Key Excerpts

Gary Mowad MSPB Hearing

Testimony of Gary Mowad, former FWS Texas Ecological Services Administrator

(Warblers in the parking lot)

1This 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
that kind of comment, and it concerned me greatly.

At a later date, Neil Wilkins was asking me to call my staff – and you’re going to be talking with Tom Cloud, or he’ll be testifying later today – but Neil Wilkins told me that I needed to call Tom Cloud and have his Biologists accept a model for warbler populations on a biological assessment that he was working on for Fort Hood. Now, Fort Hood had their own environmental staff, Fort Hood had actual numbers, they had actually counted birds, they didn't need a model, they had what we refer to in the science community as the best available science. There’s nothing better than actual on-the-ground counting of birds.

So my staff was working with the Fort Hood staff, we were using the actual number of birds from actual surveys, yet Neil Wilkins wanted me to call Tom Cloud and say, you need to let us use this model that we developed over at Texas A&M.

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

And Neil told me straight out, he said, Gary, why do you do this? You know I’m just going to call Joy Nicholopoulos, she’s gonna flip you, we’re gonna use the model, and all you’re gonna – all you end up doing is making yourself look bad. And at about this point it became very clear to me that
this small group that surrounded the State Comptroller’s Office were – they were too close. And I use the term with my staff on numerous occasions, they had an inappropriately close relationship with Joy Nicholopoulos who used to be in my position here in Texas, and now was the Deputy Regional Director. They were using their unrestricted and unbridled access to get what they wanted, and they were using their access to her to – to essentially overrule the sound science that my staff was – was using and that was I was using. And we were essentially trying to hold the ground on scientific integrity, but we – it was very frustrating for us because these folks did have unbridled access to Joy and Joy would give them what they wanted.

(Dune Sagebrush Lizard) Testimony of Gary Mowad)

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

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

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

A. Benjamin Tuggle and Michelle Shaughnessy came to Austin, Texas and asked the Austin Field Office to convene a staff meeting of all those that were present that day. We had a meeting in the Austin Field Office, and at that meeting Benjamin Tuggle
said to the group, first he congratulated them for essentially getting this over the finish line without having to list the lizard, and he stated, there was not way we were going to list a lizard in the middle of oil country during an election year. And my jaw just about hit the ground, because that to me showed that that was a pre-decisional determination on his part, and they did not want to list that lizard and they were going to make sure that they found a way not to.

Testimony of Rick, Coleman, Former FWS Scientific Integrity Officer

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

A. No, sir, I have no personal 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

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

Over a year has passed since the investigation was initiated, and over two months have passed since the findings of misconduct and loss of integrity were
determined. Months of pointed discussions and stern warnings with Regional Director Benjamin Tuggle, Deputy Director Rowan Gould, and Director Ashe, by the AIGWBP have not resulted in any formal and permanent action against the offending supervisors. To date, the whistleblowers have received no relief, and in the public eye appear to have committed wrongdoing. In fact, recent actions taken by FWS management regarding the offending supervisors appear to have elevated their status and do not appear to be disciplinary in nature. I assume the reference to the AIGWBP is to you; is that correct?

THE WITNESS: That is correct.

JUDGE GARVEY: And so your conversations—

THE WITNESS: Yes.

JUDGE GARVEY: -with Mr. Tuggle,

THE WITNESS: Okay. Okay. So because that memorandum related to three separate whistleblower complaints, I was - I was not, um, I hope I’m answering your question here, but I’ll go around this a roundabout way. That was not about Gary Mowad’s complaint. But - and I think this is
answering your question. We saw similar behavior by Fish and Wildlife Service management in Gary Mowad’s case. A lack of action. But the cases were, you know, they had separate and distinctive facts, those three – those three cases, because those three individuals were, um, um, subjected to disciplinary action, different disciplinary action. But because of management’s response in those particular cases, we did – we did feel it was appropriate to engage Dr. Tuggle with the transparent conversations on – on Gary Mowad’s complaints. And – and as far as the IG’s concerned about Fish and Wildlife Service’s handling of some of these complaints, is that it was grossly inadequate. Main Personnel can speak for itself. Does that answer your question?

JUDGE GARVEY: Well, it appears that the history of the Fish and Wildlife, and specifically Dr. Benjamin – or Regional Director Benjamin Tuggle, Gould, and Ashe is that whistleblowing retaliation is tolerated or even condoned. Apparently someone got promoted or something good happened to them after they retaliated.

THE WITNESS: I think that’s a fair assessment of the IG (indiscernible).

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

THE WITNESS: Okay. My understanding is that at least one of those cases is still languishing toward a possible settlement. And then the other two cases we have heard complaints, as well, about those languishing. But they may – those may be 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
havent’t resolved the one case that’s still pending in the OSC. But I know that - I think the answer to your question is generally yes. One of the offending managers, when there was a science integrity misconduct finding, retired or resigned rather promptly. The other alleged reprising official was detailed, and I will tell you that in the minds of the three whistleblowers, she was essentially promoted by Dr. Tuggle and Joy Nicholopoulos without any real ramification for the adverse actions that she took against them. And so in - in the eyes of a number of people in the Region 2 who have been watching that whistleblower case, it does not appear that there was any action, appropriate action, taken against the offending manager, who’s still employed by Fish.

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

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

THE WITNESS: So I am not aware of any actions that Director Ashe has taken either favorably or unfavorably for Dr. Tuggle or Joy Nicholopoulos. We - the IG, is still waiting to hear back from the Secretary on - on the finality of the case. And perhaps we wont’ hear about that until these are all settled, fully resolved, all of the complaints are fully resolved.

JUDGE GARVEY: As the Regional Director Benjamin Tuggle, Regional Director in Region 2, is Mr. Tuggle’s response to OIG’s findings about individuals in his chain
of command who have engaged in misconduct, which is basically violating the Whistleblower Protection Act and have lost their integrity, is this unusual, or do all of the Regional Directors in the Fish and Wildlife condone and tolerate such illegal actions?

THE WITNESS: Well... Your button.

I’ll start speaking, but - okay, thank you. We see different responses from different Directors. We’ve had more complaints out of the Region 2 Office than we have any other office. But to give you a good example of - of a Regional Director’s response, we - we had a case that was similar to the allegation in the three that you just read about in the MOU and to Mr. Mowad’s out of the U.S. Geological Survey. And in that case, the IG presented the facts as they were reported to the IG’s Office to the Director of USGS, and the Director promptly restored the aggrieved employee to her position and facilitated appropriate - in their view, appropriate administrative action against the offending manager. And that was also a matter that I think was pending at the OSC. But every case, you know, every case, the facts are different.

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

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

THE WITNESS: Well, because this case isn't fully concluded, I can't say for sure here, but they have certainly dragged their feet and certainly not been responsive to the MOU in a - in a timely fashion.

But having said that, I also appreciate that managers have to work with 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.  

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

[EMPHASIS ADDED]

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