

NEW MEXICO STATE LAND OFFICE

Field Operations Division



**INVESTIGATION REPORT
PRIVATE AND CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGE**

**San Jose Rock Theft / Illegal Dumping
GT0402**

Logan District

Prepared by Kenny Baca, Compliance Officer
10/14/15

OVERVIEW:

The State Land Office- Field Operations Division, was contacted by an anonymous caller regarding damage and removal of state trust assets. A site inspection revealed that rock was being excavated and taken from state trust land near San Jose, NM. Research was conducted and it was determined that the area of concern did not have an active or historic mineral lease. The subject land is currently being leased by Mr. Phil Griego under grazing lease GT-0402.

Issue 1- Grazing lessee has not protected against waste and trespass
Issue 2- Grazing lessee has not fenced lease to prevent trespass
Issue 3- Lessee was conducting ground disturbance without an improvement application
Issue 4- Excavation on lease has high probability of cultural site damage
Issue 5- Minerals in the form of sand stone boulders were removed from state trust land without permit
Issue 6- Various forms of trash remain on state trust land and will involve extensive clean up
Issue 7- abandoned building remains on site which is a nuisance and a hazard

CHRONOLOGY:

OCTOBER 5, 2015

On October 5th, 2015, I received information regarding an alleged illegal rock selling operation occurring on State trust land (STL). The information had initially been provided to an Ernesto Hurtado from the Bureau of Land Management office in Taos, who referred the caller to the STL office. Upon conversing with Mr. Hurtado he stated that he had received a call from a person, who wished to remain anonymous, stating that rock was being taken from the San Jose area. After we experienced some difficulty in ascertaining the exact location, Mr. Hurtado stated he would have the informant call me.

Shortly after the discussion with Mr. Hurtado a call was received from the said anonymous informant, stating that "the Griego's" were taking rock from STL and felt that it wasn't right". The informant gave me directions to the area.

At approximately 2:45 pm that same day myself, Fernando Roybal, and Julian Ortiz (STL employees) met with NM State Police Officer Mark Alsfeld near San Jose. I briefed Officer Alsfeld and we drove to the area.

Upon arriving, two (2) forms of heavy equipment were observed parked near the boundary of STL located off of San Miguel County Road B41C. The first piece of equipment was a track hoe the second was a front end loader. The area appeared to have been leveled off and cleared of brush. I also observed a pile of large boulders nearby.

We also drove along the roadway and followed tracks from the heavy equipment, which lead me to another area cleared of brush and rocks. The tracks continued into a draw where various piles of dirt and rocks from excavation were obvious. We also located freshly damaged trees from the heavy equipment.

The exact locations of the sites were verified by using a GPS unit. The legal land description of the activity is: Section 32, T14N R4E. Photos were taken of the area and the disturbance.

We returned to the area containing the heavy equipment and were confronted by an individual who stated that he lives in a home on the land (immediately) adjacent to the STL. The individual identified himself as Margarito Ulibarri. It was later determined that the individual was Margarito Ulibarri Jr. Mr. Ulibarri Jr. explained that his father had been working with certain individuals (removing the rocks), but that he did not have much information.

After a brief phone conversation (between SLO and Ulibarri Sr.), Margarito Ulibarri Sr. arrived at our location. Mr. Ulibarri Sr. stated that he was the middleman for an agreement made between Phil Griego (grazing lessee) and Peter Encinas – the owner and operator of the heavy equipment. Mr. Ulibarri, Sr. stated that the agreement with Mr. Griego involved rock in exchange for work. Upon being questioned about the rock, he stated that the agreement was to clear certain areas and to use any rock removed from the site to close side roads in order to prevent trespass and illegal trash dumping on their community property (private property).

Upon being asked if any rock had been removed from the area, Mr. Ulibarri, Sr. Stated that “only a few, which were for those roadways”. Mr. Ulibarri, Sr. then called Phil Griego, (grazing lessee). The person on the other end of the line introduced himself to me as “Senator Phil Griego”. He later stated that he was a retired Senator. Mr. Griego stated that he was out of town and that there was an agreement to use the rock to close off the roadways in order to prevent illegal dumping on the community property (private). He stated that none of the rock was being removed to be sold. Mr. Griego stated that he could not come to the area of the excavation, but offered his phone number and availability at any time. Mr. Ulibarri, Sr. then called Peter Encinas and it was determined that he was the owner of the heavy equipment and was en route to our location.

Peter Encinas arrived at approximately 4:45pm. He stated that he and some of his employees were assisting Mr. Ulibarri, Sr. and Mr. Griego by excavating rock to be used by the community. Upon further questioning, Mr. Encinas stated, initially, that no rock had been removed from the area, but later recanted that statement and admitted that two dump truck loads had been taken to his home in Pecos. Both Mr. Ulibarri and Mr. Encinas were then cautioned to cease the excavation and removal of rock immediately. They were further informed that they were not allowed on the property without a permit. Mr. Encinas was then advised not to move the rock located on his residential property until he received further notice. Present at that time were Fernando Roybal, Julian Ortiz, Officer Alsfield.

Upon request, it was determined that another area intended for excavation was not on STL. The area was vacated by SLO employees and Officer Alsfield at approximately 5pm.

After departing the San Jose area, we then drove to the home of Mr. Encinas, where no rock was located. Upon speaking with Mr. Encinas on his cell phone, it was alleged by Mr. Encinas the rock was stored on a different property near the river. He was asked to take pictures of said rock and send them to the Land Office. Later that evening, two photographs were received.

OCTOBER 6, 2015

On October 6th, 2015 a briefing was given to Assistant Commissioner Brian Henington and Division Director Dana Vackar Strang of the information gathered regarding this matter.

October 8, 2015

Return site visit and information gathering.

SLO Employees on Site

<i>Name</i>	<i>Title</i>	<i>Contact #</i>
Kenny Baca	Compliance and Investigations Program Manager	505-827-5729
Brian Henington	Assistant Commissioner- Field Operations	505-827-5768
Dana Vackar Strang	Division Director – Field Operations	505-827-5723
David Eck	Trust Archeologist	505-827-5857
Fernando Roybal	Agriculture Leasing Analyst	505-476-0218
Julian Ortiz	Agriculture Leasing Analyst	505-827-5876
Danny Sandoval	Agriculture Leasing Analyst	505-827-5775
Michael Marino	Minerals Manager	505-827-5750

Archaeologist David Eck stated the following:

"I noted the presence of numerous archaeological artifacts within and near the disturbed areas on the ridge top. I recommend that the lessee be required to complete an archaeological damage assessment survey of all the area lying east of the cemetery road within Lot 4, Section 32, T14N, R14E, N.M.P.M."

Fernando Roybal and Julian Ortiz found illegal dumping north of Interstate 25. They confirmed the property was SLO property. They also located what appeared to be an open septic tank in the area. Various cars, a bus, campers, and various forms of trash were discovered and confirmed (through GPS) to be on SLO property. The vehicles in the area were photographed and inventoried.

Neighbors were curious on who the SLO employees were and what we were doing. Contact was made with a gray pick up containing two men, identified as Desi Flores and Kevin Baca. Upon investigation with the San Miguel County Assessor's office it was determined that the neighboring property closest to the abandoned vehicles and trash belonged to a Florida Flores at PO Box 44 San Jose.

The area was vacated by SLO employees at approximately 1:45pm.

OCTOBER 9, 2015

On October 9th, 2015 at approximately 9:30 am, I received a phone call from Mr. Phil Griego explaining that he wanted to let me know that he never intended to violate the terms of his lease and wanted to assure me that he would not allow any violations of the lease. He reiterated that we would be informed of any type of work on the lease. He asked what the repercussions might be to the violations of the lease. I explained that I was only gathering the information and would present it to my chain of command. He stated he wanted to get it this issue resolved as soon as possible.

Mr. Griego then stated that he would be out of town and would not return until October 26th. He said he would call me upon his return.

Mr. Griego also requested signs for preventing trespass in an area of his lease that wasn't fenced off. He was informed that the Land Office could provide the no trespassing signs to place around the boundary of his lease property.

Also on October 9th, 2015, SLO Employees Tom Perkins, District Resource Specialist and David Gallegos, Agricultural Leasing Analyst traveled to Pecos to count, size and photograph the rocks. Mr. Encinas provided directions to the location where the off-site rocks were being held. Upon investigation of the said off-site location, the rock in the yard appeared to have been recently dumped as there were fresh tracks of a large truck in the vicinity. Upon review of the pictures provided by Mr. Encinas and their comparison to the area where the rocks were actually located, it was obvious that the pictures were not taken in the area where the rocks were now located. Upon questioning Mr. Encinas about this he stated he had moved the rock from his brother's property because he wanted to keep him out of the situation. The area and rocks were photographed again. Tom Perkins estimated there to be about 8.8 cubic yards of rock. We counted 20 large boulders and a few smaller pieces of rock. We left the area at approximately 11:30am.

OCTOBER 13, 2015

On October 13th, 2015 a message was received from Sergeant Leger from the New Mexico State Police referencing a report stating that rock was being stolen from the area near San Jose. One of the officers who responded to the call, Officer Roslyn Vigil, stated that she had verified that the rock being removed was coming from private property and not STL. At approximately 1:00 pm myself, Fernando Roybal and Julian Ortiz met with Officer Vigil near San Jose. Officer Vigil was shown the area where rock was being taken from SLO and

where the various cars and trash had been left or dumped. Officer Vigil was informed that State Police assistance may be requested regarding possible charges for the theft of rock from SLO and other possible violations associated with the incident.

Upon another visit to the site it was determined that there appeared to be no new activity with the rock since October 5th. Upon approaching the area where the vehicles and trash were dumped a gold colored GM model extended cab truck was observed parked in the vicinity of the dumping. Following a vehicle registration check by Officer Vigil, it was determined that Desi Flores was the registered owner. Mr. Flores was one of the individuals who had approached on October 6th as SLO employees were investigating the dump site. Various trash items had been moved since last time the site was investigated, some vehicles had been moved, certain things were piled up and burned, and some trash piles appeared to have been bagged in black trash bags. The area was photographed.

October 14, 2015

At approximately 11:00 am, Julian Ortiz and I met up with Officer Roslyn Vigil near San Jose. Also accompanying us was STL employee, Jimmy Neece. We went to the area of the excavation of the rock. No new activity in that area. As we were traveling to the site, I saw the gold colored GM model truck belonging to Desi Flores along with a charcoal gray ford truck which he drove up on the day we were near his sister's home. Also next to those vehicles was a tan colored Dodge truck that was on STL property the previous day. These vehicles were in the vicinity of the homes which border STL property. We later arrived at the area of the abandoned vehicles and saw that the tan colored Dodge truck had been removed from the site along with the gray Impala sedan. Nothing else appeared to have been removed. Officer Vigil asked for our assistance getting Vehicle Identification Numbers for the remaining vehicles. Vigil then drove to the home where I saw Desi's truck, along with the removed Dodge truck.

Officer Vigil stated that she had contacted a person identified as Angel Flores. According to Vigil, Flores stated that the vehicles on STL were theirs. According to Flores, they were removing their belongings from what they now know is STL. I asked Vigil to hand Flores my business card and advise them that we appreciated them removing their belongings. I also asked that they contact us. We left the site at approximately 12:45 pm.

SITE OVERVIEW

Lease area has been excavated with heavy equipment. Large rocks have been dug up and trees have been cut down or damaged in the process. Vegetation has been removed in various areas as well. The area is known to have a medium to high density cultural resources. The remnants of the Spanish Trail transcend through the section where the rock theft occurred.

(SEE ATTACHED MAP Site A)

A building from an expired business lease in the area appears to be falling down and marked with graffiti.

(SEE ATTACHED MAP Site B)

A portion of the lease has been a dumping ground or a place to store abandoned vehicles, etc.

(SEE ATTACHED MAP Site C)

LEGAL LAND DESCRIPTION

Section(s):

Township(s):

Range(s):

County:

District:

SLO Acres Owned where activity

32
14N
14E
San Miguel
Logan
231.31

occurred:
Beneficiary:

Common Schools

LEASING INFORMATION

Agricultural/Grazing Lease:
Rights of Ways:
Commercial Lease:

GT-0402 Phil Griego
R-22962 Barn for Phil Griego
BL 825 San Jose Community Center- Expired

DIRECTIONS

- From Santa Fe
 - Take Interstate 25 – north to Exit 319 (San Jose).
 - Take Frontage Road 2116- East until County Road B 41 D.
 - Turn on County Road B 41 D south until you reach County Road B 41 C.
 - Turn southwest on County Road 41 C (pass by houses) until to reach the section.

SURROUNDING LAND STATUS (See Land Ownership Map)

Surrounding land ownership is all private property.

ADJACENT HOMES/STRUCTURES/IMPROVEMENTS

San Jose is a small community located in San Miguel County south of Las Vegas, New Mexico. According to the most recent census, the population of San Jose is 137 people. Numerous homes/structures are adjacent (immediately) to the state trust property. There may be issues of encroachment by some residences onto state trust property.

STATUS OF LEASE

- GT-0402 –Phil Girego- is current with appropriate annual fees. The lease is set to expire in 2018.
- R-22962 Phil Griego - issued in perpetuity. (Issued in 1987)
- BL- 825 Expired

ISSUES AND/OR CONCERNS

1. Grazing Lease- GT-0402
Rule 19.2.8 NMAC violations:

Lessee has not protected the lease from waste or trespass.

Agricultural lease rule 19.2.8.8.B states:

Each agricultural lessee shall protect the leased state trust lands from waste and trespass.

Lessee has not fenced the lease to facilitate trespass issues.

Agricultural lease rule 19.2.8.8.C states:

One who leases state trust lands shall fence the lands lease, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement.

Conducting ground disturbing activities without an improvement application and approval from the SLO. According to statements made by parties involved, the rock was going to be used to close off roads.

Agricultural lease rule 19.2.8.17.A states:

Improvements shall not be placed, made or developed on state trust land without the express written consent of the commissioner...

Alleged authorization of the rock removal and grading of an area without consent from the SLO. No permit or easement was granted to any party for the excavation of rock and removal of grass and trees. The said portion of state trust land will need to be remediated.

Grazing Lease violations:

Paragraph 4 of NMSLO Agricultural/Grazing Lease states:

Lessee may use the lease premises only for such operations and activities as are necessary to carry out the purposes for which the lease is granted as specified in Exhibit A and in order to comply with all applicable provision of the law regarding care and protection of the leased premises.

Paragraph 9 states:

The violation by the lessee of any of the terms, conditions, or covenants of the is lease or the nonpayment by lessee of the rent due under this lease shall at the option of the commissioner be considered a default and shall cause the cancellation of this lease 30 days after lessor has sent written notice of such default to the lessee.....

Paragraph 11 states:

Lessor reserves the right to execute leases on the land granted by this lease for mining purposes and for the extraction of oil, gas, salt, geothermal resources and other mineral deposits therefrom and the right to go upon, explore for, mine remove and sell same. Lessor further reserves the right to sell or dispose of natural surface products of said lands other than grazing, agricultural, or horticultural products and to grant such other rights of way and easements as provided by law.

2. Cultural Resource Damage:

State Land Office policy regarding Historical and Cultural Resources (ADM-106) includes the following:

NMSA 1978, § 18-6-9[A] states “Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.” Further, NMSA 1978, § 18-6-9[B] states “Any person who solicits, employs or counsels another person to excavate, injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.” Applicants and lessees should always exercise due caution to ensure that cultural properties are not inadvertently excavated, injured, or destroyed by any person. The State Land Office recommends that a survey be conducted to current standards defined by NMAC 4.10.15 prior to any activity in the proposed project area. As a condition of this permit and pursuant to NMAC 19.2.10.20, any project or lease activities that reveal or result in discovery of a previously undocumented significant cultural property or archaeological site on state trust land shall result in immediate cessation of activities and immediate notification of the State Land Office and SHPO. Activities shall remain suspended until the SHPO and the State Land Office

approve resumption of activities. Furthermore, if activity is conducted without the benefit of a survey and any cultural property is damaged in the process, you will be subject to a fine of no less than \$100,000.00 at the discretion of the Commissioner of Public Lands. You will also be held liable for the cost of an archeological damage assessment, plus the remediation value of said property as determined by that damage assessment.

Further, NMSA 1978, § 18-6-9.2. states "Any person violating the provisions of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978] shall be liable for civil damages to the state agency, department, institution or political subdivision having jurisdiction over the cultural property in an amount equal to the cost or, in the discretion of the court, in an amount equal to twice the cost of restoration, stabilization and interpretation of the cultural property."

In this case, the Trust Land Archaeologist David Eck noted the presence of numerous archaeological artifacts within and near the disturbed areas on the ridgetop. Eck recommended that the lessee be required to contract with a permitted archaeological firm to complete an archaeological damage assessment survey of all the area lying east of the cemetery road within Lot 4, Section 32, T14N, R14E, N.M.P.M. That archaeological damage assessment survey is the appropriate tool to establish the presence of any significant cultural property or archaeological site, to determine whether there has been any excavation, injury, or destruction of such a resource, and to establish the remediation value of said property.

3. Unauthorized Removal and Theft of Trust Assets:

Alleged authorization of the rock removal and grading of an area without consent from the SLO. No state land permit or easement was granted to any party for the excavation of rock and removal of grass, and trees. Furthermore, rock was removed from the state trust land and taken to private property.

4. Illegal Dumping:

The area mentioned in the report has various vehicles, campers, motorcycles, tires, metal and other trash that will need to be removed from the site. There also appears to be oil and other hazardous materials that may need to be removed from the site which may involve proper cleanup for such.

5. Abandoned Building:

The building on site was a former school house and later became a community center. It has since been abandoned and has become a nuisance and could be considered dangerous. The walls show signs of graffiti related to gang activity. The structure presents a hazard as far as instability of roof and on the ground. There is an open septic tank that should be addressed appropriately to address the hazard it presents. According to records presented on lease, the building may have been built in approximately 1955.

POSSIBLE CRIMINAL VIOLATIONS

§ 19-6-3. Trespass or waste; penalty

Any person . . . entering upon, occupying or using for any purpose whatsoever any land belonging to the state, without having leased or purchased the same, or obtained a legal right to the use or occupation of the same, . . . or any person, association of persons or corporation constructing a ditch, reservoir, railroad, tramway, public or private road, telegraph, telephone or power line upon state lands, without legal authority, or any person . . . committing waste upon any state lands or any lessee who shall use the lands leased for any purpose other than that specified in the lease, or purposes incident thereto, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500), and in default of

payment thereof by imprisonment not to exceed six months. Each day's violation of any of the provisions of this section shall constitute a separate offense.

§ 19-6-4. Depredations; penalty

Any person who shall cut down, remove, destroy or injure, or who shall take, remove or carry away, any timber, trees or firewood standing, growing or lying upon any state lands, or who shall extract or remove, or attempt to extract or remove, from any state lands, any stone, minerals, oil, gas, salt or other natural products or deposit, or any lessee who shall permit the same to be done, without authority from the commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in the preceding section, and in addition thereto shall forfeit and pay to the state an amount double the value of material so cut, removed, destroyed, injured or extracted.

RECOMMENDATIONS/ACTION:

To be determined by SLO Administration.

ATTACHMENTS:

Photographs taken by Ken Baca and Brian Henington

Map of San Jose area

PHOTOS TAKEN BY KENNY BACA ON OCTOBER 5TH, 2015

Location of Rock Excavation T14N, R14E, Sec. 32

Photos 1-23



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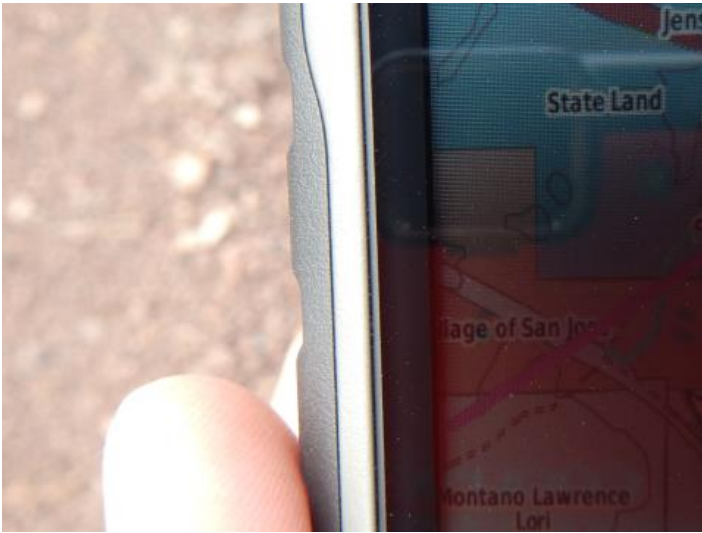
16.



17.



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22.



23.

PHOTOS TAKEN BY KENNY BACA ON OCTOBER 8th, 2015

Location of Rock Excavation T14N, R14E, Sec. 32

Verifying NMSTL property lines with Trimble GPS Unit

Photos 24-37



24.



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30.



31.



32.



33.



34.



35.



36.



37.

PHOTOS TAKEN BY KENNY BACA ON OCTOBER 9th, 2015

Location of Peter Encinas Property – Rock Claimed to have been removed from STL

Photos 38-51



38.



39.



40.



41.



42.



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44.



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48.



49.



50.



51

**PHOTOS TAKEN BY BRIAN HENINGTON ON OCTOBER 8th,
2015**

**Location of Illegal Dumping and Abandoned Structure
T14N, R14E Sec. 32**

Photos 52-128



52.



53.



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102.



103.



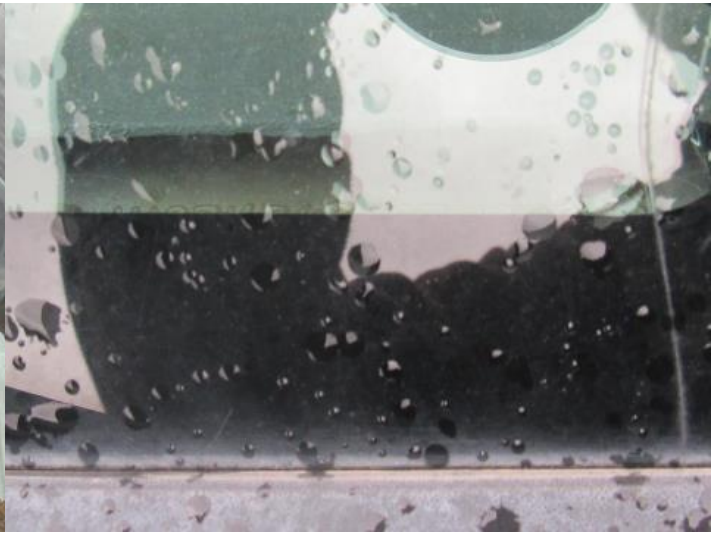
104.



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114.



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117.



118.



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121.



122.



123.



124.



125.



126.



127.



128.

PHOTOS TAKEN BY KENNY BACA ON OCTOBER 13th, 2015

Location of Illegal Dumping T14N, R14E Sec. 32

Some vehicles, trash etc. have been moved- Desi Flores Truck.

Photos 129-137



129.



130.



131.



132.



133.



134.



135.



136.



137.

PHOTOS TAKEN BY KENNY BACA ON OCTOBER 13th, 2015

Location of Peter Encinas Rock – 2nd Location, East Pecos

Photos 138-141



138.



139.



140.



141.

Map of Subject Area

