

January 7, 2013

Office of the Executive Secretariat and Regulatory Affairs  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

**Complaint of Scientific and Scholarly Misconduct**  
Coercive threats to intimidate scientists and compromise use of best  
available science in agency decision-making

**By Fax & U.S. Mail**

**Complainant:** Filed on behalf of the following Bureau of Reclamation (Reclamation) biologists (Complainants):

Keith Schultz  
Charles Korson  
James Ross  
Torrey Tyler  
Brock Phillips  
Darin Taylor  
Alex Wilkins

This complaint is submitted on their behalf by undersigned of Public Employees for Environmental Responsibility (PEER).

**Complaint Summary:** Specified Reclamation officials have violated the Department of Interior (DOI) policy on Integrity of Scientific and Scholarly Activities (Part 305; Chapter 3 DOI Manual) by “(1) intentionally circumventing policy that ensures the integrity of science and scholarship, and (2) actions that compromise scientific and scholarly integrity” within the meaning of § 3.5 M.

Specifically, in a series of actions initiated on November 8, 2012, Mr. Jason Phillips, Reclamation Area Manager, Klamath Basin Area Office (KBAO), has threatened to reassign or eliminate the scientist positions within the Fisheries Resources Branch. Mr. Phillips based his decision upon his perceptions about stakeholders’ reactions to the

scientific products and efforts of that branch. Complainants are the scientists who constitute the staff working within the besieged Fisheries Resources Branch.

These actions violate core DOI Scientific integrity principles, including specified Reclamation decision-makers:

- Engaging in “coercive manipulation” and other activities which have negatively affected “the planning, conduct, reporting, or application” of Complainants’ extensive scientific activities, in violation of § 3.7 C(1);
- “Censorship” over the reporting of scientific information in violation of §3.7 C(1);
- Intentionally hindering the scientific and scholarly activities of others, in violation of § 3.7A (6);
- Impeding the free flow of scientific information in violation of §3.4 B;
- Failing to use “the most appropriate, best available, high quality scientific and scholarly data” to support “sound decision making” furthering Reclamation’s mission as required in § 3.7A (1); and
- Eschewing the duty to “offer respectful, constructive review of...employees’ scientific and scholarly activities and ...encourage their obtaining appropriate peer reviews of their work” as specified in § 3.7C (2).

As detailed below, this misconduct was “committed intentionally, knowingly, or recklessly” and is supported by “a preponderance of evidence”, as stipulated in § 3.5 M (3). Further, neither PEER nor the Complainants knows of any conflicts of interest with any party related to this complaint. This complaint is filed within 60 days of the Complainants’ becoming aware of the facts relevant to this complaint.

**Subjects of this Complaint:** It is our contention, based upon our examination of the record, that Reclamation’s KBAO Area Manager Jason Phillips and other Reclamation officials who sanctioned or approved his actions are guilty of Scientific and Scholarly Misconduct.

**Requested Relief:** Complainants request that Reclamation:

1. Withdraw or rescind any directive(s) or plan(s) to eliminate KBAO Fisheries Resources Branch positions;
2. Withdraw or rescind any directive(s) or plan(s) to forcefully reassign KBAO Fisheries Resources Branch staff;

3. Withdraw or rescind any directive(s) or plan(s) to eliminate the KBAO Fisheries Resources Branch;
4. Rescind in writing the November 8, 2012 memorandum issued by Mr. Phillips;
5. Issue Complainants a written public statement of apology;
6. Appropriately discipline Mr. Phillips and any responsible superiors; and
7. Instruct Mid-Pacific Region to form, fund and manage an interagency team of biologists in the Upper Klamath Basin to ensure that future scientific reports are issued in a collaborative fashion.

**The Record:** For at least the past 10 years, KBAO biologists have conducted extensive scientific work that is critical to furthering Reclamation's mission. Major accomplishments of the Fisheries Resources Branch<sup>1</sup> include overseeing the construction of multi-million dollar fish screening and passage facilities, operation of the A Canal Fish Evaluation Station, involved in multiple biological opinion consultations, implemented the requirements of complex biological opinion's Terms and Condition and Incidental Take Statements, and conducted or managed a broad array of scientific investigations on fish health, entrainment, population monitoring, habitat restoration, and fish relocation throughout both upper and lower Klamath River Basins.

In a November 8, 2012 memorandum (attached), Mr. Phillips outlined his intentions to eliminate or reassign the seven Reclamation fisheries scientists in the Fisheries Resources Branch. Mr. Phillips state rationale was that:

“Many perceive Reclamation's efforts as inherently biased... There's a concern that... in some cases we are simply carrying out studies to contradict the science of other agencies.”

Hence, based on others perceptions, Mr. Phillips concluded that the Reclamation fisheries biologist positions must be eliminated or the staff reassigned. In addition Mr. Phillips stated that their “ongoing and future” work be transferred to the U.S. Geological Survey (USGS) and unspecified “other scientific entities.”

On November 8, 2012, after sending the memorandum to the union, Mr. Phillips held a manager's meeting in which he briefed his management team on the memorandum. At this meeting, Mr. Phillips stated that the Fisheries Resources Branch was producing scientific work only to prove other agencies wrong.

In the past, Mr. Phillips had complained that Reclamation science was causing “problems,” often citing a study conducted by the Fisheries Resources Branch on the abundance of endangered suckers in Lake Ewauna. Lake Ewauna is an area of poor water quality previously thought to be a “dead zone” for fish moving downstream from

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<sup>1</sup> Prior to 2011, the Fisheries Resources Branch was identified as the Fisheries Division.

the primary populations located in Upper Klamath Lake. However, using sound scientific methods, the Fisheries Resources Branch found a stable population of sucker in Lake Ewauna, with many more endangered fish than most expected. This finding caused the U.S. Fish & Wildlife Service (FWS) to re-evaluate this area in its recovery strategy. Apparently, this caused the FWS to complain to Mr. Phillips who apparently perceived this new scientific work as “proving others wrong.”

On November 13, 2012, Mr. Phillips held an all-hands Klamath Basin Area Office staff meeting in which he verbally summarized his November 8, 2012 memorandum and reiterated that the Fisheries Resources Branch inappropriately focused on proving others wrong. He added the sentiment that Fisheries Resources Branch had not contributed to Reclamation’s mission since he took over leadership of the KBAO (approximately two years ago).

On November 30, 2012, Mr. Phillips held a closed-door meeting with the Fisheries Resources Branch, two members of Reclamation’s Regional Human Resources Department, and Todd Pederson, President of the National Federation of Federal Employees (NFFE) Local 951. Mr. Pederson provides representation for the union eligible Complainants. In this meeting Mr. Phillips apologized for the Complainants misunderstanding the intent of his memorandum; however, he did not offer to rescind or modify the memorandum or his position in any manner.

During the November 30, 2012 meeting, Mr. Phillips provided another example of Fisheries Resources Branch science that was causing him “problems” – development of a life-cycle model of threatened coho salmon. Preliminary results generated by the model suggest mainstem Klamath River flows (i.e. Reclamation-controlled flows) were less important for coho salmon survival and recovery than tributary flows (i.e. non-Reclamation controlled flows). Since the National Oceanic & Atmospheric Administration (NOAA) Fisheries had raised concerns regarding this model, Mr. Phillips stated that he did not intend to allow the model to be published, be “shelved” and not used by Reclamation on its decision making process. Mr. Phillips further stated that he was eliminating the Fisheries Resources Branch so that this kind of work would no longer cause problems for NOAA Fisheries.

In a written response to a NFFE Local 951 informational request on his November 8, 2012 memorandum (Mr. Phillips’ response is attached), Mr. Phillips refused to identify either the source or precise nature of the “problems.” Instead, he evasively countered numerous times that “this data is not regularly maintained” and refused to specify the scientific concerns at issue. Ironically, Mr. Phillips cited a DOI document urging that Reclamation “provide impartial results” and describing the scientific role of USGS yet he declined to explain how Fisheries Resources Branch work was less than impartial or explain why its replacement by USGS was appropriate.

**Argument:** It appears clear that Mr. Phillips and those other officials involved in his threats are reacting to the political or interagency “problems” associated with the

scientific work of the Fisheries Resources Branch – *not the quality, integrity or value of that scientific work.*

Mr. Phillips’ refusal to specify what “problems” were raised by sister agencies with the products of Fisheries Resources Branch is aggravated by Mr. Phillips shunning any collaborative, collegial or other scientific cooperative engagement, peer review or any non-arbitrary process to address any questions about the scientific merit or integrity of Fisheries Resources Branch’s products or efforts, as he is required to do in § 3.7 C (2).

Unquestionably, threatening to abolish the Fisheries Resources Branch and transfer the employees is coercive conduct within the meaning of § 3.7C (1). These actions will have a chilling effect of suppressing future scientific findings throughout the agency. If Reclamation deems that information collected will be perceived as controversial, then the scientists who collect information will quite naturally be concerned that their positions or funding will be eliminated and their scientific findings or conclusions will be disregarded by Reclamation’s decision-makers. Further, the abolition of the Fisheries Resources Branch, by its nature, will hinder the scientific activities of the affected biologists in violation of § 3.7A (6). This type of coercive and obstructive activity cuts to the core of the very reason for the DOI Scientific Integrity policies.

Moreover, by blocking the publication of scientific models, Mr. Phillips is engaged in crude censorship in violation § 3.7C (1). This suppression also stanches the free flow of scientific information which is protected under § 3.4 B.

The DOI’s Scientific Integrity Policy states that all employees from scientists to policy makers should "act in the interest of the advancement of science and scholarship for sound decision making, by using the most appropriate, best available, high quality scientific and scholarly data and information” § 3.7A (1). Instead of using sound science, Mr. Phillips wants only non-controversial science and is moving to achieve that preference by eliminating his own agency’s scientists and disregarding their scientifically sound findings.

Reclamation is responsible for protecting water and related resources in an environmentally and economically sound manner in the interest of the American public. In order to accomplish this mission, Reclamation’s biologists must be allowed to search for scientific truth in a methodical, controlled, testable, and repeatable manner. Unfortunately, Mr. Phillips actions undermine Reclamation’s mission by sublimating science to political priorities.

Respectfully submitted,

Jeff Ruch  
PEER Executive Director