

## Key Excerpts

### Gary Mowad MSPB Hearing

#### Testimony of Gary Mowad, former FWS Texas Ecological Services Administrator

##### (Warblers in the parking lot)

1 This small group - and I'm gonna  
2 use two names so that we can be specific now  
3 - two individuals that gave me a great deal  
4 of concern were Steve Manning and Neil  
5 Wilkins. Steve Manning was a private  
6 individual. I'm not sure he has any  
7 biological training at all. We often  
8 referred to him as the State Comptroller's  
9 hatchet man. I don't - I can't say for sure  
10 if he is on the State Comptroller's staff,  
11 but I don't believe so, I believe he's just  
12 an individual that she contracts with to get  
13 certain things done. But Steve Manning and  
14 then Neil Wilkins were asking for, again,  
15 preferential treatment on - on different  
16 things that we were doing. And I would  
17 inform them that everybody gets treated  
18 equal, you know, within the Federal  
19 Government, there - there isn't preferential  
20 treatment, there isn't unrestricted access to  
21 the - to the Fish and Wildlife Service, to  
22 the Regional Director, to the Deputy Regional  
23 Director. Yet those two expected, and  
24 expected, I think, for the State  
25 Comptroller's Office to receive expedited

1 processing of their requests and preferential  
2 treatment for their requests as well.  
3 And Steve Manning personally one  
4 time when I - when I pushed back and told him  
5 that - that everybody gets treated the same,  
6 told me specifically, Your Honor, he told me,  
7 he said, you know, you need to understand you  
8 work for us, you know, we in Texas got your  
9 position funded, that's why your position  
10 exists, and your job is to make sure we get  
11 what we want. Well, I took great pause with

12 that kind of comment, and it concerned me  
13 greatly.

14 At a later date, Neil Wilkins was  
15 asking me to call my staff - and you're going  
16 to be talking with Tom Cloud, or he'll be  
17 testifying later today - but Neil Wilkins  
18 told me that I needed to call Tom Cloud and  
19 have his Biologists accept a model for  
20 warbler populations on a biological  
21 assessment that he was working on for Fort  
22 Hood. Now, Fort Hood had their own  
23 environmental staff, Fort Hood had actual  
24 numbers, they had actually counted birds,  
25 they didn't need a model, they had what we

1 refer to in the science community as the best  
2 available science. There's nothing better  
3 than actual on-the-ground counting of birds.  
4 So my staff was working with the Fort Hood  
5 staff, we were using the actual number of  
6 birds from actual surveys, yet Neil Wilkins  
7 wanted me to call Tom Cloud and say, you need  
8 to let us use this model that we developed  
9 over at Texas A&M.

10 And I explained to Neil that we  
11 can't use a model, that particular model in  
12 particular was very problematic in ground  
13 truthing, it over predicted the presence of  
14 birds by up to ten fold. And my staff  
15 actually showed where the model predicted  
16 warblers would be found in the parking lot, a  
17 paved parking lot, at Fort Hood. So I  
18 explained to Neil that I could not use that  
19 model under any circumstances. It would  
20 violate both policy and law, because we have  
21 to use best available science.

22 And Neil told me straight out, he  
23 said, Gary, why do you do this? You know I'm  
24 just going to call Joy Nicholopoulos, she's  
25 gonna flip you, we're gonna use the model,

1 and all you're gonna - all you end up doing  
2 is making yourself look bad. And at about  
3 this point it became very clear to me that

4 this small group that surrounded the State  
5 Comptroller's Office were - they were too  
6 close. And I use the term with my staff on  
7 numerous occasions, they had an  
8 inappropriately close relationship with Joy  
9 Nicholopoulos who used to be in my position  
10 here in Texas, and now was the Deputy  
11 Regional Director. They were using their  
12 unrestricted and unbridled access to get what  
13 they wanted, and they were using their access  
14 to her to - to essentially overrule the sound  
15 science that my staff was - was using and  
16 that was I was using. And we were  
17 essentially trying to hold the ground on  
18 scientific integrity, but we - it was very  
19 frustrating for us because these folks did  
20 have unbridled access to Joy and Joy would  
21 give them what they wanted.

**(Dune Sagebrush Lizard) Testimony of Gary Mowad)**

A. This lizard is located out in the  
8 Permian Basin of West Texas in the heart of  
9 oil development country, so this was an  
10 extremely controversial listing, very  
11 sensitive. And I was under the opinion, as  
12 are many others, that the failure to list  
13 this lizard, the failure to come up with a  
14 listing as warranted decision was politically  
15 motivated to keep from listing a lizard in  
16 oil country..

A. So soon after the Federal  
3 Government failed to list the dune sagebrush  
4 lizard, we had a meeting that we were called  
5 to in Albuquerque, New Mexico - excuse me, in  
6 Austin, Texas.

7 Q. [BY MR. MUNDY:] We who?

8 A. Benjamin Tuggle and Michelle  
9 Shaughnessy came to Austin, Texas and asked  
10 the Austin Field Office to convene a staff  
11 meeting of all those that were present that  
12 day. We had a meeting in the Austin Field  
13 Office, and at that meeting Benjamin Tuggle

14 said to the group, first he congratulated  
15 them for essentially getting this over the  
16 finish line without having to list the  
17 lizard, and he stated, there was not way we  
18 were going to list a lizard in the middle of  
19 oil country during an election year. And my  
20 jaw just about hit the ground, because that  
21 to me showed that that was a pre-decisional  
22 determination on his part, and they did not  
23 want to list that lizard and they were going  
24 to make sure that they found a way not to.

**Testimony of Rick, Coleman, Former FWS Scientific Integrity Officer**

9 Q. Mr. Coleman? Of the complaints that you received  
10 while you were there for the two and a half  
11 years or so in the job duty, do you have  
12 personal knowledge whether or not any of  
13 those complaints that you received went on to  
14 result in formal disciplinary action against  
15 senior Fish and Wildlife management?

16 A. No, sir, I have no personal  
17 knowledge of that.

**MSPB Judge Mary Ann Garvey questioning Laurie Larson-Jackson, the Whistleblower  
Ombudsman for DOI-OIG, the last witness called by Mowad's counsel**

16 JUDGE GARVEY: Ma'am, in evidence  
17 we have a memorandum dated July 11, 2013,  
18 from Mary L. Kendall the Deputy Inspector  
19 General to the Secretary of the U.S.  
20 Department of the Interior, and it apparently  
21 involves whistleblowing retaliation that was  
22 taken by supervisors in the Oklahoma  
23 Ecological Services Field Office who report  
24 up to Regional Director Benjamin Tuggle.  
25 I'll read you one paragraph here.

660

1 Over a year has passed since the  
2 investigation was initiated, and over two  
3 months have passed since the findings of  
4 misconduct and loss of integrity were

5 determined. Months of pointed discussions  
6 and stern warnings with Regional Director  
7 Benjamin Tuggle, Deputy Director Rowan Gould,  
8 and Director Ashe, by the AIGWBP have not  
9 resulted in any formal and permanent action  
10 against the offending supervisors. To date,  
11 the whistleblowers have received no relief,  
12 and in the public eye appear to have  
13 committed wrongdoing. In fact, recent  
14 actions taken by FWS management regarding the  
15 offending supervisors appear to have elevated  
16 their status and do not appear to be  
17 disciplinary in nature.

18 I assume the reference to the  
19 AIGWBP is to you; is that correct?

20 THE WITNESS: That is correct.

21 JUDGE GARVEY: And so your  
22 conversations—

23 THE WITNESS: Yes.

24 JUDGE GARVEY: -with Mr. Tuggle,  
25 when you also had some conversations with him

1 about Mr. Mowad in November of 2012,  
2 involved, presumably, his failure to do  
3 anything to show that the - in essence that  
4 they were doing nothing regarding findings  
5 that supervisors had retaliated against  
6 whistleblowers; is that a fair statement from  
7 what I've reading here?

8 THE WITNESS: Because they were  
9 separate cases (indiscernible)—

12 JUDGE GARVEY: All right. Start  
13 over. Start over and then I'll - start over  
14 and I'll mute.

15 THE WITNESS: Okay. Okay. So  
16 because that memorandum related to three  
17 separate whistleblower complaints, I was - I  
18 was not, um, I hope I'm answering your  
19 question here, but I'll go around this a  
20 roundabout way.

21 That was not about Gary Mowad's  
22 complaint. But - and I think this is

23 answering your question. We saw similar  
24 behavior by Fish and Wildlife Service  
25 management in Gary Mowad's case. A lack of

1 an action. But the cases were, you know,  
2 they had separate and distinctive facts,  
3 those three - those three cases, because  
4 those three individuals were, um, um,  
5 subjected to disciplinary action, different  
6 disciplinary action. But because of  
7 management's response in those particular  
8 cases, we did - we did feel it was  
9 appropriate to engage Dr. Tuggle with the  
10 transparent conversations on - on Gary  
11 Mowad's complaints. And - and as far as the  
12 IG's concerned about Fish and Wildlife  
13 Service's handling of some of these  
14 complaints, is that it was grossly  
15 inadequate. Main Personnel can speak for  
16 itself. Does that answer your question?

17 JUDGE GARVEY: **Well, it appears**  
18 **that the history of the Fish and Wildlife,**  
19 **and specifically Dr. Benjamin - or Regional**  
20 **Director Benjamin Tuggle, Gould, and Ashe is**  
21 **that whistleblowing retaliation is tolerated**  
22 **or even condoned. Apparently someone got**  
23 **promoted or something good happened to them**  
24 **after they retaliated.**

25 THE WITNESS: I think that's a

1 fair assessment of the IG (indiscernible).

2 JUDGE GARVEY: Do you know what,  
3 if any, action the Secretary took in response  
4 to this memo, which was obviously over a year  
5 ago?

.

17 THE WITNESS: Okay. My  
18 understanding is that at least one of those  
19 cases is still languishing toward a possible  
20 settlement. And then the other two cases we  
21 have heard complaints, as well, about those  
22 languishing. But they may - those may be  
23 resolved. It took an awfully long time for

24 those cases to - to go through the process  
25 once Fish and Wildlife Service had, one,

1 apologized for the behavior of that Region.  
2 And then - and then, two, made a commitment  
3 to end their retaliation. So - so the  
4 Secretary's response-

5 JUDGE GARVEY: I'm sorry, I'm  
6 sorry. I don't understand. You're saying  
7 that - I mean, I'm talking about the ones out  
8 of Region 2, Benjamin Tuggle. So did Mr.  
9 Tuggle apologize and do something or take  
10 action, or what - what did your last  
11 statement mean? If you could say it again,  
12 I'm going to turn off my mic.

13 THE WITNESS: Sure. **So actually**  
**14 Director Dan Ashe apologized to the three**  
**15 whistleblowers who are mentioned in that**  
**16 memorandum in a blog that he issued in August**  
**17 of 2013 I believe, and he stated his**  
**18 commitment to merit systems principles and**  
**19 anti-retaliation.** But, no, there's never -  
20 there's actually pretty much been only denial  
21 out of Dr. Tuggle's office, as far as any  
22 responsibility for - for the actions that  
23 were taken against these three - these three  
24 whistleblowers. And in Mr. Mowad's case,  
25 denial as well that the detail was

1 retaliatory.

2 JUDGE GARVEY: **All right, so I**  
**3 just want to get this straight. After the**  
**4 Office of Inspector General made findings of**  
**5 misconduct and loss of integrity on behalf of**  
**6 supervisors who reported up through Dr.**  
**7 Tuggle's chain of command, out of Oklahoma,**  
**8 apparently, he just denied all that and**  
**9 didn't - didn't take any steps to punish**  
**10 those who were found to have committed**  
**11 misconduct and had lost their integrity?**

12 THE WITNESS: Okay, and I have to  
13 be careful answering here, too, because that  
14 is somewhat of an open case still, where they

15 haven't resolved the one case that's still  
16 pending in the OSC. But I know that - I  
17 think the answer to your question is  
18 generally yes. **One of the offending**  
**19 managers, when there was a science integrity**  
**20 misconduct finding, retired or resigned**  
**21 rather promptly. The other alleged reprising**  
**22 official was detailed, and I will tell you**  
**23 that in the minds of the three**  
**24 whistleblowers, she was essentially promoted**  
**25 by Dr. Tuggle and Joy Nicholopoulos** without

1 any real ramification for the adverse actions  
2 that she took against them. And so in - in  
3 the eyes of a number of people in the Region  
42 who have been watching that whistleblower  
5 case, it does not appear that there was any  
6 action, appropriate action, taken against the  
7 offending manager, who's still employed by  
8 Fish.

9 JUDGE GARVEY: And you mentioned  
10 that Director Ashe, you know, did this blog  
11 and he apologized. What actions has he taken  
12 against Mr. Tuggle for, in essence,  
13 condoning, promoting, tolerating actions that  
14 violate the Whistleblower Protection Act?

15 MR. MEHOJAH: Judge, can you hit  
16 your button? Thank you.

17 THE WITNESS: So I am not aware of  
18 any actions that Director Ashe has taken  
19 either favorably or unfavorably for Dr.  
20 Tuggle or Joy Nicholopoulos. We - the IG, is  
21 still waiting to hear back from the Secretary  
22 on - on the finality of the case. And  
23 perhaps we won't hear about that until these  
24 are all settled, fully resolved, all of the  
25 complaints are fully resolved.

667

1 JUDGE GARVEY: As the Regional  
2 Director Benjamin Tuggle, Regional Director  
3 in Region 2, is Mr. Tuggle's response to  
4 OIG's findings about individuals in his chain



5 of command who have engaged in misconduct,  
6 which is basically violating the  
7 Whistleblower Protection Act and have lost  
8 their integrity, is this unusual, or do all  
9 of the Regional Directors in the Fish and  
10 Wildlife condone and tolerate such illegal  
11 actions?

12 THE WITNESS: Well... Your button.  
13 I'll start speaking, but - okay, thank you.  
14 We see different responses from  
15 different Directors. We've had more  
16 complaints out of the Region 2 Office than we  
17 have any other office. But to give you a  
18 good example of - of a Regional Director's  
19 response, we - we had a case that was similar  
20 to the allegation in the three that you just  
21 read about in the MOU and to Mr. Mowad's out  
22 of the U.S. Geological Survey. And in that  
23 case, the IG presented the facts as they were  
24 reported to the IG's Office to the Director  
25 of USGS, and the Director promptly restored

1 the aggrieved employee to her position and  
2 facilitated appropriate - in their view,  
3 appropriate administrative action against the  
4 offending manager. And that was also a  
5 matter that I think was pending at the OSC.  
6 But every case, you know, every case, the  
7 facts are different.

8 And I can only say for certain  
9 that this - this Region has had more  
10 complaints out of it than others.

11 JUDGE GARVEY: Do they also fail  
12 to do anything when there are findings such  
13 as this more often than other Regions?

14 THE WITNESS: Well, because this  
15 case isn't fully concluded, I can't say for  
16 sure here, but they have certainly dragged  
17 their feet and certainly not been responsive  
18 to the MOU in a - in a timely fashion.  
19 But having said that, I also  
20 appreciate that managers have to work with  
21 their counsels and they have to work, in this

22 case, they are working with OSC. And so, um,  
23 I don't know if it's so much that they're not  
24 going to do something, or just they're not  
25 being forced to do it through this process.

1 But it has taken an awfully long time, and it  
2 remains to be seen what - what they do with  
3 this alleged offending manager.

[EMPHASIS ADDED]

###