

REPORT OF INVESTIGATION AND FINDINGS
Allegations of Violations of the
University of California Sexual Harassment Policy
College of Natural Resources
February 2013

I. Allegations

After receiving a copy of an anonymous complaint that was filed with the California State Auditor, I was asked to conduct an investigation into the complaint's allegations of sexual harassment and discrimination to determine whether Dr. Richard Sweitzer ("Sweitzer"), Project Leader at the Sierra Nevada Adaptive Management Project (SNAMP) had engaged in conduct that constituted a violation of the University of California Policy on Sexual Harassment or other University Policies prohibiting discrimination on the basis of sex.¹

Specifically, the complaint alleged that Sweitzer [REDACTED]

[REDACTED] In addition, the complaint alleged that Sweitzer "engaged in hostile work environmental [sic] (HWE) sexual harassment, deliberately and inappropriately touching, ogling, and making suggestive comments to and about his female employees." (Exhibit 1.)

This memo summarizes my investigative interviews with current and former employees of the SNAMP Project who have worked under Sweitzer's supervision. It also summarized my factual findings with regard to the alleged conduct as it relates to University policy. Although the initial complaint identified potential health and safety violations as well as violations of wage and hour laws, this portion of the investigation and report are limited to the allegations that Sweitzer engaged in behavior that violated the University's Policy on Sexual Harassment.

¹ Other investigators are investigating and addressing safety concerns as well as allegations that Sweitzer required employees to work overtime without being compensated properly. Those complaints and findings are being summarized in separate reports. For further information regarding these investigations, contact Tony McKnight, the Investigation Coordinator.

II. The Investigation

The following employees were interviewed as part of this investigation:

Rick Sweitzer



John Battles

Peter Hopkinson

J. Keith Gilles

Barbara Lane

Reginald Barrett

III. Applicable Policies

The University of California Policy on Sexual Harassment defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment...In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of circumstances, including the context in which the conduct occurred.

The Policy also addresses conflicts of interest arising from consensual relationships. A consensual relationship is defined as one in which two individuals are involved by mutual consent in a romantic, physically intimate, and/or sexual relationship. A consensual relationship that might be appropriate in other circumstances is inappropriate and poses a potential conflict of interest when one individual has responsibility for supervising, directing, overseeing, evaluating, advising, or influencing the employment or educational status of the other. It is always the responsibility of the individual in authority to maintain appropriate professional boundaries. Individuals in positions of authority are expected to be aware of their professional responsibilities and avoid apparent or actual conflict of interest, favoritism, or bias.

This policy is intended to apply to all types of conflicts of interests created by consensual relationships within the University community where one individual has power or authority over the other. Relationships covered by this policy include, but are not limited to, relationships between supervisor and supervisee; faculty and staff; faculty and student (in situations not covered by APM-015), coach and student; student and student; and house-staff or postdoctoral scholar and other house-staff, other postdoctoral scholar, or other employee.

Because of the potential for a conflict of interest, any member of the University community who enters into a consensual relationship with someone over whom he or she has supervisory, decision-making, oversight, evaluative, or advisory responsibilities shall take effective steps to remove him or herself from any professional decisions concerning that individual. The individual in authority can be held accountable for creating a sexually hostile environment and thus should avoid creating a situation that adversely impacts the working or learning environment of others. The individual in authority shall eliminate, or arrange with his or her supervisor to eliminate, any potential conflict of interest.

Finally, the University of California's Personnel Policies for Staff Members (PPSM), 12, Nondiscrimination in Employment provides: "It is the policy of the University not to engage in discrimination against or harassment of any person employed by or seeking employment with the University of California on the basis of . . . sex." Furthermore the policy is "intended to be consistent with the provisions of applicable State and Federal laws and University Policies." These policies apply to all Staff Members.

IV. Summary of Findings

A.

[REDACTED]

B. The investigator finds that the preponderance of evidence substantiates that allegation that Sweitzer touched several female employees in ways that were both subjectively and objectively offensive, creating a hostile working environment in violation of University Policy. Sweitzer also made inappropriate comments of a sexual nature, which are described in detail below. For these reasons, the investigator finds that although Sweitzer may not have intended to offend his employees, his conduct did offend them, and would offend a reasonable woman working in that environment. Therefore, the investigator finds that Sweitzer also violated University Policy for these reasons.

C. [REDACTED]

- D. The investigator finds that there is a preponderance of evidence to support a finding that the consensual relationship between Sweitzer and [REDACTED] was not adequately addressed by Sweitzer, or by the Department, to correct any actual, or perceived, favoritism, nor were adequate steps taken to ensure that [REDACTED] was removed from a direct reporting relationship to Sweitzer.²

V. STATEMENT OF FACTS

On or about June 12, 2012, a copy of a letter dated May 4, 2012 was sent to the attention of several individuals in the College of Natural Resources at U.C. Berkeley. The letter was addressed to the Investigations Bureau of State Audits in Sacramento. That office has allowed U.C. Berkeley to complete its internal investigations into the alleged conduct and report the findings.

The letter made several allegations that Dr. Richard Sweitzer, a Project Leader of the Sierra Nevada Adaptive Management Project ("SNAMP"), had violated and continues to violate state and federal labor laws. The letter outlined allegations of state and federal laws prohibiting sexual harassment and discrimination, as well as University policy prohibiting the same. More specifically, the letter alleged two distinct types of discrimination by Sweitzer. [REDACTED]

[REDACTED] Second, it alleges that he created a hostile work environment on the basis of sex by inappropriately touching female employees, staring at them, and making suggestive comments to and about his female employees as well as making other inappropriate comments of a sexual nature in the workplace.

² Although the original complaint to the State Auditor did contain an explicit allegation that the consensual relationship policy had been violated, many of the interviewees made reference to a relationship between Sweitzer and staff member, [REDACTED], and the perceived effect of that relationship on their working environment. For that reason, the investigator conducted further investigation into the related issue of a potential violation of the consensual relationship portion of U.C. Berkeley's Sexual Harassment Policy.

All the individuals interviewed were either current or former employees who work, or had worked, at the SNAMP Fisher Project.³ All of the employees were hired by Sweitzer and reported to him. Sweitzer first starting working on the project in 2007, and was employed as an Adjunct Associate Professor and Project Scientist. Starting in March 2008, he then received one-year appointments, renewed on an annual basis, as a Project Scientist to become the project leader of the SNAMP project. (See Exhibit 2; Appointment letter dated March 20, 2008). His current appointment is set to expire on June 30, 2013. (Exhibit 3)

As summarized in detail below, eight of the nine female employees who were interviewed reported that they experienced Sweitzer rubbing their backs, patting them on the back, and squeezing their shoulders in ways that was offensive to them. One employee experienced Sweitzer patting her on the thigh. Another employee reported that Sweitzer rubbed her arm in a way that made her uncomfortable and was unwelcome. The male employees interviewed also reported that they witnessed Sweitzer leaving his hand on female employees' backs for "longer than normal."

In addition, both male and female employees heard Sweitzer make inappropriate comments and references to the All Terrain Vehicles (ATV's), two of which were the same color and had been given the names "Jane" and "Dick." Although the investigation found that Sweitzer did not give the ATV's their names, he did make reference to female employees "riding Dick" and male employees "riding Jane," which the employees understood to have a sexual connotation. Sweitzer admitted making these comments; however, he added that he started referring to them by saying who would be "taking ATV Dick" and "taking ATV Jane" after receiving a complaint from one employee. On one occasion, in the course of reviewing photos taken by a camera in the field, Sweitzer made a comment about a female employee's chest in the presence of another female employee. Although the employee who heard the comment could not remember the exact phrase that was used, she stated that Sweitzer "turned red in the face" and said, "Most guys would like to look at that." In addition, both male employees and female employees noticed Sweitzer staring at, and ogling, female employees.

A female employee (one who was identified by Sweitzer as a witness who could give additional context to the work environment) recounted an occasion when Sweitzer told her, the day before she was going home for the holidays (and would be exchanging her fall wardrobe for her winter one), that she should "bring her bikini back with her." During this same conversation, Sweitzer had been talking about fixing up his hot tub. The female employee thought the comment was odd because she did not own a bikini, and believed Sweitzer was implying she should sit in the hot tub with him.

³ According to the Project's website (<http://snamp.cnr.berkeley.edu/about/fags/>): "Pacific fishers are medium-sized predators of porcupines and squirrels which were once common in mid elevation forest habitats throughout the Sierra Nevada. These animals are now absent from the Sierra Nevada mountains north of Yosemite. We are studying fishers in the Sierra National Forest to find out how many remain in the area, and to determine the best ways to manage forest habitats to prevent fishers from disappearing from the southern Sierra Nevada."

Some of the employees interviewed reported that it appeared Sweitzer tended to give the sedentary, administrative, and less exciting job duties to female employees. However, the interviews revealed that Sweitzer tried to assign job duties based on employees' previous job experience as well as interests. For example, employees with experience doing equipment maintenance and driving the ATV's and snowmobiles were assigned those job duties. Sweitzer provided data comparing job duties assigned to male employees versus female employees in the following categories: (1) camera checks or setups; (2) trap checks; (3) trap setups; (4) den tree checks; (5) den habitat plots (also known as vegetation measurement); (6) fisher captures; and (7) telemetry flights. (Exhibit 4) Some of the "high value" tasks (according to the interviewees) were telemetry flights, camera checks, trap checks, trap set-ups were slightly male biased. But other "high value tasks" such as den tree checks, fisher captures, were "female biased." The task that the witness complained about – habitat plots, was indeed "female biased." However, according to Sweitzer, that could be attributed to the fact that [REDACTED] (one of the female employees who did not complain about her assigned job duties), often volunteered to complete habitat plots, and trained new staff on den tree habitat protocols.

Once the names of the employees were identified, there was only one employee who complained about not receiving career advancement opportunities -- [REDACTED]. [REDACTED] had two primary complaints in this regard. She claimed she did not have an opportunity to work on a peer-reviewed publication and did not have the opportunity to perform aerial telemetry. [REDACTED] only worked on the project from [REDACTED]. She was initially hired as a volunteer. Sweitzer explained that as a volunteer, she was not covered by the University's liability insurance; therefore, she was not allowed to fly and do aerial telemetry. Once she was hired as an employee, [REDACTED] conceded that she was allowed to fly. She also complained that [REDACTED], a male employee, was going to have an opportunity to present a paper at a conference with Sweitzer. However, [REDACTED] left the project before the conference and does not know who actually attended the conference. Interviews with other witnesses, including Sweitzer, revealed that both male and female employees were given opportunities to present papers at the annual conference.

All of the employees that were interviewed universally commented on Sweitzer's short temper, his tendency to be mistrustful of employees, and his tendency to get upset about what the employees perceived to be minor events (the need for equipment repairs, small mistakes involving maps and directions, being late or not managing time efficiently).

During the course of the investigation, the investigator learned additional details about the personal relationship between Sweitzer and [REDACTED], and the effect it had on the working environment at the project. Additional interviews with staff members of the College of Natural Resources revealed that some attempts were made to address the direct reporting relationship between Sweitzer and [REDACTED]. However, as summarized below, the investigation finds that these steps did not adequately address the supervisory relationship between them.

All of the witness interviews are summarized in detail, below.

A. Witness Interview Summaries

1. [REDACTED]

Interview Date: August 7, 2012 (Oakhurst, CA)

[REDACTED] has been employed at the project since [REDACTED]. Prior to being hired to work on the SNAMP Project, she was [REDACTED]. Her job duties include on the SNAMP project include [REDACTED], preparing databases and analyzing the data gather by the crew, in addition to participating in field work. Field work includes camera surveys (using motion activated cameras to capture fisher activities in various areas); trapping fishers and putting collars on them in order to track their movement; aerial telemetry (tracking fisher movement from an airplane); habitat surveys and vegetation surveys around fisher dens.

She was often involved in creating the work plans with Sweitzer for a particular day. According to [REDACTED], assignments were made based on the training, experience and preference of the employees, the available vehicles, and the flight schedule. She did not have any complaint about the assignments she worked on. She did recall [REDACTED] complaining that they had to "do veg again," which meant they were assigned to do vegetation surveys. She also recalled that there were some "hi value" assignments that everyone wanted – setting up and checking cameras, aerial telemetry flights, and setting fisher traps. Sweitzer even set a monetary reward for anyone who caught a fisher (\$1/catch). [REDACTED] was typically given vehicle maintenance duties because he was "handy." He also did trap maintenance and other small repairs on other equipment at the project site. [REDACTED] was also given maintenance duties because he had similar experience. She did not recall receiving any other complaints from female employees about their about job assignments. She stated that Sweitzer tried to assign duties based on individual experience. She did recall receiving complaints from all of the employees that they wanted to do "higher level work" such as data analysis, and preparing posters for conferences.

[REDACTED] was involved in a consensual relationship with Sweitzer starting approximately six months after she began working on the project. According to [REDACTED], it was "on-again, off-again" for about [REDACTED], and ended in [REDACTED]. They lived together on-site⁴ for approximately [REDACTED]. She stated it was completely consensual, and that when the relationship started, she was very concerned about the effect it would have on the rest of the crew and the work environment. She recalled talking to all of the crew members and at least one – [REDACTED], expressed concern to

⁴ The project site is based at a duplex house – half is used as an office for the site, the other half is living quarters. While Dr. Sweitzer worked on the project, he rented the other half of the duplex independently from the owner of the house. The project side of the house also has living quarters above the office, where a number of employees lived when they first came to work on the project.

her that there would be a problem with favoritism as a result of her relationship with Sweitzer. Sweitzer never mentioned any complaints to her that he had received about perceived favoritism.

She stated that [REDACTED] but that it was "mutual" to some extent. She moved out of Sweitzer's apartment when the relationship ended. She does not recall Sweitzer touching her inappropriately. He patted her on the shoulder, but she was not offended by it. She did not recall him giving her any massages in the workplace. She did recall him making jokes that could be considered offensive. For example, there were two all terrain vehicles (ATV's) that looked alike. They were named "Dick" and "Jane." She recalls hearing Rick say, maybe five times, "who's going to ride Dick today?" This was said in the presence of the crew. She did not know who gave the ATV's those names, and did not recall anyone complaining about it. She does not recall him making any other specific comments.

At the end of the interview, [REDACTED] made reference to having additional "documentation" about how her working relationship with Sweitzer became tense after their personal relationship ended. She did state that the dynamic changed. For example, Sweitzer asked [REDACTED] to step up in the [REDACTED] capacity and relied on [REDACTED] more often after their relationship ended. [REDACTED] that Sweitzer was talking about their relationship with her, and [REDACTED] felt she was being "put in the middle." As far as negative treatment, [REDACTED] recalled Sweitzer laughing and smirking while she was talking to the crew. She felt this was undermining her authority as a crew leader. She also recalled that after their relationship ended Sweitzer soliciting other members of the crew (specifically [REDACTED]) to present posters with him, but did not solicit her at all. She explained that there is one annual conference at which they would present – the Western Section of Wildlife Society. Employees have the option to travel to the conference in Sacramento if they are presenting the poster. She eventually did get to do a poster. She also stated that eventually their working relationship improved. She said she would consider contacting us if she wanted to give us additional information about the change in dynamic.

On September 4, 2012, I sent [REDACTED] an e-mail summarizing the resources available to her, including contact information for the employee assistance program at U.C. Berkeley and the Title IX office. She responded by e-mail on September 27, 2012. I was out of the office and asked Tony McKnight, the investigation coordinator, to contact her on behalf of the University. To date, neither of us has received any additional information from her.

2. [REDACTED]
Interview Date: August 7, 2012 (Oakhurst, CA)

[REDACTED] has worked on the project for approximate [REDACTED], since [REDACTED].
[REDACTED] His job duties include camera checking, repairs on vehicles, data analysis, crew training, capturing and handling animals, and aerial

telemetry flights. He stated that he did want to do other things and learn new skills, in particular he mentioned – doing presentations to Boy Scouts troops and other administrative duties. He perceived that male employees did the "heavy lifting" and "grunt work" such as driving ATV's and snowmobiles, setting traps (which involves hauling the traps, often for a half a mile, and in thigh deep snow depending on weather conditions). When asked if he ever complained about these assignments, he responded it would have been a "fight starter" with Sweitzer. When asked to explain, he stated that Sweitzer was verbally aggressive and would yell at him. When asked which women he recalled complaining about wanting to do aerial telemetry, [REDACTED] named the following people: [REDACTED]. He recalled Sweitzer belittling [REDACTED] about not being able to back up a trailer, and it was [REDACTED] perception that Sweitzer did not let women use the trailer.

He recalled a few specific examples of when Sweitzer yelled at him. One time after a fisher had died, Sweitzer became upset when [REDACTED] refused to walk onto private property to retrieve the animal. [REDACTED] recalled Sweitzer's face getting bright red, he yelled and spit when he spoke, then leaned over [REDACTED] while he was sitting in his chair, trying to convince him to go and get it. [REDACTED] then described what he felt was retaliation for his refusal to go and retrieve the fisher – [REDACTED] was assigned to clear trees out approximately 20 miles from the road for approximately ten hours. He also recalled that they never went back to set a trap line in that area, and felt Sweitzer was just giving him "busy work."

According to [REDACTED], Sweitzer would get upset when [REDACTED] told him that repairs were needed. On one occasion Sweitzer angrily grabbed a spring out of his hand. On another occasion, [REDACTED] made a map for Sweitzer to locate a dead deer (which were used as bait for the fisher traps). Sweitzer was upset because [REDACTED] had confused "Avenue" with "Street" on the map, and when he found the deer, it was not usable for bait. When he returned, he handed the map back to [REDACTED] saying, "good f--ing job." [REDACTED] crumpled the map in his fist. Sweitzer then physically grabbed [REDACTED] wrist to open his fist and retrieve the map. [REDACTED] also recalled being yelled at when Sweitzer could not locate a pair of pliers. [REDACTED] felt that Sweitzer was accusing him of stealing the pliers. [REDACTED] later showed Sweitzer where the pliers were located. [REDACTED] also felt Sweitzer rewarded people for speeding while driving back from the airport. [REDACTED] often took 55 minutes to return. When another employee got a speeding ticket, Sweitzer stated, "It's about time someone got a speeding ticket." Finally, [REDACTED] recalled Sweitzer saying, "I'm watching you," when Sweitzer thought [REDACTED] had returned late from lunch. Sweitzer thought the time was 12:30 p.m., when, according to [REDACTED], it was only 12:15.

With regard to the alleged sexually hostile work environment, [REDACTED] recalled [REDACTED] complaining to him that Sweitzer had put his hand on her thigh. [REDACTED] also complained to [REDACTED] that Sweitzer had given her a backrub. [REDACTED] did not witness either of these events. He also recalled a time when Sweitzer sent either a text message or an e-mail to [REDACTED] when she was on her way back from vacation saying

something like, "bring your bikini, the hot tub is ready." Sweitzer also once joked, as he was putting up a curtain in the kitchen of the office, that "he didn't want anyone seeing [him] naked, or what happens in the hot tub."

██████ also recall seeing Sweitzer standing close, too close in ██████ opinion, to women in the workplace. For example, while women were sitting down, Sweitzer would stand with his legs and genital area close to their faces. He defined close as within a couple of inches. He also recalled that Sweitzer stopped his advancements toward ██████ started working on the project ██████. He saw Sweitzer giving backrubs to ██████ on one occasion each.

In addition, ██████ was with Sweitzer when he was reviewing photos taken by various cameras. ██████ that Sweitzer was scrolling through the pictures when he noticed a photo of a woman's chest and the camera appeared to be pointing down her shirt. According to others who were interviewed, this is a common occurrence because the camera is motion activated and when the individual goes to "check" the camera by walking in front of it to retrieve the memory card, the camera will take pictures of that individual's torso. Sweitzer said something like, "That's a good photo." ██████ said the photo was of ██████. ██████ she scolded Sweitzer at that time. ██████ did not hear of another incident after that. ██████ also recalled ██████ being "grossed out" by Sweitzer putting his hand on her back and rubbing her back.

██████ observed that Sweitzer seemed to hire tall, skinny girls. When ██████ asked Sweitzer what hiring criteria he uses, Sweitzer responded that he checks the public profile of applicants on Facebook.

██████ also recounted, shuddering as he described them, staff meetings at which all of the employees would sit in a circle on chairs, with no table or desk between them. According to ██████, the pants that Sweitzer wore to the meeting had a whole in the crotch, approximately two inches in diameter. ██████ could tell Sweitzer wasn't wearing any underwear and Sweitzer's pubic hair was visible. He would also wear a button down shirt, without an undershirt underneath, with two of the top buttons undone. ██████ felt Sweitzer was exposing a lot of skin. The staff meetings occurred approximately once every 2 months, and Sweitzer would wear the same pants "every time." ██████ said he always work a shirt at work, and was not aware of any of the male employees not wearing a shirt at work.

It was ██████ perception that ██████ was "run off" by Sweitzer when ██████ challenged Sweitzer about his time-keeping practices. According to ██████, ██████ wanted to record all time worked. Sweitzer then disallowed ██████ from flying. ██████ said he often used "reverse psychology" by telling Sweitzer what he did not want to do, then Sweitzer would give him those assignments. In reality, those were the assignments ██████ preferred.

Regarding Sweitzer's personal relationship with [REDACTED], [REDACTED] said that Sweitzer would stare at [REDACTED] behind when she would bend over at work. Sweitzer would often put his hand on [REDACTED] back, and his other hand on the desk or table, when she was sitting at the computer. When asked if he perceived Sweitzer treating [REDACTED] more favorably when they were dating, [REDACTED] said that Sweitzer always gave the "newest/funnest" projects. [REDACTED] recalls when he first suspected that [REDACTED] and Sweitzer were dating. He stated that he sent himself a letter noting that date, and would check on the date after the interview. About a month after he sent himself that letter, [REDACTED] and Sweitzer informed the rest of the crew about their relationship. Sweitzer would only communicate with the crew through [REDACTED], and once asked her to pass a piece of paper to [REDACTED] even though they were all standing in the office together. Some examples of projects that he perceived as more interesting were setting up the fisher kit denning protocol and the presentations to Boy Scouts. Other examples of favoritism included:

- In January 2011, the project site lost power and internet access for approximately 6 days. All of the employees had to use vacation days to get paid during this time. Because [REDACTED] worked at the site (she was living with Sweitzer at the time), she only had to use one day of vacation and continued to do administrative work at the office.
- According to [REDACTED] got lighter workloads. For example, she got assigned to check cameras that were close to the road (about 100 yards) and then got to return to the site earlier than him. She would be assigned 3 cameras, while [REDACTED] would be assigned 6, which would be in locations that were difficult to reach, taking long hikes of 200-400 yards off the road. He would be assigned to carry cameras and the other equipment used to house the cameras (chains, metal boxes, and locks) that weighed approximately 40 pounds.

After [REDACTED] and Sweitzer ended their relationship, [REDACTED] observed that Sweitzer was mean and "treated her like hell."

Follow-up call with [REDACTED] on August 10, 2012

Subsequent to the interview, [REDACTED] call to say that he found the letter and the date on the envelope was May 12, 2010. Three weeks later, Sweitzer held a group meeting to inform the crew about his relationship with [REDACTED]. During that call, [REDACTED] also told me that he recalled Sweitzer telling the female employees they should "ride Dick," referring to the ATV named Dick. He specifically recalled Sweitzer saying it to [REDACTED]. [REDACTED] said he approached Sweitzer about changing the names of the ATV's last winter, which, according to [REDACTED], resulted in a "big fight." Sweitzer did not see any reason to rename the ATV's. During that call [REDACTED] also told me that the ATV's have labels with their names. Each letter is approximately two inches tall, and one inch wide. During the call, I asked [REDACTED] to remove the labels and he said he would do so.

3.

Interview Date: August 7, 2012 (Oakhurst, CA)

██████████ was hired on ██████████. His job duties included field work: aerial flights, checking fisher dens, checking dens in trees, camera surveys, conducting den tree plots, measuring vegetation around den sites. He also did some data entry and image tagging (reviewing photos and tagging those with fisher activity). According to ██████████, everyone did the same job duties, but it appeared that some people did work based on personal preference. He also did vehicle and ATV maintenance, as well as maintenance of other equipment (chainsaws, snowmobiles). He has vehicle maintenance experience, so does ██████████, so that is why he believed he was assigned those maintenance duties. Women ██████████ expressed interest in learning to do vehicle and equipment maintenance. He perceived their questions as having a personal interest and wanting to learn how to maintain their own personal vehicles. ██████████ was not aware of whether they complained to Sweitzer or expressed interest in receiving training on vehicle and equipment maintenance.

██████████ also recalled ██████████ expressing interest in riding the ATV's. According to ██████████, running (driving) a "tracked" ATV (an ATV with tracks on the bottom instead of wheels) is difficult to handle physically and difficult to control. ██████████ had training (a one-day field course) on driving ATVs, but no on-the-job training was provided for those who did not have training. The only training Sweitzer provided was to pass out the ATV training packet. No field training was provided. ██████████ knows that ██████████ did not have training. ██████████ did give ██████████ some informal training when she asked. ██████████ knew how to operate an ATV, therefore, they got to drive them. ██████████ did not have any complaints about his job assignments or duties.

██████████ did not recall any specific remarks or comments made by Sweitzer that he would consider offensive or sexual in nature. He did recall ██████████ confiding in him that Sweitzer made them uncomfortable. For example, ██████████ complained that Sweitzer was "looking at them," but ██████████ does not know what exactly made her uncomfortable. Sweitzer also used a demanding tone of voice, but ██████████ said he used the same tone with men and women. ██████████ complained to ██████████ about Sweitzer putting his hand on their backs for an extended amount of time. ██████████ did notice that Sweitzer would stand closer to women than men. He observed Sweitzer put his hand on ██████████ back for what he perceived to be longer than "normal." According to ██████████, normal would be 2-3 seconds. Sweitzer left his hand there for 5-8 seconds. Sweitzer has never put his hand on ██████████ back, and ██████████ never saw Sweitzer put his hand on ██████████ back. ██████████ did not see any other touching by Sweitzer or other employees in the workplace that he recalls.

██████████ is also aware that a former employee, ██████████, had similar complaints about Sweitzer invading personal boundaries. He has met her 4-6 times

when the SNAMP group hangs out in town. She has told him that Sweitzer made her feel uncomfortable, but she did not elaborate further.

█████ recounted a time when a girl he was dating came to the project site. The girl, █████ noticed that Sweitzer was staring at her. When I asked him to elaborate, he said he and █████ both noticed the Sweitzer was looking her up and down. Both █████ had complained to █████ that Sweitzer did the same thing to them.

Regarding █████ relationship with Sweitzer, █████ said it did not bother him, but that he would have liked to know they had been involved in a relationship before he started working in the project.

When asked if he recalled any specific comments Sweitzer made that could have been perceived as offensive, █████ did recall Sweitzer making comments he thought were "passed workplace etiquette." For example, Sweitzer would ask him what he did last night and seemed overly curious about his personal life. Sweitzer would ask, "Are you going by █████ tonight?" █████ thought it was inappropriate to be asking about a girl Sweitzer had previously stared at and had "checked out." █████ also recalled a time when █████ had broken up with a long-time boyfriend. Sweitzer had asked █████ questions about the break-up, which █████ made her uncomfortable.

█████ also recalled the ATV's being named Jane and Dick, and recalls Sweitzer making comments about "riding Dick." During the month the ATV's were used while he was working there, he heard Sweitzer make that comment 2-3 times.

4. █████
Interview Date: August 7, 2012 (Oakhurst, CA)

█████ was hired as a █████, and starting working in approximately the second week of April. She also considers herself a █████. Her duties included aerial telemetry, tracking fishers, checking cameras, conducting fisher presence/absence surveys, collecting memory cards from cameras, and data entry. She also did habitat surveys. Other duties in the fall include trapping fishers. According to █████, the job assignments were made by Sweitzer and █████. She perceived that █████ would keep the assignments she preferred to do for herself, then would hand out the other assignments. For example, she assigned herself the tasks of checking the den trees for fishers. When Sweitzer started a contest to locate fishers, █████ thought █████ was at an unfair advantage in the contest because she was the one who got to check the dens, and did end up finding the most fishers.

█████ also perceived that Sweitzer would not let her do aerial telemetry, even though she had the requisite experience. Both █████ got to fly, even after █████ got sick on a flight, but █████ was not assigned to fly. █████ perceived this to be "punitive." Sweitzer also made condescending remarks to her, such as: "You don't know how to do that," and "Why do you ask so many questions?" █████ once told her that Sweitzer looks up applicants on Facebook.

According to [REDACTED], Sweitzer was insulting to all of the individuals who worked there - [REDACTED]. [REDACTED] said he would also ignore her at times when she asked him a question. She did not confront him about it or complain.

She recounted a dinner party that Sweitzer had at his house to welcome her. But Sweitzer did not invite [REDACTED]. During the party, [REDACTED] mentioned she had broken up with her boyfriend. Sweitzer said he had also broken up with his girlfriend (he did not mention it was [REDACTED] at that time). [REDACTED] brought beer to share to the party. A few days later, she returned to the apartment to find a cold beer on the counter. He later asked, "did you get the beer?" She thought it was creepy that he had stopped by her apartment after work hours to bring her a beer, and then left it on the counter for her, letting her know he'd been there.

She also said Sweitzer invited her over for "movie night." She said yes, but never actually went over for movie night. Sweitzer continued asking what [REDACTED] perceived to be personal questions about her ex-boyfriend. She became concerned about Sweitzer's interest in her. She recalled two times that he rubbed her back while he was talking to her. Sweitzer also rubbed her arm on multiple occasions. After it happened a few times she tried to avoid him by walking away from him. All of these events occurred during the first month that she worked there. She did not see him rub anyone else's arms or backs.

After that first month, she felt that he stopped communicating with her, except to insult her. He would stand behind her while she was entering data on the computer and ask, "Are you OK with that," "Do you know what you're doing?" and would laugh at her and say "How come you don't know what you're doing yet?" [REDACTED] recalls going home every night crying. She didn't mention it to any of her co-workers except [REDACTED] told [REDACTED] that she was writing a letter to U.C. Berkeley and to the State Auditor, along with ten other past and present employees. She knows that [REDACTED] were involved in writing the letter.

She does not recall him making any sexually offensive comments to her. She did not recall the comments about the names of the ATV's. She did notice that Sweitzer tended to assign ATV work to guys, even though she asked for ATV training. She did not recall anything offensive about his clothing during group meetings.

After the complaint letter was sent, Sweitzer was really nice to her.

5. [REDACTED]

Interview date: August 7, 2012 (Oakhurst, CA)

[REDACTED] was hired to work on the SNAMP project as [REDACTED] in [REDACTED]. She left the project in [REDACTED].

█████ stated Sweitzer was "difficult to work with." He prioritized getting the work done at any cost, including (in her view) at the cost of safety and compliance with wage and hour laws. He was "not a people person." He got angry easily and would embarrass employees in front of others. For example, he always mentioned how much more dedicated █████ was to the project. █████ tried to keep regular hours. Sweitzer expected her to work 45 hours per week without getting paid overtime. █████ left to take another position that gave her a better work-life balance. When it came time to present a poster at the annual Wildlife Section Conference, Sweitzer expected her to do additional work for the poster that she felt was work on the project that should have been done during her regular work day.

Regarding work assignments, █████ perceived that the women were generally assigned the more sedentary, office duties as well as doing "veg" (which consisted of measuring tree and plant height around fisher dens). She heard █████ complain that she wanted to be trained on doing equipment and maintenance repair, riding ATV's and riding snowmobiles. █████ believes that █████ had the same ATV and snowmobile training as male employees when she came to work on the project, but did not get enough of those assignments. Similarly, █████ recalls that Sweitzer liked to send male employees to check trap lines. The "capture people" (those who generally were assigned to capture the animals) were █████. In contrast, the women did not enjoy collecting the vegetation data. The women would joke amongst themselves - "girls on veg," "guys on the trap line." It was █████ perspective that catching fisher's on the trap line was more interesting and of higher value than collecting vegetation data.

█████ recalled hearing comments about the ATV's named "Dick" and "Jane." She recalled seeing those names on labels on the ATV's. She heard Sweitzer make a comment about "riding Dick" to her twice. She did not know who gave the ATV's their names.

█████ recalled Sweitzer squeezing her shoulders about 8 times (squeezing her shoulders about 3-4 times on each occasion). She never objected to him doing it and did not tell him to stop. He also rubbed her back approximate 4 times. She recalled that he stopped doing it about the time he started dating █████.

She also recalled Sweitzer making what she considered a lewd comment to █████. Sweitzer had a hot tub on his side of the property and told █████, "When you go home for Christmas, bring your bikini back with you." █████ also heard from █████ that Sweitzer had touched █████ on the thigh.

█████ also recalls being invited over by Sweitzer to "movie night" but she never went. She recalls █████ going to movie night, and also █████.

On another occasion, █████ heard that Sweitzer had made a comment about her chest area while review photos from the cameras. █████ that Sweitzer had said, "guys would really like that one." █████ did not remember him staring at her in

person. She did recall she felt intimidated around him. He would "get in her face" while he was talking to her. She estimated him being between 6' and 6'1" tall.

After Sweitzer and [REDACTED] started dating, [REDACTED] felt "demoted." [REDACTED] became the spokesperson for Sweitzer, and Sweitzer became less involved in everyday assignments. [REDACTED] perceived that Sweitzer and [REDACTED] would work out the daily work plan before everyone else arrived, therefore [REDACTED] had more input about everyone's assignments. [REDACTED] would say, "Rick and I were thinking..." and Sweitzer would say, "[REDACTED] and I have it covered."

She was not aware that Sweitzer checked applicants' public Facebook profiles during the hiring process.

[REDACTED]

[REDACTED]

6. [REDACTED]
(Phone interview on 8/13/12)

[REDACTED] was hired [REDACTED] and left the project in [REDACTED]. She was a [REDACTED]. Her job duties included field work such as checking trap lines, processing animals caught on the lines, checking cameras and changing the memory cards. She noticed that women did "office work" more often, while men tended to do vehicle maintenance more often. She did not have any complaints about her own work assignments.

She called Sweitzer a "micromanager," "a jerk," and "a total prick." For example, she described an occasion when she was on the radio, which was used to communicate with the other employees, she later found out that Sweitzer "keyed over" her transmissions. This meant that when he heard her voice over the radio, he would push buttons so that her transmissions would not be heard by the receiving party. [REDACTED]. When asked to explain further, she stated that Sweitzer picked favorites among the employees. He would "trash talk" other employees and gossip about them.

When asked about the allegations of sexual harassment, she felt that Sweitzer was "a little too nice," to her when she first started working on the project. She described herself as "attractive" and "athletic." She said he rubbed her shoulders somewhere between 10 and 15 times while she was sitting at a computer in the office. On these occasions, she estimated he rubbed her shoulders for about 10-15 seconds at a time. She did not say anything to him about the shoulder rubs. Sweitzer also rubbed her on the back between her shoulder blades. She estimated this happened approximately 10 times within the first two months she was working there.

After she had worked there for a few months, their working relationship changed and they "started hating each other." She perceived that the other employees put up with Sweitzer because they wanted to work in the mammal field and needed a good recommendation from him. [REDACTED], on the other hand, [REDACTED]. She chose to stand up to Sweitzer. As examples, [REDACTED] described times when Sweitzer expected her to work overtime and he would get upset if she did not check all of the cameras she was assigned for the day. [REDACTED] explained that the cameras were spread out from each other and it would take time to get between them, and then get back to the project site. Sweitzer would also get mad when employees came back late. She said she stood up for herself and that made him angry.

When asked why she stood up for herself in some circumstances, but did not complain about him putting his hands on her shoulders and back, she stated that she was afraid of retaliation. She stated that other employees were scared to tell U.C. Berkeley about him and his behavior.

The only inappropriate comment she could recall was some mention of his ex-girlfriend. [REDACTED] When she asked Sweitzer why he refused to call her by her nickname, he responded that he once had a girlfriend named [REDACTED] and could not call [REDACTED]. She did not explain further why she felt this was inappropriate.

She also recalls Sweitzer putting his finger in another employee's drink and then licking his finger. It was hot chocolate. Sweitzer had bought hot chocolate for the office as a treat for the crew. [REDACTED], the other employee had brought hot chocolate to work. He claimed that he wanted to taste her hot chocolate to make sure it wasn't "crew" hot chocolate.

[REDACTED] recalled him chastising people in front of the group. This happened to both men and women.

She did not recall the names of the ATV's or comments about their names.

7. [REDACTED]
(Phone interview on 8/21/12)

[REDACTED] started working on the project as a volunteer in [REDACTED]. She was hired in [REDACTED] and left the project in [REDACTED]. Her field work assignments included setting up cameras, checking cameras, setting up and checking live traps, taking measurements of the trapped animals and collaring them for tracking purposes. She also did aerial telemetry from the plane. In the office she did data entry and analyzed photos from cameras.

[REDACTED] complained about not getting to do aerial telemetry when she first started working on the project. She explained that the reason she chose to work on the project

was to learn aerial telemetry. When Sweitzer hired her, he told her she would have the opportunity to do telemetry, but when she was just a volunteer, she was not allowed to fly because the University's liability insurance did not cover her. Once she did become a regular employee, Sweitzer told her she could not do telemetry because she did not have the requisite experience. She responded that at her previous job, she tracked 30-50 condors every day using telemetry, so she felt she did have the proper experience. She stated that a male employee, [REDACTED], got to do telemetry before she did. [REDACTED] eventually did get trained and learned to do telemetry on the SNAMP project when two of the other employees ([REDACTED]) left the project. Before she left the project, she heard that [REDACTED] was going to have the opportunity to present a paper at a conference with Sweitzer. It appeared to [REDACTED] that only male employees had the opportunity to go to conferences. She left the project before the conference occurred; she did not know who actually attended the conference.

She described his temper as "explosive" and she felt he was "not approachable." She recalled one incident when Sweitzer got really mad at her. He was in the airplane getting location information on the fishers. There had been a report of a fisher mortality, he was in contact with someone on the ground and wanted someone to either pick up the dropped collar or investigate the death of the fisher. According to [REDACTED], the radios were not reliable. Her radio did not work when he tried to contact her with the location coordinates. He called her when he came down out of the air and she was back at the office. She recalls he "reamed" her out. She then offered to go out and get the collar or check on the fisher. He drove back from the airport, which took approximately 30 minutes. She heard his truck come "tearing up the driveway." He slammed on his brakes; she could hear the contents of his trucks shift from the back to the front of the flat bed. When he came in to the office, she apologized. He yelled at her for approximately 10 minutes while she was sitting at her desk. She does not recall exactly what he said. Eventually he gave her the coordinates and she found the dropped collar.

She also recalls Sweitzer getting upset if she came back to the office too early and if she was unable to check her assigned cameras that day. But he also became upset if she came back late. She recalled Sweitzer arguing with [REDACTED], but does not recall what the argument was about.

She did not recall him making sexual comments and did not recall the ATV's having names. He did not rub her shoulders or her back. She did not witness him touching any of the other employees.

[REDACTED] had sent an e-mail to Cesco Brofferio and also followed up with some U.C. Berkeley Human Resources, but did not receive any responses to her complaints.

8. [REDACTED]
Phone interview on 8/30/2012

[REDACTED] worked on the project from [REDACTED]

[REDACTED] Her job duties included [REDACTED]

checking cameras and traps, as well as data entry. She did not have any complaints about her job assignments, with the exception of safety concerns.⁵ She did hear other female employees, including [REDACTED], complain about being assigned to measure vegetation. She also heard them complain that the male employees were assigned to do the more physical work. [REDACTED] did drive the ATV's, but she did not use the snowmobiles while she was there.

[REDACTED] recalled the names of the twin ATV's – Dick and Jane. She referred to Dick as "the one that is not Jane." She felt uncomfortable saying "I'm going to ride Dick" so she avoided saying it. According to [REDACTED], the employees had to distinguish the ATV's from each other because they were always breaking down, therefore it was important to know which one was working. She did over hear Sweitzer refer to employees "riding Dick."

[REDACTED] did not hear anything else that she would consider inappropriate from a gender discrimination or sexual harassment perspective. She did think Sweitzer was "a jerk to everyone." She said that [REDACTED] "had issues" with hearing inappropriate comments in the past. [REDACTED] was told by [REDACTED] noticed Sweitzer staring at [REDACTED] in the kitchen when she was wearing a tank top and shorts.

When asked why she believed Sweitzer was a "jerk to everyone," she explained that he made people feel bad if the equipment were to break. This treatment was not limited to females on the crew. For example, she described a time when [REDACTED] backed a project-owned truck into a tree branch, breaking the tail light. Sweitzer screamed and used an obscenity ("f--- dude, you broke my truck!") Another example was when employees were in the kitchen of the house late at night, approximately 9:30 or 10:00 p.m., and Sweitzer was still in the office. He yelled, "Hey, you guys need to shut up, some people need to get work done." [REDACTED] personally felt he came down on her unfairly and was condescending toward her. She did not mention any specific examples.

With regard to experiencing any touching by Sweitzer that she felt was inappropriate, she did recall him putting his hand on her back and shoulder approximately two times when she was sitting at a computer in the office. She would flinch or shrug and he would move his hand. He did not rub her back. He stopped doing that after she shrugged off his hand.

When asked if she felt Sweitzer's clothing was ever inappropriate, she recalled that he would sometimes wear a shirt that was too small and his belly would be visible.

When asked whether she heard that Sweitzer looked at applicants' Facebook profiles before hiring them, she did hear from [REDACTED] that Sweitzer did look at [REDACTED] profile.

⁵ Other investigators are investigating and addressing safety concerns and those complaints and findings are being summarized in a separate report. For further information, contact Tony McKnight, the investigation coordinator.

██████ also mentioned she felt it was inappropriate for her to have to share a room with a male co-worker ██████. She was the only woman living at the house at the time. The three others were males. There were two bedrooms upstairs on the project's half of the house. ██████ shared one room. ██████ shared the other room with ██████ for 4 months. She was aware she would be living in shared housing when she accepted the position, but did not know she would be living with a male employee. She did not object at the time, and did not experience any inappropriate conduct with living in the same room as ██████, but later learned that there was a separate one room studio on the property. Sweitzer offered to rent it to her for \$150.00. She declined. She was allowed to live in the room in the house without being charged. She believes Sweitzer at some point rented out the studio for \$500.00 per month.

██████ was aware that Sweitzer and ██████ were dating. She said they broke up about one or two months after she arrived, and she noticed they seemed to be on-again, then off-again. She did see Sweitzer treat ██████ poorly at times. He would talk to her sarcastically, and override decisions she made with regard to the crew. Sweitzer would challenge ██████ in front of the crew. She did recall receiving a series of text messages from Sweitzer at the end of a conference in Sacramento that many of the crew had attended. ██████ drove together. ██████ needed a ride back to the project, but didn't have much room in their car, so they went ahead and left Sacramento. Sweitzer sent ██████ a text message saying he was disappointed they could not help out with a ride for ██████. He then sent another text message saying ██████ would have to miss a day of work because she could not find a ride back. ██████ responded to the second text saying she would prefer to discuss the matter in person because she believed Sweitzer misunderstood the situation. Sweitzer then sent a text message to ██████ (that ██████ believed was meant for ██████) saying "That's really rich, you ignore all of my text/phone calls, but expect me to be there for you." They all then received a final message saying they should disregard Sweitzer's previous message.

██████ then wrote Sweitzer an e-mail asking Sweitzer to sit down and talk about the work environment on the project. She did not feel it was fair to attack employees via text message. Sweitzer explained he wanted them to know what the crew situation would be for the next day; that was why he sent the text message about ██████ having to miss work. Sweitzer then apologized to ██████.

██████ did not observe any special treatment given to ██████, but she could tell when their relationship was on good terms, or when it was not. She did not want to be involved and did not want to know either way.

9. [REDACTED]
Phone interview on 9/7/12

[REDACTED] worked on the project from [REDACTED]

However, she explained further that she was excited to be leaving because the work environment was "not hospitable." She described Sweitzer as being suspicious of people and she felt that he did not trust the employees. For example, when they returned from field days, Sweitzer glared at them if they did not complete all of their assignments for the day. He would "icily stare" as if they were in trouble. He also did not like employees questioning his approach to research. However, he rarely went out into the field, she felt that was why he did not understand why the work was so difficult. One example of Sweitzer's temperamental treatment of employees was when another technician, [REDACTED], suggested a change in a research method they were using. Sweitzer did not like the suggestion. He turned away from [REDACTED], and for the rest of that week, he questioned everything that [REDACTED] did. [REDACTED] also witnessed Sweitzer treating male employees the same way, including [REDACTED].

[REDACTED] job duties included checking and maintaining traps and cameras. She also helped retrieve road kill, typically deer, as bait for traps. She drove the snowmobiles and ATV's to check the traps. She also did aerial telemetry and entered data into the computer. She did not have any complaints about her work assignments. She did mention that at times the conditions were more dangerous than she felt comfortable with.⁷ She did observe Sweitzer giving [REDACTED], both male employees, more "planning duties" but she thought that could have been because they both had master's degrees and were hired at a pay grade above hers.

She did recall the ATV's being named "Jane" and "Dick." She also remembered Sweitzer saying the male employees should "ride Jane" and the females should "ride Dick." She also recalled hearing from [REDACTED] that he heard Sweitzer make a comment that [REDACTED] was "too skinny." She understood that Sweitzer's comment was made in the context of comparing the looks of the females on the crew.

[REDACTED] said that Sweitzer touched her on several occasions. During the first year, when she would sit at her desk, Sweitzer put his hands on her shoulders and neck and would squeeze them. She would squirm and scoot closer to the desk, and away from him. This happened approximately five or six times. He also did the same thing to [REDACTED]. The three of them would joke that they had gotten, "the squeeze, pat pat" from Sweitzer. She did not have a "buddy" sort of relationship with Sweitzer, so she felt the neck and shoulder squeezing was particularly odd and it made her uncomfortable. She said that [REDACTED] had also been patted on the back, but

⁶ Sweitzer identified three witnesses who could provide insight with regard to the allegations that he created a sexually hostile work environment. The Investigator interviewed two of the three witnesses identified - [REDACTED]. The third witness identified by Sweitzer - [REDACTED], was contacted via e-mail on several occasions but did not make herself available for an interview.

⁷ See footnote 1.

they all joked that [REDACTED], "only got the one pat." In addition, when she left, she reached her hand out to shake Sweitzer's hand. Sweitzer then hugged her, but she did not want to hug him. She did not object at the time because she did not want to hurt his feelings.

[REDACTED] also recounted a time when Sweitzer touched her food. Sweitzer had brought hot chocolate to work for the crew to celebrate something, she could not recall the event. The next day she brought in her own hot chocolate. She perceived Sweitzer giving her an icy stare and perhaps he thought she was drinking the "crew" hot chocolate. She said, "This stuff that I bought is really bitter," to explain to Sweitzer that she had brought her own hot chocolate. He walked by and stuck his finger in her cup of hot chocolate, licked his finger, then said, "Oh, it is really bitter," and then walked away.

She did not recall being invited over for movie night, or to sit in his hot tub. When she was living in the crew house, Sweitzer would give tours of the house and would show her room to guests visiting the project site, which she felt was inappropriate.

[REDACTED] noticed Sweitzer looking [REDACTED] up and down approximately two times.

When asked about inappropriate comments while looking at camera images, she recalled Sweitzer making a comment about a picture of bears rolling on the ground. He said it looked like the bears were "humping."

She did not know whether Sweitzer looked at applicants' profiles on Facebook, but she said that she, "lived in fear that he would find her on Facebook," because she is on Facebook and she knows he has a Facebook account. When asked how she knows he has an account, she said he had mentioned to her that he had located a former student on Facebook.

When asked if she ever experienced Sweitzer showing favoritism in the workplace, she mentioned an incident when a male co-worker [REDACTED], whom Sweitzer liked, dented a car by backing into a tree. Sweitzer would typically get mad at other employees for breaking equipment, but when it happened to [REDACTED], Sweitzer "brushed it off."

10. [REDACTED]
Phone interview on 9/10/12

[REDACTED] worked at the project as [REDACTED]
[REDACTED], from the end of [REDACTED] through the first week of [REDACTED].
[REDACTED] Her job duties included setting traps, checking traps, setting up cameras, checking cameras, and vegetation measurement. She had no complaints about her assigned job duties. She did hear complaints from other women working on the project, mainly from [REDACTED]. She heard [REDACTED] complain that she had to do vegetation measurement. [REDACTED] never saw men doing vegetation measurement while she worked on the project. The

other people who worked on the project while she was there were [REDACTED] who worked there for about two weeks before [REDACTED] left.

[REDACTED] recalled that Sweitzer had a short temper and that he got upset and angry with employees, which she thought was unprofessional. She added he did get angry at her one time when she was out in the field and apparently her radio was off. Sweitzer got mad because she did not respond to his calls on the radio. When she returned to the office, he yelled at her, "What happened out there," and turned red. She did not think it was because she was female. She witnessed him getting angry at other employees approximately three or four times while she was there.

Sweitzer never touched her on the back, or anywhere else. She did not witness him touching any of the other employees. When I asked how much time she spent in the office, she said the "typical" amount of time spent in the office at the end of the work day was about forty-five minutes to enter data into the computer.

[REDACTED] did not overhear any comments that she felt were inappropriate. She did not recall the ATV's having names. She was not invited to sit in Sweitzer's hot tub; she said she did not have social contact with any of the other crew members outside of work.

She did not know whether Sweitzer has a Facebook page.

She was aware that [REDACTED] and Sweitzer were dating. She did not think [REDACTED] was treated more favorably than other crew members. She actually thought [REDACTED] was treated worse than the other employees. Sweitzer would curse at [REDACTED] and get angry with her. [REDACTED] did not notice Sweitzer staring at [REDACTED], nor did [REDACTED] see him stare at anyone else in the workplace.

11. [REDACTED]
Phone interview on 9/11/12

[REDACTED] began working on the project in [REDACTED] and left in [REDACTED]. She was [REDACTED]. [REDACTED] job duties at the project included trapping, telemetry, camera trapping, data entry, and she occasionally drove the ATV's. [REDACTED] stated that Sweitzer had female employees do habitat (vegetation) measurement while male employees got to drive the ATV's and got sent on long hikes. For example, [REDACTED] felt that Sweitzer sent [REDACTED] on long hikes because he liked to do so. [REDACTED] also liked going on hikes, but she did not get to do so. [REDACTED] also wanted to be more involved in data analysis, but [REDACTED] primarily handled this job. [REDACTED] recalled [REDACTED] wanting to learn vehicle maintenance, but Sweitzer dismissed her request and let the male employees handle most of the maintenance duties. [REDACTED] did some equipment

maintenance of the cameras, but the male employees got to do the majority of the equipment maintenance.

█ did witness some favoritism given to █ by Sweitzer while they were dating. █ wanted to take on more of a leadership role when she became a █, but she felt it was hard to do so because █ and Sweitzer seemed to have discussed the work plan in the morning before everyone arrived. █ also felt that █ got to choose what work she wanted to do, and that she considered some of the female fishers "her" fishers and would refer to them as "my girls" or "my fishers." █ felt working with these particular fishers was "off limits" to other crew members. █ observed that █ was at the office more often than she was out doing field work. █ estimated that █ spent approximately two or three hours less than the rest of the crew per week in the field.

With regard to Sweitzer's access to Facebook, █ had heard from █ that Sweitzer has looked at the Facebook profiles of applicants. She is aware that Sweitzer has a Facebook account. When she would go to Facebook to log on to her own account on a work computer, she has seen Sweitzer's e-mail in the login box, indicating that he was the last person to log on to Facebook from that computer.

When asked whether she heard any inappropriate comments in the workplace by Sweitzer, █ stated that once time while she was sitting at a computer with Sweitzer he was showing her how to measure a fisher by a picture in a photo. While they were scrolling through the pictures, they came across a close-up picture of █ breasts/chest area. According to █, Sweitzer laughed, turned red in the face, and said something like, "Most guys would like to look at that." █ said she ignored the comment.

█ also noticed Sweitzer staring at █ one time. █ had come downstairs on her day off wearing shorts and a tank top. █ stated she saw Sweitzer "clearly checking her out," for a few minutes, which "creeped" █ out.

█ stated that Sweitzer patted female crew members on the back and rubbed their arms. If Sweitzer put his hand on her back, she would tense up and straighten her back. He put his hand on her back once for about four to five seconds. She also saw him rub █ arm when they were sitting at the computer during the last week █ was working on the project. After it happened █ discussed it. █ said it did make her uncomfortable, but she did not want to acknowledge it because it "creeped her out." █ also recalls █ talking about Sweitzer putting his hand on her back and rubbing her back. █ did not see Sweitzer put his hand on the backs of any of the male crew.

█ recalled the ATV's being named "Dick" and "Jane." She recalls hearing from █ that Sweitzer made the statement, "Did you have fun riding Dick today?" but █ never heard Sweitzer say that in her presence.

She stated Sweitzer did tell her that she could use his hot tub while she was dog sitting for him at his house, but it he did not invite her to use the hot tub with him. She did not recall being invited to movie night. She recalled attending two or three staff meetings, but did not recall anything inappropriate about Sweitzer's clothing.

When asked if there was anything else she wanted to add, [REDACTED] stated that she felt [REDACTED] and Sweitzer were "putting her in the middle" when they broke up. [REDACTED] felt Sweitzer was using her to make [REDACTED] angry. He would give [REDACTED] some of [REDACTED] duties, such as [REDACTED], which appeared to make [REDACTED] mad. [REDACTED] finally had to tell them to stop putting her in the middle.

12. [REDACTED]
Phone interview on September 20, 2012

[REDACTED] began working on the project on [REDACTED] and left in [REDACTED]. Her job duties included checking traps, camera work, data entry and data analysis, as well as training volunteers and staff. She did not have any complaints about her job duties, but heard that other women felt they did not get to do trap setting and checking as often as the male crew members (at the time the male crew members were [REDACTED]). The other female crew members working at the time were [REDACTED].

When asked if she heard Sweitzer make any comments she felt were inappropriate, she stated that once, while she and Sweitzer were driving out to retrieve a collar, they were talking about her upcoming trip home for the holidays (late December 2009), and how she was going to be exchanging her fall wardrobe for her winter clothes. Sweitzer said, "make sure you bring back your bikini." [REDACTED] stated he had also talked about fixing up his hot tub, and felt he was implying that she should bring her bikini so she could sit in the hot tub. She thought it was odd. She did not own a bikini at that time. The conversation then turned to other things. Sweitzer did not mention it again.

[REDACTED] also stated that Sweitzer was a "touchy" person. She described times when he came up behind her and rubbed her back while saying, for example, "How did camera checking go?" Initially he would put his hand on her back 1 or 2 times per week. Later, he started rubbing her back, about two times per week. When he did this she would pull away. She never saw him touch guys on the backs or shoulders. She also saw him touch [REDACTED] on the back or shoulders about a dozen times, total. [REDACTED] I was not aware of [REDACTED] and Sweitzer dating while she worked there.

She also stated that he touched her leg (top of her thigh) on one occasion. They were both sitting in a plane used for aerial telemetry. Sweitzer was sitting in the passenger seat of the plane next to the pilot. [REDACTED] was sitting in the rear passenger

seat. He turned around and touched her leg to get her attention. She did not recall which leg he touched. She did not recall the name of the pilot, she thought his name might be Steve, but was not certain. She said the pilot probably would not have been able to see Sweitzer touch her thigh from his vantage point. This occurred on the same day Sweitzer made the comment about bringing her bikini back with her when she returned from the holidays. She did not tell anyone about him touching her leg initially, but later recalls telling [REDACTED] about the incident after they returned from the holidays. She said [REDACTED] was "mildly appalled."

[REDACTED] did not recall the ATV's having names. She worked there [REDACTED]
[REDACTED]

[REDACTED] heard from [REDACTED], that Sweitzer had a Facebook account, and that Sweitzer looked at the Facebook profiles of applicants for positions at the project. She later confirmed this when talking to [REDACTED]. She heard that Sweitzer looked at the girls' profile pages before he hired them. She did not hear about him looking at male applicants' profile pages.

[REDACTED] lived at the project site house the entire time she worked there and did not experience any problems. She recalls attending staff meetings, but did not recall anything inappropriate about Sweitzer's clothing, other than his shirts being too small/short and not covering his stomach.

[REDACTED] left the SNAMP project at the end of her [REDACTED] [REDACTED] because her next job was starting in [REDACTED].

**13. John Battles (in person interview November 21, 2012 at Berkeley)
(510) 643-0684; jbattles@berkeley.edu**

Battles has been a full Professor of Forest Ecology in the Department of Environmental Science, Policy, and Management since July 2009. Prior to that he was an Assistant Professor, and had held that position since December 1995. Battles was the lead PI on the SNAMP project

Battles acknowledged he had taken the University's Sexual Harassment Training within the last two years, and that he was familiar with the portion of that policy that addresses consensual relationships.

Battles first became aware of the relationships between Sweitzer and [REDACTED] in approximately May 2011. He recalls driving with Anne Huber to a conference in Vallejo, during which she mentioned finding out about the relationship during her visit to the project site. Battles told Huber she should report the situation to HR (for the College of Natural Resources). After their drive, Huber did report the relationship to either Robin Scott or Roxanne Polk, both of whom worked in HR for the College. Battles said that

Scott then told Reginald ("Reg") Barrett. Battles also recalled having discussions with Sweitzer and Barrett about what to do next.

Battles recalls that the plan was for Barrett to provide oversight over the day-to-day operations of the site, which proved to be difficult because of the distance between the Berkeley campus and the project site. He recalled Barrett saying, "I gave everyone my number and they could call me [with any problems]." Battles then talked to Dean Keith Gilless because Battles was uncomfortable with signing off on this plan. Battles thought it would better to have the Dean, as a representative of the College, approve the plan. These discussions occurred in approximately June 2011.

On July 21, 2011, Dean Gilless held a meeting in his office on campus. Also present were Battles, Barrett, Sweitzer, Department Chair Ron Ameson, and possibly Assistant Dean for Administration, Barbara (Babs) Lane. The purpose of the meeting, according to Battles, was to get a sense of the reporting structure. Sweitzer had three career employees, and three waiver/seasonal employees, all of whom reported to him directly.

Two days prior to the meeting in Dean Gilless' office, Barrett announced he was resigning from the project. He criticized the Forest Service for improperly decreasing the funding of the project, and announcing that as of August 2, 2011, he would no longer be the PI. As of August 1, Sweitzer reported directly to Battles.

Subsequently, and as a result of the meeting with Gilless, a plan was developed to address the Sweitzer [REDACTED] relationship. Battles would be [REDACTED] direct supervisor. He intended to call each employee once a month to "check-in." Eventually, Academic Coordinator Peter Hopkinson was asked to conduct these monthly calls and monitor the situation. Battles then discussed any status updates during their weekly meetings.

After the interview, Battles forwarded several e-mails and memos regarding the plan. The plan itself was memorialized in a November 18, 2011 memo from Battles to Gilless. (Exhibit 6). The plan includes a chart of the reporting structure, with Sweitzer and Academic Coordinator Hopkinson reporting to Battles, and [REDACTED] reporting to Hopkinson. Sweitzer maintained the role of "Project Lead" for [REDACTED] and the other staff members. Hopkinson was to contact research staff to explain the plan and revised reporting structure. Staff were also advised to contact Battles directly with questions or concerns.

Gilless responded by e-mail to Battles on November 18, 2011 stating that the "revised proposal meets with my complete approval."

When asked whether who conducted performance evaluations during the relevant time period, Battles stated that they had not been conducted, and that [REDACTED] had received her first evaluation [REDACTED]. Battles informed us that [REDACTED] had resigned from the project effective [REDACTED].

14. Peter Hopkinson (in person interview November 21, 2012 at Berkeley) phopkinson@berkeley.edu; (510) 642-4364

Hopkinson is an Academic Coordinator assigned to the SNAMP project since the summer of 2011 (approximately May or June 2011). He has been with UC Berkeley since February, 2004. He reports to John Battles. Hopkinson acknowledged he has taken the University's sexual harassment training and is aware of the policy on consensual relationships.

Hopkinson first learned of the relationship between Sweitzer and [REDACTED] through Anne Huber, the former Academic Coordinator, in late summer 2011. In late fall of that year, he recalled a supervisory structure was worked out and finalized in either December or November 2011. The plan consisted of Hopkinson being a liaison with the field crew, Battles, and HR staff at the College of Natural Resources. He would collect the timesheets and send them to payroll, be available to the crew to discuss any issues, and make a monthly call to check in with each staff member regarding fairness in the office and at the work site. Hopkinson was not involved in formulating the plan.

The monthly check-in calls were initiated in January 2012. Hopkinson stated it was "awkward" because he did not know the staff. He stated he had no HR training. Hopkinson initiated contact by first sending an e-mail to all staff members to introduce himself. According to the e-mails Hopkinson provided to the investigators subsequent to his interview, the first introductory e-mail was sent on Friday, January 20, 2012. (Exhibit 7). In the message, Hopkinson explains his "Title 9 role is to contact each Fisher staff member once a month to check that everyone thinks that fairness in the workplace is being maintained, i.e., that there is no favoritism or discrimination unrelated to job performance." He also invites staff to contact him by phone or e-mail, "if any issues of unfairness come up."

Hopkinson said that initially it was complicated to set up the individual calls with each staff member due to the variety in their work schedules. By February, a schedule was established and he generally called at the end of the month. He recalled making calls in January, February, March, and April 2012. He had a prepared script, which was approved by Robin Scott and Roxanne Polk. He asked if there was any preferential treatment for reasons other than job performance. He also asked if there was anything going on that made the employees uncomfortable. He recalls speaking to [REDACTED] as well as [REDACTED]. He recalled [REDACTED] being "really unhappy" and expressing concern that she perceived [REDACTED] was receiving favorable treatment. [REDACTED] also complained, but was less emphatic. [REDACTED] did not have any complaints. [REDACTED] expressed that they were uncomfortable at certain times because of the way [REDACTED] and Sweitzer behaved. For example, they once had a loud argument in the house that was overheard by others who lived in the house. There was also a concern that [REDACTED] got to use accrued leave whether others were not allowed to during the busy season (approximately April – June). [REDACTED] also complained that Sweitzer could be "abrasive."

All of these complaints were passed on to Battles and Polk. At one point, Polk sent copies of the UPTE (union) collective bargaining agreement to the staff. Hopkinson could not recall when that occurred. When [REDACTED] came on board, they were also provided copies of the UPTE CBA by Hopkinson. Hopkinson was told to continue making his monthly calls and to pass on the complaints to HR.

Hopkinson said he stopped making phone calls at some point because the employees seemed uncomfortable talking on the phone when Sweitzer or [REDACTED] was present in the office. He then sent an e-mail informing staff that he would check-in by e-mail and that they could call him at any time. Hopkinson provided a copy of a March 29, 2012 e-mail in which he informed [REDACTED] that "with the approval of CNR HR and SNAMP lead PI John Battles" he would be "changing [his] monthly Title 9 compliance contact with Fisher staff from a telephone call to an email." (Exhibit 8).

In approximately May 2012, Robin Scott and Barbara (Babs) Lane informed him that the calls were no longer necessary.

Hopkinson stated the only other contact he had with the SNAMP crew members occurred when [REDACTED] resigned. He said he wished her "good luck [REDACTED]" and told her to check in with Polk regarding her complaints. He heard nothing further from [REDACTED] about the complaints.

After the Department received the anonymous complaint in June, Hopkinson visited the SNAMP site with Battles and the staff from IT to secure the site. Gary Roller became the Project Manager. Sweitzer was re-assigned to the Berkeley campus as a Research Scientist assigned to the Fisher Project.

15. Keith Gilless (in person interview November 21, 2012 at Berkeley)

Gilless is currently Dean of the College of Natural Resources, a position he has held for approximately 5 ½ years. He has been with the University since 1983, almost thirty years. For two of those years he served as Executive Dean, with the HR function reporting directly to him. According to Gilless, the HR function typically reports to the Associate Dean for Academic Affairs. As a result of his background in assisting with personnel matters, he feels the faculty are comfortable coming to him. With regard to Sweitzer and [REDACTED], Battles reached out to him directly for advice.

Gilless acknowledged he has taken the University's sexual harassment training and is aware of the sexual harassment policy. Gilless recalls being directly involved, and providing comments to, the policy with regard to consensual relationships with the policy was drafted.

Gilless first became aware in the Summer 2011 of Sweitzer and [REDACTED] relationship through Battles. He recalls holding a meeting in his office in July 2011 at

which Battles, Barrett, Lou Feldman, and Sweitzer were present. According to Gilless, the purpose of the meeting was to ensure that Sweitzer understood the consensual relationship policy. Gilless explained the rationale of the policy. Sweitzer did not challenge Gilless, but Gilless had the impression that Sweitzer did not think the relationship was a big deal. Sweitzer did not express that sentiment, but that was Gilless's interpretation from Sweitzer's body language and Sweitzer's questions about why Gilless thought Sweitzer's supervision of [REDACTED] would be inappropriate. Gilless explained it needed to comply with policy.

Gilless said something to the effect of, "Think through what you're doing and whether you're showing favoritism." Gilless left it up to Battles and Barrett to come up with a plan. When Barrett resigned from the project, Battles worked with Scott to come up with the plan, then draft announcements and also communicating with staff. He recalled the plan being that [REDACTED] would not report to Sweitzer, but would instead report to Battles as the Principle Investigator, or possibly to Hopkinson, the Academic Coordinator. When asked whether he considered having an alternate supervisor on site, he replied, "no." He went on to state that there "couldn't be a change in supervision that was superficial."

Eventually Battles and Scott came up with the plan. Babs Lane was also involved. Gilless recalled approving the plan they came up with, but did not recall details of the plan. He believed he approved it in early Fall 2011.

He received weekly updates from Battles. He did recall other complaints coming to light, but could not recall details. He did not know whether Barrett was aware of the relationship prior to Summer 2011.

16. Barbara ("Babs") Lane; in person interview November 21, 2012

Lane is currently the Assistant Dean for Administration for the College of Natural Resources. She has been with UC Berkeley for twenty-seven years. She stated she had just taken the University's Sexual Harassment Training the day prior to her interview. She acknowledged being familiar with the consensual relationship policy.

She did not recall exactly when she became aware of the relationship between Sweitzer and [REDACTED]. She believes she first heard from Robin Scott. Employees later began contacting the HR representative, Roxanne Polk, regarding their complaints about the working conditions.

She recalls a meeting being held on campus be Dean Gilless, which was attended by Scott, Sweitzer, and Barrett. Lane did not attend this meeting. She recalled the purpose of the meeting being to restructure the reporting lines for the SNAMP project. After the meeting, Scott informed her that it "went well."

Lane's understanding of the plan was that Barrett would directly supervise all of the employees at the site. Sweitzer was to function as the Team Lead due to the

remote location of the project site. Employees were told to contact Barrett if they had any concerns. She did not recall seeing a written plan.

Barrett resigned from the project shortly after the meeting with Gilles. She said he resigned because he felt the project was not receiving adequate funding. She did not talk to him about his resignation. After Barrett stepped down, Battles took over supervision of the Fisher project. All employees reported to him. At one point Peter Hopkinson got involved in communicating with the employees.

Lane also reached out to other resources on campus due to the allegations of favoritism at the site. She believes she contacted Deborah Cohen in campus Employee Relations. Shortly thereafter, the campus received a copy of the complaint that was sent to the State Auditor's office. The complaint to the Auditor was dated in May, but it was received by the campus in June.

Employee Relations called a meeting to discuss strategy regarding Sweitzer's role at the site, security of data for the project, and initiating investigations into the complaints. That meeting occurred on June 11, 2012. Campus representatives were sent to the site to secure the data and investigations were initiated shortly thereafter.

When asked whether she believed the plan to address the consensual relationship was appropriate, she responded that she had concerns about the project being in a remote location, and the potential for employees at the location to "stray from appropriate behavior."

Lane had contacted Scott, who retired while this investigation was pending, to make herself available for an interview. As of the date of this report, Scott has not made herself available for an interview.

17. Reginald Barrett; in person interview November 21, 2012

Barrett has been a professor with the department since 1975. He served as one of thirteen Principal Investigators on the SNAMP project. He acknowledged that he had taken the University's Sexual Harassment Training and that he was aware of the policy on consensual relationships.

Barrett visited the site approximately once a month during the first few years of the project. Later he only visited about four times per year.

Barrett recalled that Sweitzer told him, either by e-mail or over the phone, about Sweitzer's relationship with [REDACTED]. He thought it was approximately the same time as when Anne Huber informed the Department about the relationship. He stated he did not recall knowing about the relationship prior to that time. He recalled talking to Robin Scott about the situation. The plan was for Barrett to be the direct supervisor for the staff at the site. He said he met with staff and advised them to keep a daily journal of their activities. He asked them to send copies of their journals, but the employees were

resistant to this, so he did not require them to do so. He said the journal entries he did receive did not contain any complaints, they were just daily logs of their work for the day.

He told them that they could come to him directly if they ever had a problem. He said no one came to him with a complaint. He recalled throwing parties when he went to visit the site. He wanted to keep the employees happy. He said most employees were working for letters of recommendation to go on to grad school.

Barrett did not recall there being a written plan once the relationship between Sweitzer and [REDACTED] came to light.

After Barrett resigned from the project, he recalled that Battles had to convince Sweitzer to stay on with the project. Barrett suspected that the genesis of some of the complaints was that employees did not receive raises. No one told him that was the reason for the complaints.

When asked if he recalled having a conversation with Sweitzer in 2010 about Sweitzer's relationship with [REDACTED], he said he did not recall having such a conversation, and did not recall any discussion about changing the reporting structure at that time.

18. Subject Interview: Dr. Rick Sweitzer (August 28, 2012 and September 11, 2012 at U.C. Berkeley)

Employment History

Sweitzer was first appointed as an Adjunct Associate Professor and Project Scientist in 2007. His appointment was renewed most recently on June 26, 2012, effective through June 30, 2013 as a Project Scientist, Step V, in the Center for Forestry.

According to his appointment letter (**Exhibit 2**) outlines his priorities for this one-year appointment. As a Project Scientist assigned to the SNAMP project, Sweitzer described his duties as follows: He conducts research, purchases equipment, hires staff, developed a research plan, and then collects data, which has been documented and will be published.

In 2007, Sweitzer initially took a sabbatical from his position at the University of North Dakota to accept a one-year appointment with the University of California. He then took a year of unpaid leave from the University of North Dakota to accept another one-year appointment with UC. In 2010, he became a co-PI (Project Investigator) with Reg Barrett, who was Sweitzer's supervisor. In 2011, Barrett resigned from the project and Sweitzer became a full PI. John Battles then became Sweitzer's supervisor.

Training and Knowledge of Sexual Harassment Policies

Sweitzer acknowledged he had received training on the UC Policy on Sexual Harassment. He said he took the online course required to be taken by all employees. When asked to describe his understanding of what constitutes "sexual harassment," he stated that he understood a hostile work environment could be created by unwelcome advances, inappropriate contact and sexual contact, and coercion of employees to acquiesce to sexual advances.

Response to Allegations by Specific Employees

I asked Dr. Sweitzer whether he ever placed his hand on employees' backs or shoulders, or rubbed their backs. With regard to [REDACTED], he stated he may have touched her shoulder. He also stated he may have touched her shoulder or back while she was sitting at a desk, but does not have a specific recollection of touching her. He added that he had a difficult working relationship with [REDACTED]. He described her as a "difficult employee." He elaborated that he had hired her for specific skills she stated on her resume: the ability to ride and operate ATVs and snowmobiles; the ability to climb trees [REDACTED] and she represented she would be able to climb trees to check fisher kit dens. However, during the first winter she worked on the project, she was nervous and tentative on the snowmobiles and ATVs. She confessed that she had recreational experience only riding snowmobiles and ATVs at a ski resort. She also later confessed she had only been on one tree climb. According to Sweitzer, this created tension between them. Finally, Sweitzer recounted an occasion when she falsified data about trapping on some forms. Sweitzer speculated this could have motivated [REDACTED] to complain about him.

Sweitzer did not recall having any physical contact with [REDACTED]; he stated he was "certain," and that it "never happened." He later clarified that he may have touched her shoulder for less than 15 seconds. He did not recall massaging her shoulders or rubbing her back. He did recall the BBQ at his house to which he had invited [REDACTED] and 4 or 5 other people. He did recall [REDACTED] mentioning she had broken up with her boyfriend, and that he had told her he had just broken up with his girlfriend. He did recall bringing her beer back to the volunteers' kitchen and leaving it on the counter. He said it was early evening, after work hours. He also said he wanted to leave it out so that she would notice it was there. He stated he did not put it in the refrigerator because other staff used the refrigerator and he did not know which refrigerator she used.

He was "certain" he did not rub [REDACTED] back. He added that he thought he and [REDACTED] had a good working relationship.

He recalled putting his hand "infrequently" on [REDACTED] back. By infrequently, Sweitzer estimated that it happened between two and five times. He did not recall squeezing her shoulders. He initially stated that he did not recall putting his

hand on her thigh. The second day of his interview, he clarified that he did recall putting his hand on her thigh on approximately December 20, 2009. According to Sweitzer, they had driven together to find a fisher, but turned back due the snowy weather. When they were both safely back in the snowmobile, he said he recalled patted her on the leg and said, "Thank God we made it back to the vehicle safe," or something to that effect.

Response to Allegations About ATV Names

Sweitzer stated he did not know who gave the ATV's their names – "Jane," "Dick," and "Boss Hog." He did recall noticing they were named, and described seeing the names taped on the wheel wells. He listed the following staff who could have been involved in naming the ATV's: [REDACTED]. He said he recalled making one comment about "riding Dick" or "who's going to ride Dick today." He said it only happened once, then [REDACTED] complained. He then started saying, "Who's going to take ATV Dick." He did not recall asking anyone if they "had fun riding Dick." When asked if it ever occurred to him to remove the labels, or rename the ATV's, he said he never thought of that.

Response to Allegations that He Made Comments While Reviewing Camera Photos

When asked if he ever recalled scrolling through photos from cameras and scrolling back to comment about a picture of what appeared to be [REDACTED] chest, he said he did not recall doing that. He remembered a photo that captured staff falling or rolling, but did not recall making a comment about [REDACTED] chest.

Response to Allegation About Bikini Comment to [REDACTED]

When asked if he recalled mentioning to [REDACTED] that she should pack her bikini when she returned from the holidays, he said he did not recall making that comment. He did not recall inviting staff to sit in his hot tub. He clarified later that when staff would dog sit for his dog, he told them to feel free to use his hot but while he was away.

Looking at Applicants' Facebook Profiles

Sweitzer did not recall telling anyone that he viewed applicants' Facebook profiles during the screening and hiring process. He adamantly denied that he has a Facebook account, and stated he did not know how to look up anyone's Facebook profile. He said he did recall using Google to search for applicants to see if he could find anything else about the applicant. For example, he typed in the applicants name and something from their resume, such as [REDACTED]. He did say he had a LinkedIn account.

During a follow up interview with Sweitzer, he provided a print out of an e-mail that he had received from Facebook, notifying him of new "Friend Requests." Sweitzer stated in the cover e-mail that he did once have a Facebook account, but never used it to view the Facebook pages of applicants.

Other Allegations

He did not recall staring at [REDACTED] behind, or anyone else's behind in the workplace. He did not recall looking employees up and down. He said he did recall inviting employees over for "movie night." He did not recall putting his finger in [REDACTED] hot chocolate or drink, then licking it off. When asked if he held staff meetings, he said initially they did meet every couple of weeks. More recently they only met every month or so. He said he never wore shorts to the office. He did wear field pants with a rip in the knee. He did admit he owns a pair of shorts with a hole in the groin area, but stated he has never worn them to a staff meeting.

Work Assignments

Sweitzer submitted a document that summarized which employees completed certain job assignments. Sweitzer agreed to, and later did produce similar statistics for which employees did habitat plots and vegetation measurements. He stated that being assigned to due aerial telemetry ("Flyers") depended on interest, experience, and training. It was also based on seniority. About one-half to one-third of the crew was involved in telemetry at any one point in time. He did not recall employees complaining about having to do vegetation measurements, but admitted that it is tedious work. He stated that assignments are based on experience of the staff member, as well as whether staff members are assigned to more time-consuming tasks.

Relationship with [REDACTED]

Sweitzer stated his personal relationship with [REDACTED] started in early summer, [REDACTED]. In approximately early August, he and [REDACTED] told the staff at the time [REDACTED] [REDACTED]). He also informed Barrett in late August or early September.⁸ To avoid any conflict of interest, they decided that Barrett would sign [REDACTED] time sheets. There was no other change in the reporting structure. No other supervisors were present at the worksite. Sweitzer did not inform HR about the development at that time.

Barrett visited the site periodically, approximately every month or month and a half. He made it clear that staff should contact him directly with any questions. In August 2011, when Barrett retired, John Battles assumed signing [REDACTED] timesheets.

⁸ I find Sweitzer credible on this point. The staff at the site during this time period recalled Sweitzer informing them of the relationship. I believe Sweitzer would have brought it to Barrett's attention, even though Barrett does not recall this conversation. Even if he did put Barrett on notice of the relationship, this does not relieve Sweitzer of an independent obligation to alleviate the conflict of interest arising out his consensual relationship with [REDACTED]

Again, there was no change in reporting structure. Effectively, Sweitzer conceded that he was still [REDACTED] supervisor. Sweitzer stated he complied with what Barrett, Battles, and Gilles told him to do. He did recall discussing a policy with Barrett that applied to relationships between co-workers and supervisors. Sweitzer recalled thinking that the policy was ambiguous.

In April 2011, Academic Coordinator Anne Huber visited the research center. During breakfast, she said she heard that Sweitzer had a girlfriend. She then met [REDACTED] for the first time at the site. Two days later, Huber called and alerted Sweitzer that she had told John Battles about the relationship. She was also going to report it to HR for the department (College of Natural Resources). She told him to expect a call from HR. Within a day, Sweitzer received a call from Robin Scott. During that conversation, he confirmed that he was in a relationship with [REDACTED], and that he had informed the staff and Barrett about the relationship. Scott offer Sweitzer some suggestions: (1) they discussed the timesheets, which had already been addressed; (2) she recommended that Sweitzer and [REDACTED] find separate living arrangements. Sweitzer questioned that recommendation. Scott replied that "it's a small town," and that there was an "appearance that was inappropriate." She also told him she would call in one week to follow-up.

Sweitzer then spoke with Barrett about Scott's recommendations. Barrett offered to speak with Battles and Scott. The following week, Barrett reported back to Sweitzer that the conversations did not go well. The next thing that Sweitzer recalled happening was that he received an e-mail from Dean Gilles about a meeting on campus on approximately July 22, 23, or 24, 2011. They discussed Sweitzer's living arrangements as well as Huber's complaint. He did not recall taking about the reporting relationship. At one point Sweitzer also recalled receiving an e-mail from Huber, who apologized for causing him problems. Sweitzer replied, "Thank you for your e-mail" and declined to speak with her on the phone. He was concerned about any perception that he was retaliating against her for making the complaint. Barrett eventually resigned in August 2011. There were no changes in reporting structure at that time. Sweitzer did recall any further discussion about someone other than himself signing and approving [REDACTED] timesheets.

VI. ANALYSIS

A. Did Sweitzer created a hostile work environment based on sex?

The University of California Policy on Sexual Harassment states:

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or

creates an intimidating, hostile or offensive working or learning environment.

...

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Several of the female employees that were interviewed recalled specific occasions when Sweitzer either patted or rubbed their backs, shoulders, and arms. Independently, each employee described how he would leave his hand on her back for what they felt was too long. One of the male employees also observed Sweitzer putting his hand on a female employee's back, and the other male employee also felt Sweitzer left his hand there too long. One employee recounted an occasion on which he touched her thigh. All of these employees stated that the conduct was unwelcome and made them uncomfortable. Sweitzer did not recall a large number of these occurrences.⁹ He stated that he recalled putting his hand on employees backs while they were sitting at their computers for a short amount of time. Several employees stated they shrugged and/or scooted away from his hand, and yet Sweitzer continued to do so.

Sweitzer also made a comment about a female employee's chest in the presence of another female employee. While Sweitzer did not recall making this comment, the employee who witnessed the comment told the employee whose picture was taken. Other employees recalled hearing about the event. Therefore, the investigation finds that, more likely than not, Sweitzer made this statement.

Several employees also heard Sweitzer make what they considered offensive comments about the names of the ATV's, "Dick" and "Jane" and made reference to female employees "riding Dick" and male employees "riding Jane." The employees interpreted this to be a sexual innuendo. One female employee objected in her own way by referring to "Dick" as the "one that isn't Jane" because she was uncomfortable having to say she would be "riding Dick." Sweitzer admitted that he made these comments, but claimed that he stopped making such comments after receiving a complaint from one of the female employees.

Sweitzer claims he modified his comments to ask who was "taking ATV Dick" or "ATV Jane." However, [REDACTED], who worked on the project from [REDACTED]

⁹ It should be noted for the record that Sweitzer did provide a lengthy written response to what he believed to be the allegations of sexual harassment. Dr. Sweitzer's response was considered in light of the fact that there was a lack of specificity to the allegations he was provided prior to his initial interview regarding the allegations. For example, in his efforts to respond to allegations about his failure to respect personal space, Dr. Sweitzer describes the close quarters in which he and the SNAMP Fisher staff worked. Similarly, in that document he speaks about comforting female employees in response to minor field accidents. In the opinion of this investigator, while this document is perhaps useful as background, the analysis of whether the allegations are substantiated in this report focus on evidence gathered during the course of this investigation, and therefore only Dr. Sweitzer's responses to specific questions and allegations discussed during his interviews and material subsequently submitted by Dr. Sweitzer for consideration during the conduct of this investigation.

██████████ recalled hearing Sweitzer make a comment about "riding Dick" on two or three occasions. Even assuming that this occurred, Sweitzer, as a supervisor should have re-named the ATV's, and removed the labels on the ATV's. In addition, as a supervisor, Sweitzer should have known that such comments were inappropriate and could be offensive to employees in the workplace. According to the witness statement from ██████████ who worked on the project starting as far back as ██████████, recalled hearing Sweitzer make comments about the ATV names. For all of the above reasons, the preponderance of evidence supports a finding that Sweitzer engaged in physical as well as verbal conduct that created an offensive working environment.

(b) (7)(C), (b) (7)(D)

[REDACTED]

[REDACTED]

[REDACTED]

B. Did Sweitzer violate the policy on conflicts of interest created by consensual relationships?

The investigation finds that Sweitzer's and the Department's handling of the relationship, and plan developed to address the impact of the relationship on the work

site, did not adequately remove Sweitzer as a *de facto* supervisor over [REDACTED] work. As a threshold matter, the U.C. Berkeley Policy on Sexual Harassment applies to this relationship:

This policy addresses potential conflict of interest situations applicable to all members of the University community: faculty and other academic personnel; students; senior managers, including Officers, Chancellors, Vice Chancellors, and Deans; staff employees; and contract employees. Faculty also are covered by additional requirements in the APM-015 (Faculty Code of Conduct). Other members of the University community, such as health care providers, may be covered by additional legal and/or licensure requirements with regard to their relationships with clients.

This policy is intended to apply to all types of conflicts of interests created by consensual relationships within the University community where one individual has power or authority over the other. Relationships covered by this policy include, but are not limited to, relationships between supervisor and supervisee; faculty and staff; faculty and student (in situations not covered by APM-015), coach and student; student and student; and housestaff or postdoctoral scholar and other housestaff, other postdoctoral scholar, or other employee.

The policy provides direction with regard to the steps that should be taken when a member of the University community

Because of the potential for a conflict of interest, any member of the University community who enters into a consensual relationship with someone over whom he or she has supervisory, decision-making, oversight, evaluative, or advisory responsibilities shall take effective steps to remove himself or herself from any professional decisions concerning that individual. The individual in authority can be held accountable for creating a sexually hostile environment and thus should avoid creating a situation that adversely impacts the working or learning environment of others. The individual in authority shall eliminate, or arrange with his or her supervisor to eliminate, any potential conflict of interest. Ways to eliminate conflicts of interest may include, but are not limited to, transfer of either individual to another position; transfer of supervisory, decision-making, oversight, evaluative, or advisory responsibilities to another employee or team of employees; or providing an additional layer of oversight to the supervisory role.

As noted above, the investigator finds it is more likely than not that Sweitzer informed Barrett of the relationship with [REDACTED] soon after it the relationship started in

2010. Despite Barrett's apparent failure to adequately address the situation, Sweitzer had an independent obligation to take "effective steps to remove himself or herself from any professional decisions concerning that individual." Sweitzer remained the only supervisor on site, even though it appears that Barrett took over signing her timesheets. Sweitzer continued to delegate work assignments to her, and supervised her work on a daily basis, which are professional decisions concerning [REDACTED].

Once it learned of the relationship in Summer 2011, the Department made good faith attempts to change the reporting structure on the project. In theory, the plan was intended to change [REDACTED] direct supervisor from Sweitzer to Barrett, then eventually Battles after Barrett stepped down as PI. However, in practice, Sweitzer continued to be [REDACTED] "lead" at the site, overseeing her work, and making the day-to-day decisions about her job duties. If a performance evaluation was ever conducted, Sweitzer would have been more familiar with her work than Barrett or Battles, both of whom were located on the campus. The Department also made good faith attempts to keep the lines of communication open between the staff on campus (Hopkinson) and the employees at the site. Again, as a practical matter, this did not mitigate the fact that Sweitzer remained [REDACTED] supervisor at the project site. Therefore, the investigation finds, based on a preponderance of the evidence, that the Department's attempt to address the consensual relationship did not have the intended effect of alleviating the conflict of interest created by that relationship.

VII. CONCLUSION

The investigator evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred. The standard by which the evidence was weighed was "more likely than not." Based on information gathered from interviews with the complainants, respondent, and witnesses, in addition to the review of relevant documents and campus data sources, the investigators make the following findings with respect to the UC Policy on Sexual Harassment:

The investigation finds that the allegations about Sweitzer's physical and verbal conduct in the workplace creating a sexually hostile work environment in violation of the University of California Policy on Sexual Harassment are substantiated by at least a preponderance of evidence. The investigation further finds that the Policy was also violated with regard to the Sweitzer and the Department's attempts to address the consensual relationship between Sweitzer and [REDACTED]. These efforts did not adequately address the conflict of interest created by that relationship.

[REDACTED]