

1 was the Geologic Division's mission, Russ TR 986-87; Filson TR 846-
2 48. By fiscal year (FY) 1995, the percentage of science program
3 funds available to pay operating expenses had fallen significantly
4 below the twenty to twenty-five percent necessary for viable
5 scientific programs, Russ TR 988.

6 More specifically, in the National Marine and Coastal Geology
7 Program, appropriations increased from thirty million dollars in FY
8 1991 to thirty-five million dollars in FY 1995. During that same
9 period, salary costs increased from fifteen million dollars to
10 twenty-one million dollars, while available operating funds
11 decreased from 2.7 million dollars to 1.7 million dollars. Russ TR
12 982-83. During that same period in the National Cooperative
13 Geologic Mapping Program, overall appropriations increased from
14 nineteen million dollars to twenty-two million dollars, but
15 salaries increased from eleven million dollars to fifteen million
16 dollars. This resulted in a decrease of available operating funds
17 from two million dollars to six hundred seventy-two thousand
18 dollars. Russ TR 982. In the Earthquake Hazards Reduction
19 Program, overall appropriations increased from thirty-five million
20 dollars in FY 1991 to just over forty-nine million for FY 1995,
21 largely as a result of special funds appropriated in response to
22 the Loma Prieta Earthquake. However, during that same period,
23 salaries increased from 15.5 million dollars to twenty seven
24 million dollars, and available operating funds decreased from 3.3
25 million dollars to less than five hundred thousand dollars. Russ
26 TR 976-77. In the National Mineral Resource Surveys Program,
27 overall appropriations dropped from 46.4 million dollars in FY 1991

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1 to 44.8 million dollars in FY 1995, and salary costs for the same
2 period increased from 29 million dollars to 34 million dollars.
3 Operating funds available for research in this program decreased
4 from four million dollars to zero. Russ TR 983. In the Global
5 Change and Climate History Program, the overall appropriations were
6 about 9.7 million dollars in FY 1991, shifted modestly, but were
7 again about 9.7 million in FY 1995. During that same period,
8 however, salaries increased from 5.4 million dollars to more than
9 6.8 million dollars. Russ TR 982.

10 VII. Decision to Conduct RIF

11 As early as 1994, then Chief Geologist Ben Morgan expressed
12 his belief that the Geologic Division needed to conduct a RIF to
13 reduce the Division's salary commitments. Eaton TR 809, 785; Def.
14 Ex. 1002. However, before deciding to implement a RIF, the
15 Geologic Division took other steps to attempt to reduce salary
16 costs. Russ TR 987. The Geologic Division reduced its hiring, did
17 not renew certain non-permanent appointments, and offered financial
18 incentives for employees to end their employment. Russ TR 987;
19 Filson TR 849. However, these measures did not reduce the Geologic
20 Division's salary commitments enough to allow the Geologic Division
21 to spend enough of its budget on operating expenses. Russ TR 988-
22 91. Also, in early 1995, the Geologic Division was told by the
23 House Appropriations Committee that it should expect to experience
24 a significant reduction in its budget. Russ TR 989-90; Filson TR
25 857. Therefore, in early spring 1995, Dr. Eaton made the decision
26 to go forward with the RIF. Eaton TR 827, 831.

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1 VIII. Announcement of Decision to Conduct RIF

2 In accordance with Dr. Eaton's decision to go forward with the
3 RIF, on March 9, 1995, then Acting Chief Geologist Filson issued a
4 "General Notice of Workforce Reduction" to "inform all Geologic
5 Division employees that significant workforce reductions must be
6 expected." Def. Ex. 1022. The Notice explained that the RIF was
7 necessary because the funding for division programs had "remained
8 practically constant since 1991" limiting the availability of
9 operating funds necessary to "carry out program commitments." Def.
10 Ex. 1022.

11 Filson conducted several briefings in Menlo Park, California
12 on March 23 and March 24, 1995 in order to answer questions about
13 the RIF. Prior to the scheduled briefings, Cynthia Ramseyer,
14 secretary to the Assistant Chief Geologist for the Western Region,
15 created and distributed a flyer notifying staff of the time, place,
16 location, and topic of the meeting. Ramseyer TR 892; Pl. Ex. 9.
17 Consistent with her practice of including a Gary Larson cartoon on
18 such documents to catch people's attention, Ramseyer included a
19 Gary Larson cartoon on this flyer. Ramseyer TR 892-93. The
20 cartoon showed a dog saying to his mother, "You gotta help me, Mom
21 . . . This assignment is due tomorrow, and Gramps doesn't
22 understand the new tricks." Pl. Ex. 9. While Ramseyer testified
23 that she chose this particular cartoon because the RIF meant that
24 "everybody was having to learn something nobody knew anything
25 about" and that it was not her intention to make fun of older
26 employees, Ramseyer TR 893, the Court is skeptical of this
27 explanation given the cartoon's clear reference to older people.

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1 However, there is no evidence that Ramseyer played any role in the
2 RIF itself. Ramseyer TR 893.

3 IX. Regulations Governing the RIF

4 Because the USGS is a federal government agency, the Geologic
5 Division's RIF was governed by federal regulations. 5 C.F.R. Part
6 351. The regulations then applicable required the Geologic
7 Division to establish "competitive levels" consisting of all
8 positions which are "in the same grade (or occupation level) and
9 classification series, and which are similar enough in duties,
10 qualification requirements, pay schedules, and working conditions
11 so that any agency may reassign the incumbent of one position to
12 any of the other positions in the level without undue
13 interruption." 5 C.F.R. § 351.403(a)(1) (1995, as modified by 60
14 F.R. 3055); Palmer TR 503. "Undue interruption" is defined as "a
15 degree of interruption that would prevent the completion of
16 required work by the employee 90 days after the employee has been
17 placed in a different position." 5 C.F.R. § 351.203 (1995, as
18 modified by 60 F.R. 3055); Collins TR 959. "Competitive level
19 determinations are based on each employee's official position, not
20 the employee's personal qualifications." 5 C.F.R. § 351.403(a)(2)
21 (1995, as modified by 60 F.R. 3055); Collins TR 924.

22 The then-applicable regulations required the Geologic Division
23 to establish a retention register for each competitive level. 5
24 C.F.R. § 351.404(a). The retention register lists the employees
25 within the competitive level, ranked by retention factors. Palmer
26 TR 503. The first retention factor is tenure group. Career
27 employees are classified higher than career conditional employees

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1 who are classified higher than temporary and term employees.
2 Palmer TR 503-04. The second factor is veteran status, in which
3 veterans within each tenure group are classified higher than non-
4 veterans within the same tenure group. Palmer TR 504. The third
5 factor is the adjusted service computation date (ASCD), that is,
6 years of service adjusted for the three most recent performance
7 appraisals. The earlier the ASCD, the higher ranked the employee.
8 Palmer TR 504. If a position within a competitive level is
9 abolished, employees with the lowest retention standing are
10 released first. 5 C.F.R. § 351.601 (1995) ("Each agency shall
11 select competing employees for release from a competitive level
12 under this part in the inverse order of retention standing,
13 beginning with the employee with the lowest retention standing on
14 the retention register.").

15 Employees who are released from their competitive level in a
16 RIF may have an assignment right to displace another employee
17 through a bump or retreat. Palmer TR 504-05; see 5 C.F.R.
18 § 351.701 (1995, as modified by 60 F.R. 3055). With a bump, an
19 employee in a higher ranked tenure group or subgroup can displace
20 someone in a lower tenure group or subgroup, if that employee is
21 qualified to perform the job within a normal training period. For
22 example, a career veteran can displace a career non-veteran if the
23 former is qualified. Palmer TR 504; Collins TR 928-929. With a
24 retreat, an employee with an earlier ASCD can displace an employee
25 in the same tenure group and subgroup who holds a job that the
26 retreating employee previously held. Palmer TR 505; Collins TR
27 932-933.

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1 X. Revision of Employees' Position Descriptions and Personnel
2 Records

3 In preparing for a RIF, an agency should allow employees an
4 opportunity to review and update their personnel folders to ensure
5 that the retention factors are correct. Collins TR 922-23. In
6 addition, position descriptions should be updated and accurate
7 because they will be used to determine competitive levels and
8 assignment rights. Collins TR 922-23. In accordance with this, on
9 March 9, 1995, Dr. Filson advised that employees should "begin now
10 to update their personnel records to reflect all pertinent
11 experience (paid and unpaid) not already documented in their
12 official personnel folder." Def. Ex. 1022; Filson TR 850. On the
13 same date, he also sent a memo to Division managers directing them
14 to review and update the position descriptions to ensure that the
15 position descriptions reflected the current duties of the employees
16 under their supervision. Def. Ex. 1021; Filson TR 851.

17 XI. Revision of Competitive Levels Used in the RIF

18 In order to conduct a RIF, the Geologic Division needed to
19 ensure that its positions were assigned to appropriate competitive
20 levels. To address this issue, sometime prior to March, 1995, Dr.
21 Filson asked John McGurk, the Division Personnel Officer, to
22 prepare a paper on how competitive levels in the earth sciences
23 should be established for the purposes of a RIF. Filson TR 853-54.
24 McGurk concluded that the existing competitive level codes were
25 probably not workable or effective in a RIF, and that new
26 competitive levels should be developed based on position
27 descriptions. Filson TR 854-55; Def. Ex. 0123. McGurk recommended

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1 that each research position in the Division be placed in a separate
2 competitive level. Filson TR 854-55. Dr. Filson rejected McGurk's
3 recommendation because it did not seem credible that no scientist
4 in the Division was qualified to perform the work of any other
5 scientist. Filson TR 855. He instead recommended that competitive
6 levels be determined based on management review and scientific
7 certification. Filson TR 855-56; Def. Ex. 1023.

8 Based on Dr. Filson's recommendation, the Division established
9 peer panels of subject matter experts (SMEs) to review the
10 competitive levels assigned to research scientist and technical
11 positions.¹ Tilling TR 1178. The peer panel reviewing competitive
12 levels for the Western Region of the Geologic Division was
13 comprised of seven research scientists, each with a different area
14 of expertise. Tilling TR 1178-81. Using descriptors abstracted
15 from position descriptions, or full position descriptions if it
16 felt that the descriptors were not informative enough, the peer
17 panel compared positions to determine if they were unique or
18 interchangeable. Tilling TR 1181-83. In determining whether two
19 positions were interchangeable, the peer panel considered whether a
20 person could move into the other job, and vice versa, without undue
21 interruption (i.e., without losing any speed on the project work in
22 ninety days). Tilling TR 1182. The SMEs did not consider or
23 discuss the ages of the incumbents of the positions. Tilling TR
24 1183. After the peer panel's deliberations, only a few positions

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26 ¹ Peer panels have traditionally been used in the Geologic
27 Division to evaluate a number of decisions, including project
28 funding and promotions. Tilling TR 1180.

1 were placed in common competitive levels. Tilling TR 1189-90.
2 This result was not surprising because research scientists,
3 especially in the higher grades, define their own jobs and become
4 experts in a given field or geologic province or technique, causing
5 each research scientist to have a unique position description.

6 Tilling TR 1190.

7 XII. Creation of Unpopulated Staffing Plans

8 During the spring of 1995, the Program Councils were
9 instructed to develop staffing plans for their respective programs.
10 Field TR 1052-53 (National Marine and Coastal Geology Program);
11 Sutter TR 1095 (National Cooperative Geologic Mapping Program);
12 Weaver TR 1151 (Earthquake Hazards Reduction Program); Worl AR
13 35452 (National Mineral Resource Surveys Program); Poore TR 244
14 (Global Change and Climate History Program). The Program Councils
15 developed the staffing plans by using the program priorities as
16 defined in the program plans to determine what positions were
17 needed to conduct the prioritized projects. Field TR 1053-54
18 (National Marine and Coastal Geology Program); Sutter TR 1096-97
19 (National Cooperative Geologic Mapping Program); Weaver TR 155-56
20 (Earthquake Hazards Reduction Program); Worl AR 35452-55 (National
21 Mineral Resource Surveys Program); Poore TR 244 (Global Change and
22 Climate History Program). The Program Councils were instructed to
23 develop staffing plans that met certain fiscal constraints, with
24 most of the Program Councils developing multiple versions of the
25 staffing plans at differing funding levels. Field TR 1053
26 (National Marine and Coastal Geology Program); Sutter TR 1098
27 (National Cooperative Geologic Mapping Program); Weaver TR 1156

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1 (Earthquake Hazards Reduction Program); Worl AR 35452 (National
2 Mineral Resource Surveys Program); Poore TR 244-45 (Global Change
3 and Climate History Program). The staffing plans were unpopulated,
4 in that they listed positions, not individuals. Field TR 1052-53
5 (National Marine and Coastal Geology Program); Sutter TR 1097
6 (National Cooperative Geologic Mapping Program); Weaver TR 1155
7 (Earthquake Hazards Reduction Program); Worl AR 35452-55 (National
8 Mineral Resource Surveys Program); Poore TR 244-45 (Global Change
9 and Climate History Program).

10 XIII. Review and Revision of Staffing Plans

11 In the late spring of 1995, then Chief Geologist Dr. P.
12 Patrick Leahy appointed a committee to review the program plans and
13 the staffing plans to ensure that the staffing plans were
14 consistent with the program plans and that the staffing plans met
15 the needs of the Geologic Division as a whole. Leahy TR 165-67.
16 The committee was led by Tom Fouch, the Acting Regional Assistant
17 Chief Geologist, and included approximately twenty members, the
18 majority of whom were scientists. Leahy TR 165-66. The Fouch
19 Committee reviewed the staffing plans and made recommendations,
20 Def. Ex. 1016, which were presented to the Office Chiefs for
21 evaluation and accommodation. Leahy TR 167-68. One of the
22 concerns expressed by the Fouch Committee was that the Geologic
23 Division had been too "program centric" in developing the staffing
24 plans. Leahy TR 170. As a result, Dr. Leahy, the Office Chiefs,
25 and a few others met at the Summerfield Suites hotel in May, 1995
26 to review the list of the positions that were slated to be
27 abolished to see if those positions could be supported by multiple

1 programs and thus retained. Leahy TR 169-71. At this meeting,
2 some positions were placed back on the staffing plans, in order to
3 ensure that the staffing plans incorporated positions with needed
4 capabilities. Leahy TR 170-72.

5 XIV. Creation of Populated Staffing Plans

6 Geologic Division managers then populated the staffing plans
7 by comparing the positions listed on the unpopulated staffing plans
8 with the position descriptions of the Geologic Division's
9 employees. Field TR 1055-56 (National Marine and Coastal Geology
10 Program); Sutter TR 1099 (National Cooperative Geologic Mapping
11 Program); Weaver TR 1155-56 (Earthquake Hazards Reduction Program);
12 Worl AR 35456-57 (National Mineral Resource Surveys Program); Poore
13 TR 245-46 (Global Change and Climate History Program). There is no
14 evidence that these managers discussed employees' ages in
15 populating the staffing plans. Field TR 1056-57 (National Marine
16 and Coastal Geology Program); Sutter TR 1100 (National Cooperative
17 Geologic Mapping Program); Weaver TR 1157 (Earthquake Hazards
18 Reduction Program); Poore TR 246 (Global Change and Climate History
19 Program).

20 XV. Scope of Assignment Rights

21 After the staffing plans were populated and the employees
22 whose positions were not placed on the staffing plans were released
23 from their competitive levels, the Geologic Division was required
24 to evaluate the assignment rights of those employees before
25 releasing them from employment. Before doing so, the Geologic
26 Division had to make certain decisions regarding the scope of those
27 assignment rights. Those decisions were articulated in a memo

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1 issued by Dr. Leahy on June 19, 1995 entitled "Ground Rules for
2 Reduction-in-Force." Def. Ex. 1033; Leahy TR 178-79. In making
3 those decisions, Dr. Leahy attempted to balance the goals of giving
4 employees the maximum benefits possible under the applicable
5 regulations and avoiding disruption of the Division's programs.
6 Leahy TR 179-80.

7 Among the choices Dr. Leahy made was to disallow intra-tenure
8 group bumping. As he explained:

9 In general, bumping rights permit employees to
10 displace employees only in a lower tenure group
11 or subgroup. At their discretion, agencies can
12 establish ground rules that permit employees to
13 bump to other positions within their own tenure
14 subgroup if they are qualified for the position
15 and have greater length of service than the
16 incumbent. The Geologic Division will not
17 extend assignment rights beyond those required
18 by law and regulation.

19 Def. Ex. 1033 at AR 17376. Dr. Leahy made this choice for two
20 reasons. First, because most employees in the Division are in the
21 same tenure group as career, non-veteran employees, allowing intra-
22 tenure group bumping would create hundreds of displacements and
23 downgrades, causing a major disruption in the Division's ability to
24 meet its programmatic responsibilities. Second, if bumping rights
25 were expanded, grade and salary retention benefits would force the
26 Division to abolish more positions in order to achieve the desired
27 savings. Def. Ex. 1033 at AR 17378; Leahy TR 181-83. Dr. Leahy
28 was aware that expanding bumping rights would advantage the
Division's "highly experienced senior scientists" at the expense of
"younger, more recently trained staff." Def. Ex. 1033 at AR 17378.
However, there is no evidence that Dr. Leahy made this decision in

1 order to disadvantage older employees. Leahy TR 181. As Charles
2 Collins, Defendant's expert on federal RIFs, explained, allowing
3 intra-tenure group bumping, or "administrative assignment rights,"
4 is an expensive proposition. Collins TR 934. Allowing
5 administrative assignment rights results in multiple displacements
6 where otherwise there would be just one, increasing disruption to
7 the agency. Collins TR 934-38. Further, allowing administrative
8 assignment rights also hinders an agency's ability to reduce salary
9 costs, because increased bumping rights translates to more
10 employees with grade retention and salary retention rights.
11 Collins TR 940-41.

12 XVI. Evaluation of Assignment Rights

13 The assignment rights of employees were evaluated by an SME
14 panel. The SMEs were GS-14 and GS-15 scientists, chosen for their
15 broad range of expertise and because they were highly respected,
16 had "quite a bit of integrity," and would not be easily swayed by
17 the Branch Chiefs. McCarthy TR 1453. The SMEs who evaluated the
18 Plaintiffs' assignment rights included Robert Christiansen, sixty
19 years old at the time of the RIF; Carl Wentworth, fifty-nine years
20 old; William Ellsworth, forty-eight years old; Charles Bacon,
21 forty-eight years old; Randolph Koski, forty-nine years old; and
22 Floyd Gray, forty-three years old. Christiansen TR 1233; Wentworth
23 TR 1254; Ellsworth TR 1265, 1287; Bacon TR 1290; Koski TR 1380,
24 1385-86; Gray TR 1203-04.

25 To assist the SMEs in identifying potential bumps or retreats,
26 the RIF Coordinators developed a system of "pods." McCarthy TR
27 1454. A pod is a grouping of positions that fall within a range of
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1 geologic or geophysical expertise. McCarthy TR 1453-54; Def. Ex.
2 1035. With assistance from two classification specialists from the
3 Personnel Office, Dr. Jill McCarthy, RIF Coordinator for the
4 Western Region, assigned to pods all research positions and
5 specialized technical positions in Menlo Park. Administrative,
6 non-specialized technical, and non-specialized technician positions
7 were not assigned pods. McCarthy TR 1455-56. The pod assignments
8 were then reviewed by the Branch Chiefs or their representatives,
9 who made recommendations for changes, some of which were adopted.
10 McCarthy TR 1456-57.

11 To evaluate potential retreats, the SMEs compared the released
12 employee's former position descriptions with current position
13 descriptions to determine whether the jobs were essentially
14 identical. If a released employee's former position description
15 was missing or vague, they looked at his or her Professional
16 Technical Record (PTR) or Work Plans. Wentworth TR 1255-1256;
17 Ellsworth TR 1268; Bacon TR 1292-1293. To evaluate bumps, they
18 looked at the released employee's PTR to determine whether the
19 employee was qualified to perform a job without undue interruption.
20 Wentworth TR 1254, 1256; Ellsworth TR 1266, 1268-1269; Bacon TR
21 1293. The SMEs consulted with the Branch Chiefs when they needed
22 clarification about the requirements of a particular position.
23 Field TR 1072; Mooney TR 1420-1421. The Branch Chiefs did not,
24 however, have the power to veto a bump or retreat. Wentworth TR
25 1257. There is no evidence that any of the SMEs considered or
26 discussed the age of employees when they evaluated assignment
27 rights. Gray TR 1205; Christiansen TR 1234; Wentworth TR 1254-55;

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