

**FOIA APPEAL DECISION: ALL REDACTIONS FOIA EXEMPTIONS (6) & (7)(C)  
(UNLESS OTHERWISE NOTED)**

BSIO Summary Report (ESO-S0000340) re: Ephemeral Data Collection leading to potential NRDAR case, Deep Fork River, Oklahoma, September-October 2011.

██████████ FWS Scientific Integrity Officer, Final 3/15/13

**Title:** Alleged Scientific Misconduct re: Ephemeral Data Collection Leading to Potential NRDAR Case.  
**(ESO-S0000340)**

**Summary of alleged misconduct:**

Allegation 1: On October 18, 2011 Dr. Dixie Porter, Project Leader (PL) of the Oklahoma Ecological Services Field Office (OKESFO), violated the DOI Scientific Integrity Policy (305 DM 3) when she gave the order to her OKESFO staff to move a mussel monitoring cage placed at the Kelco discharge outlet, to a point approximately 30 feet further downstream. Porter's decision to move the mussel monitoring cage, "as soon as possible," was made contrary to the advice of: 1) ██████████, 2) ██████████ collaborating on the monitoring study and 3) advice from the ██████████ familiar with the Consent Decree between the State and Kelco.

Allegation 2: Mr. Luke Bell, as the supervisor ██████████, did not pay attention to the scientific information provided by ██████████ and did not take action to protect the scientific and legal integrity of the mussel study (ephemeral data collection study at the Kelco discharge site in the Deep Fork River, Oklahoma).

**Background:**

This scientific integrity concern came to the attention of the Scientific Integrity Officer during ██████ initial inquiry of another scientific integrity allegation at the same FWS office. This informal complaint became a formal complaint when it was filed with the Office of the Executive Secretariat, dated 7/20/12 (ESO-S0000340).

The Scientific Integrity Review was conducted by the FWS Scientific Integrity Officer (SIO). The FWS ██████████ assisted the SIO with most of the interviews. On August 27-28, 2012, the SIO interviewed ██████████  
██████████ The SIO also interviewed by phone: the ██████████  
██████████ the ██████████  
██████████

The SIO reviewed pertinent records including emails, photographs, letters, reports, the Consent Order and Settlement Agreement between the State and Kelco, and evidence files and response documents related to ██████████ in a matter related to this inquiry. From this information the SIO created a timeline of events related to this matter.

The SIO completed the Scientific Integrity Review Report on March 15, 2013. This is a summary of that report.

**Definition of scientific misconduct/loss of scientific integrity:** \_\_\_\_\_

The Department's policy on integrity of scientific and scholarly activities (305 DM 3) defines misconduct to include:

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§3.5(M)(1) "Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity."

§3.5(M)(3) "A finding of scientific and scholarly misconduct requires that:

- (a) There be a significant departure from accepted practices of the relevant scientific and scholarly community.
- (b) The misconduct be committed intentionally, knowingly, or recklessly.
- (c) The allegation be proven by a preponderance of evidence.

**Findings:**

**Dixie Porter: Allegation of a loss of scientific integrity – warranted.**

The SIO found that a loss of scientific integrity directly resulted from Porter's intentional actions and decision on 10/18/11, to move the live mussel monitoring cage further away from the Kelco outlet discharge in Deep Fork River, [REDACTED] EX7A

[REDACTED]. Porter's intentional actions were a significant departure from acceptable practices of a Field Supervisor in carrying out the Regional Director's NRDAR science responsibilities.

**Luke Bell: Allegation of a loss of scientific integrity – warranted.**

The SIO found that a loss of scientific integrity resulted from Bell's persistent failure to effectively communicate with his supervisors, [REDACTED] and Dixie Porter, regarding the September 2011 mussel kill at the Kelco outlet site in the Deep Fork River and the FWS/State ephemeral data collections that followed. Failing that communication, the subsequent Kelco phone call to Porter on 10/18/11 was a complete surprise to Porter. This surprise most likely compounded her reaction to the situation. Bell was not in the office on 10/18-10/19, and was not directly involved in Porter's decision to move the monitoring cage, but his lack of communication on this matter prior to 10/18/11, contributed to Porter's decision. The preponderance of evidence indicates that Bell's persistent lack of communication in this matter was a significant departure from accepted practices of a supervisor in support of NRDAR contaminant monitoring procedures and he was aware of his actions.

**Basis of findings:**

**Dixie Porter:**

Porter's decision on 10/18/11, to move the in situ mussel monitoring cage further away from the Kelco outlet, was a response to Kelco's phone call that morning, requesting that action. Although Porter consulted with her staff [REDACTED] following the Kelco phone call [REDACTED] EX5(DPP)

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initial meetings with staff, Porter revealed her concern from the beginning, saying she did not want Kelco to call the Regional Office to discuss the issue since the OKESFO had already had: (1) an OSHA investigation (for a drowning incident ██████████ and (2) the Inspector General's Office had conducted two recent audits of office activities. The SIO was told that in Porter's subsequent phone calls that morning with the State officials: ██████████, ██████████, although each of these State partners indicated to Porter that they did not support moving the cage.

Porter said that she "contacted" the Solicitor on 10/18/11 (Appendix C, "At about 11:50am, I contacted ██████████ to discuss this matter."), but there is no evidence they spoke or communicated in any way on 10/18/11. Thus, when she ordered ██████████ to move the cage as soon as possible at about 2:45pm on 10/18/11, and quickly followed that up with an email to some staff, to affirm her oral decision, she had NOT had any contact with the SOL. The day after making her decision, Porter sent an email to Solicitor ██████████ seeking ██████████ recommendation on the issue. Porter's email is noteworthy with regard to the information that was not included in her summary of the facts. Not surprisingly, the Solicitor's email response essentially 'rubber stamped' the decision she had already made. In future discussions of this issue, Porter states that the primary justification for her actions in this matter was because she was following "the advice of the Solicitor" (SIO interview and Appendix G). To apparently further justify her decision, Porter dictates specific conditions the State must meet if they want to return the cage to its original location: 1) documentation from the State that the cage location does not interfere with Kelco's ability to comply with the Consent Order and, 2) a lengthy written protocol for the study, with citations, etc. Both of these conditions had been ostensibly met and communicated to Porter on 10/18/11 by her staff and State officials and it is the opinion of the SIO that ██████████ EX5(DPP) ██████████ EX5(DPP) .

Since the mussel monitoring cages had been in place for 26 days prior to Kelco's complaint call to the Field Supervisor, it could have been reasonable and prudent for the Field Supervisor to: take more time to consider the Kelco concern, have more substantial discussions with the State, the Regional office and the Solicitor, request discussions between the State Attorney General's Office and the Solicitor, and better understand and acknowledge the experience and knowledge of the staff biologists and their joint work with their State counterparts as "co-trustees."

Porter's intentional actions and quick decision on 10/18/11 to move the cage from directly in front of the Kelco outlet to a new location approximately 30 feet further downstream, ██████████ EX7A ██████████

As a decision maker, Porter failed to "support the scientific and scholarly activities of others and will not engage in... other misconduct that alters the content, veracity, or meaning or that may affect the planning, conduct, reporting, or application of scientific and scholarly activities" (305 DM 3.7 C (1)).

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Porter's intentional actions were a significant departure from acceptable practices of a Field Supervisor in carrying out the Regional Director's NRDAR science responsibilities.

**Luke Bell:**

Despite his personal involvement in that initial discovery on 9/15/11, Luke Bell failed to effectively communicate with his supervisors, ██████████ and Dixie Porter, regarding the September 2011 mussel kill at the Kelco outlet site and the monitoring actions that followed. It is not clear why Bell paid so little or no attention to this matter. As supervisor of the contaminants section, Bell had a duty to convey to Porter and ██████████ the concern of his technical staff and inform them that initial sampling of this ephemeral data was being conducted jointly with the State. With this awareness, FWS management could have explored any concerns they may have had concerning the nature and quality of this initial work, including the in situ mussel monitoring cages and their location. This initial briefing with the top level supervisors also would have provided an opportunity to discuss the history of Kelco's contaminant discharges and the concerns that the State and the Refuge had with regard to these matters. Failing that communication, the subsequent Kelco phone call to Porter on 10/18/11 was a complete surprise to Porter. This surprise most likely compounded her reaction to the situation. Bell was not in the office on 10/18-10/19, and was not directly involved in Porter's decision to move the monitoring cage, but his lack of communication on this matter, prior to 10/18/11, led to a loss of scientific integrity contributing to Porter's decision. The preponderance of evidence indicates that Bell's persistent lack of communication in this matter was intentional and he failed to "communicate the results of scientific and scholarly activities clearly, honestly, objectively, thoroughly, accurately, and in a timely manner" (305 DM 3.7 A (2)), and as a decision maker, he failed to "support the scientific and scholarly activities of others and will not engage in dishonesty, fraud, misrepresentation, coercive manipulation, censorship, or other misconduct that alters the content, veracity, or meaning or that may affect the planning, conduct, reporting, or application of scientific and scholarly activities" (305 DM 3.7 C (1)).

**Conclusion:**

**Restoring Scientific Integrity:**

The BSIO recommends that ██████████ EX5(DPP) ██████████  
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