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United States Department of the Interior

BUREAU OF RECLAMATION

Albuquerque Area Office
555 Broadway Blvd. NE, Suite 100
Albuquerque, NM 87102-2352



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PER-17.00

SEP 18 2006

Mr. Charles Rex Wahl
Bureau of Reclamation
Albuquerque Area Office
Environment Division
Environmental Compliance & Monitoring Group
Albuquerque, New Mexico 87102

Dear Mr. Wahl:

This is notice of a proposal to remove you from your position of Supervisory Environmental Protection Specialist, GS-0028-12, Albuquerque Area Office, Environment Division, Environmental Compliance and Monitoring Group. The reasons for this proposed action are:

- Unauthorized release of administratively controlled information
- Failure to comply with government/departmental policy
- Failure to cooperate in an administrative investigation.

The facts and circumstances supporting this proposal are as follows:

In February 2004, you were hired by the Bureau of Reclamation, Lower Colorado Region, Yuma Area Office, as an Environmental Specialist, GS-401-12. According to your position description of record, you were responsible for managing "all elements of assigned National Environmental Policy Act (NEPA) compliance activities associated with actions and initiatives of the Yuma Area Office." This was a position of trust and a high level of responsibility in carrying out policies, mission and directives of the Yuma Area Office (YAO) in relation to all NEPA activities.

In May of 2006, you transferred to the Albuquerque Area Office (AAO) of the Upper Colorado Region as a Supervisory Environmental Protection Specialist. As part of that transfer, your computer accounts in Yuma were turned over to Ms. Cynthia Hoeft, your previous supervisor. Ms. Hoeft went through those records to evaluate if any documents needed to be passed on to others for action or completion. In reviewing your last 90 days of emails, Ms. Hoeft was extremely concerned to find that you were in regular contact with organizations who you described as having an adversarial relationship with the Yuma Office and who you believed had

threatened litigation over the proposed Drop 2 Project. Upon closer review of your email correspondence, it became clear that you were knowingly passing administratively controlled information to other organizations without authority to do so. The information that you were sharing was highly sensitive to ongoing policy development, and was highly damaging to Reclamation in pursuing resolution to ongoing disputes with these organizations. In at least one instance, you shared agency information with an organization who you believed had given notice of their intent to sue Reclamation, and the information you shared dealt directly with the proposed Drop 2 Project. This caused harm to the agency, and directly affected the efficiency of the service by hampering Reclamation's ability to accomplish its work.

Specifically relating to the charge of releasing administratively controlled information without authorization, the following list of correspondence is provided.

On February 13, 2006, you emailed Jennifer Pitt, Senior Research Analyst for the Environmental Defense (ED), giving ED advance knowledge that the Yuma Groundwater Management Plan was being reviewed. This information was not public knowledge at the time and apprised ED that the plan would soon be open for public review.

On February 16, 2006, you emailed Ms. Pitt and advised her saying, "you should look into the current thrust to have the MSCP (Section 10a and 7, ESA) also apply to Section 404 CWA mitigation throughout the LCR. Under the guise of 'double mitigation.'" So while the YAO was pursuing a course of action that you were entrusted in your agency position for working towards its success, you were advising the ED on ways to subvert or halt the proposed action.

On March 24, 2006, you advised Ms. Pitt to look at H.R. 3691, pending legislation to amend the Central Valley Project Improvement Act, and specifically pointed her to Section 10 of that legislation. The nature and purpose of this correspondence was wholly outside of your position, for the benefit of an organization that is at odds with Reclamation on many Central Valley issues.

On April 13, 2006, you emailed Ms. Carol Beardmore, your ex-wife at the Fish and Wildlife Service regarding the controversial Drop 2 Reservoir. You state: "FYI, I will soon be giving talk to this group. Remind me to get you a low altitude (helicopter) video of the Colo. R. in US and Mx (border area) shows current wetland and riparian and perennial and ephemeral reaches."

On April 25, 2006, you emailed Ms. Leslie Fitzpatrick, a regulatory official with the Fish and Wildlife Service, and attached an internal agency memo regarding an Environmental Assessment for the Border Patrol. Reclamation's position was that it will not mitigate for salt-cedar, a non-native species. You disagreed with that position, and instead of bringing your difference of opinion to management officials within your chain of command, you shared information with an organization that has regulatory control over Reclamation such that it has hindered the efficiency of the Service in accomplishing its work. You were aware that your email was inappropriate as evidenced by your statement, "Please don't identify the source of this information."

On May 4, 2006, you emailed Ms. Pitt and shared non public agency information that was internal to the YAO. You state, "FYI, Management has decided to 1/8 capacity startup of YDP for 90 day period. Plan operation by March 2007. Management has instructed that no NEPA or other compliance will be done, despite recommendations. Look for the lack of NPDES permit, no or inadequate NEPA (CE), etc. Also, there is a planned 'outage' for MODE (salinity canal) in Feb. 2007 for repair. That would mean MODE diversion to River - no NPDES permit for that." Then, in recognition that the information you were sharing was highly sensitive, you instruct Ms. Pitt to use an alternate communication avenue by saying "Correspond to rexwahl@msn.com more secure." While you state that the agency has instructed that no NEPA compliance will be done, Ms. Jennifer McCloskey, Deputy Area Manager of the YAO, asserts that management did not give any such instruction and that your assertions of non compliance were simply untrue. The outage planned in 2007 was simply that - planned - with the expectation that the needed permits would be acquired by that time.

Shortly after the preceding email, you again emailed Ms. Pitt and forwarded her an internal agency memo regarding the seismic reports for the Yuma desalting plant, advising Ms. Pitt to question whether the desalting plant meets seismic standards. Based on your advice, Ms. Pitt then began questioning YAO regarding seismic stability of the plant which impacted productivity and efficiency while the office spent time responding to these questions that in the end had no merit. This unauthorized release of an internal management memo was subversive in nature and hindered the accomplishment of agency work.

Later that same day on May 4, 2006, you emailed Marjorie Blaine, an official with the Corps of Engineers, and inappropriately shared non-public, administratively controlled information as well as your opinions that were not founded in fact. Ms. Blaine is part of the review process that grants or declines permits which allow Reclamation to complete mission goals and projects. In this email you state: "I appreciate your vigilance of the Yuma Area Office, it is a group intent on subverting regulation, especially environmental. Examples: Laguna - the 3:1 cut is known to settle to 6:1 or so slope due to the sandy material. That area is not taken into account in impacts. Conscious decision to obscure this in application. You should verify if dredging meets description (Imperial, Laguna, etc.), there is overdredging in depth and perhaps extent in most cases. Art Pipkin is still behind trying to do the worst for wetlands on the river." In recognition that you understand your email to be inappropriate, you tell Ms. Blaine "Keep the above confidential as to source." You then ask her about a previous disclosure that you made to her regarding an alleged IID violation, saying "Art P. swore in a meeting to 'get the one who reported it.'"

In Ms. Blaine's response to your email she states "Thanks for the info on Laguna. As with IID, I will not divulge any info." She then goes on to say that, in fact, there had been no violation at IID because "a previous Corps project manager told them that they did not need permits to dredge there." Your communication to Ms. Blaine regarding the IID violation was not only untrue (because in fact, there was no violation), it was speculative opinion on your part. Your willful maligning of the Yuma office and Mr. Pipkin, the Assistant Area Manager, has damaged its ability to get the required permits in order to carry out the Laguna project. In fact, the project has now been delayed by 4 months, with the Corps citing the same issues that you opined about.

Ms. Blaine told the YAO that she is not willing to give Reclamation the permits it needs to do its work because she does not trust that Reclamation managers are being truthful. Your unauthorized disclosures coupled with expressing your contrary opinions outside of the agency have not only harmed the agency's ability to perform its mission, but has created an unhealthy relationship between the Corps and Reclamation managers which damage will take a long time to repair.

On May 8, 2006, you emailed Ms. Pitt with the ED organization, to inform her of the existence of a planning document that was not in the public domain, which you felt would be of value to the ED. You write: "A blueprint exists for long range plans for the LC and Gila Rivers. Art Pipkin was a primary author as a consultant to Reclamation (while employed by Reclamation? .. an illegal conflict of interest). Bob Brose was also an author. The report is referred to as the Anteon Report (the firm that contracted it). If you can, you should FOIA it, it is cited as the guide for future river projects on the LC. It is embarrassingly illiterate document even for government! It is cited here as the planning blueprint for the river and many projects in the future budget are taken directly from the document." You then give the exact title page citation with author names, date and other information relevant to assist ED in making the FOIA request. Shortly after your email, Ms. Pitt did in fact present a FOIA request for this document as you had advised her to do.

On May 17, 2006, you attended a meeting with Ms. McCloskey to make a presentation to the basin states. While traveling to the meeting, you advised Ms. McCloskey that ED had given Reclamation notice of their intent to sue via a letter from Ms. Pitt July 12, 2005. Then, in your agency role as the Environmental Protection Specialist, you advised Ms. McCloskey that she should interpret that letter as a notice of intent to sue for all legal purposes. The issue referred to was the Drop 2 Reservoir.

With your understanding of ED's intent to pursue litigation, just one week later on May 24, 2006, you knowingly wrote to Ms. Pitt and shared information that you knew was pertinent to the Drop 2 Reservoir issue. You wrote: "FYI, Basin states and MWD are questioning our conclusion of 'May affect, unlikely to adversely affect' species in Lower CR. Badgering Reclamation to change to 'no affect.' These groups get interim reports and consultant products that support the NEPA, well ahead of public view. Group violates Federal Advisory Committee rules. You need to 'discover' this on your own, though minutes or agenda of these meetings should reflect Reclamation attendance."

Ms. Pitt replied: "Thanks much. FYI, I'll be in your office tomorrow for a 2 pm meeting. . . . Will I see you there?"

Your response shows that you were not only aware that what you were doing was inappropriate, but that it could also have an impact on your employment. You wrote: "No. Don't let on you know me . . . bad for career!"

Ms. Pitt replied: "Indeed, sorry you're leaving, your info was extremely helpful." This comment came from an organization that had, by your own definition, a very adversarial relationship with Reclamation, and the YAO in particular.

The above emails were unauthorized disclosures of agency information which you had received in the course of your official duties with the agency. Your unauthorized disclosures were done on government time and using government equipment and resources to the detriment of the Yuma Area Office and to the detriment of the efficiency of government service.

In relation to the second charge of this proposed personnel action, your unauthorized disclosures of non public information cited above violates 18 U.S.C. 1905 which states:

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment. (emphasis added)

Your actions cited above also violate 43 CFR 20.502, dealing with employee conformance to existing policies, which states:

Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors. While policies related to one's work are under consideration, employees may, and are expected to, express their professional opinions and points of view. **Once a decision has been rendered by those in authority, each employee is expected to comply with the decision and work to ensure the success of programs or issues affected by the decision.** An employee is subject to appropriate disciplinary action, including removal, if he or she fails to: Comply with any lawful regulations, orders, or policies; or Obey the proper requests of supervisors having responsibility for his or her performance. (emphasis added)

Your inappropriate conduct is also in violation of 43 CFR 20.501 which states:

Employees of the Department of Interior are expected to maintain especially high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Government business and the continual trust and confidence of citizens in their Government. Employees are expected to comply with all Federal statutes, Executive Orders, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations. The conduct of employees should reflect the qualities of courtesy, consideration, loyalty to the United States, a deep sense of responsibility for the public trust, promptness in dealing with and serving the public, and a standard of personal behavior which will be a credit to the individual and the Department. These principles apply to official conduct and to private conduct which affects in any way the ability of the employee of the Department to effectively accomplish the work of the Department.

The foregoing emails were reported by the Yuma office to the Albuquerque Area Office (AAO) and were then referred to the Office of Inspector General (OIG). After a review of the data, the OIG reinforced to the agency that these disclosures constituted a serious breach to the agency. The OIG declined to prosecute this as a criminal action, so the issue was referred back to the agency to pursue an administrative course of action.

The AAO then requested that a formal administrative investigation be conducted by the Human Resources Division. This was done on August 3, 2006. Mr. Sterling Egan, Chief of Employee and Labor Relations, conducted the investigation while I sat in and participated in the process. The three of us met on August 3, 2006, for an interview. I introduced Mr. Egan and explained to you that he was here to conduct an investigation, and I then gave you a direct order that you were to answer questions completely and honestly and participate fully in the process. I asked if you understood my directive, and you replied that you did.

Mr. Egan then presented to you a written notice of administrative investigation and had you read through it completely. He then went through each paragraph with you and had you initial the paragraphs after they had been verbally explained to you. After explaining the meaning and purpose of each paragraph, Mr. Egan then asked if you understood what was expected of you, and you replied that you did. You then signed the notice acknowledging your understanding of it.

Mr. Egan also informed you that criminal prosecution in this matter had been waived, thus converting the matter exclusively into an administrative investigation. You were specifically notified of your obligation as a federal employee to cooperate during an investigation. Paragraph four of the notice specifically reads:

Employee obligation to cooperate and be truthful: In an administrative investigation a federal employee is obligated to cooperate fully, disclose known information completely, and be totally honest (18 U.S.C. 1001, False Statement Act). Any attempt to be uncooperative, to mislead, misrepresent, withhold or distort information or otherwise impede the investigative process creates a

separate cause of action which may be used as a basis for disciplinary action against you up to and including removal from federal service.

During the course of our meeting, you were reminded of this obligation a number of times when you failed to respond to questions posed to you. As an observer of the process, I found your overall behavior to be uncooperative, evasive, misleading, and dishonest in your responses - to the point that I did not feel confident that I could trust what you were saying on many of the questions.

You described the relationship between the YAO and non-governmental environmental organizations as being quite adversarial and sometimes litigious. You described Yuma management policies, decisions and actions to be "fraudulent" in nature and explained that you had an obligation to report this fraud. Mr. Egan inquired about your employee orientation and whether or not you knew what your avenues were in reporting waste fraud and/or abuse in the federal government. You replied that you knew that you could go up the chain of command and tell someone in the organization, or that you could report it to the OIG. Clearly you knew what the appropriate avenues were for sharing your opinion on fraudulent behavior. When asked why you did not report your suspicions through either of these options, and instead "reported" it to the very organizations that the agency was dealing with in an adversarial way, you said that you had your own reasons. When asked what they were, you did not reply. You later stated that you feared reprisal for going to the OIG (even though you acknowledged that you knew it could be done anonymously), and that you did not believe that agency management would do anything about your concerns, but that the environmental/regulatory groups would do something about them.

You admitted in the investigation that you knew of your obligation to express your concerns and/or differences of opinion on specific subjects with your supervisor. When asked if you had expressed your opposing opinions to your supervisor related to the subjects in the emails, you said no. When asked why, you said that you had your own reasons. You later added that you had not been comfortable talking with your supervisor for fear of retaliation.

You admitted that you were aware that information you were sharing with ED was related to an issue that ED had threatened litigation, thereby assisting ED's position in the potential law suit.

You acknowledged that you were aware of a specific process for making internal documents part of the public domain, and that the information you passed on had not gone through that process and was not public. You were asked if you had received authorization from your supervisor or other management official to release the information contained in the emails cited above. You admitted that you had not sought or received authorization to release any of that information. When asked why you had not sought authorization, you said "because I knew they wouldn't want that information out there." When asked what the reason or purpose was for disclosing unauthorized information to these specific groups that were hostile to the agency, you simply replied, "I have my own reasons." When asked what those reasons were, you would not reply.

Later in the interview, you stated that philosophically, you believed that since you were a "public" servant, that anything you dealt with belonged in the "public" domain and that what you had done at Yuma was the right thing to do and had been for the best. When asked who your actions had been the best for, you replied all US citizens. In point of fact, however, all of your unauthorized disclosures that were recovered in your email account went exclusively to those organizations that fall in the category of environmental organizations which are opposed to Reclamation generally and are adversarial in nature.

When asked about the FOIA process, you said that you understood it clearly, as you had used it often in your previous position as Executive Director of the Forest Guardians. You denied having provided any advice to these environmental groups, and you denied specifically ever advising any of them to FOIA a specific document. This is contradicted by your email of May 8, 2006, cited above.

When asked if you had any contact with these organizations outside of your government email account, you said no. Yet you specifically direct Ms. Pitt to email your MSN account, saying it was more secure.

When asked if you felt that sharing any of the information cited above had been wrong, you said no, that it was the right thing to do, it was in the best interest of the public and was justified based on Yuma's conduct. Yet you repeatedly say in your emails to not disclose their source of information and that it would be bad for your career if it were known.

In relation to the third charge of this proposed action, as an observer to the interview, I conclude that you were not forthcoming when asked to identify all contacts that you had made with environmental groups and the nature of information that you had disclosed. You were evasive when asked how many times you had passed unauthorized information. You said that you had not passed any information to your ex-wife, but your email of April 13, 2006, shows otherwise. I found that during the interview process, you were reluctant to answer questions completely and honestly, and your behavior, generally throughout the interview, to be misleading. You were reminded a number of times during the interview that failure to cooperate in an administrative investigation would create a separate cause of action and could result in disciplinary action up to and including removal. This had little impact on your overall demeanor and responsiveness.

Your behavior as outlined above is unacceptable and cannot be tolerated because it has had a destabilizing effect on the agency, workplace effectiveness, and is in violation of established departmental policy. In addition, your disrespectful and discourteous conduct towards supervisors and others in authority undermines one of the basic principles of Federal service -- that supervisors and managers have the right to assign work and instruct employees in how and when the work is to be accomplished with the expectation that employees follow those proper instructions and work to see that they are carried out to a successful completion. Your behavior, however, was subversive and undermined Reclamation's ability to accomplish its projects and mission-related work.

In proposing this action, I have considered the nature and seriousness of your actions and the fact that they were deliberate and form a pattern of behavior that is unacceptable. I have also considered the fact that due to your pattern of behavior, I have no confidence that this behavior will change if you were to disagree with policy decisions of the Albuquerque Area Office in the future. I have also taken into account the negative effect of your actions on your relationship with your supervisors and their lack of confidence in your ability to carry out your assigned duties and responsibilities; the fact that failure to take action in this matter would negatively impact other employees' confidence in management's willingness to take disciplinary action; and the fact that you were clearly on notice of the requirements to follow established policies and directives given to you during the course of the administrative investigation.

I do not find your 2-½ years of service or your past work record as mitigating, nor do I find other mitigating circumstances that would warrant a less severe penalty.

Your actions constitute an offense against the employee-employer relationship and cannot be tolerated. Accordingly, your proposed removal is for such cause as will promote the efficiency of the service.

As this letter is for a proposed disciplinary action, you have the right to respond to the charges outlined above by either meeting with or submitting a written response to Ms. Connie Rupp, Albuquerque Area Manager, who will be the Deciding Official in this matter. This is your opportunity to give a meaningful reply to the person who will decide this action and explain your side of the story. You may contact Ms. Rupp directly at 505-462-3542 to arrange for an appointment should you wish to meet with her. You may submit affidavits and/or other documentary evidence in support of your answer if you desire. You may also be represented by an attorney or other representative of your choosing. You will be allowed 14 calendar days from the date you receive this notice to submit your answer. Full consideration will be given to any answer you submit. Consideration will also be given to extending this period if you submit a written request stating your reasons for desiring more time. Any request for an extension should be sent to Ms. Rupp who will render a decision on that request.

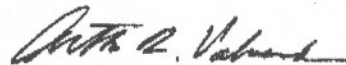
You will be allowed a reasonable amount of official time to secure affidavits and prepare an answer to this notice. You should contact me directly to arrange for the use of this official time. The material relied upon for this action is enclosed for your convenience. If you do not understand the reasons for this proposed action, you may also contact Ms. Barbara Turner in the Regional Human Resources Office at 801-524-3754 for further information.

Please note that upon your receipt of this letter, you will continue to be on Administrative Leave which is a non-work with pay status. You are directed to be available by telephone during your normal tour of duty, Monday through Friday, during the hours of 7:00 a.m. to 4:00 p.m. (except during the lunch period from 11:30 to 12:30 each day). This will permit management to contact you and return you to the office, if needed. If you will not be available as directed, you should request annual leave or sick leave in advance from your supervisor or higher level management official at the Albuquerque Area Office.

In conclusion, with the exception of the period of official time arranged with me or when presenting an oral reply to this notice, you are directed to absent yourself from the premises of the Bureau of Reclamation until such time as a decision has been rendered in this matter and/or you are directed to return to duty.

As soon as possible after your answer is received or after the expiration of the 14 day limit, if you do not submit an answer, you will be issued a written decision on this proposal.

Sincerely,



Arthur Valverde
Assistant Area Manager

Enclosure