental assessments and decision records. This investigation is complete and will be provided to the Office of Special Counsel in response to OSC referral No. DI-08-2659.

#### ATTACHMENTS

1. Southern Nevada Public Lands Management Act project summary for "BLM Capital Improvement – Red Rock Campground and Fire Station Complex," Round Priority: 4-21, Project # BL27.
2. Letter from the Office of Special Counsel, Re: OSC File No. DI-08-2659, dated March 24, 2009.
3. Draft letter from Juan Palma to Ron Wenker, Subject: Contract/Agreement with Las Vegas Valley Water District for water line to Red Rock Canyon NCA Fire Station and Visitor Center, June 26, 2007.
4. IAR – interview of Randolph August, Office of Law Enforcement Security, Nevada Branch, BLM on May 7, 2009.
5. IAR – interview of Kenda Tucker, Chief, Contracting Office, BLM-NV on May 26, 2009.
6. IAR – interview of Robert Taylor, Special Projects Manager, Las Vegas Field Office, Southern Nevada District, BLM-NV and former Field Manager, LVFO, BLM-NV, on May 19, 2009.

7. IAR – interview of Michael Reiland, Assistant Deputy State Director (ADSD) for Natural Resources, Eastern States Office, BLM and former project manager, Las Vegas Field Office, Southern Nevada District, BLM-NV, on June 15, 2009.
8. IAR – interview of Juan Palma, State Director, Eastern States Offices, BLM and former Field Office Manager, Las Vegas Field Office, BLM-NV, on June 15, 2009.
9. IAR – interview of Steve Tryon, Assistant District Manager for the Southern Nevada Public Lands Management Act, BLM-NV, on June 15, 2009.
10. IAR – interview of Paul Peterson, State Engineer, BLM-NV, on May 27, 2009.
11. IAR – interview of Nancy Christ, contract Project Manager, Las Vegas Field Office, BLM-NV, on June 15, 2009.
12. IAR – interview of John Baribault, Assistant Field Manager for Support Services, Las Vegas Field Office, BLM-NV, on May 26, 2009.
13. IAR – interview of Rebecca Fuentes, Environmental Health Specialist, Southern Nevada Health District, on June 4, 2009.
14. EFFEX Laboratory Report, Invoice #780117, Test date: 6/19/07.
15. EFFEX Laboratory Report, Invoice #781051, Test date: 12/17/07.
16. Potable Water Hauler permits for BLM Water Trailer G91-001-40, ID NV0000398.
17. Red Rock Canyon NCA Visitor Center Environmental Assessment, #None, November, 2006, Contractor: None.
18. Red Rock Canyon NCA Visitor Center Environmental Assessment, #NV-050-2007-63, January 8, 2007, Contractor: OTAK.
19. Photos of bulldozed vegetation at RRCNCA Visitor Center construction site, 6 ea., provided by R. August.
20. BLM NEPA website: <http://www.blm.gov/wo/st/en/info/nepa.print.html>.
21. BLM NEPA Handbook H-1790-1: [http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information\\_Resources\\_Management/policy/blm\\_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf).
22. Finding of No Significant Impact/Decision Record, unsigned (signature block for Markian Rekshynskyj, RRCNCA Manager).
23. Investigative Activity Report – interview of Lisa Christianson, Environmental Protection Specialist, Las Vegas Field Office, BLM-NV and former RRCNCA Manager on June 24, 2009.
24. Grow out agreements with College of Southern Nevada and the Nevada Division of Forestry.