



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • PACIFIC

August 21, 2023

Mr. Alfred Elsner
District Manager
Farmington Field Office
U.S. Bureau of Land Management
6251 College Blvd., Suite A
Farmington, NM 87402

Dear Mr. Elsner:

Public Employees for Environmental Responsibility (PEER) represents Ms. Melissa Shawcroft, a Range Management Specialist in the San Luis Valley Field Office of the Bureau of Land Management (BLM). On July 28th, she was emailed the Proposed Suspension signed by Mr. Keith Berger, Field Manager of the Royal Gorge Field Office to suspend her for 14 calendar days without pay.

Introduction

For more than 30 years, Melissa Shawcroft has been a BLM Rangeland Management Specialist working in south-central Colorado's San Luis Valley. Her primary duty is administering approximately 70 grazing allotments and 50 grazing permits, with a focus of protecting the Rio Grande Natural Area from damage caused by livestock overgrazing. In recognition of the quality of her work, in 2012, BLM gave her its Colorado Outstanding Rangeland Management Specialist Award.¹

The Rio Grande Natural Area is a thirty-two-mile stretch of the Rio Grande River and is one the treasures of the San Luis Valley.² A large portion of the Natural Area borders approximately nine sheep and cattle allotments managed by the BLM San Luis Valley office.

This is an arid area with primarily ephemeral waters to support wildlife and the Rio Grande is important as one of the few permanent waters. It is also essential to the biodiversity of the area. In this area BLM has documented beaver, river otter, rabbits, deer and elk. This section of the river is full of bird life and is the protected habitat of migratory birds and raptors, herons, the threatened Western Yellow-billed Cuckoo, and the endangered Southwestern Willow Flycatcher.

¹ <https://www.blm.gov/press-release/local-blm-staff-named-outstanding-rangeland-management-specialist>

² See, Rio Grande Natural Area Act, Public Law 109-1337, Oct. 12, 2006 and the 2015 Rio Grande Natural Area Protection Plan at: <https://rgwcd.org/attachments/Rio%20Grande%20Natural%20Area%20-%20Private%20Land%20Plan1.pdf>

It is estimated that there are only 900 remaining breeding pairs of the Willow Flycatcher and the birds have been documented nesting in this area.

Rampant Grazing Trespass

Unfortunately, this area is also highly attractive to cattle and horses across much of the west side of the river is BLM managed land, while the east side is unfenced private and county lands. Throughout Melissa’s career at BLM, it has been her duty to protect this stretch of the river from illegal trespass and overgrazing.

During just the short period between 2022 and 2023 (to date), Melissa has documented 36 separate grazing trespass incidents in the South San Luis Valley. In some instances, unauthorized cattle or other livestock has been foraging in the area for months.³ Yet, no enforcement action has been taken in any of these cases.

This pattern of non-enforcement against grazing trespass goes back years. For the period between December 2017 through June 2023, Melissa recorded approximately 60 trespass incidents with no reported enforcement follow-up. These numbers are underestimates, as Melissa has not been constantly in the field and there have been, to her knowledge, trespass reports from fellow staff members.

Resource Damage from Trespass

The La Sauses Allotment currently does not have a current lessee, yet the damage done by grazing trespass on this allotment remains substantial. According to the BLM Land Health Assessment & Determination issued in November 2022, this allotment is failing to meet minimum landscape health standards for riparian systems, wildlife habitat, protection off threatened and endangered species, and water quality, in which grazing trespass is a substantial factor⁴:

Standard	Previous 1999 Determination	Current 2022 Determination	Issues	Contributing Factors
Riparian Systems	Not Meeting	Not Meeting	Absence of woody vegetation (cottonwood and willow) along streambanks.	Trespass cattle, feral horse, and historic grazing impacts.
Plant & Animal Communities	Not Meeting	Not Meeting	Species and functional group composition, lack of cool-season grasses, high bare ground, reduced	Trespass cattle, historic grazing, feral horse impacts.

³ See Exhibit A

⁴ United States Department of the Interior Bureau of Land Management Land Health Assessment & Determination La Sauses Allotment, November 2022 (See Table 1)

			resistance and resilience.	
Special Status Species	Meeting	Not Meeting	Degraded grass/shrub habitat, loss of willow/riparian function for Southwestern Willow Flycatcher.	Trespass cattle, historic grazing, feral horse impacts.
Water Quality	Not Meeting	Not Meeting	Water quality and stream channel conditions Upstream watershed upland soil and streambank erosion.	Trespass cattle, historic grazing, and feral horse impacts

(Emphasis added)

While this allotment was not meeting several of these conditions in the 1999 assessment, in the succeeding years with no allotment permittee, conditions have not improved, and water quality has deteriorated, since then, with grazing trespass identified as a contributing factor.

BLM Non-Enforcement Posture Contrary to Law and Policy

This entire matter revolves around one issue: the refusal by the BLM Rocky Mountain District to take enforcement action to stem grazing trespass to protect the resource described above. BLM is obligated to protect the functioning of the lands in its custody to maintain water, soil, and vegetative quality, as well as wildlife habitat.⁵ In addition, under the Endangered Species Act, the agency is obliged to prevent actions that put threatened and endangered species in jeopardy.⁶

The other related issue is the refusal by BLM management to recover the market value for the public resources stolen by the trespasser. In enacting the Federal Land Policy and Management Act (FLPMA) of 1976, Congress declared that a basic statutory purpose that the BLM is supposed to serve is that –

“the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute.”⁷

In short, it is Melissa’s often-expressed view that BLM’s non-enforcement posture on grazing trespass in the San Luis Valley runs contrary to BLM’s mission and legal obligations. In an

⁵ See 43 CFR 4180

⁶ <https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered>

⁷ 43 U.S.C. 1701 (9)

August 9, 2022 email to Mr. Barger, Catherine Cook (Rocky Mountain District Manager) and Dario Archuleta (San Luis Valley Assistant Field Office Manager) that confining the BLM response to willful non-permittee grazing trespassers was a futile waste of time because as a non-permittee they are under no legal obligation to respond – and in fact have not responded for a lengthy period.⁸ She advised pursuit of these cases under the ample legal authority that BLM has to impound cattle, and seek fines before a federal magistrate, pointing out that this is the path pursued by the U.S. Forest Service in similar cases.

Also, as noted below, some of the cited emails concern actions regarding existing permittees that are required under the BLM Handbook, FLPMA grazing regulations, and the National Environmental Policy Act. Her disclosures concerning actual threatened violations of these authorities are also similarly legally protected.

The Proposed Suspension is Prohibited Retaliation

Melissa repeatedly, by email and in person, let her supervisor, Mr. Berger know about illegal trespasses in the allotments managed by the Field Office. She further repeatedly brought up the decimation of the public land and the habitat of an endangered species by illegal trespass in each staff meeting she attended.

These multiple disclosures are protected by 5 U.S.C. § 2302(b)(8), and, as detailed below, this current proposed suspension is a prohibited personnel practice because it threatens to take a personnel action against an employee, because of “any disclosure of information by an employee . . . which the employee or applicant reasonably believes evidences (i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”⁹

To establish “reasonable belief,” the employee must only show that the matter disclosed was one which a reasonable person in his position would believe evidenced one of the situations specified. The test, outlined in *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999), cert. denied, 528 U.S. 1153 (2000), asks whether a disinterested observer with knowledge of the essential facts readily known to and readily ascertainable by the employee could reasonably conclude that the actions of the government evidence wrongdoing as defined by the Whistleblower Protection Act.¹⁰

Suspension Specifics

Charge 1: Discourteous Emails

Before turning to the specifications, three overall points are in order:

A. Accusing Management of Dereliction of Duty Is Misperceived as Discourtesy

⁸ Exhibit B

⁹ 5 U.S.C. § 2302(b)(8)

¹⁰ See also *Wojcicki v. Dep’t of the Air Force*, 72 M.S.P.R. 628, 632 (M.S.P.B. 1996) (citing *Special Counsel v. Eidmann*, 49 M.S.P.R. 614 (1991) aff’d, 976 F.2d 1400 (Fed. Cir. 1992)) and *Horton v. Dep’t of the Navy*, 66 F.3d 279, 283 (Fed. Cir. 1995), cert. denied, 116 S. Ct. 1271 (1996)).

The courts recognize that there is often no polite way to blow the whistle, yet those disclosures are nonetheless legally protected from retaliatory action. The main purpose of the Whistleblower Protection Act is to shield employees who are willing to speak out and criticize government management, to “freely encourage employees to disclose that which is wrong with our government.”¹¹ By its very terms, the Act terms includes and protects “any disclosure that an employee “reasonably believes evidences misconduct or mismanagement.”¹²

In this matter, there is every indication that Melissa’s statements were “reasonably believed.”

When the disclosure is protected the burden is on the Agency to show, by clear and convincing evidence, that it would have disciplined the employee for reasons unrelated to the protected disclosure.¹³ In this case, that is a particularly difficult burden for the Agency because the charges are anchored in the protected disclosures themselves.

B. Candor Does Not Equal Discourtesy

All three of the cited emails under this charge were directed to immediate supervisors, not outsiders. They were not directed to Tribal Councils, State agencies, interest groups, or the public. The emails largely expressed Melissa’s frustrations about a continued policy of non-enforcement for which she was not provided a coherent explanation.

This charge improperly conflates alleged misconduct with a performance issue. These issues are more properly addressed in a performance evaluation, rather than distorting these emails into instances of misconduct deserving formal discipline.

Melissa is certainly an outspoken individual and sometimes she does not use the most artful language. But Mr. Berger does not claim that Melissa’s emails were inaccurate or unwarranted but only that they were “disparaging.” Arguably, a management style that punishes employee candor deserves some review.

C. Stale and Previously Addressed

As if scraping together multiple specifications will mask the petty nature of this proposed action, Mr. Burger has dredged up an email that Melissa sent more than eight months prior for which she already received a written warning. To punish her for something that old and which already received a disciplinary action (a written warning) is impermissible double jeopardy.

The second specification is another email sent more than four months ago for which she also received a written warning is similarly impermissible. Including these earlier emails in this proposal is at odds with Mr. Berger’s claim in the Penalty Analysis that this matter requires “swift and firm discipline.”

Similarly, the third cited email took place nearly two months before this proposal was issued. Waiting more than seven weeks to take any action belies Mr. Berger’s contention that this

¹¹ Marano v. Dep’t of Justice, 2 F.3d 1137, 1142 (Fed. Cir. 1993)

¹² 5 U.S.C. § 2302(b)(8)(A)

¹³ See, e.g., Briley v. National Archives and Records Admin., 236 F.3d 1373, 1378 (Fed. Cir. 2001)

constituted “serious misconduct” for which a severe penalty would be the only appropriate response.

Specification 1. December 14, 2022 email

This email was the end of a string of emails between Melissa and Assistant SLV Field Office Manager Dario Archuleta concerning next steps dealing with identified illegal grazing. Mr. Berger cites excerpts from this communication, but the full message should be read to understand the context:

“In fact, the best scenario would be to either impound the livestock or give out citations to these criminals as we all know the regulations suggest. If we were to give out a citation with a mandatory court appearance under FLPMA then a federal magistrate would hear our case and in the past this took care of the problem or at least put the criminals on a one year probation and they paid fines (ie. Tommy Martinez has never been in court). It is just that BLM mgt basically has no gumption or desire to put themselves out there in an external conflict that might be noticed like the Bundy case. So in the end it will take a manager that has some desire to do what is right for the resources and either impound them or have citations issued. We are spinning our wheels trying to handle a long term criminal livestock trespass situation administratively with issuing grazing bills or proposed and final decisions that have no affect on them and never did. I for one am very discouraged that BLM can not live up to the task of taking care of our resources especially when our twin agency the FS could and did take care of BLM lands when under Service First.”

It is without question that BLM did not take enforcement action for a case involving blatant theft of public resources. Melissa would have been remiss not to take notice of this fact. She is advocating an alternate approach (impoundment) to addressing a serious problem. As a Range Management Specialist, protecting the public range from degradation is her job.

Mr. Berger apparently has extremely delicate sensibilities to take offense to a question about organizational “gumption” in these circumstances.

Specification 2. August 18, 2023 email

Mr. Berger does not mention that the subject matter of this email concerned a meeting in Quinlan attended by Melissa, Mr. Berger, and a permittee. Mr. Berger had decided at the last minute to deny the permittee’s requested changes to his annual grazing application. This permittee had been allowed by BLM management for more than over 30 years to adjust his turn on date and off date. Not surprisingly, the rancher became very angry at being told at the last minute that he could not do this.

Regulations covering cover applications allow annual adjustments in permit terms and conditions within the permit. Melissa was advising Mr. Berger that he should be following the regulations on this issue, otherwise his decision would be appealed.

Melissa’s email also meant to suggest that inconsistent decision-making put his employees in an awkward position with stakeholders. She was seeking to convey (perhaps in not the most tactful

fashion) that BLM should also be concerned about maintaining good relations with its permittees.

Specification 3. June 1, 2023 email

Mr. Berger cites the concluding paragraph of this email as the basis for this specification. He omits any discussion of what led to that concluding paragraph. An examination of the full email reveals that Melissa was notifying her two supervisors that their instructions on how to handle changes in livestock levels for a particular permittee were –

- Contrary to the conditions of their permit;
- Conflicted with the approved schedule for renewal of permits;
- Circumvented BLM Handbook and CFR 43 requirements that the changes be treated as a new permit;
- Improperly altered the requirements for a new Environmental Assessment as required under the National Environmental Policy Act; and
- Inconsistent with how the same situations were handled by the BLM New Mexico Office.¹⁴

Her email’s concluding paragraph begins with language (which Mr. Berger also declined to quote) as follows:

“My recommendation as a RMS is that management deal with the annual requests to changes in grazing dates that are outside the permitted dates as it specifically specifies in the handbook and in the 43 CFR regulations by issuing decisions”.

The next sentence reads: “If this is not what you as supervisors are able to do due to maybe lack of moral and ethical maturity (as well as the transparency thing) as a supervisor...”

It is only in the context of ensuring that she was not being given orders to violate agency policy and regulations does Melissa raise concerns about ethics and transparency. As noted above, these reasonable concerns are disclosures covered under the Whistleblower Protection Act as disclosures that are supposed to be free from retaliation.

Significantly, when read in context, Melissa’s message was not one of discourtesy but a sincere exhortation to do the right thing.

Charge 2; Failure to Follow Instructions

In overview, it should be pointed out the there is no instance where Melissa did not complete assigned work. Contrary to the wording of this charge, she did not fail to follow instructions. Instead, she questioned the propriety of those instructions, which is not an offense.

¹⁴ Exhibit C

Specification 1. June 1, 2023 email

This specification double-counts the same email for two separate offenses, the first and the third discourtesy specification.

In this email, Melissa requests a “Letter of Directive” spelling out the process she is verbally being ordered to follow. Mr. Berger neglects to mention Melisa’s email of two days earlier (May 30th) on the same topic in which she requested “to have the process put in writing so everyone is aware of the process rather than having just the verbal meeting where notes are taken but not shared with all participants.”¹⁵

Requesting clarification about an assigned task and/or requesting that the instruction be put in writing is not a failure to follow the instruction. This is especially true when the request concerns instructions that could be interpreted as violating agency policy and regulations (see above).

Specification 2. July 13, 2023 email

This email concerns spreadsheets sent to Melissa by another staff person that included requests for material that were inaccurate. This was not material sent to her by Mr. Berger, nor was there any instruction from him.¹⁶

When the problem persisted Melissa sent the email in question indicating that she had completed all the tasks that were assigned to her but also questioning that she wanted to be “provided with a reason” for filling out more spreadsheets that seem to serve no demonstrable purpose.

Asking for an explanation for a task is not the same thing as failure to follow instructions – which is the charge. Moreover, Mr. Berger never specifies which instruction from him she did not follow, because there was no such instruction. Significantly, Mr. Berger did not charge her with insubordination or discourtesy for this communication.

Flawed “Douglas Factor” Analysis of Penalty

In *Douglas v. Veterans Administration*, the MSPB set forth twelve factors to be considered in determining the appropriate penalty for the subject employee.¹⁷ The factors help decision-makers gauge whether the “the penalty exceeds the range of permissible punishment specified by statute or regulation, or unless the penalty is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion.”¹⁸

Douglas Factor 1 - Seriousness of Offense

Mr. Berger states that the offenses are serious because they are intentional and repeated. He does not include elements outlined in the guidance for how to apply this factor that the conduct was

¹⁵ Ibid

¹⁶ Exhibit D

¹⁷ See 5 M.S.P.B. 313, 331-32 (1981); see also *Zingg v. Dep't of Treasury*, 388 F.3d 839, 844 (Fed. Cir. 2004) (explaining that Douglas “requires” the employing agency to consider the twelve factors but “does not mandate that any particular factor be given special treatment[] or that all factors be considered in every case without regard to their relevancy”).

¹⁸ *Tartaglia v. Dep't of Veterans Affairs*, 858 F.3d 1405, 1408 (Fed. Cir. 2017) (quoting *Zingg*, 388 F.3d at 843 (internal quotation marks and citation omitted)).

not done for personal gain or maliciously. Unlike a range of other actions for which serious penalties are deserved (such as sexual harassment, falsification, or theft), these emails are trivial matters that could have been handled in a much less heavy-handed fashion than is the case here.

Douglas Factor 2 - Job Level and Type of Employment

The charged offenses do not impact in Melissa's ability to do her job or interact with permittees and the public. Moreover, Melissa enjoys excellent relations with her permittees, some of whom have indicated a willingness to testify on her behalf should this resolution of matter require a public hearing. Further, Melissa's frustrations echo those expressed by permittees who see valuable gate materials without any official sanction and they echo complaints lodged by ranchers at Recent Resource Advisory Committee meetings.

Contrary to Mr. Berger's assertion, the specifications reflect Melissa's "honesty, integrity, reason, and thought" – not the opposite. It is precisely because Melissa is sincere and committed to the success of the agency that she felt the need to speak truth to power.

In this regard, Mr. Berger cites Melissa's "lack of judgment and disdain for authority." However, on the issue of the District's approach to grazing trespass, Melissa is the only party exhibiting sound judgment, as evidenced by her repeated predictions that Agency efforts would come to naught – predictions that have all come true.

As for disdain for authority, Mr. Berger is apparently directing Melissa to ignore BLM's legal obligations, to shirk its' duty to protect resources and sensitive species, and to take no action to curb continuing and worsening landscape health conditions. By law, federal employees have the right to refuse to execute illegal orders.¹⁹ It is appropriate for an employee to request clarification as to why a supervisor's instruction conforms with law and agency policy.

Douglas Factor 3 - Prior Misconduct

While Melissa did receive a suspension for a prior incident, that incident was not related to the current proposal but, as Mr. Berger admits, this prior episode was "unrelated to this current action."

Apart from this one blemish, Mr. Berger did not apparently consider that in more than 30 years with BLM, Melissa's career showed steady advancement from its beginning at the GS-7 level to her current GS-11 position. Her performance evaluations always ranged from fully successful to exceptional.

Douglas Factor 4 - Employee's Past Work Record

Mr. Berger's analysis does not mention that BLM in 2012, gave Melissa its Outstanding Rangeland Management Specialist Award for Colorado.

In addition, the accusations raised in this Douglas Factor evaluation (allegations that Melissa does not get along well with many employees, sabotages relationships and is untrustworthy) are based upon complaints that Mr. Berger admits were found, after investigation, to not be justified. It is improper of Mr. Berger to cite these unsubstantiated complaints as legitimate aggravating

¹⁹ 5 U.S.C. § 2302(b)(9)(D)

factors. Furthermore, he fails to mention that Melissa has a longstanding EEO complaint involving some of these same employees for which the investigative report is due shortly. In this regard, this proposed suspension acts to revictimize a victim.

In addition, these accusations are inconsistent with the positive evaluations she received, including positive ratings for her leadership, commitment, and overall performance. As noted earlier, the proper venue for these issues is Melissa's performance evaluation rather than a misconduct proposal.

Douglas Factor 5 - Erosion of Supervisory Confidence

These specifications are not at all relevant to Melissa's ability to do her job. They do not impact negatively on her being "independent" (arguably, just the opposite) or "trustworthy" or "reliable"—all factors Mr. Berger cited but did not explain.

What Mr. Berger also fails to express is that if you want an employee who has experience, understands her job, and will tell you the unvarnished truth that it would be hard to top Melissa.

Mr. Berger's expressed loss of supervisory confidence in Melissa appears a self-fulfilling prophecy, as the basis for these charges was a retaliation triggered by her refusal to quietly ignore the destruction of the Rio Grande Natural Area by illegal actions her management continues to tolerate.

Douglas Factor 6 - Consistency of Penalty

The proposing official demurs on this grounds and concedes that this combination of charges is a matter of first impression. He offers no explanation for why a two-week suspension without pay would be considered proportionate justice. Further, it is in no way clear how he arrived at 14 days as the appropriate alternative. Nor does he point to any example of a BLM employee suspended for two weeks for writing a series of internal emails discussing a resource management issue.

In my more than 30 years working on behalf of federal employees, I regard this action to be unprecedented in its harshness and reflecting a severe overreaction.

Douglas Factor 7 - Consistency of Penalty with Table of Penalties

The proposed penalty claims to be based on consideration of both charges together, but their quantification to equal a suspension of 14 days remains unclear. The proposing official supplies no precedent for a 14 day suspension for any combination of similar charges.

In this regard, he states that a two-week suspension is within the range of penalties for "disgraceful acts" but this is the case only for a second offense. If sustained, this would be only the first offense in this category of misconduct.

Further, the earlier emails prompted Letters of Warning. A proportional approach to punishment would dictate that the next step from a Letter of Warning is not a two-week suspension (a sanction just short of termination); that would be like following a parking ticket with a sentence of ten years in prison. Progressive discipline would encourage application of lesser sanctions such as a Letter of Reprimand or a short suspension following a Letter of Warning.

Douglas Factor 8 – Notoriety

Melissa’s emails were internal to a handful of people who she perceives to be in her chain of command. She did not distribute her emails to any outside individuals, nor did she forward them to other co-workers. Nor does Mr. Berger cite any evidence for his curious claim that her co-workers had “actual or potential knowledge” of her emails. Moreover, the term “potential knowledge” suggests that they were, in fact, not known at all. In short, there was no notoriety whatsoever attached to these communications.

In his analysis, Mr. Berger seems unreasonably focused on the mere existence Melissa’s emails somehow working to “degrade the integrity of the agency and undermine the authority of your leadership team.” It should be noted that in making this sweeping claim, he is actually referring to four emails sent to a handful of BLM supervisors over a period of 15 months (April 2022 through July 2023) – hardly incendiary material.

Mr. Berger’s somewhat narrow view of official integrity and authority suggests that he expects BLM employees to never ask questions, or point out problems, or offer alternatives (all of which is precisely what Melissa did). It is troubling that Mr. Berger’s understanding of authority does not appear to entail engaging with employees, exploring alternatives with them, or earning their respect.

Douglas Factor 9 - Notice of Warning about Conduct

In this action, Mr. Berger seeks to double count prior actions for which there were warnings as both an aggravating factor and as separate counts. As noted above, Mr. Berger cannot re-charge offenses for which disciplinary action has already been taken – as was the case here for all but the two most recent emails.

Douglas Factor 10 - Potential for Rehabilitation

The only thing said to undermine Melissa’s potential for rehabilitation is, her continued penchant for raising difficult issues, pointing to inadequacies in the agency’s work, or raising the alarm about illegal damage to public resources. In other words, Mr. Berger does not believe that Melissa can stop being forthright. In other federal offices, including other BLM offices, the qualities that Mr. Berger denounces are often valued in employees. These are traits that separate conscientious from disengaged public servants.

Douglas Factor 11 - Mitigating Circumstances

It denotes a lack of basic fairness and a severe bias that Mr. Berger could find not a single mitigating circumstance in Melissa’s lengthy and excellent record of service. Nor does this supervisor take into account Melissa’s commitment to the protection of public resources like habitat for endangered and threatened species, biodiversity and fair administration of the law. Moreover, her passion and personal identification with her role should also be seriously considered as justification for reduced penalties.

Douglas Factor 12 - Effectiveness of a Lesser/ Alternative Sanction

The proposing official states that he rejected lesser sanctions but does not explain why. He states that “nothing short of a fourteen (14) suspension (sic) will sufficiently deter you and others from engaging in such serious misconduct in the future.” Besides offering no reasoning behind this

sentiment, Mr. Berger appears determined to make a public example of Melissa to deter other potential dissidents. This public shaming would entail creating the very notoriety that he earlier cited as an aggravating factor.

Finally, Mr. Berger is sorely mistaken in believing that suspending a long-time employee for expressing her professional opinion will reflect well on the integrity of the BLM.

Conclusion

For these reasons, we urge that you strike this proposed action and allow Melissa to get back to work.

Respectfully,



Jeff Ruch
Counsel for Ms. Shawcroft
Pacific PEER Director

Melissa Shawcroft