



United States Department of Agriculture

SEP 10 2014

Office of the Secretary
Washington, D.C. 20250

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW., Suite 300
Washington, D.C. 20036

Re: OSC File No. DI-140293

Dear Special Counsel Lerner:

I write in response to your letter of May 8, 2014, referring for investigation a Whistleblower allegation that an employee of the U.S. Forest Service in the Douglas Ranger District purposely re-ignited a forest fire in Arizona's Chiricahua Mountains (Brushy Fire) on June 26, 2010, without the requisite approval and without following requisite procedures. The allegations, if true, could constitute violations of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a specific and substantial danger to public health and safety.

On May 13, 2014, I forwarded the Whistleblower's allegation to the USDA's Office of Inspector General (OIG) to investigate. Specifically, your office tasked USDA with investigating the Brushy Fire to ascertain if the U.S. Forest Service had adhered to specific fire-related policies. OIG reviewed documents and interviewed 13 Forest Service employees, including the Whistleblower, regarding the alleged extinguishment and the alleged re-ignition of the Brushy Fire. The investigation uncovered varying accounts from witnesses, as well as the fact that there was no documentation in Forest Service records that the fire had been extinguished as of the morning of June 26, 2010. Therefore, we were unable to confirm the Whistleblower's assertion that the Brushy Fire had been extinguished and subsequently re-ignited. I am enclosing a report concerning the investigation, in compliance with the requirements of 5 U.S.C. § 1213.

Thank you for writing concerning the Whistleblower's allegations. Please do not hesitate to contact me if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack", written over a circular stamp.

Thomas J. Vilsack
Secretary

Enclosure

cc: The Honorable Phyllis Fong, Inspector General
The Honorable Ramona Romero, General Counsel

UNITED STATES DEPARTMENT OF AGRICULTURE

Report of Investigation Concerning the Alleged
Re-ignition of a Fire on the Coronado National Forest in June 2010

OSC File Number DI-14-0293

September 2014

I. SUMMARY OF THE INFORMATION WHICH FORMED THE BASIS FOR THE INVESTIGATION

The Whistleblower alleged that a Douglas Ranger District employee (Employee) engaged in conduct that, if true, could constitute violations of law, rule, or regulation; gross mismanagement; an abuse of authority; a gross waste of funds; and/or a specific and substantial danger to public health and safety.

On May 8, 2014, OSC referred the allegation and a request for an investigation to USDA Secretary Thomas J. Vilsack. On May 13, 2014, Secretary Vilsack referred the matter to the USDA Office of Inspector General (OIG) for investigation.

In brief, the Whistleblower alleged that on June 26, 2014, the Employee intentionally re-ignited the Brushy Fire in violation of Forest Service policies. Prior to the alleged re-ignition of the Brushy Fire, only a few acres had been consumed by fire. The Brushy Fire ultimately consumed approximately 5,935 acres and cost approximately \$580,000 to extinguish. The alleged re-ignition of the Brushy Fire could potentially violate various regulations if environmental plans, biologist reviews, and other reviews had not occurred prior to the burn.

II. DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION

USDA OIG conducted investigative interviews of Forest Service employees between May 29, 2014, and July 15, 2014. The names and titles of the employees OIG interviewed as part of the investigation are listed below, followed by the interview dates:

- [REDACTED], [REDACTED] (May 29, 2014)
- [REDACTED], [REDACTED] (June 17, 2014)
- [REDACTED], [REDACTED] (June 23, 2014)
- [REDACTED], [REDACTED] (June 23, and June 27, 2014)
- [REDACTED], [REDACTED] (July 1, 2014)
- [REDACTED], [REDACTED] (July 3, and 9, 2014)
- [REDACTED], [REDACTED] (July 9, and 10, 2014)
- [REDACTED], [REDACTED] (July 10, 2014)
- [REDACTED], [REDACTED] (July 14, 2014)
- [REDACTED], [REDACTED] (July 14 and July 16, 2014)
- [REDACTED], [REDACTED] (July 14, 2014)

- [REDACTED], [REDACTED] (July 15, 2014)
- [REDACTED] (August 19, 2014)

In order to determine the District's compliance with Federal requirements and if any Federal regulations were violated if the Brushy Fire was intentionally re-ignited, OIG investigators reviewed the following statutes, regulations, and documents:

- National Environmental Policy Act (NEPA), 42 U.S.C. § 4321. NEPA establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within Federal agencies. The Act also establishes the Council on Environmental Quality (CEQ).
- CEQ Regulations, 40 C.F.R. 1500-18. The regulations address the procedural provisions of NEPA and the administration of the NEPA process.
- Forest Service Manual National Headquarters, Washington, D.C., FSM 1900, Chapter 1950 – Environmental Policy and Procedures (June 12, 2012). The Manual states, "Compliance with NEPA is fundamental to managing all Forest Service resource, research, and cooperative forestry programs and must be integrated into the management processes of those programs."
- Johnson Peak Fire Management Plan (JPFMP). The JPFMP covers the area where the Brushy Fire took place. The burn plan for the Brushy Canyon area was being drafted but had not yet been approved at the time of the Brushy Fire.
- United States Fish and Wildlife Service's (FWS) Biological opinion regarding the JPFMP (September 7, 2007). The FWS opinion was assumed to be valid as there was no expiration date included in the analysis.
- Wildland Fire Amendment and Environmental Assessment to the 1986 Coronado National Forest Land and Resource Management Plan (CNF-LRMP). The CNF-LRMP documents are applicable to fires that occur within the Douglas Ranger District.

III. SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION

Witness Accounts

The Whistleblower alleged that firefighters from the Douglas Ranger district responded to and extinguished the June 24, 2010, lightning-induced Brushy Fire. The Whistleblower further alleges that on June 26, 2010, the Employee re-ignited the fire without the requisite approval and without following the requisite procedures.

In support of his allegation, the Whistleblower stated that during the morning of June 26, 2010, he and several others heard [REDACTED], [REDACTED], radio the dispatch and state the fire was out. When the Whistleblower arrived at the Brushy Fire location, he said there was no visible smoke. He stated that no one at the June 26, 2010, morning briefing indicated a

“burnout” was to occur.¹ The Whistleblower said he observed the Employee with a drip torch² lay fire about a “half of chain” (approximately 33 feet)³ from the blackened area.

Ms. [REDACTED] stated that on June 26, 2010, the Brushy Fire was not active and had no visible smoke. She also confirmed the June 26 morning briefing did not contain any information that a burn was to take place. She also stated that there was no reason to backburn the area.⁴ However, Ms. [REDACTED] did not corroborate the Whistleblower’s statement that she had notified dispatch that the fire was out; she stated that she did not contact dispatch and advise them that the fire had been extinguished. Ms. [REDACTED] explained that the Employee requested that she scout the containment lines in the area. Ms. [REDACTED] said she was making a wide loop around the Brushy Fire area when she heard the Employee’s request to dispatch for helicopter assistance to combat the growing fire.

During OIG’s initial interview, the Employee indicated that he did use a drip torch. The Employee was interviewed again and at that time he changed his statement to say that prior to the helicopter request, he did not use a drip torch to ignite the Brushy Fire. He stated at both interviews that he did not know that the Brushy Canyon area was a prescribed burn area scheduled to be burned in Fall 2010.

Two individuals who were present at the Brushy Fire site on June 26, 2010 ([REDACTED], [REDACTED] and [REDACTED], [REDACTED]) were interviewed. Mr. [REDACTED] stated that his crew of 20 firefighters was trying to hold a containment line at the time the helicopter assistance was requested. The Whistleblower believed Mr. [REDACTED] could provide additional information because he was near the Employee at the time of the alleged event. Mr. [REDACTED] was interviewed and stated he only observed the Employee watching the Brushy Fire from a rock shelf near the fire. He stated that while the fire picked up in size and intensity, as if a strip of fuel (that is, combustible materials naturally present on the forest floor) had been ignited, he did not see the Employee with a drip torch.

Forest Service Records

OIG investigators reviewed the WildCad Incident Card and the Individual Wildland Fire Report. The WildCad Incident Card provided dates and times that fire resources were committed to the Brushy Fire. The Individual Wildland Fire Report provided data on the overall fire consumption, costs, and initial strategy. The Report also provided transmissions between the field and dispatch. The Report indicated there was no transmission of information that the Brushy Fire was out (that is, had been extinguished) prior to or on June 26, 2010.

¹ “Burnout” or “backburn” refers to the process of setting fire inside a control line to widen it or consume fuel (*i.e.*, combustible material such as grass, leaves, shrubs, trees, litter, etc.) between the edge of the fire and the control line.

² A drip torch is a hand-held device for igniting fires by dripping flaming liquid fuel on the materials to be burned and consists of a fuel fount, burner arm, and igniter. Generally, a mixture of diesel and gasoline is used for this purpose.

³ A chain is a unit of linear measurement equal to 66 feet.

⁴ Backburn is synonymous with burnout. See footnote 1 above.

Brushy Fire Photographs

Mr. [REDACTED], [REDACTED], stated he was also told that the fire was out. On the morning of June 26, 2010, Mr. [REDACTED] arrived at the Brushy Fire and saw smoke. He then took several photographs which appear to indicate that the fire was purposely re-ignited.

OIG investigators reviewed the photographs of the fire taken on the morning of June 26, 2010, and asked two other experienced Forest Service employees to interpret the photos. The reviews yielded different opinions concerning the photos' meaning, thus failing to confirm whether the Brushy Fire had been extinguished and subsequently re-ignited.

Designated Burn Area

Mr. [REDACTED], [REDACTED], and Mr. [REDACTED], both stated the Brushy Fire occurred within a designated prescribed area that was set to be burned in Fall 2010. Mr. [REDACTED] stated he would be surprised if the Employee had re-ignited the Brushy Fire prior to the first helicopter being requested because both the Whistleblower and the Employee had started preparing the area for the scheduled prescribed burn before the Brushy Fire occurred. Mr. [REDACTED] admitted stating that the Brushy Fire was a "highly beneficial fire" and a "good fire." However, he denied telling anyone to keep the Brushy Fire burning. Mr. [REDACTED], in fact, contacted Forest Service Law Enforcement and Investigations personnel after the Whistleblower alleged that the Employee re-ignited the Brushy Fire.

Compliance with Federal Requirements

Mr. [REDACTED], [REDACTED], and Mr. [REDACTED], [REDACTED] for the Douglas District, Coronado National Forest, provided documents, including the Johnson Peak Fire Management Plan and the Coronado National Forest Land and Resource Management Plan (CNF-LRMP), that purported to demonstrate the District's compliance with Federal requirements. Significantly, the CNF-LRMP indicated in part that "Fire Management emphasis will be to permit lightning caused fires to play, as nearly as possible, their natural ecological role within the wilderness." Accordingly, if the Brushy Fire had not extinguished itself, the act of allowing the fire to burn as a resource benefit by Forest Service employees was within the scope of the CNF-LRMP. If, however, the Brushy Fire had extinguished itself, as some witnesses contended it had, the Employee's alleged re-igniting of the Brushy Fire may have been in violation of the CNF-LRMP.

IV. INVESTIGATIVE FINDINGS

The OIG investigation yielded contradictory accounts from witnesses concerning the Whistleblower's key factual contention that the Brushy Fire had been extinguished as of the morning of June 26, 2010, and was subsequently re-ignited. Similarly, OIG determined that there was no documentation in Forest Service records to indicate the Brushy Fire had been extinguished as of the morning of June 26, 2010. Therefore, the OIG investigation was unable to confirm the Whistleblower allegations at issue. No further action is needed because the Whistleblower's allegations could not be definitively corroborated.