



United States Department of the Interior

BUREAU OF RECLAMATION
Albuquerque Area Office
555 Broadway NE, Suite 400
Albuquerque, New Mexico 87102-2351

IN REPLY REFER TO:

ALB-100

PER-17.00

DEC 21 2006

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

Modification of Notice of Proposal to Remove dated September 18, 2006;
Revised Notice of Proposal to Remove

Dear Mr. Wahl:

On September 18, 2006, you were issued a Notice of Proposal to Remove you from your position of Supervisory Environmental Protection Specialist, GS-0028-12, Albuquerque Area Office, Environmental Division, Environmental Compliance and Monitoring Group. On October 30, 2006, you provided a reply to such Notice through your attorneys, Richard Condit and Paula Dinerstein, of Public Employees for Environmental Responsibility (PEER). Following your reply, I conducted further inquiry into the charges brought and the issues raised, and I have decided to modify the Notice of Proposal to Remove dated September 18, 2006, and issue the following revised Notice of Proposal to Remove you from your position in the Albuquerque Area Office and from Federal Service. Therefore, the Notice of Proposal to Remove you dated September 18, 2006, is hereby modified, and a revised Notice of Proposal to Remove you from your position and from the Federal Service is hereby issued.

This is notice of a proposal to remove you from your position of Supervisory Environmental Protection Specialist, GS-0028-12, Albuquerque Area Office, Environmental Division, Environmental Compliance and Monitoring Group and from the Federal Service. This action, if taken, is to be effected not less than 30 days from the date you receive this notice. This notice is based on the following reasons and is taken for just and sufficient cause in order to promote the efficiency of the service. Please refer to the documents provided in the Notice of Proposal to Remove dated September 18, 2006, for a copy of documents that the agency is relying on.

Background

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, GS-0028-12. 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 retained. In reviewing your email messages, Ms. Hoeft was extremely concerned to find that you were in regular contact with organizations who you personally had 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 acting contrary to the position of the agency and contrary to that which you had been hired to do. The information that you were sharing was highly sensitive to ongoing policy development, and was damaging to Reclamation in its goal of 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.

Specification #1:

On February 16, 2006, you emailed Ms. Pitt of Environmental Defense (ED) and advised her saying, "[y]ou should look into the current trust 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.'"

Your email to Ms. Pitt was contrary to the course of action you were assigned in your position with the Bureau of Reclamation. Instead of working towards Reclamation's success, you were advising ED on ways to impede Reclamation's work.

Specification #2:

On April 25, 2006, you emailed Ms. Leslie Fitzpatrick, a regulatory official with the Fish and Wildlife Service (FWS) and attached an internal agency memo reviewing an Environmental Assessment of the Limitrophe by the Border Patrol. The MSCP Program office defines our internal position on the Limitrophe area and position to not mitigate for salt cedar in this memo.

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You forwarded Reclamation's internal position to FWS stating, "Stance seems to vary from stated actions in MSCP documents. Please don't identify the source of this information."

Rather than bringing the differences in your stance with that of the agency to management officials within your chain of command, you shared information with an organization that has regulatory control over Reclamation that can impede the agency's ability to accomplish its mission. Your action casts doubt on fellow Reclamation staff and impairs their ability to develop trust and good working relationships with regulatory agencies.

Specification #3:

On May 4, 2006, you emailed Ms. Pitt and stated, "FYI, Management has decided to 1/8 capacity startup of YDP for 90 day period. Plan operation my (sic) 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."

The information you sent was factually inaccurate. The outage planned in 2007 was simply that - planned - with the expectation that the needed permits would be acquired by that time. Presenting this information in the manner as you stated casts the agency in an unfavorable light.

Specification #4:

On May 4, 2006, you emailed Ms. Pitt and forwarded her an internal agency memo regarding the seismic reports for the Yuma desalting plant.

Shortly thereafter, 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.

Specification #5:

On May 4, 2006, you emailed Marjorie Blaine, an official with the Corp of Engineers, in which you state: "I appreciate your vigilance of the YAO, 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."

Ms. Blaine is part of the review process that grants or declines permits which allow Reclamation to complete mission goals and projects. Your communication to Ms. Blaine was untrue and casts the agency in the unfavorable light. It also required Reclamation to write additional explanation

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to the COE on an issue that was in-fact already appropriately addressed, thereby delaying the process for Reclamation to receive the needed permit to carry out the mission.

In the same email you stated the following: "Art Pipkin is still behind trying to do the worst for wetlands on the river. Laguna is being touted as a capacity increase project in talks with the Basin States and in federal legislation. Good luck with MSCP as a Wetland Mitigation Bank. Keep confidential as to source. Whatever happened to the IID violation? Art. P swore in a meeting 'to get the one who reported it?'"

It is inappropriate to make disparaging remarks to a regulatory agency about Reclamation management. Your statement to the COE that Reclamation is touting the Laguna project as a capacity increase project this could cause the COE to question the overall purpose and need of the project submitted on the application.

Specification #6:

On May 8, 2006, you emailed Ms. Pitt with the ED organization, to inform her of the existence of a planning document. You wrote: "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 gave the exact title page citation with author names, date and other information relevant to assist ED in making the FOIA request.

Your statement concerning the Anteon Report caused embarrassment to the agency. You also alleged that the agency engaged in an illegal conflict of interest without a basis to determine if that was true or false. Your opinion was stated as fact and put the agency in a negative light.

Specification #7:

On May 24, 2006, you emailed Ms. Pitt and stated "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' on your own, the minutes or agenda of these meetings should reflect Reclamation attendance."

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 she should interpret a letter from Ms. Pitt dated July 12, 2005, for all legal purposes as their intent to sue.

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The letter referred to the Drop 2 Reservoir. In effect you were sharing information that you believed would help ED succeed in a lawsuit against Reclamation.

Penalty Analysis

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 and from the Federal Service.

In proposing this action, I have considered the nature and seriousness of your actions, your entire employment record, the fact that your conduct was deliberate and repeated over at least a 3-month period of time, and that it forms a pattern of behavior that is unacceptable. Your actions consistently painted Reclamation in a bad light and were counter to what was expected of a person in your position which was to assist Reclamation in completing its work in compliance with laws and regulations. If you had issue with any decisions made by your supervisors and coworkers, you should have brought your concerns to them. Instead, you chose to cast aspersions against Reclamation to outside entities.

I have also considered the fact that due to your pattern of behavior and the higher level of sensitivity of your current supervisory position in Albuquerque, 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; and the fact that failure to take action in this matter would negatively impact other employees' confidence in management's willingness to take disciplinary action.

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.

Employee Rights and Procedures

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 Rick L. Gold, Regional Director, Upper Colorado Region, 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 Mr. Gold directly at 801-524-3600 to arrange for an appointment should you wish to meet with Mr. Gold. 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

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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 Mr. Gold, who will render a decision on that request.

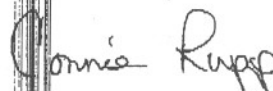
You will be allowed a reasonable amount of official time to secure affidavits and prepare an answer to this notice. You should contact me directly to arrange for the use of this official time. The material relied upon for this action is enclosed for your convenience. If you do not understand the reasons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

Please note that 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 a.m. to 12:30 p.m. 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 me or my designated acting.

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,



Connie Rupp
Area Manager

cc: Public Employees for Environmental Responsibility
Attention: Paula Dinerstein and Richard Condit
2000 P Street, NW, Suite 240
Washington DC 20036 (via fax and hard copy)