



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

June 3, 2016

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

Re: OSC File No. DI-14-0293

Dear Mr. President:

Pursuant to my responsibilities as Special Counsel, I am forwarding reports from the U.S. Department of Agriculture (USDA) based on a disclosure of wrongdoing at the U.S. Forest Service (USFS), Douglas Ranger District, Coronado National Forest, Douglas, Arizona. Lawrence Martinez, a former Douglas Ranger District supervisory technician engine captain, disclosed that on June 26, 2010, Julio Robison, intentionally reignited a June 24, 2010 lightning-induced brush fire in the Chiricahua Mountains of the Coronado National Forest. The agency investigation did not substantiate the allegation. I have reviewed the reports and determined that they meet the statutory requirement and the findings appear reasonable.

I referred Mr. Martinez's allegations to Secretary of Agriculture Thomas Vilsack for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Vilsack referred the matter to the USDA's Office of Inspector General for investigation and submitted the agency's report to the Office of Special Counsel (OSC). In response to OSC's request for additional information, the USDA submitted a supplemental report. In accordance with 5 U.S.C. § 1213(e), I now provide the following summary of the investigation, whistleblower comments, and my findings.¹

According to Mr. Martinez, the original lightning-induced brush fire encompassed only one or two acres of land. The reignited fire, however, raged for more than a week, consumed an estimated 5,000 acres of the national forest, and cost more than \$800,000 to extinguish. Mr. Martinez stated that the area where the original June 24, 2010 fire occurred was scheduled for a prescribed fire in the fall of 2010 to rid the area of potentially

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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combustible debris. Thus, he alleged that USFS management used the June 24, 2010 fire and its alleged re-ignition on June 26, 2010, to achieve the goals of the scheduled prescribed fire, while avoiding the many layers of agency planning, notification, and approval required for a prescribed fire.

The USDA's investigation was unable to substantiate Mr. Martinez's allegation that Mr. Robison intentionally reignited the June 24, 2010 lightning-induced fire to circumvent USFS policies and procedures for prescribed fires. Specifically, the 13 witnesses whom the USDA investigators interviewed provided varying accounts concerning the extinguishment of the June 24, 2010 fire and its re-ignition on June 26, 2010. Furthermore, the USDA found no documentation in USFS records that the original fire had been extinguished as of the morning of June 26, 2010.

In his comments, Mr. Martinez disputed some of the witness statements, suggesting that witnesses may have withheld information from USDA investigators because they feared retaliation. He also highlighted inconsistencies in Mr. Robison's statements to the investigators concerning his use of a "driptorch," which is used to intentionally ignite fires, on June 26, 2010. Further, Mr. Martinez expressed dissatisfaction with the investigators' finding that there was insufficient information to conclude that the original fire had been extinguished by the morning of June 26, 2010. He noted that several witnesses confirmed that they heard Karalyn Peters, incident commander trainee, radio the dispatch that morning that there was no visible smoke at the site of the fire. According to Mr. Martinez, the lack of smoke translates to no fire; thus, investigators should have concluded that the fire was extinguished.

As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the unredacted agency reports and Mr. Martinez's comments to you, the Chairman and Ranking Member of the Senate Committee on Agriculture, Nutrition, & Forestry, and the Chairman and Ranking Member of the House Committee on Agriculture. I have also filed copies of this letter, the redacted agency reports, and the whistleblower comments in OSC's public file, which is available online at www.osc.gov.² This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

² The USDA provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. The USDA has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the USDA's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b), but has agreed to post the redacted version of the reports as an accommodation.