



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

February 23, 2000

The President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-99-0612 and DI-99-0613

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Robert Stanton, Director, National Park Service sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). I transmitted the disclosure to the Honorable Bruce Babbitt, Secretary, United States Department of the Interior. Secretary Babbitt delegated authority to Director Stanton to respond pursuant to 5 U.S.C. § 1213(c). The report sets forth the findings and conclusions of the Director's review of disclosures of information allegedly evidencing violations of law, rule, or regulation and a substantial and specific danger to public health and safety at the Department of the Interior, National Park Service, Crater Lake National Park, Oregon.

The whistleblowers, Stephen L. Robinson and Amelia E. Bruno, provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Robinson's and Ms. Bruno's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report are reasonable and that the report contains all of the information required by statute.

Mr. Robinson and Ms. Bruno, who both consented to the release of their names, were seasonal employees with the National Park Service (NPS) at Crater Lake National Park (Crater Lake). They alleged that a boat tour operation at Crater Lake, run by a private company under contract with the NPS, and staffed with NPS employees and Rangers, is fraught with safety hazards and violations of marine laws. Their concerns included insufficient training and lack of Coast Guard Certification for boat operators, lack of safety equipment, unreliability of boat engines and dangerous operation of boats in inclement weather. Their concerns date from the 1992 season, and became an issue in the 1996 season when Mr. Robinson refused to

accompany the boat tours and submitted his and Ms. Bruno's safety disclosures in writing to their supervisors¹.

The NPS report is a thorough and careful response to the specific allegations made by Mr. Robinson and Ms. Bruno, and to their overall concerns about the safety of the boat tours on Crater Lake. In preparing its response, the NPS designated a review team of three NPS employees, including the NPS Associate Regional Director for Operations and Education, the Law Enforcement Program Manager in the Ranger Activities Division in Washington, D.C., and a Safety Officer in the Midwest Regional Office. The review team reviewed NPS records, conducted an on-site investigation, and consulted with a variety of NPS officials, including members of the NPS task force responsible for writing and updating the NPS marine regulations at issue in this matter. The report states that the NPS also consulted with the U.S. Coast Guard in the course of its investigation, in connection with both the safety issues raised and the applicability of the relevant marine laws.

The report concluded that there were legitimate safety concerns regarding the boat tour operations at Crater Lake prior to 1996, but that since 1996, the safety of the boat operations has improved markedly, particularly with the involvement of the U.S. Coast Guard in the inspection and certification of the boats and boat operations, in improved training, and in upgrades to the maintenance of the boats. Acknowledging that there have been different interpretations of the scope and meaning of the operative marine regulations, specifically 36 CFR Part 3.1, the report states that the agency is working to resolve and clarify some of the regulatory and policy issues that pertain to boating on non-navigable waters.

The report did not acknowledge that there had been any violation of law, rule, or regulation in the operation of the tour boats. The agency's official position for purposes of this report is that the Crater Lake tour boat operation is exempt from Coast Guard and state boating laws and regulations. The report stated that Coast Guard regulations do not apply because the Coast Guard has no jurisdiction over non-navigable waters. The report also stated that state marine laws are not applicable because they expressly exclude Crater Lake National Park from their operation.

The report did conclude that there is inconsistent policy guidance on the scope of 36 CFR Part 3.1. Notwithstanding its conclusion that state and federal laws are inapplicable, the agency proposes to remedy the NPS policy inconsistency through the work of the NPS Boating Regulations Task Force, a national task force convened in 1997 to update NPS boating regulations, specifically, 36 CFR Part 3. The project was not completed for budgetary reasons. The NPS has verbally advised the Office of Special Counsel (OSC) that it is prepared to insist that Coast Guard regulations be applied to waters located within National Parks

¹ Mr. Robinson and Ms. Bruno were denied employment at Crater Lake for the 1997 and 1998 seasons. In April 1999, OSC obtained corrective and disciplinary action against the agency in connection with their allegations of reprisal for whistleblowing. There were no boat tours during the 1998 season due to a maintenance project, according to the NPS report.

without regard to navigability.² On January 12, 2000, Ms. Martha Leicester, Associate Regional Director, Park Operations & Education, Pacific West Region, National Park Service, advised OSC that the Director, NPS has committed funding for the task force, and that it will reconvene in the spring of 2000.

With respect to the specific safety concerns raised by Mr. Robinson and Ms. Bruno, the NPS report acknowledges that many of these concerns were legitimate prior to the 1996 season, but maintains that the current operations are safe, and that the safety program is continually improving. The specific recommendations of the review team include supplementation of the existing Safety Plan with an Emergency Evacuation and Rescue Plan; completion of a joint revision of the Boat Operations Plan to incorporate additional emergency procedures; retirement of the current boats at the "end of their useful life, or earlier;" the planned purchase of a rescue/patrol boat for use on the Lake; establishment of improved operations and communications by instituting peer reviews and employee work groups, revising Interpretive logs with an emphasis on safety and establishing a log review process, and improving written standard protocols for boat operations and weather communications. In addition, the review team recommends that the staff receive continued and improved boat skills training. Finally, the review team recommends re-convening the NPS National Task Force on Boating Regulations to update 36 CFR Part 3.1, with the specific recommendation that the task force address the interpretation of these regulations in parks with non-navigable waters and in parks with exclusive jurisdiction.

Mr. Robinson and Ms. Bruno continue to assert their grave concerns regarding the safety of the boating operation. While they understand (but disagree with) the policy position taken by the NPS regarding the inapplicability of federal and state boating laws, they express dismay that the NPS has chosen not to err on the side of higher safety standards and voluntarily apply the laws. They believe that some of the changes implemented by the NPS as reflected in the report were made to avoid violating boating regulations, but do not necessarily make the operation any safer. For example, they point out that the reduction of the passenger count to 48 from 63 is an attempt to avoid Coast Guard regulations that require that passenger boats with more than 48 passengers have double hulls to avoid sinking if the hull is punctured. They assert that the new "safety" rule requiring the tours to remain within one mile of the shoreline is another attempt to avoid the implication of Coast Guard regulations, disguised as a safety improvement. This new safety rule actually presents, according to Mr. Robinson and Ms. Bruno, a greater risk that a disabled boat will be blown into the rocky shoreline and endanger passengers.

At a bare minimum, state Mr. Robinson and Ms. Bruno, the following improvements must be made before the tour boats can operate at safety levels required for the protection of the public: (1) replacement of the boats; (2) Coast Guard licensing for boat pilots; and (3) life

² This information was given to OSC in a telephone conference on October 13, 1999 with Chris Andress, Ranger Activities Division Chief, Park Operations and Education, National Park Service.

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rafts on all boats to ensure the safety of passengers in the event that a boat sinks. Without these safeguards, and continuing efforts to improve safety as set forth in their comments, they believe that the tour boat operation should be suspended.

I have determined, pursuant to section 1213(e)(2), that the agency's report contains the information required under section 1213(d), and that the findings of the agency head appear to be reasonable, for the reasons stated above.

As required by section 1213(e)(3), I have sent a copy of the report and Mr. Robinson's and Ms. Bruno's comments to the Chairman of the Senate Committee on Energy and Natural Resources and the Chairman of the House Committee on Resources. We have also filed copies of the report and the whistleblowers' comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures