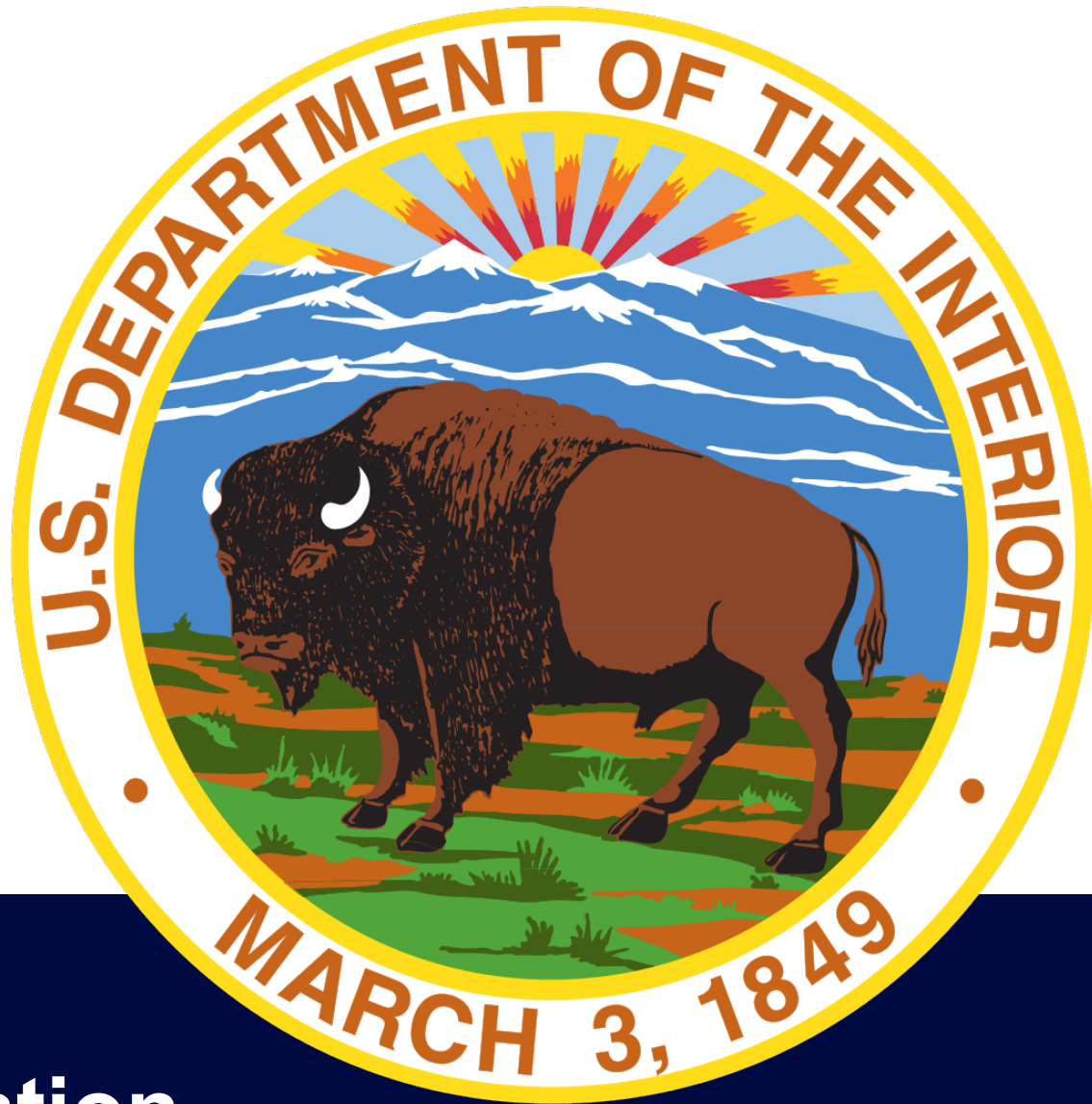




OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR



Investigation

Alleged Ethics Violations, BLM, DC

This is a revised version of the report prepared for public release.



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated allegations that Nada Culver, Principal Deputy Director for Policy and Programs for the U.S. Department of the Interior's (DOI's) Bureau of Land Management (BLM), may have violated ethics requirements when she participated in particular matters involving ConocoPhillips (Conoco), an oil and gas company and a prohibited investment for certain DOI employees. We also investigated whether Culver failed to disclose her spouse's interest in Conoco and other prohibited investments, such as Berkshire Hathaway, to the Departmental Ethics Office (DEO). Finally, we assessed whether Culver's participation in the DOI's review of the Federal oil and gas program impermissibly affected any of her financial holdings.

We found that Culver initially failed to identify her holdings of Berkshire Hathaway stock, a prohibited investment for certain DOI employees under the DOI's supplemental ethics regulation, 5 C.F.R. § 3501.103(b)(1)(ii) (hereinafter "Prohibited Investments"), when asked about her financial interests by the DEO during her initial ethics review. Although Culver subsequently disclosed her financial interests in Berkshire Hathaway when she submitted her new entrant public financial disclosure report, Culver's failure to disclose these holdings earlier resulted in Culver owning Berkshire Hathaway stock in violation of DOI's supplemental ethics regulation and the Standards of Ethical Conduct. We note that once the DEO reviewed Culver's public financial disclosure report and advised her to sell all holdings of Berkshire Hathaway, Culver did so that same day.

We also concluded that Culver did not violate the criminal conflict of interest statute, 18 U.S.C. § 208, through her participation in the DOI's review of the Federal oil and gas leasing program while she and her spouse held financial interests in Berkshire Hathaway because the review did not have a direct and predictable effect on these financial interests. Moreover, we found that 18 U.S.C. § 208 did not restrict Culver from participating in matters involving Conoco because Culver herself did not have a prohibited financial interest in Conoco, and the amount of her spouse's Conoco holdings did not trigger application of the statute.

We are providing this report to the Director of the BLM for any action deemed appropriate.

II. RESULTS OF INVESTIGATION

A. Facts

1. *Culver's Employment with the DOI and DOI's Ethics Guidance*

DEO officials conducted a preliminary ethics review of Culver's financial holdings in January 2021, before she joined the DOI.¹ As part of that review, the Alternate Designated Agency Ethics Official (ADAEO) emailed Culver a list of questions to help identify "whether [she] would be potentially required to implement significant recusals or require additional ethics consultation outside of the planned onboarding process" upon appointment to the DOI. As part of this review, the ADAEO asked Culver if she held any direct or indirect financial interests in Federal lands or resources administered or controlled by the DOI. The ADAEO asked

¹ A timeline of the events discussed in this report is available in Appendix 1.

Culver to review a List of Prohibited Investments,² which identified “certain financial holdings which are prohibited for certain Department employees to hold by statute or supplemental regulation, prior to responding to this question.”³ Berkshire Hathaway was listed as a Prohibited Investment on this list. Culver responded “No,” to the ADAEO’s question and did not identify her ownership of Berkshire Hathaway at this time.

On March 1, 2021, Culver began her employment with the DOI as a Senior Advisor to the Secretary. On March 2, 2021, Culver received an email from the Designated Agency Ethics Official (DAEO) explaining that while Culver was completing her new entrant public financial disclosure report, DEO officials would issue interim ethics guidance and a draft recusal document that would be updated after DEO officials reviewed and certified Culver’s public financial disclosure report. The same day, the DAEO issued draft interim ethics guidance to Culver and attached the List of Prohibited Investments listing Berkshire Hathaway as one of several Prohibited Investments. Culver reviewed the draft interim ethics guidance she received from the DAEO, which included the List of Prohibited Investments. Culver provided her comments on the draft interim ethics guidance to the ADAEO but again did not tell the DEO that she owned Berkshire Hathaway. On March 7, 2021, the DAEO provided Culver with a revised draft of the interim ethics guidance.

Based on the information Culver provided, the DAEO and ADAEO issued Culver interim ethics guidance on March 11, 2021, stating that Culver “confirmed [that she did] not hold financial interests identified on the 2021 List of Prohibited Investments.”⁴ The interim ethics guidance included the List of Prohibited Investments as an attachment. The interim ethics guidance also advised Culver that if she owned any Prohibited Investments, she would have recusal obligations under 18 U.S.C. § 208, and that “recusal is an interim step while you complete your OGE Form 278e and then take steps to divest of any prohibited financial interests as required by 5 C.F.R. § 3501.103.”⁵

2. The DOI’s Federal Oil and Gas Program Review and Culver’s Appointment as Deputy Director for Policy and Programs at BLM

On March 25, 2021, the DOI hosted a public forum as part of its implementation of a pause on issuing new oil and gas leases and review of the Federal oil and gas leasing and permitting practices (hereinafter the “Federal Oil and Gas Program Review”). Culver, as the Senior Advisor to the Secretary, represented BLM at this forum. During the forum and public comment period that followed, the DOI sought information from and met with oil and gas companies, conservation groups, American Indian and Alaska Native Tribal communities, academics, and others who had an interest in the Federal Government’s oil and gas program. After the forum, Culver participated in meetings with members of the oil and gas industry and other groups who submitted comments during the public comment period.

On April 11, 2021, Culver was appointed Deputy Director for Policy and Programs at BLM, which subjected her to additional investment restrictions under 43 U.S.C. § 11 and 43 C.F.R. § 20.401. Specifically, as a BLM employee, Culver was prohibited from “voluntarily acquiring a direct or indirect interest in Federal lands,” including directly owning stock or other securities in corporations determined by DOI officials to have an interest in Federal lands directly or through a subsidiary, or through the substantial holdings of a spouse or minor child.⁶ The regulations implementing this statutory prohibition do not define “substantial holdings of a spouse or minor child,” and the ADAEO told us that the DEO considers the holdings of a BLM employee’s spouse or minor child to be “substantial” if the holdings exceed the \$15,000 regulatory de minimis threshold set forth in 5 C.F.R. § 2640.202(a).⁷

² Every year, DOI ethics officials compile and publish a list of financial interests that employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at the GS-15 level and above are prohibited from holding pursuant to the DOI’s supplemental ethics regulation, 5 C.F.R. § 3501.103(b)(1)(ii). See, e.g., Appendix 2, 2021 List of Prohibited Investments for Office of the Secretary and Office of the Solicitor Employees (GS-15 and above) and Office of Natural Resources Revenue Employees (at all grades) (hereinafter “List of Prohibited Investments”).

³ Email from ADAEO to Culver, “Preliminary ethics review,” dated Jan. 4, 2021.

⁴ Memorandum from DAEO to Culver, *Interim Ethics Guidance on Recusal Obligations* at 5, March 11, 2021.

⁵ *Id.* at 2 n.2.

⁶ See 5 C.F.R. § 3501.103(a).

⁷ See 5 C.F.R. § 2640.202(a) and 43 C.F.R. § 20.401.

On April 12, 2021, Culver submitted her new entrant public financial disclosure report to the DEO.⁸ In this report, Culver disclosed her and her spouse's financial interests in Berkshire Hathaway and her spouse's financial interest in Conoco (see Figure 1, below).

Figure 1: Culver and Her Spouse's Investments in Berkshire Hathaway and Conoco⁹

Holding	Value	Owner	Date Sold
Berkshire Hathaway Stock	\$15,001-50,000	Jointly	04/23/2021
Berkshire Hathaway Stock	\$1,001-15,000	Spouse	04/23/2021
Berkshire Hathaway Stock	\$15,001-50,000	Spouse	04/23/2021
Berkshire Hathaway Bond	\$1,001-15,000	Spouse	08/16/2021
ConocoPhillips Bond	\$1,001-15,000	Spouse	08/16/2021

3. Culver's Senate Testimony and the DEO's Discovery that Culver Owned Prohibited Investments

Culver was scheduled to travel to testify at an April 27, 2021 hearing before the Senate Committee on Energy and Natural Resources on energy development on Federal lands. Culver would be testifying in particular on the Federal Oil and Gas Program Review. We found that, before the hearing, Culver participated in drafting written testimony and met with BLM, DOI, and Senate Committee on Energy and Natural Resources staff in preparation for the hearing.

Prior to the hearing, DEO Attorney 1 reviewed Culver's public financial disclosure report and noticed that Culver had listed financial interests that appeared on the DOI's List of Prohibited Investments. Specifically, Culver's public financial disclosure report disclosed that both Culver and her spouse owned stock in Berkshire Hathaway and that Culver's spouse owned bonds in Berkshire Hathaway and Conoco (see Figure 1, above). Upon DEO Attorney 1's discovery of these holdings, DEO Attorney 1 notified the ADAEO. On the morning of April 23, 2021, the ADAEO emailed Culver requesting additional information about Culver and her spouse's holdings. The ADAEO's email stated that, in reviewing Culver's new entrant public financial disclosure report, the ADAEO became aware that Culver possibly owned Prohibited Investments in oil and gas companies.

Later that same morning, the ADAEO and the DAEO spoke with Culver on the telephone. The ADAEO told us that, during the telephone conversation, they advised Culver and her spouse to immediately divest their holdings of Berkshire Hathaway stock to avoid any potential criminal conflicts of interest. As shown in Figure 1, above, Culver and her spouse owned Berkshire Hathaway stock in a joint brokerage account, and Culver's spouse owned additional Berkshire Hathaway stock in his individual retirement accounts. After that telephone conversation, the ADAEO emailed Culver asking her to confirm that she had spoken with her broker and instructed the broker to execute the sale of Culver and her spouse's Berkshire Hathaway stocks. In the email, the ADAEO confirmed that Culver would "not participate in any BLM issue, action or decision that could affect [Culver's] energy holdings (including meetings or preparation for the upcoming hearing on BLM's oil and gas leasing program) until [Culver has] divested these interests."¹⁰ Culver and her spouse sold these investments that same day and provided the DEO with written confirmation of the sale.¹¹ Figure 1 shows Culver and her spouse's financial holdings and the date these holdings were sold.

⁸ Culver's public financial disclosure report was timely filed. Culver requested and received an extension of the filing deadline from the DEO, which is permitted under Office of Government Ethics regulations. See 5 C.F.R. 2634.201(g) (allowing two extensions, each not to exceed 45 days, for good cause shown). See also *id.* § 2634.201(b) (requiring individuals occupying a public filer position to file a public financial disclosure report within 30 days of assuming the position); see also 5 C.F.R. § 2634.202 (defining "public filer").

⁹ We also determined that Culver, jointly with her spouse, owned several other stocks that were not on the List of Prohibited Investments that the DEO provided to Culver in March 2021 but were either prohibited for BLM employees or otherwise related to the oil and gas industry. Culver disclosed these investments on her new entrant public financial disclosure report, and DEO Attorney 2 advised Culver on June 11, 2021, to sell those investments. The evidence showed that Culver sold those investments in accordance with DEO officials' advice and consistent with the requirements of 5 C.F.R. § 2635.403.

¹⁰ Email from ADAEO to Culver, "RE: Ethics check-in" dated April 23, 2021.

¹¹ The Culvers' broker faxed the Culvers' Sell Trade confirmations at 9:45 a.m. on April 23, 2021.

The ADAEO told us that Culver did not inform DEO officials about her ownership of Berkshire Hathaway stock during her preliminary ethics review in January 2021, or in March 2021, when Culver received the DEO's interim ethics guidance. When we asked the ADAEO why, on April 23, 2021, she and the DAEO advised Culver and her spouse to immediately divest their holdings of Berkshire Hathaway stock, the ADAEO told us that, at that time, DEO officials had sufficient information to believe that Culver may have violated 18 U.S.C. § 208 by participating in DOI's Federal Oil and Gas Program Review.

The ADAEO also told us that Culver's reported spousal interest in Conoco was not assessed at that time to determine whether it presented a criminal conflict of interest requiring immediate action such as divestiture or recusal. When we asked the ADAEO why it did not advise Culver to immediately divest her spouse's Conoco bond, the ADAEO said that Culver reported the bond as a spousal holding on her public financial disclosure report, and the supplemental ethics regulations applicable to employees in the Office of the Secretary do not apply to financial interests owned solely by an employee's spouse or minor children.¹² The ADAEO further told us that the information ethics officials had at the time was insufficient to reach an immediate determination as to whether the Conoco bond or other investments Culver disclosed on her public financial disclosure report would be subject to BLM's additional investment restrictions.¹³

4. Culver's Senate Testimony and Involvement in Matters Related to Conoco

On April 27, 2021, Culver testified at the Senate Energy and Natural Resources Committee's hearing on energy development on Federal lands. Culver's testimony focused on the status of DOI's Federal Oil and Gas Program Review. Culver testified that no timeline had been set for completing the review and that the BLM had not decided if it would hold oil and gas lease sales scheduled for the third quarter of 2021. Culver also responded to questions regarding a specific Conoco oil drilling project, the "Willow Project," in the National Petroleum Reserve in Alaska (NPR-A). BLM had initially approved the project in October 2020, after Conoco proposed a plan to develop and operate 250 oil wells in the NPR-A. Conoco held valid, existing leases in the NPR-A at the time of the Federal Oil and Gas Program Review.

On June 2, 2021, Culver emailed the BLM State Director for Alaska regarding a statement that ConocoPhillips Alaska—a Conoco subsidiary—had released the previous day about DOI's review of the Willow Master Development Plan.¹⁴ She concluded by writing, "if you have a good contact at Conoco to ask about that statement, then I'd really appreciate asking them about it, as well."¹⁵ In reply, Culver received the cellular phone number of the Vice President of External Affairs for ConocoPhillips Alaska.¹⁶

5. Culver's Divestiture of Certain Financial Holdings

The DAEO and ADAEO stated that they engaged with Culver for several weeks revising her new entrant public financial disclosure report to ensure it was accurate and complete in accordance with the Office of Government Ethics' reporting requirements. The ADAEO certified Culver's report on June 9, 2021.

In a June 11, 2021 email to Culver, DEO Attorney 2 identified additional investments on Culver's public financial disclosure report that presented potential conflicts of interest. In particular, DEO Attorney 2 noted that Culver's spouse owned Berkshire Hathaway and Conoco bonds. DEO Attorney 2 did not, however, require Culver to divest these holdings because they belonged to Culver's spouse. DEO Attorney 2 advised Culver

¹² 5 C.F.R. § 3501.103(b)(1) specifically provides that *employees* are prohibited from acquiring or holding any "direct or indirect financial interest in Federal lands or resources administered or controlled by the Department." The regulation does not specifically refer to the financial interests of spouses or minor children of employees and does not define what may constitute an "indirect financial interest." Compare 5 C.F.R. 3501.103(b)(1) with 43 C.F.R. § 20.401(a)(2)(iii)(B).

¹³ See 43 U.S.C. § 11; 43 C.F.R. § 20.401(a); see also 43 C.F.R. § 20.401(c)(3) (providing certain limited exclusions to the prohibition on voluntarily acquiring a direct or indirect interest in Federal lands applicable to BLM employees based on the employee's duties, the particular interest, and the nature of the asset's acquisition).

¹⁴ See *ConocoPhillips Alaska Willow Master Development Plan Clears DOI Review*, ConocoPhillips Alaska, News Release, Jun. 1, 2021, <https://static.conocophillips.com/files/resources/nr-ak-june-2021-willow-master-development-plan-cle.pdf>.

¹⁵ Email from Culver to BLM State Director for Alaska, "lease suspension notices" dated June 2, 2021.

¹⁶ We did not need to determine whether Culver spoke with this individual. As noted below, Culver could participate in particular matters involving Conoco because her spouse's interest in Conoco did not exceed the regulatory de minimis threshold.

that, because her spouse owned these investments, “if you choose to keep them, you would remain subject to recusals from matters that would impact [Berkshire Hathaway and Conoco’s] willingness or ability to honor or repay these bonds (liabilities).”¹⁷

On June 29, 2021, Culver met with the DAEO and ADAEO to discuss her divestitures and recusals. After that meeting, the ADAEO sent Culver an email confirming her understanding that Culver’s spouse “plans to sell the bonds . . . as soon as possible.”¹⁸ On August 16, 2021, Culver’s spouse sold his Berkshire Hathaway and Conoco bonds. At the time of these sales, the bonds were each valued at less than \$15,000.

B. Analysis

We investigated whether Culver violated relevant ethics requirements by failing to timely disclose and divest financial interests that she was prohibited from holding and by participating in the Federal Oil and Gas Program Review.

We found that Culver owned financial interests in Berkshire Hathaway, a Prohibited Investment, in violation of DOI’s supplemental ethics regulation and the Standards of Ethical Conduct. We also found that Culver failed to identify her Prohibited Investments to the DEO when initially asked, although Culver did disclose these investments on her new entrant financial disclosure report. We also note that Culver sold these investments after DEO officials advised her to do so.

We also concluded that Culver did not violate 18 U.S.C. § 208 by participating in the Federal Oil and Gas Program Review because the Federal Oil and Gas Program Review did not have a direct and predictable effect on her financial interests. Finally, we determined that 18 U.S.C. § 208 did not restrict Culver from participating in particular matters affecting Conoco because her spouse, rather than Culver herself, held this financial interest, and his financial holdings in Conoco were below the regulatory de minimis threshold and thus did not trigger application of § 208.

1. Culver Owned Berkshire Hathaway Stock in Violation of DOI’s Supplemental Ethics Regulation and the Standards of Ethical Conduct

We determined that Culver’s ownership of Berkshire Hathaway stock violated DOI’s supplemental ethics regulation, 5 C.F.R. § 3501.103(b), which prohibits the ownership of Berkshire Hathaway stock by certain DOI employees, and the Standards of Ethical Conduct.

The DOI’s supplemental ethics regulation, 5 C.F.R. § 3501.103(b)(1)(ii), prohibits high-level DOI employees from holding certain financial interests. Specifically, the supplemental ethics regulation states that “the Secretary and employees of the Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer who are in positions classified at GS-15 and above” may not “acquire or hold any direct or indirect financial interest in Federal lands or resources administered or controlled by the Department.”¹⁹ This rule applied to Culver, as a senior executive in the Office of the Secretary. The Standards of Ethical Conduct prohibit employees from acquiring or holding any financial interest that they are prohibited from acquiring or holding by statute or supplemental agency regulation.²⁰ In addition, under the DOI’s Employee Responsibilities and Conduct regulations, specifically 43 C.F.R. § 20.103(a), Culver was required to be familiar and comply with the DOI’s supplemental ethics regulation and all other laws and regulations governing her conduct.

When Culver joined the DOI as a senior executive in the Office of the Secretary, she owned Berkshire

¹⁷ Email from DEO Attorney 2 to Culver, “Follow-up on Remaining Assets that Require Divestiture” dated June 11, 2021.

¹⁸ Email from ADAEO to Culver, “RE: Follow-up on Remaining Assets that Require Divestiture” dated June 29, 2021.

¹⁹ 5 C.F.R. §§ 3501.103(b)(1)(ii). The “Office of the Secretary and other Departmental offices reporting directly to a Secretarial officer” include: the Immediate Office of the Secretary; the Office of Solicitor; the Office of Inspector General; the Office of Communications; the Office of Congressional and Legislative Affairs; and all Assistant Secretaries, their immediate office staff, and heads of bureaus that are subordinate to an Assistant Secretary. This includes the following offices under the Office of the Assistant Secretary for Policy, Management and Budget: the Office of Budget; the Office of Hearings and Appeals; the Office of Acquisition and Property Management; the Office of Environmental Policy and Compliance; the Office of Policy Analysis; the Office of Financial Management; and the Office of Information Resources Management.

²⁰ 5 C.F.R. § 2635.403.

Hathaway stock in a joint account with her spouse. As discussed above, on January 4, 2021, prior to joining the DOI, DEO officials provided Culver with a List of Prohibited Investments, which listed Berkshire Hathaway as a Prohibited Investment, and asked Culver to review the list to assist DEO officials in identifying whether she owned any financial interests “which are prohibited for certain Department employees to hold.” The DEO provided Culver with the List of Prohibited Investments on at least two more occasions after January 4: on March 2, 2021, attached to the draft interim ethics guidance sent to Culver by the ADAEO; and on March 11, 2021, attached to the signed version of Culver’s interim ethics guidance. Thus, Culver knew or should have known that Berkshire Hathaway was a Prohibited Investment.²¹

When we asked Culver why she failed to tell the DEO in either January or March that she owned Berkshire Hathaway stock, Culver stated that she “must not have realized” she owned Berkshire Hathaway or any other Prohibited Investments when she spoke with the ADAEO in January 2021 or when she joined the DOI in March 2021. Culver explained that she recalled “skimming” the List of Prohibited Investments at some point after she had first received it from the ADAEO in January 2021 and “believed [she] didn’t have any of the holdings.” Culver said that, when she viewed the List of Prohibited Investments, she “saw a number of companies that I would never invest in” and did not believe she had invested in because she and her spouse “mainly have mutual funds.” Culver told us that “if there were prohibited holdings after I said no, then I made a mistake.”

We found Culver’s statements credible. Nevertheless, in light of the regulations governing Culver’s conduct, including 5 C.F.R. § 3501.103(b) and 43 C.F.R. § 20.103(a), and the List of Prohibited Investments that Culver was provided on multiple occasions, we concluded that Culver had an obligation to review and identify for the DEO any Prohibited Investments she owned when asked to do so in January and March 2021. Culver’s failure to do so until April 11, 2021, when she filed her new entrant public financial disclosure report, led to her owning Berkshire Hathaway stock in violation of DOI’s supplemental ethics regulation, 5 C.F.R. § 3501.103(b) and the Standards of Ethical Conduct.

2. Culver Did Not Violate 18 U.S.C. § 208 When She Participated in the Federal Oil and Gas Program Review Because the Review Did Not Have a Direct and Predictable Effect on Berkshire Hathaway

We did not find that Culver violated the Federal criminal conflict of interest statute, 18 U.S.C. § 208, by participating in the Federal Oil and Gas Program Review while holding a financial interest in Berkshire Hathaway because the Review did not have a direct and predictable effect on Berkshire Hathaway.

Under 18 U.S.C. § 208, an executive branch employee is prohibited from participating “personally and substantially” in a “particular matter” in which the employee knows that she has a financial interest if the particular matter will have a “direct and predictable effect” on that financial interest, unless the employee obtains a written waiver or qualifies for an exemption.²²

a. The Federal Oil and Gas Program Review Was a Particular Matter of General Applicability

We first examined whether Culver’s participation in the Federal Oil and Gas Program Review involved the type of matter covered under 18 U.S.C. § 208 and determined that it did.

As used in 18 U.S.C. § 208, a “particular matter” means a specific party matter or particular matter of general applicability. A specific party matter “typically involves a specific proceeding . . . or an isolatable transaction or related set of transactions between identified parties,” such as a contract, application, claim, or lawsuit, and involves “a specific party or parties.”²³ A “particular matter of general applicability” is defined as “a particular matter that is focused on the interests of a discrete and identifiable class of persons but does not involve specific parties.”²⁴ We concluded that the Federal Oil and Gas Program Review was a particular matter of general applicability because it was focused on the interests of a discrete and identifiable class, i.e., the oil and

²¹ See Appendix 2 (List of Prohibited Investments).

²² 18 U.S.C. § 208; see also 5 C.F.R. § 2640.103 (elaborating on the terms of 18 U.S.C. § 208).

²³ 5 C.F.R. § 2640.102(l). See also Memorandum from Robert I. Cusick, Director, Office of Government Ethics (OGE) to Designated Agency Ethics Officials, “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter,” DO-06-029 (Oct. 4, 2006).

²⁴ 5 C.F.R. § 2640.102(m).

gas industry, rather than an isolatable transaction between identified parties.

b. Culver Participated Personally and Substantially in the Federal Oil and Gas Program Review

We next found that Culver participated personally and substantially in the Federal Oil and Gas Program Review. The regulations interpreting 18 U.S.C. § 208 state that “[t]o participate ‘personally’ means to participate directly,” and that “[t]o participate ‘substantially’ means that the employee’s involvement is of significance to the matter.”²⁵ The regulations further explain that “[p]articipation may be substantial even though it is not determinative of the outcome of a particular matter,” and that “[p]ersonal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.”²⁶

Here, we found evidence showing that Culver participated personally and substantially through, at a minimum, her involvement in the March 25, 2021 public forum and her preparations for testifying before the Senate Energy and Natural Resources Committee regarding the Federal Oil and Gas Program Review. Her participation in the Federal Oil and Gas Program Review during this period was both direct and of significance to the matter, and she therefore participated personally and substantially.

c. Culver’s Financial Interest in Berkshire Hathaway Was Not Directly and Predictably Affected by the Federal Oil and Gas Program Review

Finally, we examined whether the Federal Oil and Gas Program Review had a direct and predictable effect on Berkshire Hathaway. We concluded that it did not.

To violate 18 U.S.C. § 208, an employee must hold a financial interest—e.g., stock ownership in a particular company—that is directly and predictably affected by the particular matter in which the employee participates.²⁷ The regulations interpreting 18 U.S.C. § 208 make clear that an “attenuated” connection will not suffice to establish a violation of the statute:

A particular matter will have a “direct” effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. . . . A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.²⁸

The regulations also state that a “particular matter will have a ‘predictable’ effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest.”²⁹ The Office of Government Ethics has further explained that “a financial interest in a particular matter affecting a subsidiary of a company in which an employee holds an equity-related interest is treated as a particular matter affecting the parent.”³⁰

Both Culver and her spouse owned Berkshire Hathaway stock until April 23, 2021. We therefore determined that Culver had a financial interest in Berkshire Hathaway during the time that she participated personally and substantially in the Federal Oil and Gas Program Review. Berkshire Hathaway owns Berkshire Hathaway Energy, which in turn owns numerous subsidiary energy companies, including companies that operate in the oil and gas industry.³¹ We therefore determined that Berkshire Hathaway was a member of the discrete and identifiable class whose interests could be affected by the Federal Oil and Gas Program Review.

²⁵ *Id.* § 2640.103(a)(2).

²⁶ *Id.* § 2640.103(a)(2).

²⁷ 5 C.F.R. § 2640.103(a) (interpreting 18 U.S.C. § 208).

²⁸ *Id.* § 2640.103(a)(3)(i).

²⁹ *Id.* § 2640.103(a)(3)(ii).

³⁰ OGE, Conflicts of Interest Considerations: Assets at 14 (last updated Oct. 2021).

³¹ See Berkshire Hathaway Energy, <https://www.brkenenergy.com/> (last visited Apr. 25, 2024).

We did not find evidence, however, showing that Berkshire Hathaway or its subsidiaries were directly or predictably affected by the Federal Oil and Gas Program Review in 2021. Specifically, we did not find evidence that Berkshire Hathaway or its subsidiaries reported any royalties or oil and gas production to the Office of Natural Resources Revenue (ONRR) or operated any oil and gas wells under BLM leases during this time. We made this determination after conducting a search and review of data pulled from ONRR's Mineral Revenue Management Support System Analytical and Reporting Tool, an online tool that provides access to data such as contracts, oil and gas operations reports, and royalty reports held by various entities. That search returned no results for Berkshire Hathaway or its subsidiaries over the period January 1, 2021, through December 31, 2021. Additionally, we reviewed data from the BLM Automated Fluid Minerals Support System database for oil and gas wells, which did not establish that Berkshire Hathaway or its subsidiaries owned an interest in, or conducted operations on, land leased under the BLM onshore oil and gas leasing program during the time period in question.

Finally, we reviewed the BLM Mineral & Land Records System (MLRS) case database for the same companies over the same period. The MLRS database reported certain Berkshire Hathaway subsidiaries as partial owners of three oil and gas leases issued by BLM. Those leases were established in 1974, 1997, and 2013, respectively, and remained authorized in 2021. We did not find evidence that the Federal Oil and Gas Program Review affected those leases, however, because the Federal Oil and Gas Program Review only paused the issuance of new leases and did not alter ownership of valid, existing leases. Nor did we find evidence that Berkshire Hathaway or its subsidiaries had any pending applications for additional leases at the time of the Federal Oil and Gas Program Review. We also found no evidence that Berkshire Hathaway or its subsidiaries participated in BLM's public forum regarding the Federal Oil and Gas Program Review, met with BLM officials regarding the Review, or submitted comments related to the Review.

Based on this review, we did not find evidence that Berkshire Hathaway or its subsidiaries held any leases or lease applications that were directly or predictably affected by the Federal Oil and Gas Program Review. We therefore concluded that Culver's participation in the Federal Oil and Gas Program Review did not violate 18 U.S.C. § 208.³²

3. *18 U.S.C. § 208 Did Not Restrict Culver's Participation in Matters Involving Conoco Because the Conoco Financial Interest Was Owned by Culver's Spouse and His Holding Fell Below the Regulatory De Minimis Threshold*

We found that 18 U.S.C. § 208 did not restrict Culver from participating in particular matters involving Conoco because the Conoco bond was owned by Culver's spouse rather than Culver herself, and because the value of the Conoco bond fell below the regulatory de minimis threshold for criminal conflicts of interest.

Pursuant to 5 C.F.R. § 2640.202, a Federal employee may participate in particular matters affecting an entity in which the employee has a financial interest if that interest does not exceed certain regulatory de minimis thresholds. As relevant here, the regulatory de minimis threshold was \$15,000.³³ Thus, Culver could participate in particular matters involving Conoco as long as her spouse's financial interest in Conoco did not exceed \$15,000. While this regulatory de minimis exemption does not apply to Prohibited Investments,³⁴ the DOI supplemental ethics regulation prohibiting Office of the Secretary employees from owning interests in lands controlled by the DOI does not apply to the holdings of a spouse.³⁵ Additionally, under a regulation applicable to BLM employees, an employee has an indirect interest in Federal lands only when their spouse has "[s]ubstantial holdings" in that interest.³⁶ The BLM regulation does not define what constitutes "substantial

³² Because we found that Culver's participation in the Federal Oil and Gas Program Review did not have a direct and predictable effect on her financial interest, we do not need to address whether Culver had the requisite knowledge to violate 18 U.S.C. § 208.

³³ 5 C.F.R. § 2640.202(a)(2).

³⁴ 5 C.F.R. § 2640.204.

³⁵ 5 C.F.R. § 3501.103(b) covers only the "direct or indirect financial interest in Federal lands" of specified "employees," and does not define what may constitute an "indirect financial interest." By contrast, the next subsection, 5 C.F.R. § 3501.103(c), prohibits "employees and their spouses and their minor children" from acquiring certain rights in Federal lands. As does the DEO itself, we conclude that if the financial interests of employees' spouses and children were meant to be covered by Subsection (b), they would have been expressly included in the text, as they were in Subsection (c).

³⁶ 43 C.F.R. § 20.401(a)(2)(iii)(B).

holdings,” but the DEO considers holdings to be “substantial” when they exceed the regulatory de minimis thresholds specified in 5 C.F.R. § 2640.202, e.g., when the financial interest exceeds \$15,000.

Culver testified before the Senate Committee on Energy and Natural Resources regarding BLM’s energy program—including responding to a question about Conoco’s Willow Project specifically—and appeared to have communicated with a ConocoPhillips Alaska official regarding DOI’s review of the Willow Project Master Development Plan while her spouse owned a Conoco bond. Culver, however, did not have a prohibited interest in Conoco under the DOI supplemental ethics regulation because the regulation does not apply to a spouse’s holdings. Moreover, Culver’s spouse’s financial interest in Conoco did not exceed \$15,000, and thus, did not create a conflict of interest under 18 U.S.C. § 208. For the same reason, Culver did not have a prohibited interest in Conoco under the BLM regulation applicable to BLM employees because Culver’s spouse’s interest did not exceed \$15,000, and thus, did not constitute “substantial holdings” that would create an indirect interest under the BLM regulation.

We therefore concluded that 18 U.S.C. § 208 did not restrict Culver’s participation in matters involving Conoco.³⁷

III. CONCLUSION

We concluded that Culver held Berkshire Hathaway stock in violation of DOI’s supplemental ethics regulation and the Standards of Ethical Conduct until she sold these holdings in April 2021. We also found that Culver did not violate 18 U.S.C. § 208 by participating personally and substantially in the Federal Oil and Gas Program Review because the Review did not have a direct and predicable effect on Berkshire Hathaway. Finally, we concluded that 18 U.S.C. § 208 did not restrict Culver from participating in matters involving Conoco because Culver did not have a prohibited interest in Conoco, and because her spouse’s financial interest in Conoco fell below the regulatory de minimis threshold.

IV. SUBJECT

Nada Culver, Principal Deputy Director, Policy and Programs, BLM.

V. DISPOSITION

We are providing this report to the Director of the BLM for any action deemed appropriate.

³⁷ We referred our findings related to Culver’s financial holdings to the U.S. Department of Justice (DOJ), which declined to prosecute the matter.

Appendix 1: Timeline of Events

Date	Event Description
01/04/2021	The U.S. Department of the Interior (DOI) Departmental Ethics Office (DEO) provides Nada Culver with the 2021 List of Prohibited Investments for DOI employees and asks her initial ethics questions. Culver responds that she did not own any Prohibited Investments.
03/01/2021	Culver begins her employment with the DOI as Senior Advisor to the Secretary in the Office of the Secretary.
03/02/2021	The Alternate Designated Agency Ethics Official (ADAEO) provides Culver with draft interim ethics guidance and recusal obligations and again includes the 2021 List of Prohibited Investments.
03/07/2021	The ADAEO provides Culver with revised draft interim ethics guidance and recusal obligations following Culver's review of the March 2, 2021 draft.
03/11/2021	The DAEO and ADAEO issue Culver interim ethics guidance stating that Culver did not hold any financial interests identified on the 2021 List of Prohibited Investments.
04/11/2021	Culver is appointed BLM Deputy Director for Policy and Programs.
04/12/2021	Culver files her public financial disclosure report (OGE Form 278e).
04/23/2021	The ADAEO advises Culver to immediately sell the Berkshire Hathaway stock that she and her spouse held in a joint brokerage account and the Berkshire Hathaway stock her spouse held in his individual retirement investment account. Culver and her spouse sell those investments later the same day and provide the DEO with confirmation.
04/27/2021	Culver testifies before the U.S. Senate Committee on Energy and Natural Resources regarding the pause of oil and gas leasing in the National Petroleum Reserve – Alaska. Culver also responds to a question specifically about the Willow Project.
06/02/2021	Culver emails the BLM State Director for Alaska regarding a statement that ConocoPhillips Alaska released about the DOI's review of the Willow Project, requesting contact information for a ConocoPhillips Alaska official to ask about the statement.
06/09/2021	The ADAEO certifies Culver's public financial disclosure report.
06/11/2021	DEO Attorney 2 sends an email to Culver advising her that if her spouse chooses to keep the Berkshire Hathaway and Conoco bonds, Culver would remain subject to recusals from matters that would impact Berkshire Hathaway and Conoco's willingness or ability to honor or repay those bonds.
06/29/2021	Culver meets with DEO officials to discuss her divestitures and recusals. The ADAEO confirms in an email that Culver's spouse plans to sell the Berkshire Hathaway and Conoco bonds.
08/16/2021	Culver's spouse sells the Berkshire Hathaway and Conoco bonds. Each bond is valued under \$15,000 at the time of sale.

Appendix 2: List of Prohibited Investments



Departmental Ethics Office U.S. Department of the Interior

2021 List of Prohibited Financial Interests for

Office of the Secretary and Office of the Solicitor employees (GS-15 and above) and Office of Natural Resources Revenue employees (at all grades)

The Departmental Ethics Office (DEO) has issued an updated list of prohibited investments for Office of the Secretary and Office of the Solicitor (OS/SOL) employees for 2021. If you are in a **GS-15 or above** position in OS/SOL, this list of prohibited investments applies to you.

This list of prohibited investments also applies to **all** Office of Natural Resources Revenue (ONRR) employees within OS, at all grade levels.

Prohibited investments. All OS/SOL employees GS-15 and above, and all ONRR employees at all grade levels, are prohibited from acquiring or holding “any direct or indirect financial interests in Federal lands or resources administered or controlled by the Department.” Among other things, this prohibition precludes stock or bond investment in many companies that hold Department-granted permits and leases in federal lands.

Each year, ethics officials compile a list of prohibited investments. The 2021 list of prohibited investments is included below and includes investments with oil, gas, solar, wind, geothermal, and mineral rights in federal lands above specified thresholds. Note that many publicly traded companies hold interests in federal lands through private subsidiaries and these subsidiaries are not separately listed. If you have questions about whether investment in certain subsidiaries of publicly traded companies or other privately owned companies is prohibited, please contact an ethics official for additional guidance. Please be aware that the Department’s leasing activity and corporate ownership structures change frequently and this list remains in effect until updated in writing.

What if you have prohibited investments? If you have a prohibited investment, please contact the DEO at once to discuss your options. DOI regulations provide some limited exceptions and waiver authority. If you must sell an investment to comply with ethics laws, you may be able to defer paying capital gains taxes if you obtain a certificate of divestiture from the U.S. Office of Government Ethics **before** you sell.

What if you are GS-14 or below? If you are an OS/SOL employee GS-14 or below, you are not restricted from investing in these companies but if you do so, you must comply with the prohibition on participating in certain government actions affecting your personal financial interests for these and any other investments. Note that the list of prohibited investments applies to all ONRR employees, at all grade levels.

Other supplemental ethics requirements. In addition to complying with all other executive branch ethics requirements, **all** Department employees, their spouses, and their minor children are also prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights that are granted by the Department in Federal lands.

Employees who perform duties or functions under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are also prohibited from having any interests in underground or surface coal mining operations. If you perform duties or functions under SMCRA, please contact your ethics official for further guidance.

We remain available to provide guidance to assist you in complying with this, and all other, ethics requirements.

Parent Company	Ticker Symbol (NYSE or NASDAQ unless otherwise noted)
AES Corporation	AES
Albemarle Corporation	ALB
Apache Corporation	APA
Arch Resources Incorporated (formerly Arch Coal)	ARCH
Avangrid Incorporated	AGR
Barrick Gold Corporation	GOLD

Berkshire Hathaway Incorporated	BRK.A (Class A) & BRK.B (Class B); & PPWLM on OTC
BHP	BHP & BBL
BP	BP
Brookfield Asset Management Incorporated	BAM
Brookfield Renewable Partners Limited Partnership	BEP
Chesapeake Energy Corporation	CHKAQ on OTC
Chevron Corporation	CVX
Clearway Energy	CWEN
CNOOC Limited	CEO
ConocoPhillips	COP
Crystal Peak Minerals Incorporated	CPMMF on OTC
Devon Energy Corporation	DVN
Dominion Energy Incorporated	D
EDP Renewables SA	EDRVF on OTC
Enel S.p.A.	ENIA
Eni S.p.A.	E
EOG Resources Incorporated	EOG
Eolus Vind	EOLU-B on STO
Equinor ASA	EQNR
Eversource Energy	ES
Exxon Mobil Corporation	XOM
First Solar, Inc.	FSLR

Genesis Energy Limited Partnership	GEL
Grizzly Energy Limited Liability Company	GRZZU on OTC
Hess Corporation	HES
Iberdrola	IBDRY & IBDSF on OTC
Innergex Renewable Energy Incorporated	INGXF on OTC
Intrepid Potash Incorporated	IPI
Itafos	MBCFF on OTC
Kosmos Energy Limited	KOS
Marathon Oil Corporation	MRO
Mosaic Company	MOS
Murphy Oil Corporation	MUR
NextEra Energy Incorporated	NEE
NorthWestern Corporation	NWE
Occidental Petroleum Corporation	OXY
Ormat Technologies Incorporated	ORA
Ørsted AS	DOGEF & DNNGY on OTC
Ovintiv Incorporated (Formerly Encana Corporation)	OVV
Peabody Energy Company	BTU
Royal Dutch Shell	RDS.A (Class A) & RDS.B (Class B)
Solvay SA	SOLVY & SVYSF on OTC
Talos Energy Incorporated	TALO
Tata Chemicals Limited	TATACHEM on NSE
Total SE	TOT

W&T Offshore Incorporated	WTI
WPX Energy Incorporated	WPX

Questions? Please contact an ethics official for more information.

OS/SOL Financial Disclosure Team

- Monica L. Garcia, Financial Disclosure Team Lead, at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov) or [REDACTED]
- Alisha Avril, Ethics Specialist, at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov)
- Tia Barner, Ethics Specialist, at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov)
- Curtis J. Steuber, Attorney Advisor, at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov)
- LaShanda R. Whaley, Attorney Advisor, at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov)

ONRR Deputy Ethics Counselor

- Scott Currie, ONRR Deputy Ethics Counselor at [REDACTED] [@sol.doi.gov](mailto:[REDACTED]@sol.doi.gov) or [REDACTED]



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

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