

I have reviewed the agency report and attachments and have some questions and concerns. A first question is why was South Tularosa Fire the only fire investigated for hazard pay and overtime pay? In 2008 we had the Salt Well Fire, Rodgers Pasture Fire, and several small fires that David Kirgan, Cornel Cervantes, and Leland Pellman had responded to and received hazard and overtime pay without having a current red card. In Mr. Kirgan's reply to the Notice of Proposed Removal that he submitted to Larry Morin, Southwest Regional Director, he **admitted** to claiming hazard pay and overtime for hours that he worked on the South Tularosa Fire. This is obviously Falsification and Misrepresentation of Official Government Records (falsified timesheet)? In the unauthorized changing of overtime report of investigations states on paragraph four on page two (attachment 2) "Additionally, our review of overtime pay regulations **found no restrictions** in the payment of overtime with regard to red card certifications." According to the BIA –Blue Book Wildland Fire and Aviation Program Management and Operations Guide 2009, Chapter 10 Business and Administration page 10-2 regulations or guidelines in calming overtime when engaged in emergency wildland fire suppression activists states the follows:

"Overtime This section pertains to overtime and hazard pay for personnel in General Schedule (GS) or Wage Grade (WG) positions.

Overtime, Full Time and a Half Public Law 106-558, requires employees of the Department of the Interior, whose overtime pay is calculated under rules established in Title 5, United States Code, section 5542(a), **be paid at a rate equal to one and one-half times their hourly rate of basic pay when they are engaged in emergency wildland fire suppression activities.** The receipt of full time and a half applies under the following circumstances:

- Those **assigned to emergency wildland fire activities** (including wildland-fire use) whose overtime work is exempt from coverage under the Fair Labor Standards Act (FLSA).
- Those required to augment planned preparedness-staffing levels to enhance short-term suppression response capability, severity activities, accident or after action reviews or emergency wildland fire funded prevention activities, whose overtime hours worked are exempt from coverage under FLSA.
- Those involved in similar wildland fire activities that are approved for coverage on a case-by-case basis by an agency fire director.
- **In order to qualify for this pay provision; the employee's overtime work must be charged to wildland fire, ESR, severity, or wildland fire suppression funds tied to the support of suppression operations and that overtime work must be recorded on a time sheet approved by an appropriate supervisor.**

This overtime pay provision does not apply to personnel involved in prescribed fire, other fuels management activities, implementation of fire rehabilitation plans, or to overtime incurred in conjunction with any other activity not specified above.

Pay code 113

A Federal Personnel Payroll System (FPPS) pay code of 113 has been established to record **overtime worked by FLSA exempt firefighters engaged in emergency wildland fire suppression activities as a result of Public Law 106-558.** Overtime hours coded, as 113 will be paid at the true time and a half base rate, regardless of exempt or nonexempt status. Use of pay code 113 authorizes employees to be paid under annual rather than bi-weekly maximum earnings limitations.

Hazard Pay

General Schedule Employees (GS) - will receive a 25% hazardous duty differential for “all hours in a pay status” on a day on which the duty is performed. (Example: A GS employee works in a hazardous situation for one hour and regular non-hazardous duty for the remaining hours of their scheduled tour. The employee will receive 25% of their base salary for all hours worked that day.) 5 CFR 550.905 Appendix A.

Wage Grade Employees (WG) – will receive a 25% environmental differential for “all hours in a pay status” for a day in which they are: 1) fighting a fire on the fire line; 2) participating or assisting in firefighting operations on the immediate fire scene and in direct exposure to the hazards inherent in containing or extinguishing wildfires; or 3) participating in search and rescue operations on the fire line. 5 CFR 532.511 Appendix A, Part II

Non-Fire Personnel

Qualified personnel from other Bureau programs often participate as incident responders. Non fire-funded incident responders should charge their base-8 to the incident.

The key words in this regulations or guidelines are “**engaged in emergency wildland fire suppression activities**”. In order to engage in emergency wildland fire suppression activities the GS or WG employees have to have a current red card and this will authorize the employee to claim hazard pay and overtime pay. The employee can work up to 16 hours on the emergency wildland fire suppression activities (on the fire line) and claim 8 hours of overtime and 16 hours of hazard pay or work 16 hours overtime on their day off and claim 16 hours of hazard pay. The AD employees need to have a current red card and AD employee can work up to 16 hours on the emergency wildland fire suppression activities (on the fire line) and claim 16 hours.

My next question is why the Acting Regional Director William T. Walker was overseeing and involved in the agency report, investigation, and decision making when he was the previous Mescalero Agency Superintendent and knew about the red card issues that surfaced for the third time in January or February 2004, after NIFC conducted a program review of the Interagency Hotshot Crew operating for the Mescalero Agency. In Mr. Morton’s interview, he recalled that NIFC meet with SWRO management to discuss red card certification issues, **as well as the other issues**, they identified during their review of MAFMP IHC. Morton recalled that the following BIA officials were present at the meeting with NIFC: the Regional Director Larry Morin, the Assistant Regional Director Dawn Selwyn, the **Mescalero Agency Superintendent William Walker**, then Regional Forester John Waconda, Calvin Pino, and John Mortin. Mr. Walker knew about the problems with the Mescalero Agency Fire Managements Program and red cards certification back in 2004, 2005, 2006, and 2007 according to Mr. Morton.

Mr. Walker was responsible as the line officer and should be held accountable for Mr. Kirgan’s and Mr. Cervantes’ actions in mismanagement of the red cards certification, disregarding fire fighter safety, and mismanagement of the Mescalero Agency Fire Program. Mr. Walker should have done the right thing and excused himself from the agency report, investigation, and decision-making with the Mescalero Agency because he could compromise agency reports, investigation, and decisions.

In Calvin Pino’s, Regional FMO, interview he states that “it was his opinion that administrative action should have also been taken against Ryan since he oversaw the MAFMP, allowed the program to be mismanaged, and turned a blind eye to the issues because of external political

pressures from the tribe". In my opinion, this statement also applies to Mr. Walker because he was the line officer for the Mescalero Agency and allowed the program to be mismanaged. He also turned a blind eye to the issues because of external political pressures from the tribe when he was Acting Southwest Regional Director making decision dealing with Mr. Kirgan. Why was Mr. Kirgan allowed to use his tribal political influence (his father and cousin were on the council and his uncle is tribal president) to influence the government decision (Acting Southwest Regional Director Mr. Walker) when he was a government employee?

For example, in Mr. Morton's interview he states that Mr. Walker fired Lou Mendez for his refusal to return to work because he was a guide for hunting and only gave Mr. Kirgan a letter of reprimand which will remain in his file for two years for: mismanagement of the red cards, failing to adhere to national policy requirements, placing agency firefighters on the fire line without proper certification and approval jeopardizing them as well as their interagency counterparts. Mr. Kirgan was reassigned to Zuni Agency, but after a couple of months, Mr. Walker allowed Mr. Kirgan to return to Mescalero Agency in a new position as the Supervisory Forester, Forestry Timber Operations Section. Now Mr. Kirgan will be responsible for planning, direction and coordination of the Mescalero Agency Branch of Forestry's timber sale program, consisting of timber sale planning, timber sales administration and timber inventories. So how can Mr. Walker place Mr. Kirgan in position with so much responsibility dealing with timber sale operations when Mr. Walker stated "he had lost confidence in Kirgan to manage the fire program at the Mescalero Agency". This Timber Sale Operation is just as complex as the Fire Management Program. Mr. Kirgan used his tribal political influence knowing Mr. Walker was applying for the Southwest Regional Director and that Mr. Walker needed tribal support for the job.

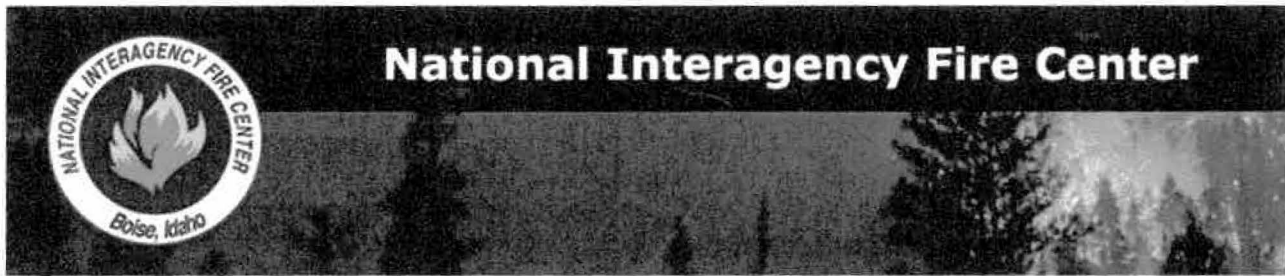
Since Mr. Walker is applying for the Southwest Regional Director job, all of the above factors indicate a big financial and personal interest to Mr. Walker if he gets the job.

Accounting to the Ethics Guide for Employees of the Department of the Interior page 8 Government Wide Ethics Laws 18 U.S.C. § 208 Conflict of Financial Interest generally; this statute prohibits you from personal and substantial participation, in your official capacity, in any "particular matter" in which you have a financial interest. A "particular matter" refers to matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters, which do not involve formal parties and may extend to legislation, regulations, or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. You may not make decisions or recommendations, nor take any action on any particular matter, when that action is likely to have a "direct and predictable effect" on your financial interests. This statute applies whether you are on or off duty. Further, the financial interests of: (1) your spouse; (2) your minor child (ren); (3) your general partner; (4) any organization in which you are serving as an officer, trustee, general partner or employee; and/or (5) any person or organization with whom you have an arrangement for future employment or with whom you are negotiating for employment is "imputed" to you. That is, for purposes of this prohibition, their financial interests are treated as if they were your own. This statutory prohibition also provides for exemptions and waivers for certain financial interests. Refer to 5 CFR parts 2640 for an interpretation of terms used in the prohibition as well as further information on exemptions and waivers to the prohibition. The prohibition does not apply to an individual's birthright financial interest in an Indian tribe, band, nation or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

10/7/2009

In my original letter, I highly recommended an audit be done for the past five years on the 92120 preparedness, 92350 severity, and 92310 suppression Mescalero Agency accounts; audit for the Mescalero Agency Fire Management Program receiving \$600,000 to the build new facilities at the Branch of Forestry for the Fire Management Program; and an audit on Cornel Cervantes who claimed over 90 hours overtime in one pay period when the Agency had no on-going fires and no other government employees were working. To this date, I am not aware of any audits of this highly suspicious activity.

I feel that this entire situation has been ruled by a powerful tribal family influencing a acting regional director in the lack of any kind of action against their family member, and that acting regional director's support of that family for his own personal gain. I hope that this matter is more fully investigated and that it is not swept under the rug. Thank you for your time and consideration of my concerns.



BIA - Blue Book

Wildland Fire and Aviation Program Management and Operations Guide 2009

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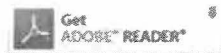
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1 Agencies should recruit a pool of qualified drivers prior to fire season. Agencies
2 must submit the Government Motor Vehicle Operator's License and Driving
3 Record, GSA Form 3607, to the Region for processing. The Agency must
4 obtain verification of a safe driving record prior to allowing the casual to operate
5 a BIA motor vehicle. The Division of Safety and Risk Management (Regional
6 Safety Managers) may be contacted for information on completing and
7 submitting the GSA Form 3607.

8
9 Meeting the qualification requirements for a BIA Motor Vehicle license is a
10 condition of employment with the BIA, for those individuals whose position
11 requires the operation of a motor vehicle. Failure to adhere to the Motor
12 Vehicle Operator Policy will result in automatic termination of the casual.

15 **BIA Employees Who Drive**

16
17 All BIA employees required to operate a motor vehicle either as a condition of
18 employment or incidentally in support of their primary job functions must
19 satisfy the requirements of the BIA Motor Vehicle Operation Policy.

20
21 Prior to operating a motor vehicle in an official capacity, agencies and
22 employees will complete the GSA Form 3607, to verify the employee has a
23 favorable driving record. Recertification of a favorable driving record is
24 required annually. Form 3607 will be processed through Regional channels.
25 The form is used to retrieve the applicant's driving record from the State or
26 National Driver Registry. The Division of Safety and Risk Management can be
27 contacted for more information

28
29 Upon meeting the requirements of the BIA Motor Vehicle Operation Policy the
30 employee will be issued a BIA Motor Vehicle License, the license is valid for a
31 5 year period from the date of issue, unless revoked due to failure to comply
32 with policy requirements or the employee leaves the service of the Agency.

34 **Pay Provisions**

35 The following are administrative procedures for the BIA pertaining to pay
36 provisions.

38 **Overtime**

39 This section pertains to overtime and hazard pay for personnel in General
40 Schedule (GS) or Wage Grade (WG) positions,

42 **Overtime, Full Time and a Half**

43 Public Law 106-558, requires employees of the Department of the Interior,
44 whose overtime pay is calculated under rules established in Title 5, United
45 States Code, section 5542(a), be paid at a rate equal to one and one-half times

1 their hourly rate of basic pay when they are engaged in emergency wildland fire
2 suppression activities. The receipt of full time and a half applies under the
3 following circumstances:

- 4
- 5 • Those assigned to emergency wildland fire activities (including wildland
6 fire use) whose overtime work is exempt from coverage under the Fair
7 Labor Standards Act (FLSA).
- 8 • Those involved in the preparation and approval of a Burned Area
9 Emergency Stabilization and Rehabilitation Plan (ESR) whose overtime
10 hours worked are exempt from coverage under the FLSA. This overtime
11 provision will apply only until the initial ESR plan is submitted for
12 approval.
- 13 • Those required to augment planned preparedness staffing levels to enhance
14 short term suppression response capability, severity activities, accident or
15 after action reviews or emergency wildland fire funded prevention
16 activities, whose overtime hours worked are exempt from coverage under
17 FLSA.
- 18 • Those involved in similar wildland fire activities that are approved for
19 coverage on a case-by-case basis by an agency fire director.
- 20 • In order to qualify for this pay provision; the employee's overtime work
21 must be charged to wildland fire, ESR, severity, or wildland fire
22 suppression funds tied to the support of suppression operations and that
23 overtime work must be recorded on a time sheet approved by an appropriate
24 supervisor.

25
26 This overtime pay provision does not apply to personnel involved in
27 prescribed fire, other fuels management activities, implementation of fire
28 rehabilitation plans, or to overtime incurred in conjunction with any other
29 activity not specified above.

30 31 **Paycode 113**

32 A Federal Personnel Payroll System (FPPS) pay code of 113 has been
33 established to record overtime worked by FLSA exempt firefighters engaged in
34 emergency wildland fire suppression activities as a result of Public Law 106-
35 558. Overtime hours coded as 113 will be paid at the true time and a half base
36 rate, regardless of exempt or nonexempt status. Use of pay code 113 authorizes
37 employees to be paid under annual rather than bi-weekly maximum earnings
38 limitations.

39 40 **Annual Pay Cap**

41 Annual maximum pay is restricted to earning no more than the maximum rate
42 received by a GS-15 step 10. Employees who earn more than the annual cap
43 will be required to pay back the amount in excess of the GS-15 step 10 salary or,
44 go on leave without pay for the remainder of the year once the cap is met.

1 **Hazard Pay**

2 **General Schedule Employees (GS)** - will receive a 25% hazardous duty
3 differential for "all hours in a pay status" on a day on which the duty is
4 performed. (Example: A GS employee works in a hazardous situation for one
5 hour and regular non-hazardous duty for the remaining hours of their scheduled
6 tour. The employee will receive 25% of their base salary for all hours worked
7 that day.) 5 CFR 550.905 Appendix A.

8
9 **Wage Grade Employees (WG)** – will receive a 25% environmental differential
10 for "all hours in a pay status" for a day in which they are: 1) fighting a fire on
11 the fireline; 2) participating or assisting in firefighting operations on the
12 immediate fire scene and in direct exposure to the hazards inherent in containing
13 or extinguishing wildfires; or 3) participating in search and rescue operations on
14 the fireline. 5 CFR 532.511 Appendix A, Part II

15
16 **Base-8**

17 All personnel funded from the Wildland Fire Management (WFM)
18 Appropriation will charge their regular base 8 time to the preparedness account.
19 Incident overtime and hazard pay is charged to the appropriate incident.

20
21 **Non-Fire Personnel**

22 Qualified personnel from other Bureau programs often participate as incident
23 responders. Non fire-funded incident responders should charge their base-8 to
24 the incident.

25
26
27 **Personnel Timekeeping/Recording**

28
29 **Objective**

30 **The primary objective is to keep time records for individuals under a system of**
31 **control.** Emergency Firefighter Time Reports, OF-288's, that have been certified
32 as accurate by an authorized signature are considered to be accurate for pay
33 purposes. Home unit timekeepers will not make changes to this official
34 document, except to correct mathematical errors and/or to complete return travel
35 entries. If home unit timekeepers have questions concerning the Emergency
36 Firefighter Time Report, OF-288, they should contact the incident agency for
37 clarification. (IIBMH, Chapter 10, section 13.)

38
39 **OF-288 and SF-261**

40 All fire hours must be reported on an Emergency Firefighter Time Report (OF-
41 288) or a Crew Time Report (SF-261) for a GS or WG employee when engaged
42 in emergency operations. The OF-288 and SF-261 verify and authorize official
43 hours worked.

44