



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

October 5, 2004

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

Re: OSC File No. DI-04-0916

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Gale A. Norton, Secretary of the U.S. Department of the Interior, sent to me pursuant to 5 U.S.C. § 1213(c) and (d). The report sets forth the findings and conclusions of the Secretary's review of disclosures of information allegedly evidencing violation of law, rule, or regulation and a substantial and specific danger to public safety arising out of actions by employees at the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), Mid-Pacific Region at Northern California Area Office (NCAO), Shasta Lake Dam, Shasta Lake, California.

The whistleblower, Ms. Rebecca A. Torres, Budget Analyst, consented to the release of her name. Ms. Torres' allegations were referred for investigation to Secretary Norton on March 19, 2004. On July 26, 2004, the Office of Special Counsel (OSC) received a report from the Secretary pursuant to 5 U.S.C. § 1213(c) and (d). Ms. Torres did not comment on the agency's report.

I have carefully examined the original disclosures and reviewed the agency's response. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

As noted, the relevant information was provided to OSC by Rebecca A. Torres. A summary of Ms. Torres' allegations follows.

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Ms. Torres alleged that Ms. Deborah P. Miller, NCAO Administrative Officer, violated a law, rule or regulation and created a substantial and specific danger to public safety by approving requests from the Shasta Wonderland Elite Athletic Team (SWEAT) to run the route for their New Year's Day marathons on the road over the Shasta Dam.

NCAO manages the Shasta Dam and its supporting facilities including a tourist center. Ms. Torres stated that since the terrorist attacks of September 11, 2001, access to the road over the Shasta Dam has been restricted. Access to the road is governed by security procedures which vary according to the national threat level. When the national threat level is Yellow, pedestrians are required to pass through metal detectors before proceeding over the dam. Those wishing to drive on the road must apply for a permit 3 days in advance and submit to a vehicle search. When the national threat level is Orange, the road across the dam is closed to all traffic, except residents and contractors who can provide documentation authorizing access to the road. Residents, approximately 10 families who live on the other side of the dam, are allowed access to the road only after their residence has been verified.

As Administrative Officer, Ms. Miller reviews requests to use the road over the Shasta Dam from civic and athletic organizations and serves as the Acting Area Manager in the absence of the Area Manager Mr. Michael J. Ryan. According to Ms. Torres, Ms. Miller regularly denied requests from civic or athletic organizations for access to the road due to security concerns. In the case of the SWEAT marathons, however, Ms. Torres alleged that Ms. Miller, a member of the club and participant in the races, approved SWEAT's requests in 2002 and 2003, when the nation was at threat level Yellow, and again in 2004 when the threat level was Orange.

Ms. Torres alleged that the requisite security procedures were not followed for the marathons and that the participants did not pass through metal detectors. She emphasized that for the 2004 marathon a portion of the chain link fence, which blocks access to the road, was removed so that the runners could pass through without interference. Ms. Torres noted there were approximately 197 participants from the U.S. and foreign countries in the 2004 marathon.

The Report of the Department of the Interior

The Secretary referred the allegations to the Office of the Inspector General (OIG) who, in turn, referred the matter to the Bureau of Reclamation for investigation. Reclamation's Mid-Pacific Regional Office conducted the investigation. The report substantiated the allegation that agency officials failed to enforce the appropriate security measures during the Orange alert in place on January 1, 2004. The report also concluded that Ms. Miller did not violate any laws, rules or regulations but acknowledged that her membership in the running club could create the appearance of preferential treatment. The report recommended that Reclamation take a number of actions including reviewing

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the special use permit procedures specifically examining security issues and the recovery of administrative costs.

The report noted that for all three marathons an agency official other than Ms. Miller approved the use of the facility. The report found that the approvals, and the issuance of all three special use permits, were proper under existing regulations.

With respect to the route of the 2004 marathon in particular, the report explained that an alternate route has been approved in the event heightened security measures were mandated. However, the report points out that the alternate route was not followed even though the national threat level had been raised to Orange. A review of NCAO procedures found that after the special use permits are issued, they were not reexamined prior to the event to identify what additional security measures, if any, were necessary.

The OIG made a number of recommendations for agency action based on the findings of this investigation. Specifically, OIG recommended that the agency take the following actions:

- Immediately implement a procedure requiring daily review of all use permits and project activities to ensure that any necessary security changes are put in place before the event occurs.
- Conduct a review to determine whether continued issuance of special use permits for Reclamation land is in the best interest of the government.
- Determine if the administrative costs incurred, such as overtime and utility, are in the best interest of the government. The report states that in this case these costs were limited. However, regulations specify that such costs are to be recovered which is not the current practice.
- Determine whether the Mid-Pacific Region's policy of allowing use of the facilities without cost recovery, when the costs are not excessive, is permissible under the regulations because it appeared to fall outside the regulations.
- Establish a procedure to ensure that all overtime is planned, scheduled and authorized in advance as required by regulation.

Reclamation is reviewing the areas of concern identified by the OIG. Thereafter, the agency will modify its procedures if necessary.

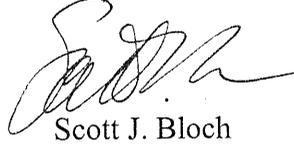
Based on the representations in the report and as stated above, I have determined, pursuant to 5 U.S.C. § 1213(e)(2), that the agency's report includes all of the information required by statute and its findings appear to be reasonable. As required by 5 U.S.C. § 1213(e)(3), copies of the report have also been sent to the Chairman of the Senate Committee on Energy and Natural Resources and to the Chairman of the House

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Committee on Resources. A copy has also been placed in OSC's public file as required by 5 U.S.C. § 1219.

Respectfully,

A handwritten signature in black ink, appearing to read "S. Bloch", written over the printed name.

Scott J. Bloch

Enclosure