

# BLM Ethics Office

## Partnerships: What You Don't Know May Hurt You 'Brochure'



### Ethics Contacts

#### Bureau of Land Management

Markci D. Metcalf

Deputy Ethics Counselor

[Markci.Metcalf@blm.gov](mailto:Markci.Metcalf@blm.gov)

Phone: 202.912.7486

Facsimile: 202.912.7172

#### National Park Service

Richard Grant

Deputy Ethics Counselor

[Richard.Grant@nps.gov](mailto:Richard.Grant@nps.gov)

Phone: 202.354.1981

Facsimile: 202.354.5695

#### U.S. Forest Service

Lorraine (Raine) Luciano

[Lorraine.Luciano@dm.usda.gov](mailto:Lorraine.Luciano@dm.usda.gov)

Phone: 703.605.0858

Fax: 703.605.5105

#### U.S. Fish and Wildlife Service

Anne Badgley

Deputy Ethics Counselor

[Anne.Badgley@fws.gov](mailto:Anne.Badgley@fws.gov)

Phone: 503.326.2008

Facsimile: 503.326.2494

#### DOI - Departmental Ethics Office

Melinda Loftin

Designated Agency Ethics Official

[DOI.Ethics@ios.doi.gov](mailto:DOI.Ethics@ios.doi.gov)

Phone: 202.208.7960

Facsimile: 202.208.5515

#### U.S. Department of Agriculture

Stuart A. Bender

[stuart.bender@dm.usda.gov](mailto:stuart.bender@dm.usda.gov)

Phone: 202.720.2251

Facsimile 202.690.2642.

Note: Throughout this brochure, you will see the phrase, "Ethics Speak." Ethics Speak are observations, suggestions or recommendations.

# BLM Ethics Office

The BLM has a number of authorities that permit it to enter into a variety of partnerships or (partnership type relationship)

## Authority to Operate with Partners

- State Regulatory and Law Enforcement Officials (43 U.S.C. § 1733(d))
- Investigations, Studies and Experiments (43 U.S.C. § 1737(a)) Experimental Stewardship Program (ESP) for Grazing Permittees and Leases (43 U.S.C. § 1908)
- Stewardship Contracting for Tree Thinning and Other Services (16 U.S.C.A. § 2104 note)

## Authority to Enter Into Cooperative Agreements

- Watershed Restoration and Enhancement (16 U.S.C. 1011(a)) Management, Protection, Development, and Sale of Public Lands (43 U.S.C. § 1737(b))
- Fire Protection (42 U.S.C. § 1856)
- Range Improvements (43 U.S.C. 315 (c))
- Challenge Cost Share Authority (31 U.S.C. 6305 note)

## Authority to Accept Gifts, Donations and Volunteer Services

- Contributions (43 U.S.C. § 1737 (c))
- Volunteers (43 U.S.C. § 1737(d))

## BLM Regional and Site-Specific Authorities

- King Range (Pub. L. 91-476, § 5(8))
- Santa Rosa and San Jacinto Mountains (Pub. L. 106-351, § 4(c))
- Authority to Recruit Volunteers for the Carrizo Plain National Monument

## Ethics Speak

Be clear about what authority you are using to form the partnership. Forming a cogent partnership relationship may require that you obtain input *before, during and after the partnership formation* from a number of units within DOI/ or your organization. Consider:

### Office of the Solicitor/ Office of General Counsel

Provides advice and counsel regarding the appropriateness of the instrument selected to form the partnership.

Is the Government going to have limited input? Grant

Is the Government going to be a major player? Cooperative Agreement/MOU

Is the Government going to acquire goods or services? Contract/Procurement

### Appropriations Office/Budget Office

Provides guidance on the expenditure of appropriated funds.

Can the Bureau use monies to cover transportation costs for its partner(s)?

Can appropriated funds be used to cover lunch for partners?

### Ethics Office

Provides advice and counsel on the appropriateness of gift acceptance (and agency gift acceptance) from partners and other prohibited sources.

Can a partner provide a car for the employee's use?

Can a partner give an employee a gas card to purchase gas for his or her personal vehicle?

Does transportation constitute a gift?

Can a partner give an employee a Christmas gift?

Can an employee serve on the board of a partner organization in his or her official capacity? If an employee serves on the board of a partner org. in his or her personal capacity does he or she have to step aside from taking official action on matters in which the partner has an interest?

# BLM Ethics Office

## 14 General Ethics Principles

**Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.**

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

# BLM Ethics Office

## Ethics Speak

There are some areas in the realm of ethics that are more sensitive than others. Based on available data, the likelihood of an employee committing an ethics violation in one of these areas is very high.

Gifts from Outside Sources  
Conflicting Financial Interests  
Seeking Other Employment  
Fundraising

Lobbying  
Prohibited Representation  
Misuse of Position  
Post-Employment

What is a gift? The term “gift” includes the following: (See 5 CFR 2635.203(b))

- Gratuity (freebie)
  - Entertainment (e.g., amusement, hobby, leisure, etc...)
  - Hospitality
  - Forbearance (refraining from enforcement like a debt or other obligation)
  - It includes services as well as gifts of training, transportation, local travel, lodging, meals, whether provided in-kind, by purchase of a ticket, payment in advance or by reimbursement.
- Favor  
-Discount  
-Loans

Rule of Thumb: Any item having monetary value is a gift, unless it is excluded from the definition of gift. (When in doubt, call you servicing ethics advisor.)

Some items are excluded from consideration as a gift. Consider the following:

- Modest items of food and refreshments, i.e., a Pepsi, Coke, Sprite, a cup of coffee, a doughnut.
- Greeting cards, items of little intrinsic value (plaques, trophies...)
- Loans from banks and other institutions; opportunities and benefits; rewards and prizes; and random drawings (generally open to the public)
- Anything for which fair market value is paid by the employee.

### Example

Mary Mary Quite Contrary, BLM Trails Manager, has worked extensively with P & P Trails, Inc., [a BLM partner] developing plans to construct a foot bridge at a BLM recreational area. Ms. Contrary has to attend a meeting outside of her local commuting area to examine the plans. P & P offers her a \$25.00 VISA gift card, to assist her with gas. What should Mary do?

1. Return the card. It's over the limit.
2. Return the card. Employees may not accept cash.
3. Return the card. Accepting an item of value could look like dual compensation.
4. Return the card. Instead, ride with the P&P manager.
5. Keep the card and use it.

### Answers to Mary Mary Quite Contrary

1. Employees may accept unsolicited gifts valued at \$20 or less, per source per occasion provided the aggregation of items does not exceed \$50 in a calendar year. See 5 CFR § 204(a). The value of the card is \$25, so it cannot be accepted.

2. The “\$20 or less” rule cannot be used to accept cash, cash equivalents, or investment interests, i.e., stocks, bonds, and CDs.

3. You may not accept compensation or anything of value from a prohibited source (partner) for doing or not doing your job. (18 U.S.C. § 209)

4. This ride is a gift of transportation... the value \$22.50 exceeds \$20 per source per occasion. So, it cannot be accepted

5. It cannot be accepted based on Items: 1, 2, 3, or 4 above.

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## Ethics Speak

No ethics rule or exception permits an employee to:

- Accept a gift in return from being influenced in the performance of an official act. (This can be criminal in nature under 18 USC 201-the anti-bribery statute.) **Remember:** A gift does not have to be money, it's anything of value.
- Ask for or coerce the offering of a gift.
- Accept gifts from the same or different sources on a basis so frequently that a reasonable person would be led to believe the employee is using his/her public office for private gain.

You may not accept **directly** or **indirectly**, a gift (anything of value) for officially taking action or failing to take action. (See 18 U.S.C. § 201)

### **Directly**

Linda, a BLM Auditor, was assigned to perform an audit of H & H, Inc., a BLM partner. When she arrived, the manager of H&H offered her a vacation package if she would "overlook" some problem spots in H&H's financial reports. She asked, "What spots?" He said, "Anywhere you want." Linda found 13 problem spots, but only reported 5 to her manager. She leaves for Tahiti in 3 weeks.

### **Indirectly**

William, contracting officer, selected N&B Services, Inc., for contract award worth \$250,000. His \*wife received a weekend spa package, at La Chateau Engle, valued at 2500, courtesy of N&B Services.

\*A gift is accepted indirectly if given with employee's knowledge/acquiescence to a relative or charity.

**OIG:** The Office of the Inspector General has found numerous instances of employees accepting things inappropriately from entities we are doing business with their agencies/bureaus.

Tickets to sporting events,  
plays, movies etc...

Lunch Swaps

Trips, excursions, etc...

## Ethics Speak

Even though acceptance of a gift may be permitted, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position. (See 5 CFR 2635.204)

### **Don't Make Assumptions**

Don't assume that because an item being offered is not cash, it's not problematic. Unless its specifically excluded from the definition of gift, it should probably be treated as one. Depending on the nature and value of the gift, you may be entitled to 3 hots and cot... in the pokie!

## **Next Topic... Misuse of Position**

Misuse of position has lots of moving parts, but here's 3 that come up frequently:

Inducement/Coercion | Endorsement | Appearance of Governmental Sanctions

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## **Misuse of Position - Inducement or Coercion:**

An employee shall not use or permit the use of his/her Government position, title or authority in a manner intended to coerce or induce another person, including a subordinate, to provide a benefit to himself or to another. 5 C.F.R. § 2635.702(a)

### **Example**

During a staff meeting, Tina, a long-time BLM manager says, “I have been working with XYZ group for a significantly long period of time. If any of you have excluded them for funding considerations, I need you to re-think your decision.” Has Tina crossed the line? Yes.

### **Example**

BLM Manager tells his subordinates at a staff meeting, “I want you to seriously consider membership in the Soccer Professional Society. I joined 6 months ago.” Has the Manager crossed the line? Yes.

## **Misuse of Position - Endorsement**

Employees may not use or permit the use of their Government position, title or authority to endorse any product, service or enterprise, unless there is statutory authority. 5 C.F.R. 2635.702(c))

### **Example**

Shelia, BLM State Director, has been asked to write a letter of endorsement for the Society of Professional Cutters’ (SPC) grass cutting services. SPC is competing for a Federal grant. [Depends.]

### **Ethics Speak**

You *may* be able to write “factual letters,” but a letter that seeks to endorse/sanction will be problematic, unless there is statutory authority.

## **Misuse of Position- Appearance of Governmental Sanctions**

Employees shall not use or permit the use of their Government position, title or authority in such a way that implies the BLM sanctions or endorses their personal activities or those of another. (5 C.F.R. 2635.702(b))

### **Example**

District Manager sends out an all-employee e-mail extolling the virtues of participating in a 5-K race, sponsored by an organization with whom he is affiliated in a non-governmental capacity. [Does this cross the line?] Yes, this gives the appearance of Governmental sanctioning.

## **Conflicting Financial Interests/ Service on Boards**

Jack is serving on the board of Directors in his official capacity of the I Can Do It, Inc. a BLM partner that restores beaver habitats. He does not have a waiver or statutory authority. Problem? Yes.

Jack may not serve on the board of a non-Federal entity, unless he has statutory authority or a waiver. In the absence of authority, he has committed a conflict of interest. (18 USC § 208)

This is a criminal violation and must be reported to the Office of Inspector General 1-800 424-508

Jack may be able to serve as an Officer/Director, if the following are in place: (1) Conflict of Interest Waiver; (2) MOU between Agency and Non Federal Org. and (3) Recusal Statement (See **Snapshot**.)

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## Recusal Memorandum (Snapshot)

Are there **limits** regarding what an employee can do in his/her official capacity through service as an officer/director of a non-Federal organization? Absolutely!

305 DM 3.9 provides in part: “I will not involve myself with the following:

- a. Any [Department or bureau] **grants, contracts, cooperative agreements or other agreements** with the [name of outside non-profit organization];
- b. Providing support to the [name of outside non-profit organization], including **personnel or equipment** from or to the [name of outside non-profit organization];
- c. **Directing a subordinate** to speak at any conference or other meeting of the [name of outside non-profit organization];
- d. **Participating in investigations** of the activities of the [name of outside non-profit organization], other than as a provider of information or testimony;
- e. **Developing regulations** that would impact the [name of outside non-profit organization] or enforcing regulations pertaining to the [name of outside non-profit organization]”

Let's look at Conflict of Interest (COI) in detail-

### Conflict of Interest

You may not participate personally and substantially in your official capacity in any **particular matter** in which you have a **direct** or an **imputed** financial interest.

### Particular Matter

Matters that involve deliberation, decision, or action that effects a specific party or parties, like judicial proceedings, applications, grants, agreements, contracts, determinations, etc...

### Imputed Interest

A financial interest that is treated as the employee's own interest, e.g., an entity where the employee serves as officer, director, trustee, general partner, or employee, or one that he is negotiating for or has an arrangement for future employment.

### **Example: Direct Interest**

Joe, BLM land surveyor, lives in Richville, a very upscale suburb, adjacent to BLM land. BLM is contemplating installing a right-of-way through Richville. Investors have speculated that property values will shoot up. Can Joe perform the survey work? No, doing so would constitute an official action on a direct interest which equals a conflict of interest.

### **Example: Imputed Interest**

Josephine is Secretary for Jacks and Balls (JB), a 501(c)(3) non-profit, that has sought to partner with the BLM to build a children's recreational area. Can Josephine, review JB's proposal? No, Josephine has an imputed interest of JB. Reviewing the proposal would constitute official action on an imputed interest which equals a conflict of interest.

### Ethics Speak

You do not have to be final decision maker to commit a conflict of interest violation. Managers cannot dissolve conflict of interest concerns by acknowledging that conflicts exist and then instructing employees to proceed.

### **Example**

Morris was elevated to the position of BLM Division Chief, Economic Policy and Adjudications. He serves as the VP of African American Engineers Society (Society) and has held the position for 10 years. The Society is a longstanding BLM partner.) Upon returning to the office from vacation, he found a proposal submitted to the BLM from the Society with a recommendation on how to increase the retention of African American engineers within the BLM. What should Morris do? **(See the next page.)**

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1. Morris must return the proposal to his manager and tell him that he cannot participate in the matter.
2. Morris can give the proposal to a subordinate and advise him what actions the subordinate should take. (Directing the activities of a subordinate on a matter in which Morris has an interest equals a conflict of interest.)
3. Morris can read through the proposal and return it to the society with recommendations about how to strengthen it.
4. Morris can phone the BLM deciding official and share his insights about the proposal.

Correct Answer: 1 Selecting items 2-4 will result in a conflict of interest.

## Leaving Federal Service...for a Partner (Post-Employment Restrictions)

**Rule:** Prohibits employees from knowingly making, with the intent to influence, any communication to or appearance before an employee of the U.S. on behalf of another in connection with a particular matter involving a specific party or parties when the employee was personally and substantially involved in the matter as a Government employee and when the U.S. is a party or has a direct and substantial interest in the matter. ((18 U.S.C. § 207(a)) **Lifetime Ban**)

### Example

Sharon is planning to leave the BLM and work for one of its partners. Problem? No, Sharon can work for whomever she chooses.

### Example

Sharon was a decision-maker in awarding cooperative agreement(#456) to Partner ABC. She left BLM to work for Partner ABC. A dispute arose between BLM and Partner ABC. Partner ABC has asked Sharon to represent it during the meeting with the BLM. Can she represent Partner ABC? No. The same would be true if Sharon represented Partner ABC before EPA, HUD, etc...) Note: She could advise Partner ABC *behind-the-scenes* about how to proceed during the dispute.

**Reminder:** Employees are required to step aside from taking official action on matters in which their prospective employer have an interest. This applies in instances where the employee is negotiating for or has an arrangement concerning prospective employment. (18 U.S.C. § 208; 5 C.F.R. § 2635.601 to 2635.606)

## Lobbying | 18 U.S.C. § 1913

Prohibits Federal employees from using appropriated funds (e.g., on official time, in official capacity, or using Government resources) to engage in grass-roots lobbying activity to pressure Congress regarding legislation. Grass roots lobbying includes using appropriated funds to pay for personal services, telegrams, advertisements, telephones, letters, printed/written or other devices intended to influence a Member of Congress.\*

Note: ..."this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels." (Please see the next page for Ethics Speak.)

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## Ethics Speak

1. Do you homework on the organization (partner). Does it have a lobbying/advocacy component?
2. Has the organization asked for information that is non-public?
3. Have you dialogued with the External Affairs or the Communication Directorate to be sure the information is appropriate to share?

Note: BLM as well as most agencies have internal protocols that must be adhered to. Questions about lobbying need to be referred to SOL.

## **Prohibited Representation**

18 U.S.C. § 203 Employees may not accept or solicit compensation (directly or indirectly) for representational activities in relation to a particular matter in which the Government is involved or has an interest.

18 U.S.C. § 205 Employees may not represent another before a Federal court or Federal agency in a particular matter in which the U.S. is a party or has an interest.

**Representational activities** means compensated activities in direct support of another person or organization who is representing before any Federal agency.

**Represent** includes not only acting as one's attorney or agent, but also includes knowingly making, with the intent to influence, any communication (oral or written) to or appearance before any officer or employee of a Federal agency.

## **Ethics Speak**

With or without compensation, do not represent a partner (or provide representational services) before a Government agency, not just the BLM. Note: Both statutes are criminal in nature and apply on and off duty.

### **Example**

India, a BLM employee and attorney-in-private practice, was approached by Chi & Chong (C&C), a BLM partner, that specializes in unearthing dinosaur remains. Chi & Chong asked India to represent it before the Environmental Protection Agency on its application to begin digging. India agrees to do it.

1. Is it a problem if she represents C&C for a small fee of \$1000? Yes, it's a violation of 18 U.S.C. § 203. (An employee cannot receive compensation for representing another before a Federal agency, not just the BLM.)
2. If India does it for free is it still a problem? Yes, it's violation of 18 U.S.C. § 205. Even without accepting compensation, it's a problem for a Federal employee to represent another before a Federal agency.

**Note**: 203 & 205 do not apply to representation in connection with discharge of official duties.

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## **Example**

Can Denzel, a BLM employee, sign as the *Grant Administrator* on a grant he developed for Center, Inc., a 501(c)(3) organization (and BLM partner) on a grant application being submitted to the Department of Housing and Urban Development? No, however he can provide behind-the-scenes assistance, provided there's no compensation.

### *Behind the Scenes Assistance*

Uncompensated assistance such as drafting a document being submitted to Federal agency or providing information regarding who the document should go to.

### *It does not include:*

- Signing documents being submitted to a Federal agency;
- Identifying oneself within the documents;
- Presenting the document to the agency; or
- Arguing the merits of the document before a Federal agency/employee

## **DOI Supplemental Standards – Prohibited Interests in Federal Land based on the BLM Organic Act.**

An employee is not permitted to have any ownership interest in DOI lands through earnings, use or benefits based on employment, contract, grant, lease, permit, easement, rental agreement, or application. (See 5 C.F.R. § 3501.103(a)(1); (See 43 CFR Part 20.401)

## **Example 1**

Mr. Jackson, BLM Range Specialist, forms a hunting and guide business. He files an application to hunt and guide on BLM lands. Problem?

Yes, it constitutes an interest in Federal land and is prohibited.

## **Example 2. (From Example 1)**

After his application was rejected, Mr. Jackson contacted a Forest Service employee and asked him to file the application. (Mr. Jackson is named as a partner on the application.) Problem.?

Yes, Mr. Jackson benefits from the earnings of the business and has outside employment both of which equal an interest in Federal lands.

## **Ethics Speak**

Talk with your servicing ethics advisor about specific stocks and other securities that are prohibited.

Additionally, it may be prudent to visit with your servicing ethics advisor regarding bureau-specific supplemental regulations.