

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

NO. 09-008

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] and Board Staff of the Washington State Executive Ethics Board (Board) through Melanie de Leon, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On February 4, 2009, the Executive Ethics Board (Board) received a complaint alleging that [REDACTED] used his position as a Washington Department of Fish and Wildlife (WDFW) Habitat Biologist to give assurances to wind energy production companies if these companies would donate monies to a non-profit organization that [REDACTED] founded and led. The complaint also alleged that [REDACTED] role as the President of this non-profit organization conflicted with his public duties and he was using his state computer inappropriately.

1.2. Board staff reviewed the complaint and contacted the State Auditor's Office (SAO) to request assistance in completing a forensic analysis of [REDACTED] hard drive. The SAO made a bit-stream image of the original hard drive using EnCase version 5.05g on May 18, 2009. SAO

reviewed the contents of the hard drive, including an analysis of Internet use. Board staff also interviewed individuals from WDFW and Klickitat County.

1.3. On March 12, 2010, the Board reviewed staff's preliminary investigation report and found reasonable cause to believe [REDACTED] may have violated one or more provisions of RCW 42.52, the Ethics in Public Service Act.

1.4. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.5. [REDACTED] understands that if Board Staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000 for each violation found, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.6. [REDACTED] recognizes that the evidence available to the Board Staff is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.7. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts

the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.8. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Agreed Order.

1.9. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. Furthermore, any and all stipulations by [REDACTED] are for the sole purpose of settling this matter and are not admissible or stipulated to for any other purpose than the ethics board proceedings.

1.10. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.11. If the Board rejects this Stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that if this proposed Stipulation, with any applicable modification by the Board, is rejected by [REDACTED] this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. At all times material hereto, [REDACTED] was employed by Washington State Department of Fish and Wildlife as an Area Habitat Biologist. He was also the founder and President of the Columbia Gorge Ecology Institute (CGEI), a non-profit environmental science organization licensed in Oregon since April 20, 1995. CGEI offers K-12 environmental science programs through their *SECRETS of our Shrub-Steppe Home*© and *SECRETS of Our Forest Home*© programs. CGEI also works to restore habitats in Washington through grants from WDFW and other agencies/organizations.

2.2 One of the areas [REDACTED] worked in as a Habitat Biologist for WDFW regarded wind farms in Klickitat County, Washington. Wind projects must include project pre-assessment studies based upon the WDFW Power Guidelines. Applicants are encouraged to consult with the WDFW and local habitat/wildlife experts regarding turbine siting before making any final decisions.

2.3 [REDACTED] proposed mitigation projects that benefitted CGEI, working with the energy company to propose mitigation projects he supported in exchange for WDFW's support for the wind farm project. In one instance, CGEI managed monies received from energy companies to fund a ferruginous hawk (raptor) study sponsored by the WDFW. Columbia Gorge Ecology Institute received 10 percent of the raptor study proceeds for managing the funds and paying invoices for equipment ordered by WDFW personnel. CGEI received \$12,000 for their role in managing the study funds. In another instance, an energy company agreed to fund educational material promoted by CGEI

2.4 While [REDACTED] was both the President of CGEI and an Area Habitat Biologist for WDFW, CGEI applied for and was awarded several contracts with WDFW for restoration projects:

- WDFW # 04-1922, Ladiges Sandhill Crane Forage Habitat. The contract ran between 10/01/04 – 06/30/08. [REDACTED] signed the contract for CGEI as the “contractor.”
- WDFW 05-1865, Lyle-Klickitat WL Habitat Restoration. The contract was for the period of 7/01/05 – 6/30/07. [REDACTED] is listed on CGEI’s application for project funding as the WDFW employee who would provide technical assistance during performance of the contract.
- WDFW 07-1345, Klickitat River Restoration – Final Phase. The contract period was 7/01/07 – 6/30/09. [REDACTED] signed as the CGEI President.
- WDFW 08-1238, CGEI Sandhill Crane Habitat Restoration. The contract period is 5/01/08 – 6/30/12.

WDFW paid a total of \$37,576.41 to CGEI under these contracts.

2.5 On May 18, 2009, the SAO made a bit-stream image of [REDACTED] hard drive using EnCase version 5.05g. The SAO reviewed the contents of the hard drive, including an analysis of Internet use. [REDACTED] used the WDFW computer for a variety of non-work related purposes. For the period of 10/31/08 through 3/2/09 (122 calendar days; 80 work days), [REDACTED] visited 711 social/networking sites, 641 news/sports sites, 118 banking sites and had 8,060 non-work related e-mails.

[REDACTED] used his state computer to:

- Support and promote the mission of the Columbia Gorge Ecology Institute (CGEI), a non-profit environmental science education organization based in Hood River, Oregon where [REDACTED] is the Chairman of the Board of Directors and Founder.
- Draft and market a series of educational materials to be used for these educational programs to include: *SECRETS of Our Forest Home*© and *SECRETS of Our Shrub-Steppe Home*©.
- Draft and market religious writings regarding the Baha’i faith.
- Draft and market requests for grants for private, state and federal funds for environmental projects to be administered and/or completed by CGEI.
- Draft and market articles to environmental magazines.

2.6 [REDACTED] left WDFW employ on August 6, 2009, resigning in lieu of termination.

2.7. On March 12, 2010, the Executive Ethics Board found reasonable cause to believe that [REDACTED] violated RCW 42.52.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. [REDACTED] stipulations to the following conclusions of law are for the sole purpose of reaching settlement in this matter and are limited to these proceedings. These stipulations and conclusions are not admissible for any other purpose or proceedings.

3.4. RCW 42.52.010(14) defines "person" as follows:

"Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

RCW 42.52.020, Activities incompatible with public duties.

3.5. The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties.

RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

[REDACTED] was the founder and President of a non-profit organization. His efforts to obtain funds for the non-profit conflicted with [REDACTED] state duties. He helped broker projects between

WDFW and his non-profit organization that would profit his organization. He contracted with his own state agency while acting for the non-profit organization.

RCW 42.52.030, Financial Interest in a transaction.

3.6. A state employee is restricted from having a financial or beneficial interest in a transaction with the state. RCW 42.52.030 states in pertinent part:

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

██████████ did not receive a salary or any type of monetary remuneration as the President of CEGI, however, he had a beneficial interest in the solvency and perpetuity of the Columbia Gorge Ecology Institute, as its founder and Chief Executive.

RCW 42.52.070, Special privileges.

3.7. Under RCW 42.52.070:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

██████████ used his position with WDFW to promote mitigation projects that furthered the agenda of his non-profit organization. He used his position with WDFW to negotiate projects with energy companies that resulted in monetary benefits for his non-profit organization.

RCW 42.52.160, Use of state resources.

3.8. The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

██████████ transacted business for his non-profit organization using his state computer. He also used the WDFW computer for a variety of non-work related purposes. WAC 292-110-010, Use of State Resources, states, in pertinent part:

(6) **Prohibited uses.** The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources.

(a) Any use for the purpose of conducting an outside business or private employment;

(b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: A private business, a nonprofit organization, or a political party (unless provided for by law or authorized by an agency head or designee);

██████████ used his state computer to support and promote the mission of the Columbia Gorge Ecology Institute (CGEI); draft and market a series of educational materials to be used for these educational programs to include: *SECRETS of Our Forest Home*© and *SECRETS of Our Shrub-Steppe Home*©; draft and market religious writings regarding the Baha'i faith; draft and market requests for grants for private, state and federal funds for environmental projects to be administered and/or completed by CGEI; and draft and market articles to environmental magazines.

3.9. Based on Findings of Fact 2.1 through 2.5, ██████████ violated RCW 42.52.020, 030, 070 and 160.

3.10. The Board is authorized to impose sanctions for violations of the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

II. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Mitigating factors include that ██████████ received no actual monetary gain as a result of his conduct and that he left WDFW employ, resigning in lieu of termination.

III. AGREED ORDER

[REDACTED] will pay a civil penalty in the amount of fifteen thousand dollars (\$15,000.00) over a three year period as agreed by the parties. The first payment is due 45 days after this stipulation is accepted by the Board.

CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that this Stipulation may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts this Stipulation and Agreed Order, I understand that I will receive a signed copy.

[REDACTED]

- 2010

Respondent

Stipulated to and presented by:

Melanie de Leon 10-11-10

Melanie de Leon Date
Executive Director

IV. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is:

✓

ACCEPTED in its entirety;

REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):

DATED this 12 day of October, 2010.

Linnaea Jablonski
Linnaea Jablonski, Chair

Approved via telephone
Michael F. Connelly, Vice-Chair

Neil Gorrell
Neil Gorrell, Member

Martin T. Biegelman
Martin Biegelman, Member

Matthew Williams III
Matthew Williams III, Member

* I, [REDACTED] accept/do not accept (circle one) the proposed modification(s).

[REDACTED] Respondent Date