



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JAN 29 2013

Dr. Paul R. Houser
George Mason University
240 Research Hall, MSN: 6C3
4400 University Dr.
Fairfax, Virginia 22030

Dear Dr. Houser:

On February 24, 2012, you submitted a letter (hereinafter referred to as "Letter") to the U.S. Department of the Interior ("DOI") that contained two allegations of scientific and scholarly misconduct. Your allegations were based on the assertion that there was falsification in the summarization of key scientific conclusions and in the press announcement for the Klamath River dam removal Secretarial determination process.

The first of your allegations was intentional falsification (biased reporting) of scientific findings in a summary, which you assert was "motivated by Secretary of the Interior Salazar's publicly stated 2009 intention . . . [to remove] four dams on the Klamath River," in advance of the completion of the secretarial determination process. You specifically allege that DOI officials, including senior managers in the Bureau of Reclamation, have followed a course of action to construct support for such an outcome resulting in intentionally biased reporting of scientific results in the September 21, 2011 "*Summary of Key Conclusions: Draft EIS/EIR and Related Scientific/Technical Reports*" (hereinafter referred to as "*Summary*".) The persons that you allege committed this misconduct are unnamed authors of the *summary* report and unidentified DOI officials. Your second allegation states that DOI officials intentionally circumvented the policy that ensures scientific and scholarly integrity in the drafting of a press release to announce the availability of the Draft EIS/EIR for public comment and review and in their responses to your disclosure of concerns of bias in that document. You also allege that subsequent to that disclosure of your concerns, there was reprisal ultimately resulting in your removal from federal service.

Background.

The DOI policy on the integrity of scientific and scholarly activities is codified in Part 305 of the Departmental Manual. In Chapter 3, the scope of the policy indicates that the policy covers: "[a]ll DOI employees, including political appointees, . . . when they engage in, supervise, manage, or influence scientific and scholarly activities or communicate information about the DOI's scientific and scholarly activities, or utilize scientific and scholarly information in making agency policy, management, or regulatory decisions" (305 DM 3.3(A)).

Section 3.5.M defines scientific and scholarly misconduct as:

- (1) Fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and scholarly activities, or the products, or reporting the results of these activities. (Federal Policy on Research Misconduct, 65 FR 76260 – 76264, December 6, 2000). Misconduct also includes: (a) intentionally circumventing policy that ensures integrity of science and scholarship; and (b) actions that compromise scientific and scholarly integrity. Scientific and scholarly misconduct does not include honest error or differences of opinion.
- (2) Fabrication, falsification, or plagiarism in the application of scientific and scholarly information to decisionmaking, policy formulation, or **preparation of materials for public information activities** [emphasis added].
- (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; and (c) the allegation be proved by a preponderance of evidence.

Since your allegations are against DOI employees, and relate to materials prepared for public information activities of the DOI, your allegations may be reviewed for scientific misconduct.

Section 3.8 details the procedures for reporting in resolving allegations regarding loss of scientific and scholarly integrity. Section 3.8.A stipulates that the DOI will consider allegations submitted within 60 days of discovery of alleged misconduct. The public issuance of the documents cited in your allegations and your actions relative to disclosing concerns about the content of those documents occurred on or before September 21, 2011. You filed this complaint on February 24, 2012. Thus, the filing of your allegations occurred outside the window prescribed by the procedures outlined in 305 DM 3.8. However, you have indicated your belief that these documents are part of a series of actions that ultimately resulted in your proposed removal from federal service. The Departmental Scientific Integrity Officer (DSIO) at the time that you filed your complaint determined that you properly documented your belief that the alleged misconduct began a process that ultimately resulted in your removal from federal service, and that process may not have been immediately evident at the time the first action occurred. Consequently, he determined that your allegations warranted further inquiry.

The incumbent DSIO also determined that the nature of your allegations was such that they were best evaluated by an independent panel. The DOI entered into a contract with a third party evaluator, RESOLVE. RESOLVE was tasked under the following statement of work:

"The September 2011 summary document of the 50 federal science and technical reports entitled "Summary of Key Conclusions: Draft EIS/EIR and Related Scientific/Technical Reports" is being questioned and allegations are made that the document contains intentional bias and thus, the authors falsified the reporting of scientific results drawn from studies conducted on the Klamath River. The bias identified in the allegation is that the Summary misrepresented the strength of the case for removal of the Four Facilities. A determination must be made whether the authors of the Summary violated the DOI Scientific Integrity Policy . . . In addition, allegations have been made that persons responsible for a draft press release entitled "Studies Show Removing Klamath Dams Could Add Thousands of Jobs and Boost Dwindling Salmon Runs Draft Environmental Analysis also Released, Public Comment Period Opens"

violated the Scientific Integrity Policy by failing to explain the uncertainty that underlies such a large undertaking as removing the Four Facilities. In the version reviewed on September 14, 2011, by the Bureau of Reclamation's (BR) Science Advisor, he was concerned that the science be reported accurately including critical uncertainties and caveats . . ."

RESOLVE independently assembled and convened, without influence from any DOI employee or agent, a panel of scientific experts (hereinafter referred to as "Expert Panel") with subject matter expertise in the fields of fish ecology, hydrology, dam operations, and the practice of decisionmaking in complex ecological management scenarios. To evaluate the allegations, the panel reviewed an initial analysis conducted by RESOLVE, the documents that were subjects of the allegations, supporting materials that you provided, a sampling of press releases from throughout the DOI and other federal agencies that produce scientific studies, and the complement of scientific studies, literature and reviews that were used to develop the Draft EIS/EIR and the *Summary*.

RESOLVE delivered a final report (hereinafter referred to as "Panel Report") in August 2012, which was reviewed by the incumbent DSIO for compliance with the contract terms and forwarded to me on September 13, 2012. I have carefully reviewed the Panel Report and accepted it as definitive for the purpose of my analysis and findings detailed below.

Allegation I: *Intentional Falsification.*

You have alleged that unnamed DOI officials intentionally distorted the reporting of scientific results related to analyses of the impacts of the potential removal of four dams on the Klamath River to support a predetermined decision to remove the dams. You have specifically asserted that the September 21, 2011 *Summary* "intentionally distorts and generally presents a biased view of the Klamath River dam removal benefits. It intends to present only the positive, without the uncertainties or negatives" (Letter, pp 3-4). You identify five topics in which you allege that the *Summary* does not accurately reflect the content of the underlying scientific studies and Klamath River Expert Panel Report (hereinafter referred to as the "KREP Report" to differentiate from the Panel Report produced by RESOLVE).

In the Panel Report, the Expert Panel states:

"We begin by noting that the Summary does report on costs, risks, and potential negative impacts of dam removal. That is, it is not the case that only positive impacts were included in the Summary. Examples include loss of reservoir recreation, and risks of flooding, as well as cost. Hence the Summary cannot be seen as a uniformly positively slanted document. We find that the Summary of Key Conclusions is just that, a summary, and could not be reasonably expected to include in four pages all the information and caveats of the Draft EIS/EIR (1,864 pages) and the 50 federal science reports. . . . In accepted professional practice, a summary is not regarded as a freestanding document, but is a representation of the full report that it summarizes. Where there is a difference or gap, it is the information and intent of the full report that prevails. So, we evaluated whether for these five issues [Letter, p. 4] there was evidence that the Draft EIS/EIR, not just the Summary of Key Conclusions, presented a substantively distorted, biased or incomplete report of the scientific results toward a more optimistic scientific story that supports dam removal, without the uncertainties or negatives."

Notwithstanding the general statement above about the nature of, and expectations for, report summaries, the Expert Panel reviewed each of your five (Letter, p. 4) specific alleged examples and produced the following observations:

- (1) Climate Change. You are factually correct that climate change is not discussed in the *Summary*. The topic, however, is the subject of Section 3.10 in the *Draft EIS/EIR*, where climate change is addressed both in reference to fish recovery and the impacts of dam removal on greenhouse gas emissions. The Expert Panel noted that "The impacts of changes in precipitation and runoff, as well as the impacts of temperature increases, are assessed. It is acknowledged in the *Draft EIS/EIR* that warmer temperatures would result in changes in the salmon populations under both dam removal and no action alternatives and the scientific record is extensively referenced."

- (2) Chinook Salmon. You allege that the *Summary* does not address nine contingencies that were included in the KREP Report and, thus, is a falsified (biased) *Summary*. As noted above, the Expert Panel states, and I agree, that the *Summary* "could not be reasonably expected to include in four pages all the information and caveats of the Draft EIS/EIR (1,864 pages) and the 50 federal science reports." However, the Expert Panel did determine that:

"The source of the statement that the removal of dams is expected to increase the median annual production of adult Chinook salmon by 81.4 percent is unclear. The *Draft EIS/EIR* is not that specific, indicating that the effects of the Proposed Actions on fall-run and spring-run Chinook salmon would be significant or considerable in the short term and beneficial in the long term. . . . Furthermore, the accuracy of the estimate implied by 81.4 percent is misleading. By any estimation, it could not be accurate to tenths of a percent. This is an example of 'false precision.' It is noted that the final version of the *Summary* released on September 21, 2011 changes this statement to read that actions are expected to "increase the average annual production of adult Chinook salmon by 83 percent."

- (3) Coho Salmon. You allege that the KREP Report does not support the *Summary* statement that upper Klamath River Coho salmon populations would be expected to "reclaim 68 miles of habitat." The Expert Panel notes that "the [Klamath River] Expert Panel did not, in fact, question the estimate of the extent of habitat that would be reclaimed, thus the statement in *Summary of Key Conclusions* is not inconsistent with the [*Klamath River*] *Expert Panel Final Report*." However, the Expert Panel did note that the KREP Report described other uncertainties implicit in the estimate.

- (4) Salmon disease. You allege that the *Summary* does not adequately describe the level of uncertainty associated with the disease outbreaks post dam removal. The *Draft EIS/EIR* does, as described by the Expert Panel, "provide rationale for likelihood [of reduced disease outbreaks] because of improved water quality and reduce [sic] crowding in areas where fish can spawn. . . . The statement in the *Summary* indicates the alleviation of disease is likely, not certain, and the discussion of disease effects and their alleviation in the *Draft EIS/EIR* makes this clear by describing the multiple factors that influence disease prevalence and mortality."

- (5) Steelhead. The Expert Panel evaluation notes that "As with Chinook, the statement [in the *Summary*] about habitat access and the concerns about the importance of water quality improvements are not inconsistent. Actually the [*Klamath River*] *Expert Panel Report* was

more optimistic that the Proposed Action would result in increased spatial distribution and numbers of steelhead than for Coho salmon."

The Expert Panel provides the following summary:

"Of the five issues raised for particular concern by Dr. Houser, we find that the underlying scientific record for coho salmon, salmon disease, or steelhead do not at all conflict with the statements made in the *Summary of Key Conclusions*. The statements regarding Chinook salmon are more nuanced, and it appears that the Chinook salmon panel members were of the opinion that dam removal (while a positive step for Chinook salmon) would not alleviate all the concerns for that species in all areas. The *Summary* does not spell out all such specific geographic details. Nor does the *Summary* discuss all the contingencies; it does however make clear that the benefits of dam removal will accrue only after effective restoration of habitat (one of the contingencies). The panel feels that the *Summary* presents a reasonable précis of a complex situation. While Dr. Houser may feel that more detail should have been provided, we believe that this is a matter of opinion, rather than evidence of deliberate obfuscation of the facts.

The issue of climate change is not addressed in the *Summary*, as Dr. Houser correctly points out. . . . While presentation of a discussion of climate change impacts would have certainly improved the comprehensive scope of the *Summary of Key Conclusions*, it is not clear that a summary is the appropriate place for a full discussion of such a complex and controversial issue. Again, we interpret this as a matter of opinion. Since the issue is dealt with exhaustively in the more important underlying decision documents, we do not see the absence of a discussion of climate change in the *Summary of Key Conclusions* as evidence of obfuscation of the facts."

Finding: Not Warranted

The *Summary* was part of a press release announcing the availability of the *Draft EIS/EIR* for review and comment. Although the *Summary* certainly could have benefitted from a discussion of climate change and from more carefully defined terms of uncertainty in place of "could," "likely," "about," or "average," for example, the *Summary* clearly points the public to the underlying documents in which the topics of uncertainty and climate change are fully discussed. Documents that you provided in support of your allegations do not present convincing evidence of falsification; they contain clear statements of agreement or disagreement with sections of the analyses and reports, as would be expected in the context of public comment. The Panel Report documents instances of false precision in the draft *Summary* sections describing possible impacts of dam removal on Chinook salmon populations.

The Expert Panel notes, however, that the instances of false precision were improved in the final *Summary* release. In reviewing the documents and the full Panel Report, I did not find evidence that this instance met the test for scientific misconduct. The *Summary* was not intended as a stand-alone scientific product but was an extension of the press release that pointed to the full suite of scientific reports that described potential impacts in detail and, thus, did not *significantly depart* from similar public notifications (305 DM 2.8.M(3)(a)); nor did I find evidence that the use of a precise number (81.4%) was done recklessly or with the intent to falsify or fabricate data to manipulate the public review process (305 DM 2.8.M(3)(b)).

Allegation II: Intentionally circumventing policy that ensures the integrity of science and scholarship that compromise scientific and scholarly integrity.

In your allegation, you describe your actions over the course of 2 days, September 14, 2011 and September 15, 2011, to disclose your analysis and belief that a draft press release titled, "*Studies Show Removing Klamath Dams Could Add Thousands of Jobs and Boost Dwindling Salmon Runs*" was intentionally biased to lead the public to support the removal of four hydroelectric dams. You stated that "the details themselves are not the scientific integrity issue but are rather a case of subsequent reprisal that show intentional actions that compromise the scientific and scholarly integrity codes called out above" (Letter, p. 5). On page 10 of the same document, you state that "After receiving the termination notice on February 8, 2012, I contacted Ms. Laurie Larson-Jackson, Associate Inspector General for Whistleblower Protection. I was subsequently interviewed by Mr. Steven Futrowsky, OIG Senior Investigator, and Mr. Gregory Gransback, OIG Investigator. Ms. Larson-Jackson thought that I had a reasonable complaint, and encouraged me to contact Ms. Kira Finkler to negotiate a solution."

The Office of the Inspector General (OIG) and the Office of Special Counsel have a specific responsibility to investigate misconduct complaints related to alleged reprisal in violation of the Whistleblower Protection Act of 1989. At the time you filed your allegations, you already contacted the OIG regarding these issues. Consequently, the scope of work provided to the Expert Panel did not provide for an evaluation of specific personnel actions, but was limited to the review of evidence for scientific misconduct in the drafting and issuance of the subject press release. Moreover, because the only "scientific and scholarly activity" identified in your allegation was the press release, I reviewed the Expert Panel's assessment of the press release as well as subsequent actions by DOI personnel that affected your ability to exercise your scientific responsibilities and could be directly linked to the press release and associated *Summary*.

During the course of 2 days (September 14-15, 2011), you indicate that you spoke to no fewer than four individuals in the Public Affairs offices of the Bureau of Reclamation and the DOI, as well as the DOI Office of the Solicitor. At no point do you indicate, nor is there evidence, that your analysis, opinions, or input were manipulated or suppressed to alter your scientific advice and input into the draft press release. In fact, several changes were made to the press release to incorporate your input and address your concerns, including changing the title to a considerably more neutral tone ("*Salazar Announces Release of Klamath Dam Removal Studies*."). A leading sentence was also added to say that the underlying documents, the release of which is the subject of the press release, describe both "pluses and minuses" associated with "potential dam removal."

The Expert Panel also found that while you are factually correct in your allegation that the press release did not fully describe the uncertainty in the scientific conclusions, it did point the public to the documents in which the uncertainty is fully discussed. Furthermore, in an analysis of other DOI press releases that announce scientific findings, uncertainty is seldom described. Therefore, this press release does not substantially deviate from standard practice in the drafting of press releases announcing the availability of scientific studies and/or Draft Environmental Impact Statements for review.

You also allege that your supervisor began a systematic process of retaliation as a result of your disclosure of your scientific opinion that the draft press release was biased. You have brought the charge of retaliation to the attention of the OIG. Regarding specific actions that constitute scientific misconduct as defined in 305 DM 3, I have determined that based on the evidence presented, your supervisor did not have a role in drafting the press release, and, thus, did not alter nor cause to be altered your input to the release but, rather, opined that she thought it did not contain bias. The statement, as presented in your Letter, represents her opinion as expressed in a private discussion with you, not a direction for you to alter your opinion or input. No evidence was presented that she withdrew your input to the press release, altered your statements, or directed you not to communicate your opinion. Regarding subsequent actions by your supervisor, there is evidence that you were counseled to be careful what you put in discoverable documents and that the confidentiality statement you appended to your documents was not valid. Her admonishment that you did not adhere to the established chain of command in your communications was related to a different issue and the evidence provided did not establish a link to the subject of your allegations (the press release). The Expert Panel's review found that ". . . avoiding documentation of preliminary discussions is relatively standard practice. It is not sufficiently unusual here to suggest that there was an effort to suppress or alter science on the Klamath issue."

Additionally, you allege that your supervisor deliberately limited your travel based on your disclosures related to the issuance of the subject press release and *Summary*. You provided supporting evidence in Attachment 21 of your Letter. This attachment is a series of emails in which your supervisor declines to approve one trip to a scientific conference and a recommendation that you conduct field visits in conjunction with other travel. In her email of September 29, 2011, your supervisor states that ". . . if you are headed somewhere out west to give a presentation or attend a meeting, we can discuss tacking on a day or two to some of those trips to see Reclamation projects on the ground." This statement indicates that your supervisor intended for you to continue to travel for various purposes. You have not provided sufficient evidence that your scientific responsibilities suffered through travel reductions, nor that the alleged action is a result of your input to the drafting of the press release.

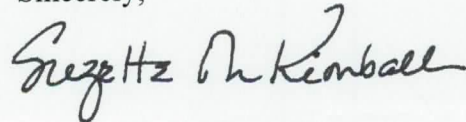
Finding: Not Warranted

Although the press release did not contain a substantive discussion of uncertainty, it did not deviate substantially from standard practice in the drafting of announcements pertaining to the release of scientific documents for public review. No evidence was found that your supervisor suppressed, altered, or otherwise falsified your scientific opinion which was, in fact, used to edit the draft release. Within the scope of this investigation, insufficient evidence was produced to support a finding of *scientific misconduct* related to allegations of retaliatory actions on the part of your supervisor linked to the basis that you present for your allegation (your input and expressions of concern related to the press release and *Summary* announcing the availability of a *Draft EIS/EIR* for public comment.)

In conclusion, through the evaluation of your allegations according to 305 DM 3, and measured against the requirements for a finding of misconduct as defined in Section 3.5.M (3), I found no merit in the charges. The allegations presented in this complaint are considered closed.

However, the analysis provided by the Expert Panel established that you identified two areas in which DOI could improve its presentation of scientific information to the public. First, the implications of false precision in reporting results to the public need to be better understood by those who prepare public documents; and second, the issue of how uncertainty is represented in press releases needs to be addressed in order to insure that public documents are consistent with the Departmental Scientific Integrity Policy. Although these recommendations do not affect your specific complaint nor our findings, they are nonetheless insightful and will be passed on to the appropriate policy maker. I appreciate your cooperation in this important process.

Sincerely,

A handwritten signature in black ink that reads "Suzette M. Kimball". The signature is written in a cursive style with a large, looping initial 'S'.

Suzette M. Kimball, Ph.D.
Scientific Integrity Officer
Department of the Interior