



# PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

June 14, 2021

The Honorable Mark Lee Greenblatt  
Inspector General  
US Department of the Interior  
1849 C Street NW – MS 4428  
Washington, D.C. 20240

Heather Gottry  
Designated Agency Ethics Official  
US Department of the Interior  
1849 C Street NW – MS 5311  
Washington, D.C. 20240

**Re: Request for Investigation into Possible Ethics Violation by Nada Culver,  
BLM Deputy Director of Policy and Programs Exercising the Delegated Authority  
of the Director**

Dear Mr. Greenblatt and Ms. Gottry,

Protect the Public's Trust (PPT) is a non-profit organization dedicated to promoting compliance in government and restoring the public's trust in government officials. In pursuit of this mission, it has been brought to our attention that a current high-ranking official may be acting inconsistently with her ethics obligations and improperly participating in an ongoing particular matter.

Overview

In January 2021, then-Secretary of the Interior David Bernhardt signed five Public Land Orders (PLOs) that concurred with BLM's recommendations and opened 28 million acres of land in Alaska to mining, selection by the State of Alaska, and selection by Alaska Native Vietnam Veterans. Just months prior, in October 2020, Ms. Nada Culver's former employer, the National Audubon Society, petitioned the BLM and the Secretary of the Interior to take a specific action in regard to these particular matters. Upon joining the BLM, Ms. Culver has participated personally and substantially in these particular matters in a way that advances her former employer's recommended course of action.

Ms. Culver's actions raise concerns about her impartiality while conducting herself as the BLM's Deputy Director for Programs and Policy and appear to be a violation of the Biden Administration's Ethics Pledge and/or the Standards of Conduct captured in ethics



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regulations at [5 CFR § 2635.502\(a\)\(2\)](#). To that end, we respectfully request your office initiate an immediate investigation into possible ethics violations by Ms. Nada Culver, the Deputy Director for Policy and Programs Exercising the Delegated Authority of the Director of the Bureau of Land Management (BLM).

## Ms. Culver Has Several Ethics Obligations Regarding Participating in Certain Matters Involving Her Former Employer

As a political appointee, Ms. Culver is bound by applicable ethics laws, regulations, and the Biden Administration Ethics Pledge. These include [5 CFR § 2635.502\(a\)\(2\)](#) which requires appointees to consult with ethics officials and receive approval prior to participating personally and substantially in a matter where a reasonable person with knowledge of the relevant facts would question their impartiality. Based on the language in 502(a)(2) that expands the impartiality concern to “circumstances other than those specifically described in this section,” particular matters of general applicability may present such concerns for an agency in the face of bias being at issue. Failing to consider this appearance of bias by not consulting with agency ethics officials may likely be a violation of an appointee’s ethics obligations.

Additionally, Paragraph 2 of the Biden Administration Ethics Pledge (“the Revolving Door Ban”) prohibits political appointees from participating in particular matters involving specific parties that are directly and substantially related to their former employer or former clients, including regulations and contracts. This prohibition extends for a period of two years after joining the government.

The Ethics Pledge extends the coverage of particular matters involving specific parties beyond the standard regulatory definition. Specifically, Section 2(j) states:

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

Unless an appointee receives a waiver, this provision extends an appointee’s obligations to particular matters of general applicability where two factors are met. First, it must involve a meeting or communication relating to the performance of the appointee’s duties while with their former employer. Second, participation in the meeting or other event (i.e., communication) was not open to all interested parties.



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## Ms. Culver's Former Employer was Involved in Certain Public Land Orders Before the Bureau of Land Management

Prior to joining the Biden Administration, Ms. Culver was the Vice President of Public Lands and Senior Policy Counsel at the National Audubon Society, an environmental non-governmental organization. On October 28, 2020, Audubon Alaska, a [state office](#) of the National Audubon Society, [sent a letter co-signed by nine additional entities](#) including Alaska Native tribes and other environmental non-governmental organizations to then-Secretary Bernhardt expressing opposition to BLM's recommendations in favor of issuing a series of recommendations from BLM to issue Public Land Orders (PLOs) opening BLM lands in Alaska to mineral development, as well as for selection by the State and Alaska Native Vietnam Veterans. In its letter, the National Audubon Society requested that the Department of the Interior (DOI) halt any work on those PLOs until additional consultation with Alaska Native tribes could be conducted as well as additional environmental analysis.

While the National Audubon Society appears to have hundreds of affiliated and independent organizations across the country, upon close review Audubon Alaska appears to be a part of the National Audubon Society, serving as one of its 22 state offices. For instance, independent Audubon entities in Alaska such as Arctic Audubon, Anchorage Audubon, and Juneau Audubon each share many similar characteristics: 1) uniquely [designed](#) websites with independent terms of service and privacy policies that do not link to the National Audubon Society, 2) file their own IRS Form 990s, and importantly, 3) independently fundraise under their own corporate identity.

This is not the case for Audubon Alaska, which: 1) uses a similar website design as the National Audubon Society with the same Terms of Service and Privacy Policy, 2) does not appear to have ever filed their own IRS Form 990, and 3) directs users to the National Audubon Society donation page when seeking donations. In fact, when users seek to donate to Audubon Alaska, they are directed to a [page](#) that expressly indicates the receiving entity is the National Audubon Society with the federal tax ID number 13-1624102. This would imply there is no distinction between the organizations and they must therefore be considered the same entity for purposes of determining Ms. Culver's covered relationships.

As Vice President of Public Lands and Senior Policy Counsel at the National Audubon Society, any communication to the Department of the Interior on such a high-profile issue affecting public lands and alleging legal deficiencies appears to fall squarely within the performance of Ms. Culver's duties while at the National Audubon Society. It also is unlikely that the communication or petition to the BLM and Secretary of the Interior was open to all interested parties given the adversarial nature of the demand and its attempt to obstruct the future interests of a discrete and identifiable class of persons in the mining and mineral development industries.



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## Public Land Orders are Likely Particular Matters of General Applicability

The Public Land Orders (PLOs) issued by the BLM or Secretary of the Interior appear to be properly considered particular matters based on [guidance](#) from the Office of Government Ethics (OGE). The PLOs focused on the interests of a discrete and identifiable class of persons in the mining and mineral development industries by opening up a designated area of land for their use. Additionally, the focus of the Orders had a distinct impact on this class, separate from the impact on the general population. There are several examples of federal actions with similar characteristics that have been determined to be particular matters of general applicability. A few of these [include](#):

- Mine Safety and Health Administration regulation establishing new occupational health and safety standards for mine workers (2641.201(h)(2) Ex. 1)
- Department of Veterans Affairs regulation that will provide for expanded hospital health benefits for veterans (2640.203(d) Ex. 5)
- Regulation applicable only to the meat packing industry (2640.103(a)(1) Ex. 3)
- Recommended changes to how Medicare reimbursements will be made to health care providers (2640.201(b) Ex. 2)
- Matter affecting employees who are invested in the Thrift Savings Plan (61 FR 66834)
- The activities of the Federal Open Market Committee regulating interest rate-sensitive securities by determining the amount and cost of reserves available to banks and thrifts are particular matters of general applicability because they focus on a discrete and identifiable class of banks and thrifts. (Unpubl. OP OLC (June 30, 1993)).

The National Audubon Society's complaint was sent outside the usual course of business of public commenting on agency actions. The signatories sent the petition unsolicited and appealed directly to the Secretary *"to cease issuance of any further Public Land Orders revoking withdrawals put in place by ANCSA § 17(d)(1)."*

### Ms. Culver is Currently Participating in a Particular Matter Involving Her Former Employer

On April 15, [BLM announced that the Biden Administration's DOI was delaying the effective date of the PLOs by two years](#) to consult with Alaska Native tribes and address alleged defects in the environmental analysis. On April 29, 2021, Ms. Culver was quoted at length in BLM's press release on this particular matter:

"The BLM will undertake government-to-government Tribal consultation as the first step in its review of five Public Lands Orders signed in January 2021. Consultation with Alaska Native Tribes will give us the best



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understanding of Tribes' interests and equities in these lands as we begin our work, and will help inform our efforts to prioritize land selections by Alaska Native Vietnam Veterans. We are committed to moving forward expeditiously with our review, and will issue formal consultation notices within two weeks.”

As promised, two weeks later the BLM indicated it was moving forward with Ms. Culver’s proposed course of action. The [BLM press release](#), dated May 13, 2021, made clear that Ms. Culver was continuing to participate in the particular matter at hand in order to advance the recommendations sought by her former employer:

“The BLM is committed to expediting Alaska Native Vietnam-era veterans’ land applications, even as we review and complete the analysis for the decisions in the previous Administration's land orders,” said BLM Deputy Director for Policy and Programs Nada Culver. “We must make sure that any decisions we make have the benefit of Tribal input, including impacts on Indian trust assets and potential impacts to cultural resources and federal subsistence users.”

## Analysis – Potential Ethics Violations by Ms. Nada Culver

Nada Culver’s former employer, the National Audubon Society, participated in a petition to the BLM and Secretary of the Interior on certain PLOs in October 2020. The nature of the PLOs appears to make them particular matters of general applicability. The communication by the National Audubon Society’s Alaska state office, along with a limited set of interested parties, fell squarely within Ms. Culver’s professional duties while at the National Audubon Society. Within a few months of joining the BLM, Ms. Culver demonstrated she has been personally and substantially involved in advancing the specific federal actions sought by her former employer in their petition only six months prior.

An outside observer familiar with the relevant facts and circumstances has reason to believe that Ms. Culver’s participation in these PLOs present the appearance of bias toward her former employer, a \$500 million national special interest organization involved in the issue.

## Conclusion

In light of Ms. Culver’s ethics obligations under [5 CFR § 2635.502\(a\)\(2\)](#) and the Biden Ethics Pledge, Protect the Public’s Trust is disturbed about the lack of impartiality evident in these facts and concerned that Ms. Culver did not appropriately consult with ethics officials prior to participating in the PLOs, if at all.



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The American public deserves to be assured that political appointees are carrying out their duties in an ethical, impartial manner without favoritism to previous employers or large special interest groups. Protect the Public's Trust therefore asks your office to begin an immediate and thorough investigation into the following issues:

1. Whether or not Ms. Culver sought or received guidance from the Ethics Office as to whether the PLOs were considered matters or particular matters;
2. If a particular matter, whether or not Ms. Culver sought or received guidance or approval from the Department Ethics Office (DEO) to participate in this matter given the strong potential for actual or perceived conflicts of interest;
3. What guidance, if any, the DEO provided to Ms. Culver on this matter; and
4. Whether or not Ms. Culver received a waiver to participate in the PLOs and, if not, whether her participation constitutes a violation of her ethics obligations under either 502(a)(2) or the Biden Administration Ethics Pledge.

Protect the Public's Trust appreciates your dutiful attention to this important issue, and looks forward to the outcome of your investigation.

Sincerely,

Michael Chamberlain  
Director  
Protect the Public's Trust  
[Michael@protectpublictrust.org](mailto:Michael@protectpublictrust.org)