



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.

2014 OCT 23 AM 11:29

OCT 21 2014

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

Re: OSC File No. DI-140293

Dear Ms. Lerner:

On September 15 and September 17, 2014, you sent additional questions relating to the Douglas Ranger District Coronado National Forest Service Employees Report (Douglas Report), prepared by the USDA Office of Inspector General (OIG). Please find the responses to your questions, prepared by OIG, and copies of the additional memoranda of interview requested by your office. The Douglas Report and the responses to the questions are provided to you pursuant to 5 U.S.C. Section 1213.

Enclosed please find an additional copy of these records, redacted to protect the names of witnesses who provided factual information to OIG or individuals referenced during those interviews. The Department has determined that the individuals have a strong privacy interest in their involvement in this investigation. Certain individuals identified in these records may have rights under the Privacy Act. Records protected by the Privacy Act may only be disclosed with the consent of the individual to whom the records pertain or through one of the exceptions articulated in the Privacy Act. The Department has the authority to provide the information to the Office of Special Counsel pursuant to a Privacy Act exception; however, we respectfully request that the redacted version of these records be used for any public disclosure.

Please feel free to contact my office at (202) 720-3631 or Karen Ellis, Assistant Inspector General – Investigations, at (202) 720-3965 if you need additional information.

Sincerely,

Thomas J. Vilsack
Secretary

Enclosures



UNITED STATES DEPARTMENT OF AGRICULTURE



OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250

MEMORANDUM FOR THE SECRETARY

FROM: Phyllis K. Fong
Inspector General

OCT 15 2014

SUBJECT: OSC File No. DI-14-0293, Brushy Fire - Chiricahua Mountains, Douglas Ranger District, Coronado National Forest, Arizona

Pursuant to the requirements of 5 U.S.C. Section 1213(d), on May 8, 2014, the Office of Special Counsel (OSC) asked the Department of Agriculture (USDA) to conduct an investigation into the alleged June 2010 re-ignition of the Brushy Fire that occurred within the Chiricahua Mountains, Douglas Ranger District, Coronado National Forest, Arizona (OSC File No. DI-14-0293/OIG File No. SF-0801-0799). On May 13, 2014, you delegated responsibility for conducting this investigation to the Office of Inspector General (OIG). As a result, OIG conducted the investigation and submitted its report to you on August 22, 2014, and your office subsequently sent the Department's official response to OSC on September 10, 2014.

On September 15 and September 17, 2014, OSC sent additional questions pertaining to USDA's response in this matter. Additionally, OSC requested that several new interviews of Forest Service employees be conducted by OIG. Enclosed for your review and consideration are proposed responses to OSC's questions and copies of the additional memoranda of interview requested by OSC. OSC's due date as to when USDA should transmit this information to OSC is Friday, October 17, 2014.

Should you have any questions or require any additional information, please do not hesitate to call me at (202) 720-8001, or have a member of your staff contact Ms. Karen L. Ellis, Assistant Inspector General for Investigations, at (202) 720-3965.

Enclosures

Draft Supplemental Response to Questions from the Office of Special Counsel
OSC File No. DI-14-0293

1. *Had the prescribed fire scheduled for the fall of 2010 been approved as of June 26, 2010, or was the approval process still ongoing? Assuming it had been approved, please provide us with the appropriate Forest Service documentation to verify the approval?*

The local prescribed fire burn plan had not been approved as of June 26, 2010. However, it appears that two other governing documents regarding fire management policies were in place as of June 26, 2010: (1) The Wildland Fire Amendment and (2) Environmental Assessment to the 1986 Coronado National Forest Land and Resource Management Plan (CNF-LRMP). The CNF-LRMP documents, both dated June 2005, are applicable to lightning initiated fires that occurred within the Douglas Ranger District.

2. *According to the report, when interviewed a second time, Mr. ██████ stated that "prior to the helicopter request, he did not use a drip torch to ignite the Brushy Fire." Can we imply from this that Mr. ██████ used a drip torch after the helicopter request? Could you provide the rationale behind the investigator's decision to accept Mr. ██████'s revision of the facts?*

██████████, Forest Service (FS) ██████████, indicated he had participated in backburning operations sometime after the helicopter was requested through dispatch. During Mr. ██████'s first interview on June 23, 2014, he indicated that he had utilized a drip torch in burnout operations on June 26, 2010. In the second interview on July 10, 2014, Mr. ██████ indicated he only participated in burnout operations after the request for helicopter assistance was made. The investigative report did not accept Mr. ██████'s revision of the facts; rather, it reported the inconsistencies between Mr. ██████'s statements during his interviews.

3. *What prompted Mr. ██████ to summon the helicopter?*

Mr. ██████ indicated that he requested helicopter assistance when the fire grew in size and looked as if it was going to move uphill.

4. *The report indicates that "some witnesses" stated that the Brushy Fire had extinguished itself. Please identify the witnesses who testified to this. Were these witnesses told the fire was extinguished or did they personally observe the situation? Please identify the witnesses who testified to the contrary (i.e. that the fire was ongoing).*

In response to this request, all memoranda of interview (MOIs) were provided to OSC via email on September 26, 2014. The MOIs provide specific testimony given by the FS personnel interviewed and whether they considered the fire to be extinguished. Additionally, we are enclosing the subsequent interviews conducted at the request of OSC which also address this issue.

5. *Given that Mr. ██████ initially indicated he used a drip torch, the whistleblower claims he saw Mr. ██████ use a drip torch, and Mr. ██████ testified that, from his vantage point, he watched the fire pick up in size and intensity, "as if a strip of fuel...had been ignited," could*

you please explain how the investigator arrived at the conclusion that the fire was not re-ignited?

The investigator never concluded that the fire was not re-ignited. Rather, as noted in our initial report, due to the varying accounts from witnesses and the lack of documentation in USDA records that the fire had been extinguished, OIG was unable to confirm whether the Brushy Fire had been extinguished and subsequently re-ignited.

6. *The report indicates that [REDACTED], like the whistleblower and "some witnesses" testified that he was told the fire was extinguished. Mr. [REDACTED] then took photos which, according to his testimony, he believed documented that the fire was purposely re-ignited. Based on their review of these photos and the review of the photos by "two other experienced Forest Service employees," the OIG investigators concluded that the photos yielded different opinions and had no evidentiary value. Could you provide the rationale as to why the first-hand account of Mr. [REDACTED] was given less probative value than a review of still photos of the scene which occurred four years after the fact? Would you please identify the two Forest Service employees who examined the photos and provide copies of their statements/interviews?*

The OIG investigator never concluded that the photographs taken by [REDACTED] had no evidentiary value. Rather, the OIG investigator obtained the opinions of two current USDA FS employees: [REDACTED], FS Central Zone [REDACTED], and Mr. [REDACTED]. Mr. [REDACTED] indicated that fires in this area move in a predictable manner, as the Brushy Fire had. Both Mr. [REDACTED] and Mr. [REDACTED] indicated that the distance between the burnt areas from the previous day's burn and the re-ignition point was problematic. Mr. [REDACTED] indicated that there should be no gap between the active Brushy Fire area and the blackened area of the fire. Mr. [REDACTED] indicated that without a higher resolution of Mr. [REDACTED]'s photograph, it was impossible to conclude that there was not a burn line that extended from the original Brushy Fire area to the leading edge of the re-ignition point. Other than reporting what the investigator was told by these two witnesses, OIG did not draw any conclusions regarding the evidentiary value of Mr. [REDACTED]'s photographs. Copies of OIG's MOIs with these two employees were provided to OSC on September 26, 2014.

7. *We have identified a significant discrepancy in the report. According to the report, Mr. [REDACTED] stated that "he did not know that the Brushy Canyon area was a prescribed burn area scheduled to be burned in Fall 2010." Mr. [REDACTED] testified, however, that "he would be surprised if the Employee [Mr. [REDACTED]] had re-ignited the Brushy Fire prior to the first helicopter being requested because both the Whistleblower and the Employee [Mr. [REDACTED]] had started preparing the area for the scheduled prescribed burn before the Brushy Fire occurred." This contradiction in testimony was not addressed in the report. Would you please comment on this?*

OIG's investigative reports do not make inferences or provide opinions regarding what individual witnesses state during their interviews. Rather, they report the facts as told to the investigator as well as the inconsistencies between statements made by those interviewed. In this case, the OIG investigator questioned Mr. [REDACTED] about this issue, Mr. [REDACTED] stated that he

was not aware the area was a designated burn area, and the investigator memorialized this statement in an MOI.

8. *There seems to be a significant discrepancy between what [REDACTED] told the whistleblower he saw and his testimony as summarized in the report. Mr. [REDACTED] stated to the whistleblower that he was on a rock ledge on the morning of June 24 and watched Mr. [REDACTED] light the fire with a drip torch. According to the whistleblower, Mr. [REDACTED] told him he observed Mr. [REDACTED] through binoculars and, therefore, had a very clear view. We request that Mr. [REDACTED] be interviewed again to clarify this discrepancy.*

Mr. [REDACTED] was re-interviewed on September 19, 2014. During his second interview, Mr. [REDACTED] stated that he did not specifically see Mr. [REDACTED] with a drip torch. He also said that, based on the way the fire was trailing Mr. [REDACTED] in his opinion, a drip torch was the only piece of USDA FS equipment that performed in such a manner.

9. *According to the whistleblower, many Forest Service employees heard [REDACTED] declare the fire out on the radio. The exact language she used was there was "no smoke showing" which, among fire fighters means the fire is extinguished. Three individuals specifically identified by the whistleblower as having heard [REDACTED] say this and understood it to mean the fire was out are: [REDACTED], [REDACTED], [REDACTED].*

During Ms. [REDACTED] June 17, 2014, interview, she indicated she never radioed that the fire was out. On September 26, 2014, Ms. [REDACTED] was re-interviewed at which time she indicated that she may have broadcast over the radio the Brushy Fire had "no smoke showing." Ms. [REDACTED] also indicated that "no smoke showing" did not mean the fire was out. OIG interviewed [REDACTED] on September 17, 2014, and [REDACTED] on September 18, 2014. Both individuals stated that they never heard over the radio that the Brushy Fire was out or contained on June 26, 2010. In addition, both Mr. [REDACTED] and Mr. [REDACTED] were off duty on June 26, 2010. OIG interviewed [REDACTED] on July 11, 2014, and re-interviewed her on September 26, 2014. During her second interview, Ms. [REDACTED] reiterated that she heard Ms. [REDACTED] state on the radio that "no smoke was showing," but did not recall any radio traffic that indicated the fire was out or contained. Ms. [REDACTED] stated that the verbiage of "no smoke was showing" usually means that the fire was out.

10. *According to the whistleblower, he and several other witnesses interviewed pursuant to this investigation mentioned that [REDACTED], who was detailed to the [REDACTED] position on the day of the incident in question, could verify that the fire was extinguished. Mr. [REDACTED] according to the whistleblower, walked the perimeter of the original fire after the heavy rain had extinguished it and confirmed that the fire was out. We request that Mr. [REDACTED] be interviewed with regard to his observations of the fire and its status.*

Mr. [REDACTED] was interviewed on September 17, 2014. Mr. [REDACTED] said he never stated that the Brushy Fire was out or contained. According to Mr. [REDACTED] on June 25, 2010, between 1100 and 1300, he walked the perimeter of the Brushy Fire and after walking the perimeter, a hard rain

fell. Mr. [REDACTED] indicated that there were hotspots within the burned area and when he departed the area between 1400 and 1500, there was still smoke rising from the Brushy Fire.

MEMORANDUM OF INTERVIEW

Name: [REDACTED] File: SF-0801-0799
Title: [REDACTED] Date: September 17, 2014
Bozeman District Office
Address: 3710 Fallon St. Suite C Special Agent: Kevin Wall
Bozeman, MT 59718
Phone: 406-[REDACTED]

On September 17, 2014, USDA/OIG Special Agent Kevin Wall (SA WALL) interviewed [REDACTED] United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Bozeman District Office, Bozeman, Montana. Prior to the interview beginning, [REDACTED] was advised of his rights as a USDA employee and consented to be interviewed. [REDACTED] stated the following in substance:

He was detailed to the Coronado National Forest, Douglas Ranger District, Arizona, as the [REDACTED] for approximately twenty-one days. The detail ended on June 25, 2010. The [REDACTED]'s position required the individual to ensure that appropriate resources were dispatched to a fire, if additional items were in need or not needed, conduct a morning roll call, and ensure everyone was on duty. When he began his detail on the Douglas Ranger District, USDA FS [REDACTED] provided him an orientation of the district's area. Specifically, [REDACTED] indicated that the area in and around where the Brushy Fire occurred was within a predetermined burn area.

On June 25, 2010, he was present on the Brushy Fire. The Incident Commander (IC) was a female, [REDACTED] (name unknown). USDA FS employee [REDACTED] ([REDACTED]), who was in charge of the on-scene handcrew, may have been the IC. On June 25, 2010, between 11:00 and 13:00, he conducted a perimeter walk around the fire. The Brushy Fire was approximately a ¼ acre in size, had visible smoke, and had hot spots. While walking the perimeter, he spoke with the IC [REDACTED]. He told her that she was "doing a good job," "looked good," and "looks like you caught it." Control lines around the Brushy Fire were either constructed by the handcrew or utilized natural barriers. After walking the fire's perimeter, he headed back to his truck, which was parked with other vehicles on Rucker Road. At his vehicle, he met with USDA FS [REDACTED] and USDA FS [REDACTED]. He told [REDACTED] and [REDACTED] that the fire "looked good" and "looks like you caught it." While he was speaking to [REDACTED] and [REDACTED], it began to rain hard, and they all went into their vehicles to escape the rain. At around 14:00 – 15:00, he departed the Brushy Fire area and drove to the District Ranger Station. After stopping at the District's Ranger Station, he drove to Bisbee, Arizona, where he was being temporarily lodged. On June 26, 2010, he departed Bisbee for Montana.

When he left the Brushy Fire on June 25, 2010, there were still hotspots and smoke. With a good wind, the Brushy Fire could have picked up and spread. He never told anyone the fire was out or contained. If the Brushy Fire had re-ignited, a line officer such as the District's Ranger, could make the decision as to whether or not to allow the fire to continue to burn as a resource benefit.

MEMORANDUM OF INTERVIEW

Name: [REDACTED]
Title: [REDACTED]
Coronado National Forest
Address: 4070 S. Avenida Saracino
Hereford, AZ
Phone: 520 [REDACTED]

File: SF-0801-0799
Date: September 17, 2014
Special Agent: Kevin Wall

On September 17, 2014, USDA/OIG Special Agent Kevin Wall interviewed [REDACTED] ([REDACTED]), United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Coronado National Forest, Sierra Vista Ranger District, Hereford, Arizona. Prior to the interview beginning, [REDACTED] was advised of his rights as a USDA employee and consented to be interviewed. [REDACTED] stated the following in substance:

On June 25, and 26, 2010, [REDACTED] was off-duty. Up through June 29, 2010, [REDACTED] never heard a radio transmission that the Brushy Fire was out or contained. On June 27, and 28, 2010, [REDACTED] was patrolling the Sierra Vista Ranger District.

[REDACTED] was dispatched to the Brushy Fire and arrived on the afternoon of June 29, 2010. At this time, the Brushy Fire had consumed approximately 100 acres. When [REDACTED] responded to the Brushy Fire, USDA FS [REDACTED] [REDACTED] was the assigned Incident Commander.

MEMORANDUM OF INTERVIEW

Name: [REDACTED]
Title: [REDACTED]
Coronado National Forest
Address: 303 Old Tucson Road
Nogales, AZ
Phone: 520. [REDACTED]

File: SF-0801-0799
Date: September 18, 2014

Special Agent: Kevin Wall

On September 18, 2014, USDA/OIG Special Agent Kevin Wall interviewed [REDACTED] [REDACTED] United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Coronado National Forest, Nogales Ranger District, Nogales, Arizona. Prior to the interview beginning, [REDACTED] was advised of his rights as a USDA employee and consented to be interviewed. [REDACTED] stated the following in substance:

In June 2010, [REDACTED] was a USDA FS [REDACTED] assigned to the Coronado National Forest, Sierra Vista Ranger District, Sierra Vista, Arizona. On or about June 11, 2010, [REDACTED] was assigned to the Horseshoe One Fire. Due to the limitation of continuous days worked, it was mandatory [REDACTED] take time off. [REDACTED]'s last day on the Horseshoe One Fire was June 24, 2010. On June 25, 2010, [REDACTED] traveled back to the Sierra Ranger District. [REDACTED] was off duty on June 26, and 27, 2010. [REDACTED] did not monitor radio traffic on June 26, and 27, 2010. Prior to or after his days off on June 26, and 27, 2010, [REDACTED] did not remember hearing radio traffic that the Brushy Fire was out or contained.

MEMORANDUM OF INTERVIEW

Name: [REDACTED]
Title: [REDACTED]
Coronado National Forest
Address: 1192 W. Saddleview Rd.
Douglas, AZ
Phone: 520-[REDACTED]

File: SF-0801-0799
Date: September 19, 2014
Special Agent: Kevin Wall

On September 19, 2014, USDA/OIG Special Agent Kevin Wall (SA WALL) interviewed [REDACTED] United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Coronado National Forest, Douglas District, Douglas, Arizona. Prior to the interview beginning, [REDACTED] was advised of his rights as a USDA employee and consented to be interviewed. [REDACTED] stated the following in substance:

On June 25, 2010, [REDACTED] met with USDA FS employee [REDACTED] while transporting horses to the East Cochise Stronghold. [REDACTED] told [REDACTED] the Brushy Fire was out while unloading the horses.

On June 26, 2010, between 0900 and 1000, [REDACTED] arrived at the Brushy Fire. [REDACTED] stopped approximately ¼ mile from the Brushy Fire along Rucker Road. As smoke began to rise from the Brushy Fire area, [REDACTED] witnessed USDA FS employee [REDACTED] emerge from the smoke and appeared to be laying fire with a drip torch.

Agents Note: When [REDACTED] indicated that he observed [REDACTED] with a drip torch, [REDACTED] was advised that in 2010, he provided a statement to USDA FS that he did not see [REDACTED] with a drip torch, and then again on July 1, 2014, he told SA WALL that he did not observe [REDACTED] with a drip torch. After further questioning, [REDACTED] stated that he did not specifically see [REDACTED] with a drip torch, but the way the fire was being laid by [REDACTED], a drip torch was the only piece of USDA FS equipment that performed in such a manner.

[REDACTED] may have told USDA FS employee [REDACTED] that he witnessed [REDACTED] with a drip torch. When [REDACTED] moved uphill with fire following him, a drip torch was the only possible answer as to why fire was moving in such a way around [REDACTED] as he walked.

MEMORANDUM OF INTERVIEW

Name: [REDACTED] File: SF-0801-0799
Title: [REDACTED] Date: September 26, 2014
Gila National Forest
Address: 3005 E. Camino Del Bosque Special Agent: Kevin Wall
Silver City, NM 88061
Phone: 575-[REDACTED]

On September 26, 2014, USDA/OIG Special Agent Kevin Wall (SA WALL) interviewed [REDACTED], United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Gila National Forest, Silver City, New Mexico. [REDACTED] stated the following in substance:

[REDACTED] was not working the Brushy Fire; however, she was working on the Sierra Vista District, and was monitoring radio traffic. Sometime on June 26, 2010, she heard the [REDACTED] [REDACTED] say over the radio after [REDACTED] had walked the perimeter of the fire that "no smoke was showing." [REDACTED] did not remember if [REDACTED]' announcement occurred over the tactical channel or the dispatch channel. [REDACTED] did not recall any radio traffic that indicated the fire was out or contained. The announcement of "no smoke was showing" usually means that the fire was out.

MEMORANDUM OF INTERVIEW

Name: [REDACTED] File: SF-0801-0799
Title: [REDACTED] Date: September 26, 2014
Sierra Vista Ranger District
Address: 4070 South Avenida Saracino Special Agent: Kevin Wall
Hereford, AZ 85615
Phone: 520-[REDACTED]

On September 26, 2014, USDA/OIG Special Agent Kevin Wall re-interviewed [REDACTED] aka [REDACTED], United States Department of Agriculture (USDA) Forest Service (FS) [REDACTED] assigned to the Coronado National Forest, Sierra Vista Ranger District, Hereford, Arizona. Prior to the interview beginning, [REDACTED] was advised of her rights as a USDA employee and consented to be interviewed. [REDACTED] stated the following in substance:

She may have broadcasted over the radio that the Brushy Fire had “no smoke showing.” She could not recall if the broadcasted message utilized the dispatch frequency or the tactical frequency. The fact that she said there was “no smoke showing” did not indicate that the fire was out, especially since there was a possibility that the fire could contain hotspots that would flare up and could begin to burn.