



Patricia A
Grantham/R10/USDAFS
04/12/2006 11:05 AM

To pdl r10 tongass petersburg@FSNOTES
cc Karlene K Hale/R10/USDAFS@FSNOTES, Olike E
Rappe-Daniels/R10/USDAFS@FSNOTES
bcc
Subject Glen's Detail

Good morning. As of yesterday, Glen lth began a detail to the SO working on wildlife issues related to the Forest Plan amendment. He is working on a migratory bird assessment which will help bring the Tongass in line with work that's been happening on the Chugach. This detail is expected to last about 90 days. Chris Savage will continue to be Glen's supervisor, at least in the short term.

As you know, Glen is involved in a lawsuit against the Forest Service and, specifically, against some work done here at PRD. The nature of attorney-client privileged work and other deliberative discussions here at the District involving the lawsuit made it inappropriate for Glen to continue to work in our building. This detail protects the interests of both Glen and the government, as we share printers, computer files, have limited private meeting space, etc.

If you have specific project email lists that include Glen, it would be good for you to revise them. If you need to get a hold of Glen for some reason, his new number in the SO is 5805.

I am hoping to get a detailer in to fill behind Glen.

Please come and see me if you have questions. I will do my best to answer them. I'm not sure how many folks are aware of it, but much of what we've gone through in the past few months has been new ground for the agency. Above all, I'd like to thank everyone who has continued to do your normal most excellent level of work through a situation that has been quite challenging at times. I admire you.

Patricia A. Grantham
District Ranger
Petersburg Ranger District
Tongass National Forest
P.O. Box 1328
Petersburg, AK 99833
voice (907) 772-5900
fax (907) 772-5995
pagrantham@fs.fed.us



Tim A Obst/NONFS/USDAFS

05/08/2006 04:10 PM

To Karlene K Hale/R10/USDAFS@FSNOTES

cc Forrest Cole/R10/USDAFS@FSNOTES, Olleke E
Rappe-Daniels/R10/USDAFS@FSNOTES

bcc

Subject Ethics Issue Research

Confidential and Attorney-Client Privileged

Karlene -

My research on the ethical issues involved has found two other cases in which a Forest Service employee filed an Administrative Procedure Act lawsuit against the Forest Service. Of all the OGC and FS folks I have talked to, none can remember any others. You might not be surprised to learn that both were on the Tongass NF. The Forest Service has not asserted defenses against claims made by federal employees in other APA or environmental law litigation based upon their status as federal employees. A third case of interest was a lawsuit brought by an EPA attorney. Only in one of these cases was personnel action taken against the employee, and that was later withdrawn.

Mary Dalton and FSEEE v. U.S. Forest Service, No. 97-0774 (D.D.C.) involved a Forest Service biologist challenging the 36 CFR 215 appeal regulations prohibition against Forest Service employees filing administrative appeals. Although the conflict of interest issues received considerable attention in internal discussions, the government's motion for summary judgment did not argue any standing issues or jurisdictional issues based upon the status of the plaintiff as an employee or her involvement on the project interdisciplinary team. The litigation was settled before a decision on the merits was issued. The settlement resulted in a change to the 36 CFR 215 appeal regulations such that Forest Service employees were no longer prohibited from filing appeals (see 63 Fed. Reg. 4187). Personnel action was taken against the employee, but the action was later withdrawn and damages paid to the employee under a settlement.

William Shoaf v. Powell, No. A96-137-cv (D. Alaska) involved a NEPA, TTRA and APA challenge a timber sale on the Tongass NF. The lead plaintiff was no longer a Forest Service employee, but prior to his retirement he had been the interdisciplinary team leader for the entire project until publication of the ROD. The government did not argue any standing issues or jurisdictional issues based upon the status of the plaintiff having worked extensively on the project when he was as an employee. The court denied plaintiff's request for preliminary relief and the action was dismissed by stipulation because timber sale would have been substantially completed.

Dubois v. U.S. Dept. of Agriculture, 102 F.3d 1273 (1st Cir., 1996) involved a NEPA and CWA challenge to a Forest Service permit for the expansion of a ski area in New Hampshire. The plaintiff was an EPA attorney in Washington D.C. who was appearing pro se. The government challenged the plaintiffs' standing to bring the case on injury in fact grounds, but no defense was asserted on the basis that the challenge was brought by a federal employee.

Protection for Whistleblowers in Environmental Laws

The Merit Systems Protection Board has found that an employee's disclosure that proposed timber sale would violate NEPA and Federal Land Policy and Management Act (FLPMA) was protected by the Whistleblowers Protection Act. Bump v. Department of Interior, 69 M.S.P.R. 354 (M.S.P.B. Jan 23, 1996) affirmed at 217 F.3d 854 (Fed.Cir. Oct 07, 1999) (Table). Attached is a copy of the MSPB case.



WLEDoc04_28_2006_03_09PM.doc

At least six federal environmental laws specifically prohibit retaliation against employees who file claims, testify, or provide information against their employer under the Act:

- Toxic Substances Control Act, 15 U.S.C. § 2622;
- CERCLA, 42 U.S.C. § 9610;
- Water Pollution Control Act, 33 U.S.C. § 1367;
- Solid Waste Disposal Act, 42 U.S.C. § 6971;
- Clean Air Act, 42 U.S.C. § 7622;
- Safe Drinking Water Act, 42 U.S.C. § 300j 9

The statutes invoked in *FSEEE v. USFS*, however, do not contain a specific whistleblower provision.

New Ethics Issue

The filings on Friday by *FSEEE* raise new ethics issues, however. It appears to me that the motion and declaration by the employee may in themselves violate ethics and Touhy regulations. In particular, the declaration does not state that it is being given in a personal capacity, and it appears to draw upon the employee's status as a government employee to build credibility of the testimony. The questions that need to be explored are:

1. Is there a reasonable likelihood that the motion and declaration may violate the Touhy regulations as the employee providing testimony against the United States without approval by the agency? How can that testimony be differentiated from testimony by an employee in EEO litigation against the agency?
2. Is there a reasonable likelihood that the motion and declaration may violate the ethics regulations by providing expert testimony on behalf of a litigant? (See especially the brief at page 22.)
3. What process should be followed by the agency to determine whether a violation occurred so that any action is defensible against possible claims of retaliation against alleged whistleblowing by the employee?
4. How can any personnel action taken on the ethics and Touhy matters be taken without undermining the litigation strategy in the environmental litigation, which seeks to inform the court that very little is not moot in the litigation?

In order to be at our most defensible position, I am thinking that we ought to formally refer the matter to the Forest Service ethics officer for advice on whether or not there is a violation in this matter. Attached are the brief and declaration by Glen Ith.



TRO Brief.pdf Ith Declaration.pdf

Tim Obst
Assistant Regional Attorney
USDA Office of the General Counsel
Juneau Office, Pacific Region
907-586-8826

USFS Allows Employee Appeals

Greenwire

December 4, 1997

In response to a whistleblower lawsuit, the U.S. Forest Service plans to drop a regulation that forbids employees from challenging agency actions through the citizen appeal process. USFS biologist Mary Dalton sued in April after she was suspended and then transferred when she filed an administrative appeal in 1996 challenging a timber sale on Alaska's Tongass National Forest. She claimed that the required environmental impact statement omitted most of her research about potential damages from logging to wildlife habitat.

U.S. District Judge James Robertson last week postponed any ruling in the case, giving the USFS 60 days "to make good on its pledge to formally rescind" the 1989 regulation that bars agency workers from using the appeals process.

But the agency is going ahead with plans to auction off the timber sale that Dalton found questionable, arguing that the period in which to have an administrative appeal heard ended in 1996.

Andy Stahl of the Association for Forest Service Employees for Environmental Ethics, which is representing Dalton: "It's really a remarkable sleight of hand. First they shot the messenger and now they are blaming her for their own refusal to revive her appeal."

Dalton has asked Phil Janik, the USFS regional boss, to postpone the sale so that her appeal can be considered. And she is fighting her transfer out of Alaska in a separate action through the federal employee system (*AP/Ashland Daily Tidings*, Nov. 28).

4-67

Lori Delgado/WO/USDAFS
06/27/2006 05:56 AM

To: Karlene K Hale/R10/USDAFS@FSNOTES
cc: Melvin Y Shibuya/HCM/USDAFS@FSNOTES
bcc:
Subject: Re: Glen Ith - OIG assistance requested

Hi Karlene,

We had a meeting on this issue. It's my understanding that Melvin Shibuya will make arrangements for a FS credentialed investigator to assist. You can contact Melvin at 703-605-0826.

Lori Delgado
Forest Service Ethics Advisor
Phone: 703-605-0856
FAX: 703-605-5107
E-Mail: LoriDelgado@fs.fed.us
Karlene K Hale/R10/USDAFS



Karlene K Hale/R10/USDAFS

06/23/2006 09:04 PM

To: Lori Delgado/WO/USDAFS@FSNOTES
cc:
Subject: Glen Ith - OIG assistance requested

Hi Lori - I am needing assistance in reaching an appropriate contact in the OIG. Specifically, I made 5 telephone contacts to the OIG Hotline on June 15 and June 16, 2006. An electronic voice told me everyone was busy helping others. One of the electronic options was to file a detailed message to the OIG on-line hotline. I did this on Friday, June 16, 2006, and have not received a response to date. The situation is regarding an employee of the Tongass National Forest, Glen Ith. He is a wildlife Biologist, GS-486-9, on the Petersburg Ranger District in Petersburg Alaska. I reported to OIG what I believe may be a violation of law and regulations. Mr. Ith has filed a law suit in conjunction with the FSEEE (Forest Service Employees for Environmental Ethics). He has used this website to solicit funds, requesting funds amounting to \$50,000, to litigate this lawsuit. After discussion with Tim Obst, Office of Special Council in R10, and the Tongass NF Forest Supervisor, I tried to approach OIG with questions regarding First Amendment rights, versus the fairly obvious ethics violations of soliciting funds for nonfederal organizations. I would like to proceed with disciplinary actions, but do not want to continue without the input and assurance of OIG regarding these matters. I have attached the fund-raising article for your reference. If you have a FS contact with the OIG that is responsive and can provide assistance I would appreciate your sharing this information. Thank you. Karlene

FSEEE Appeals

Help Save the Tongass

HELP SAVE THE TONGASS

Hello, my name is Glen Ith and I am seeking your help. I've worked for the Forest Service for 25


Forrest Cole/R10/USDAFS

06/27/2006 02:50 PM

To MaryAnne Young/R10/USDAFS@FSNOTES

Karlene K Hale/R10/USDAFS@FSNOTES, Olleke E
cc Rappe-Daniels/R10/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES

bcc

Subject Re: Fw: lth 

You were on my list of calls to make today regarding this. My read is that he has created a conflict of interest in filing a lawsuit against the FS related to work he has been hired to do. He has exacerbated this situation while openly promoting fund raising activities on the AFSEEE website to continue his litigation on projects on the Forest he is assigned as well as those he is not. The job he has been temporarily been assigned, while the FS prepares the litigation information associated with his complaint, is about over. Our current funding situation does not allow the Tongass to assign new jobs in lieu of what he is suppose to be doing. Placing him back on the District is not an option while the case is pending. Placing him in a job that we have no funding to cover is not an option.

Karlene was unsuccessful in getting anyone to talk to her about the case. It appears you are having similar difficulties. If we do not have a read on whether or not my interpretation of the situation is correct by the time the project he is currently assigned is over, I intend to place him on leave (admin or otherwise) to preserve the Forest's ability to continue working. I realize this is not the best supported strategy but lacking timely input on this situation leaves me in a position to make the best decisions on the information we can generate from here.

If you get the opportunity to talk to an investigator, please let them know we have a timeline issue and I would appreciate a review of this situation as soon as possible.

Forrest Cole
Forest Supervisor
R10 - Tongass National Forest
Ph: 907-228-6281 Fax: 907-228-6292
Email: fcole@fs.fed.us



MaryAnne
Young/R10/USDAFS
06/28/2006 09:24 AM

To Forrest Cole/R10/USDAFS@FSNOTES
Karlene K Hale/R10/USDAFS@FSNOTES, Olleke E
cc Rappe-Daniels/R10/USDAFS@FSNOTES, Melvin Y
Shibuya/HCM/USDAFS@FSNOTES
bcc
Subject Re: Fw: Ith

Forrest,

I just got off the phone with Melvin Shibuya at the WO. A Personal Misconduct Investigator has been assigned to the issue and will be traveling up to Ketchikan very soon.

Some logistics need to be worked out later today. Her name is Carol Kittson - she is an ER Specialist employed by the Forest Service in Region 1 who will be representing the WO in her capacity as Investigator. Melvin will be sending her a note today about the investigation and related trip, copying you and me.

Regarding the pending administrative leave decision, Melvin stated that the WO does not prefer it as a step to take in such a situation, but the circumstances and timing make it a necessary step; they are supportive of it being the only option available right now to protect the interests and integrity of the Forest Service position at this time. When time and money for Mr. Ith's current detail runs out, administrative leave is the next logical step in protecting the Forest Service.

Let me know if there is anything else I can do to help at this time.

Mary Anne

MARY ANNE YOUNG
Acting Deputy Regional Forester, Operations
Alaska Region - USDA, Forest Service
E-mail: maryanneyoung@fs.fed.us
Phone: 907.586.7945
Fax: 907.586.7840
"A problem well stated is a problem half solved."
-Albert Einstein

Forrest Cole/R10/USDAFS

Forrest Cole/R10/USDAFS
06/27/2006 02:50 PM

To MaryAnne Young/R10/USDAFS@FSNOTES
Karlene K Hale/R10/USDAFS@FSNOTES, Olleke E
cc Rappe-Daniels/R10/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES
Subject Re: Fw: Ith



Melvin Y
Shibuya/HCM/USDAFS
06/28/2006 12:23 PM

To Carol Kittson/R1/USDAFS@FSNOTES
MaryAnne Young/R10/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES, Sherry
cc Hooper/WO/USDAFS@FSNOTES, Lori
Delgado/WO/USDAFS@FSNOTES

bcc

Subject Misconduct Investigation – Glenn Ith

Carol:

I understand you've consented to conduct an administrative investigation on the matter of Glenn Ith who has apparently enjoined the Forest Service Employees for Environmental Ethics in a lawsuit against the agency for violation of NEPA and related environmental regulations.

I put MaryAnne Young, Acting DRF and Forrest Cole, Forest Supervisor, Tongass NF in this email so they can correct any errors in my cursory understanding of the case and what you're charged with investigating. They will add or correct stuff in this email.

OGC is defending the agency against the lawsuit filed by FSEEE in which the employee is party. That "tracks" separately from your investigation. What we're looking for is whether the employee breached any ethical rules under 5 USC 2635 et seq.

That is, did he use "inside information" that he acquired during the course of his duties in violation of ethics?

Can he, as an employee of the agency be a party in a lawsuit against the agency?

Did he engage in proscribed activity when he solicits funds from perhaps prohibited sources to fund the lawsuit against the agency?

Did his misuse his position in any way in this matter? Did he abuse his position by soliciting funds as a FS employee? Did he engage in any proscribed activity on "company" time when such outside activities should not have been?

I'll leave it to the others to correct misapplications or add to this list.

Please call MaryAnne and Forrest to coordinate your travel.

Normally, I'd tell you to contact me for more information, but the well is dry.

Melvin Y. Shibuya
Employee Relations
Phone # (703) 605-0826
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us



Tim A Obst/NONFS/USDAFS
07/12/2006 08:59 AM

To Keith Simila/R10/USDAFS@FSNOTES, Denny
Bschor/R10/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES, Patricia A
Grantham/R10/USDAFS@FSNOTES, Christopher S
Savage/R10/USDAFS@FSNOTES, Carol
Kittson/R10/USDAFS@FSNOTES, bruce.landon@usdoj.gov,
Stacie Mason/R10/USDAFS@FSNOTES, Karlene K
Hale/R10/USDAFS@FSNOTES

cc

bcc

Subject Ethics Investigation

Since we are threatened with a lawsuit and TRO in the ethics investigation, the advice from OGC is that we close the loop with OIG before the interview with the employee tomorrow. If anyone knows whether OIG has been contacted and whether they have declined to investigate, please let me know right away. Otherwise I will try to get with Karlene and OIG and sort that out today, if possible.

Tim Obst
Assistant Regional Attorney
USDA Office of the General Counsel
Juneau Office, Pacific Region
907-586-8826

Forrest Cole/R10/USDAFS

07/12/2006 09:15 AM

To Tim A Obst/NONFS/USDAFS@FSNOTES

bruce.landon@usdoj.gov, Carol
 Kittson/R1/USDAFS@FSNOTES, Christopher S
 Savage/R10/USDAFS@FSNOTES, Denny
 cc Bschor/R10/USDAFS@FSNOTES, Karlene K
 Hale/R10/USDAFS@FSNOTES, Keith
 Simila/R10/USDAFS@FSNOTES, Patricia A
 Grantham/R10/USDAFS@FSNOTES

bcc

Subject Re: Ethics Investigation

We made numerous attempts to make contact with OIG thru voice mail, email, and even the hotline without any response. That aside, the investigation currently taking place is for the benefit of the government as well as the employee. If nothing is found that bars me from putting him back into his original job I intend to do this expeditiously. At the moment there is an obvious cloud hanging over this move due to questions relating to conflict of interest, employee consultation with litigant during work hours, information paid for by the government without being accessible by the public and deciding official, and ethic violations. Mr. Ith has been assigned work unrelated to the current case under litigation. This work will soon culminate prior to the disposition of the litigation. I need to know whether or not I can put him back into his job without impairing the Forest Service ability to perform work. There is no funding to continue in his current assignment.

Forrest Cole
 Forest Supervisor
 R10 - Tongass National Forest
 Ph: 907-228-6281 Fax: 907-228-6292
 Email: fcole@fs.fed.us
 Tim A Obst/NONFS/USDAFS



Tim A Obst/NONFS/USDAFS

07/12/2006 08:59 AM

Keith Simila/R10/USDAFS@FSNOTES, Denny
 Bschor/R10/USDAFS@FSNOTES, Forrest
 Cole/R10/USDAFS@FSNOTES, Patricia A
 Grantham/R10/USDAFS@FSNOTES, Christopher S
 To Savage/R10/USDAFS@FSNOTES, Carol
 Kittson/R1/USDAFS@FSNOTES, bruce.landon@usdoj.gov,
 Stacie Mason/R10/USDAFS@FSNOTES, Karlene K
 Hale/R10/USDAFS@FSNOTES

cc

Subject Ethics Investigation

Since we are threatened with a lawsuit and TRO in the ethics investigation, the advice from OGC is that we close the loop with OIG before the interview with the employee tomorrow. If anyone knows whether OIG has been contacted and whether they have declined to investigate, please let me know right away. Otherwise I will try to get with Karlene and OIG and sort that out today, if possible.

 Tim Obst
 Assistant Regional Attorney
 USDA Office of the General Counsel
 Juneau Office, Pacific Region
 907-586-8826



Tim A Obst/NONFS/USDAFS
07/12/2006 11:28 AM

Denny Bschor/R10/USDAFS@FSNOTES, MaryAnne Young/R10/USDAFS@FSNOTES, Keith Simila/R10/USDAFS@FSNOTES, Karlene K Hale/R10/USDAFS@FSNOTES, bruce.landon@usdoj.gov, Forrest Cole/R10/USDAFS@FSNOTES, Olleke E Rappe-Daniels/R10/USDAFS@FSNOTES, Carol Kittson/R10/USDAFS@FSNOTES, Jacqueline Myers/WO/USDAFS@FSNOTES, Jack.Cipsman@usda.gov, jeff.moulton@usda.gov, Cherie Shelley/R10/USDAFS@FSNOTES, Paul Brewster/R10/USDAFS@FSNOTES, Christopher S Savage/R10/USDAFS@FSNOTES, Patricia A Grantham/R10/USDAFS@FSNOTES

cc
bcc

Subject: Conf Call Today at 12:30 AKT, 1:30 PT, 4:30 ET

I would scheduled a conference call for today at 12:30 AKT, 1:30 PT, 4:30 ET to discuss the ethics issues related to FSEEE v. USFS. Please call into 907-586-7820 at that time.

The latest developments are that the Chief has assigned Jacque Myers to be a point person on the employee-litigant issues, and FSEEE won't be filing an amended complaint as they need to seek leave from the court before they do so. Their proposed amended complaint includes at least the following new claims:

44. In June 2006, as an FSEEE member, Glen Ith signed a fundraising letter that FSEEE sent to its 12,000 members to explain the facts and background of the ongoing road reconstruction case against the Forest Service. In that letter, Mr. Ith asked FSEEE's members to help contribute to FSEEE's expenses in the ongoing case. All of the work concerning the June 2006 letter was on Mr. Ith's own time, and not as a Forest Service employee. All of the time Mr. Ith has spent on the litigation against the Forest Service has been on his own personal time. At PAGE 11, PLAINTIFFS' THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

no time did Mr. Ith use official Forest Service time or equipment, or Forest Service information not otherwise available to the public.

45. On July 10, 2006, Glen Ith was informed by his supervisor, Chris Savage, that an investigation is being conducted by the Forest Service concerning Mr. Ith's participation in the FSEEE fundraising effort. Mr. Ith was informed that he would be subjected to questioning on this matter at 1:00 pm on Thursday, July 13, 2006, in Petersburg, Alaska, by a special investigator who works for the Forest Service.

CLAIM V: The Forest Service Has Violated the First Amendment and 42 U.S.C. § 1983 Through Intimidation and Attempts to Suppress and Limit Mr. Ith's Free Speech and Active Involvement in this Case

64. Plaintiffs hereby incorporate by reference all preceding paragraphs.

65. The First Amendment to the United States Constitution provides that "Congress shall make no law...abridging the freedom of speech, . . . Or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

66. 42 U.S.C. § 1983 provides: "Every person who, under color of any statute...subjects, or cause to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

67. The United States Supreme Court has recognized that public employees cannot be compelled to relinquish their First Amendment rights to comment on matters of public concern as a condition of public employment. See *Pickering v. Board of Education of Township High School District 205*, 391 U.S. 563 (1968).

68. Glen Ith's involvement in this case as a public citizen is "speech" protected by the First Amendment. Mr. Ith's June, 2006, letter to FSEEE's members is also "speech" protected by the First Amendment.

69. The above allegations establish that the Forest Service has, under color of federal law, had a chilling effect and otherwise deprived Glen Ith of his First Amendment rights of free speech through the agency's actions towards him as the result of his association with FSEEE, his participation in a public interest lawsuit against the Forest Service, and his participation in fundraising efforts regarding this lawsuit. The Forest Service has thereby violated the First Amendment and 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court:

H. Enjoin the Forest Service from continuing its investigation into the involvement of Mr. Glen Ith in a public interest lawsuit against the Forest Service, including Mr. Ith's involvement in FSEEE's fundraising efforts regarding the lawsuit;



United States
Department of
Agriculture

Forest
Service

Tongass
National
Forest

Petersburg
Ranger
District

P.O. Box 1328
Petersburg, Alaska 99833
(907) 772-3871
(907) 772-5995 (fax)

5-30

10

File Code: 6170

Date: July 13, 2006

Route To:

Subject: Letter of Instruction

To: Glen G. Ith

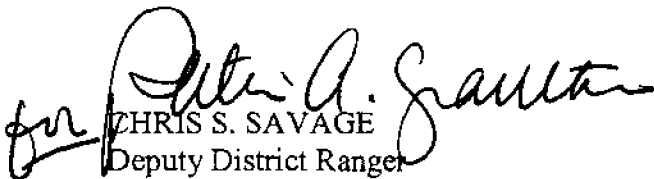
This memorandum is to inform you of your responsibilities as an employee of the USDA Forest Service to cooperate with an administrative misconduct investigation.

You were informed on Monday, July 10, 2006, of a scheduled appointment for you to be interviewed with Carol Kittson, Misconduct Investigator, on Thursday, July 13, 2006.

USDA Employee Responsibilities and Conduct, Personnel Bulletin: 735-208c, states that employees are obligated to give information they possess to authorized representatives of the Department or Mission Area or Agency when called upon, if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of relationships incident to such employment. This shall include the furnishing of a signed, sworn/affirmed statement. Failure to respond to requests for information or to appear as a witness in an official proceeding may result in consideration of disciplinary action.

As a bargaining unit employee, you have the right to request union representation during the course of this inquiry, if you reasonably believe it may lead to disciplinary action. This is called the Weingarten Right.

Should you have any questions regarding these responsibilities you are to direct them to Karlene Hale, Employee Relations Specialist, at (907) 228-6249.


CHRIS S. SAVAGE
Deputy District Ranger

Cc:NFFE



Kalkines Warning

For a compelled interview with existing or potential administrative consequences, you are informed of the following:

- 1) You are going to be asked a number of specific questions regarding the performance of your official duties.
- 2) You have a duty to reply to these questions, and agency disciplinary action resulting in your discharge may be initiated as a result of your answers. The information you provide and evidence discovered may be used in a disciplinary proceeding.
- 3) However, neither your answers nor any information or evidence which is gained by reason of such statements can be used against you in any criminal proceeding. If you knowingly and willfully provide false information, you may be criminally prosecuted for that action.
- 4) You are subject to dismissal if you refuse to answer or fail to respond truthfully to any questions.

Do you understand the information listed above?

Glen Ith
Printed Name of Employee

7/13/06
Date

[Signature]
Signature of Employee

7/13/06

Carol A. Kittson
Printed Name of Interviewer

7/13/06
Date

Carol A. Kittson
Signature of Interviewer

Patricia A. Grantham
Sign. of Supervisor

7.13.06

Patricia A. Grantham
Printed Name

7.13.06



United States
Department of
Agriculture

Forest
Service

Alaska Region
Tongass National Forest
Petersburg Ranger District

P. Box 1328
Petersburg, AK 99833-1328
Phone: (907) 772-3871
Fax: (907) 772-5995

7-3

File Code: 6100

Date: November 7, 2006

12

Route To:

Subject: FSEEE Clarifications

To: Forest Supervisor

FOIA Exempt – Confidential Personnel Information Included

In mid-August, the fall 2006 issue of *Forest Magazine* arrived, unsolicited, at the District office. This magazine is a quarterly publication of Forest Service Employees for Environmental Ethics (FSEEE). The fall issue included (page 29) the *Inner Voice* newsletter section, entitled "Tongass Whistleblower Disciplined." After reviewing this newsletter, I have significant concerns about the inaccurate information that was included in it, and feel that you should be appraised of the facts of the case should the agency be asked to respond at some point.

The first significant inaccurate statement is *"(w)hen Ith first learned of the illegal road-building, he told his bosses that unless they put a stop to it, he would seek help from FSEEE. His supervisor told him to stay away from FSEEE or there would be trouble."*

Mr. Ith never contacted myself (as District Ranger) or his supervisor (the Deputy District Ranger) about his concerns associated with the road maintenance activities on FSR 6232 and 6231. Executive Director of FSEEE, Andy Stahl, contacted me in August 2005 with questions regarding the Overlook road work and stated that a "concerned citizen" had brought this to his (Mr. Stahl's) attention.

Mr. Ith's immediate supervisor, Deputy District Ranger Chris Savage, never counseled Mr. Ith that he should avoid associating with FSEEE. In December 2005, I sent an email to Mr. Ith (attached) at his request, offering advice on keeping his agency affiliation separate from his personal views. This email affirmed Mr. Ith's free speech rights. Mr. Ith has voiced his concerns with the local radio station and in public meetings. His free speech rights have never been compromised or diminished in any of these activities.

The next inaccurate portion stated *"(a)fter Ith revealed photographs of the illegal road construction, his supervisor warned him that the Forest Service was investigating misconduct charges against him. That turned out to be a bluff."*

The appeal of this project was filed January 27, 2006. The subsequent lawsuit was filed March 30, 2006. (Note to Chris: Where did the photos first surface? Weren't they in the lawsuit first? Or the appeal? Need to note that here.) Deputy Ranger Savage never indicated that a misconduct investigation was pending following those events, because there was not one pending. What may be being misrepresented here is another issue, a discussion that followed Mr. Ith's annual performance rating which he received on February 4, 2006. Mr. Ith received a satisfactory performance rating. At this time, Deputy Ranger Savage did indicate that there were several conduct-related (not misconduct) issues that were being researched by Human Resources in regard to a project Mr. Ith had worked out. These issues were related to the Port Houghton-Cape Fanshaw



Landscape Assessment and what Deputy Ranger Savage felt was Mr. Ith's refusal to follow directions/failure to meet deadlines regarding his work on the Port Houghton project. A disciplinary letter had been drafted relating to this issue, but ultimately, given the notoriety of Mr. Ith's appeal and court challenge, a joint decision was made by Human Resources and the Office of General Counsel to not pursue disciplinary action on that matter.

The next issue identified in the newsletter stated "(t)he real thing happened six months later...after he signed a letter on FSEEE's behalf seeking donations from our members to help cover the lawsuit costs." The "real thing" referred to here is a misconduct investigation.

It is true that Mr. Ith's and FSEEE's fundraising letter raised significant questions about the propriety of this activity by any federal employee. The letter was sent as a mass electronic mailing across the USDA Forest Service email list in April of 2006. Mr. Ith's fundraising letter notes that "(t)ogether with FSEEE, I filed suit in federal district court..." and stated that "FSEEE and I need your help" with regards to financial resources. Mr. Ith's letter does not make it clear that he is solely fundraising for FSEEE and, in fact, Mr. Ith's above noted statements clearly show that he is fundraising on behalf of FSEEE and himself. Mr. Ith was using the fundraising letter for his personal financial gain, in that he would not have as great a personal financial burden as part of the lawsuit should FSEEE members contribute to the cause.

A number of issues regarding the appropriateness of some of Mr. Ith's participation and internal knowledge of the two appeals he has filed also were considered when deciding to investigate the issue. Specifically, this activity seemed to be in conflict with USDA and agency Ethics and Conduct regulations and policy. The Forest had made overtures to the Office of Special Investigations (the "Whistleblower Hotline") trying to get answers to specific concerns without success. With the advent of Mr. Ith's fundraising letter, enough notoriety and concern surfaced about this situation that the Forest once again requested investigation assistance and an investigator was assigned.

The next inaccurate statement, relating to the discussion that Mr. Ith had with the misconduct investigator, said *"(t)he hours -long questioning was wide-ranging and started off with the warning that if he didn't answer, he would be fired immediately"*.

Prior to Mr. Ith's interview, Mr. Ith was given a memorandum, informing him of his responsibilities as an employee of the USDA Forest Service to cooperate with the investigation, because he originally indicated he would not participate. This is standard practice when an investigator believes an employee may choose not to cooperate. The memorandum referenced the USDA Employee Responsibilities and Conduct, Personnel Bulletin, 735-208c. The memorandum also quotes *"that failure to respond to requests for information or to appear as a witness in an official proceeding may result in consideration of disciplinary action."* It was never mentioned or discussed that Mr. Ith would be immediately fired if he did not participate. Mr. Ith being notified of these requirements, in fact, made sure that he was fully informed about the consequences of the choices he faced. Having the investigator hear directly from Mr. Ith was an important part of the process, and provided Mr. Ith was the chance to clearly explain how his

activities did not violate ethics or conduct direction. Mr. Ith was accompanied at his interview by a Union official and, via teleconference, by his attorney. Approximately ten other employees were likewise required to cooperate with the investigation by participating in an interview, under oath, with the investigator.

The newsletter contains other inaccuracies that, while mistruthful, are not as significant. In general, the FSEEE article is very disappointing. If Mr. Ith provided the information contained in the article, then it seems he provided false information in order to intentionally cast the agency in a poor light. This may be another issue requiring review by the investigator.

Please feel free to contact either myself or Deputy Ranger Chris Savage at 772-5950 if you have any further questions.

PATRICIA A. GRANTHAM
District Ranger

BACKGROUND INFORMATION ASSOCIATED WITH GLEN ITH

This document helps summarize the current issues and concerns associated with Mr. Glen Ith. It is broken down into three separate sections: the unresolved issue about the pending Letter of Reprimand; his involvement in the litigation with the Overlook Environmental Assessment; and his involvement during the planning process of the Scott Peak Environmental Impact Statement.

Letter of Reprimand

Prior to Mr. Ith's two appeals and subsequent litigation on the Overlook EA, the Petersburg Ranger District was in the process of issuing a Letter of Reprimand (enclosure) for his failure to follow instructions. The letter extensively documents Mr. Ith's failure to produce acceptable and timely work products associated with the Port Houghton Landscape Assessment. He failed to incorporate edits and Forest Service protocols in the analysis developed for this project, despite repeated direction from his supervisor. This period of concern spans from November 2004 to January 11, 2006.

Overlook Environmental Assessment

The Overlook EA was a contractor provided planning effort. Mr. Ith was not assigned responsibility as part of the District review team for this project, however, he took it upon himself to review the draft document and provide substantial comments to it on official time. Neither his supervisor nor the IDT leader requested this review. The District treated these comments (dated October 26, 2004) as any other internal comments. Responses to his comments were in writing (enclosed), primarily to explain how the wildlife analysis was conducted.

Mr. Ith was directed to not spend any additional work time on this project, as he was assigned to other high priority work and needed to focus on that. As a private citizen, Mr. Ith provided comments during the public draft environmental assessment comment period, which ended July 11, 2005. When comparing these comments to his October 26, 2004 internal comments, a substantial amount of duplication exist. There are also a number of quantifying statements within the July 11, 2005 comments that would have required some level of analysis to generate. Mr. Ith did not request any information under FOIA relating to this project until December 20, 2005. It appears that he used his ability as an employee to access information needed to develop his private citizen comments. Mr. Ith appealed the project on January 30, 2006, and the project was withdrawn by the Forest Supervisor for additional work. Mr. Ith subsequently filed a lawsuit relating to the Overlook project with the Association of Forest Service Employees for Environmental Ethics (AFSEEE). That suit is pending.

Scott Peak EIS

The Scott Peak EIS was an internally developed project. Mr. Ith began as a wildlife biologist assigned to this effort and later became the IDT leader. Mr. Ith was ultimately assigned to other priority work on the project due to his inability to complete both the wildlife resources report for this project and the overall project document. A more

experienced wildlife biologist (Mr. Ith became a wildlife biologist in mid-2001) was brought in to complete the resource report and the overall document was completed by an alternate team leader.

Mr. Ith appealed the Scott Peak project decision on March 2, 2006, primarily on concerns over how effects to wildlife were measured. These concerns were identical to concerns that Mr. Ith brought forward during his time working on the project. These concerns were addressed numerous times and Mr. Ith was given direction to correct the methods he was using in order to make them supportable, which he failed to do. Mr. Ith's appeal was subsequently substantiated a minor point of how cumulative impacts were measured. The decision was remanded.

Current Situation

Mr. Ith has been temporarily assigned to work on migratory bird issues for the Forest Plan amendment. His physical location has been moved away from the Ranger District and to the Supervisor's Office. This was necessitated due to Mr. Ith's status as a litigant, to avoid exposure to attorney-client privileged information. It was inappropriate to leave Mr. Ith in a position to have easy access to shared computer files, printers, etc., while litigation strategy and responses are being developed in the District office.

Around April 17th, a Forest Service wide email was sent out to all employees through AFSEEE with Glen's picture on the front page. The article below is what was distributed:

HELP SAVE THE TONGASS

Hello, my name is Glen Ith and I am seeking your help. I've worked for the Forest Service for 25 years; the last 5 as a manager of wildlife habitat in America's greatest rainforest—Alaska's Tongass National Forest. As a Forest Service employee, I have a great love for our incredible public land. The Tongass National Forest has the most abundant fish and wildlife in the nation, and I'm proud to be responsible for safeguarding these invaluable natural resources.

I also have great respect for our nation's environmental laws, including the National Environmental Policy Act. NEPA is a simple, but profound law. It requires the government to tell the truth about the environmental harm of its actions before it acts. It's a basic process—first, analyze environmental effects; second, disclose those effects to the public; third, take appropriate and well-informed action.

It is my love for the Tongass National Forest and respect for the law that has compelled me to blow the whistle on my own employer—the U.S. Forest Service.

In August of 2005, I learned that the Forest Service was working on a logging road to access old-growth timber that had not yet been approved for sale. The Forest Service was in the middle of studying the environmental impacts of logging these trees, a process it named the "Overlook Project Area Environmental Assessment." But the public had not been told about the Forest Service's activities, nor had the Forest Service finished the final crucial stage of the NEPA process in which the public would be allowed to comment on the Overlook timber sale.

Yet there in the middle of the rainforest, I saw the evidence with my own eyes. A private contractor hired by the Forest Service was blasting and expanding rock quarry pits, and bulldozing a road through the young forest to get to old-growth trees in the Overlook sale area. The sale had not yet been approved, but the contractor had already cut dozens of old-growth Sitka spruce trees to build new bridges for the road. These ancient trees are truly irreplaceable and increasingly scarce. The environmental damage is incalculable.

To make matters worse, the financial cost to taxpayers from this road is a matter of public record—over \$160,000 of your tax money was spent on this logging road.

So I did what I had never done before. With FSEEE's help, I appealed the Overlook timber sale when it was finally approved almost a year after the logging road was built. And I won—at least a brief victory. The Forest Service withdrew the timber sale to rewrite it and try to justify why the Forest Service built the road before approving the timber sale.

But it turns out the Overlook sale fiasco was not an isolated case. FSEEE and I discovered that the Forest Service was doing the same thing at Traitors Cove, about 110 miles from where I live in Petersburg, Alaska. The Forest Service had proposed three timber sales called Rockfish, SW Neets and Francis Cove, all in the Traitors Cove area. The Forest Service decided it should analyze the cumulative impacts of all three projects together in one document (a good thing), and named it the Traitors Cove environmental impact statement ("EIS").

But a problem arose when the Forest Service realized that it had unused money designated to build logging roads and the EIS was taking a long time to prepare. If the Forest Service didn't spend the money, it would be lost. So last summer, the Forest Service awarded three contracts worth almost \$1 million to build logging roads to access the Rockfish, SW Neets and Francis Cove timber sales.

The EIS was not complete and the timber sales had not been approved but the Forest Service went ahead with its \$1 million logging roads anyway.

The Traitors Cove EIS has still not been released to the public for comment and the Forest Service's decision about whether or not to go forward with the three

3-13
14

Principal: CN=Melvin Y Shibuya/OU=HCM/O=USDAFS
\$LangPrincipal:
\$AltPrincipal:
\$AutoSpell: 1
tmpImp:
tmpSendandFileFolder: R10 (Gith)
Logo: StdNotesLtr20
useApplet: True
DefaultMailSaveOptions: 0
Query_String:
Sign:
WebSubject: Ith
FaxToList:
Subject: Ith Update
\$KeepPrivate:
SendTo: CN=Hank Kashdan/OU=WO/O=USDAFS@FSNOTES,CN=Jacqueline
Myers/OU=WO/O=USDAFS@FSNOTES
CopyTo: CN=Denny Bschor/OU=R10/O=USDAFS@FSNOTES,CN=MaryAnne
Young/OU=R10/O=USDAFS@FSNOTES,CN=Forrest Cole/OU=R10/O=USDAFS@FSNOTES,CN=Karlene
K Hale/OU=R10/O=USDAFS@FSNOTES
INetSendTo: hkashdan@fs.fed.us,jmyers01@fs.fed.us
INetCopyTo:
dbschor@fs.fed.us,maryanneyoung@fs.fed.us,fcole@fs.fed.us,kkhale@fs.fed.us
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\$StorageCc: 1,1,1,1
\$Mailer: Lotus Notes Release 6.0.2CF2 July 23, 2003
\$MessageID: <OFC8444E1C.A0795FCA-ON87257296.007AFA13-
87257296.0082DA94@LocalDomain>
From: CN=Melvin Y Shibuya/OU=HCM/O=USDAFS
INetFrom: mshibuya@fs.fed.us
PostedDate: 03/06/2007 02:49:16 PM
Encrypt:
RouteServers: CN=ENTR3B/OU=E/O=USDAFS,CN=ENTR10A/OU=E/O=USDAFS
RouteTimes: 03/06/2007 02:50:21 PM-03/06/2007 02:50:22 PM,03/06/2007 02:50:22
PM-03/06/2007 02:50:22 PM
\$Orig: CB444E1CA0795FCA87257296007AFA13
\$UpdatedBy: CN=Melvin Y
Shibuya/OU=HCM/O=USDAFS,CN=ENTR3B/OU=E/O=USDAFS,CN=Denny Bschor/OU=R10/O=USDAFS
Categories:
\$Revisions:
\$MsgTrackFlags: 0
DeliveredDate: 03/06/2007 02:50:22 PM
\$MiniView:

Hank/Jacque:

I hesitate to put too many in this email and will trust you to share its contents with those whom you think would have a need to know. Please treat this matter as deliberative and confidential.

At 1515 EST, 1315 MST, and 1115 AST, we had a conference call with the principals involved in this matter. The call was initiated by Deb Beighley, AD for Appeals and Litigation. Also in "attendance" were Forrest Cole, Tom Parker, Richard Stem, Tim Obst, Gary Gilbert/Katie Atkinson, Cherie Shelley, Karlene Hale, and Paul Brewster and Carol Kittson.

The purpose of the meeting was to explore the agency's response to Mr. Ith's second appeal of the Scott Peak Project.

When the matter of R10's response to the appeal was settled, I asked that we explore our options related to what administrative action, if any, would we want to pursue on the matter of Mr. Ith. Many of the callers not involved in the administrative action dropped out. The Regional Forester, Deputy Regional Forester, the Acting HR Director, OGC, and Gary/Katie remained on the line.

There is growing consensus for proceeding with administrative action. We recommend removal. I contend the employee has destroyed the confidence and trust of his employer when he used information he acquired as a Forest Service employee to further his environmental agenda in the Scott Peak appeal.

Resistance from the legal side centers primarily on whether we can legitimately carve an exception to the employee's appeal/whistleblowing activities. Both Gary Gilbert and Tim Obst want the agency to append the agency's investigation to get an additional statement from Ith as to where he secured a copy of the draft biological report of 5/2/05. That will address the concern of where he got the draft on which he used its contents in his appeal.

We respectfully question the necessity for doing so. Regardless of where/how Mr. Ith secured a copy of his draft biological report, the fact of the matter is he still used information he himself generated as a wildlife biologist to form the basis his appeal to the Record of Decision.

Tim is soliciting input from OGC in Washington. The decision to move forward is line management's to make. According to Karlene, Forrest Cole wants to move forward with administrative action.

Please feel free to weigh in on this matter. I will continue to update you as events progress.

Melvin Y. Shibuya
Employee Relations
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

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-----Original Message-----

From: Melvin Y Shibuya [mailto:mshibuya@fs.fed.us]
Sent: Friday, May 04, 2007 3:12 PM
To: WALKOW, RON H.; TROST, TAMI
Cc: Forrest Cole; Ollie E Rappe-Daniels; LELAND, ARLEAN
Subject: Draft -- Ith

Ron/Tami:

In early April I sent you and Gary Gilbert the draft of a proposed adverse action on an R10 employee who we believe engaged in misconduct that is not shielded by the Whistleblower Protection Act.

I asked that you let me know by the end of the week (4/6), if you could give me your comments. I did not hear from you.

During the second week of April, I sent you an email asking if you were okay with the draft. You responded by conveying reservations and concerns. You asked for the casefile. I told you I would FedEx the file to you. You informed me you would complete the review by the end of the week (4/13).

On 4/26 (Thursday) you sent an email asking to conference call on the afternoon of the next day (Friday). I informed you I was not going to be available to do that on such short notice and to have you send your comments that I would incorporate.

Since then, I've not heard from you. My phone calls and messages go unreturned.

It's been a month since you've had this for review and I and management in R10 grow increasingly concerned that it remain with you for so long without comment.

I don't know how to shake this draft loose from your review. I will be recommending we move forward. If you have comments, I ask that you send them as soon as you can. I cannot let this matter languish for much longer.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500



"TROST, TAMI"
<TAMI.TROST@OGC.USDA
.GOV>

05/04/2007 01:55 PM

To: 'Melvin Y. Sotoluyar' <sotoluyar@fs.fed.us>

cc: "Forrest Cole" <fc@fs.fed.us>, 'Orleka E. Ranpe-Daniels'
<orappedaniels@fs.fed.us>, 'LELAND, ARI FAN'



<ARLEAN.LELAND@OGC.USDA.GOV>, "WALKOW, RON
H." <RON.WALKOW@OGC.USDA.GOV>, "Sherry Hooper"
<shooper@fs.fed.us>, "Banegas, Ronald -FS"
<Ronald.Banegas@usda.gov>, "Burgers, Kathy -FS"
<Kathy.Burgers@usda.gov>, "Kashdan, Hank -FS"
<Hank.Kashdan@usda.gov>

Subject: RE: Draft -- lth

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

Melvin,

I apologize for not yet returning your call from yesterday at 2:41 PM. I have been tied up with another pressing matter and I was hoping to take advantage of the West Coast time difference and get back to you later this afternoon.

Since you appear to be on a tight deadline, I won't sugar coat it. We have found the draft removal notice woefully inadequate. It appears that the drafter neglected to include much of the information contained in the investigative report. In particular, the draft notice fails to explain the timeline regarding the release of the draft "Wildlife and Biological Diversity Resource Report" and the subsequent appeal filed using that report. This is essential information because it helps to explain why the charges are not as stale as they appear to be on their face. In addition, the notice fails to explain clearly who released the document, to whom and what evidence you have to support this charge.

More importantly, the draft removal does not address the critical Douglas factors. The draft does not adequately explain why the release of the document was so egregious as to warrant removal as the only appropriate penalty. This is a critical point that needs to be made explicitly.

As we explained by telephone last month, we strongly recommend that the Forest Service re-write the proposed removal to include much more of the substance that explains why the charges are supported by the facts and why they are so egregious. We will provide an expedited 48-hour review of any revised proposed removal. However, we cannot support issuing the document as it stands. It would be virtually impossible to defend in litigation as it is currently written.

If you have any additional questions, please feel free to contact me.

Tami Trost, Attorney-Advisor
Civil Rights Policy, Compliance & Counsel Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, SW Room 3312-S
Washington, DC 20250
telephone: (202) 690-6993
facsimile: (202) 720-7524
e-mail: tami.trost@usda.gov

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-----Original Message-----

From: Melvin Y Shibuya (mailto:mshibuya@fs.fed.us)
Sent: Friday, May 04, 2007 3:12 PM
To: WALKOW, RON H.; TROST, TAMI
Cc: Forrest Cole; Orlene E Rappe-Daniels; DELANE, APLEAS
Subject: Draft -- Ith

Ron/Tami:

In early April I sent you and Gary Gilbert the draft of a proposed adverse action on an F10 employee who we believe engaged in misconduct that is not shielded by the Whistleblower Protection Act.

I asked that you let me know by the end of the week (4/6) if you could give me your comments. I did not hear from you.

During the second week of April, I sent you an email asking if you were okay with the draft. You responded by conveying reservations and concerns. You asked for the casefile. I told you I would FedEx the file to you. You informed me you would complete the review by the end of the week (4/13).

On 4/26 (Thursday) you sent an email asking to conference call on the afternoon of the next day (Friday). I informed you I was not going to be available to do that on such short notice and to have you send your comments that I would incorporate.

Since then, I've not heard from you. My phone calls and messages go unreturned.

It's been a month since you've had this for review and I and management in R10 grow increasingly concerned that it remain with you for so long without comment.

I don't know how to shake this draft loose from your review. I will be recommending we move forward. If you have comments, I ask that you send them as soon as you can. I cannot let this matter languish for much longer.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500

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Email: mshibuya@fs.fed.us

4.33

17



Melvin Y
Shibuya/HCM/USDAFS
05/05/2007 07:38 PM

To: Oileke E Rappe-Daniels/R10/USDAFS@FSNOTES
cc: Karene K Hale/R10/USDAFS@FSNOTES
bcc:
Subject: Fw: Draft -- lth

As Deciding Official, Forrest Cole, Forest Supervisor, should not be in this email. I therefore purposely exclude him.

It's clear OGC is against issuing this notice. We exercise considerable care in identifying the charge and believe the specification supports the charge. OGC disagrees.

This is information for your eyes only. Please destroy after reading. It's not protected by privilege and is subject to discovery.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 05/05/2007 09:30 PM -----



Melvin Y
Shibuya/HCM/USDAFS
05/05/2007 09:27 PM

To: "TROST, TAMI" <TAMI.TROST@OGC.USDA.GOV>
cc: Carol Kittson/R10/USDAFS@FSNOTES
Subject: RE: Draft -- lth

I appreciate the email, Tami. Thank you for the input.

It is difficult to address your general criticism the draft is "woefully inadequate" because it "neglects to include much of the information contained in the investigative report."

Your criticism focuses principally on two critical failures. The first relates specifically our failing to "explain the timeline regarding the release of the draft 'Wildlife and biological Diversity Resources Report.'" I fail to see the criticality of this failure but I will have the investigator specifically address that matter. Even if we cannot explain the timeline however, I don't know how that undermines the charge the employee improperly released deliberative (non-public) information to a non-Forest Service employee.

The second relates to our failing to identify clearly who released the document to whom. Does not the proposal notice identify the employee as the one who released the document to Larry Edwards of Greenpeace? As to what evidence the agency has to support this charge, the proposal notice cites the employee's own statement.

You contend the notice fails to address the critical Douglas Factors. Douglas is a substantive obligation the board places on the agency's decision making. The deciding official's failure to consider the relevant factors can constitute reversible error. However, I have not seen a board case where an agency's failure to consider the relevant Douglas Factors -- or any of the 12 factors, for that matter -- in the *proposal* stage has been found to be a procedural fatality to the agency's adverse action.

Nevertheless, a careful reading of the notice (see our Nexus section), shows we do in fact address Douglas:

only Your failure to safeguard internal (draft) material entrusted in your care is serious. Worse, not
act did you fail to safeguard that information, you admit to providing your draft to Larry Edwards of
act Greenpeace who, in turn, used that information to file an appeal against the agency. I find your
act to be hardly inadvertent.

Nexus section, paragraph 1

How is the above not Douglas 1 (nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional or technical or inadvertent or was committed maliciously or for gain...)?

Additionally, our Nexus section addresses Douglas 5 (effect of offense with the employee's ability to perform satisfactorily and supervisory confidence):

...Coworkers no longer trust you to keep from public release anything they say or write regarding biological, environment[a], or land-management use. So serious was your act of indiscretion that you were detailed from your position... to restrict access to sensitive information and minimize the damage of your failing to protect 'inside' information from unauthorized use.

And isn't, "I cannot think of any other alternative but to propose your removal," a consideration of Douglas 10 (potential for rehabilitation)? Implicit in a proposed removal action is the agency's belief the employee cannot be rehabilitated.

Last, doesn't the agency address Douglas 12 when it informs the employee his misconduct destroys the requisite trust the agency must have in his position at Douglas 12 (adequacy and effectiveness of alternative sanctions)? Removal is the only appropriate penalty when an employee commits an offense this serious.

The deciding official will have the opportunity -- and the obligation -- to consider these and the other factors of Douglas in his decision making. Therefore, the Nexus section identifies clearly the incompatibility of the employee's continued employment with the efficiency of the service. I therefore question your contention the draft fails to consider Douglas and worse, that it "does not adequately explain why the release of the document was so egregious as to warrant removal as the only appropriate penalty." I think we make a compelling argument for removal.

You characterize my inquiring as to the status of your review after you've had the draft for a month as a "tight deadline." Your concern the case grows increasingly stale is one I and many others share. Hence my pressing you to hasten your review.

I appreciate the assessment. I will have Carol who investigated the matter, address the matter of the timeline regarding the release of the Report.

Thank you again for your review/assessment.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us
"TROST, TAMI" <TAMI.TROST@OGC.USDA.GOV>



"TROST, TAMI"
<TAMI.TROST@OGC.USDA
.GOV>
05/04/2007 01:55 PM

To: "Melvin Y Shibuya" <mshibuya@fs.fed.us>
cc: "Forrest Cole" <fcole@fs.fed.us>, "Olleke E Rapoe-Daniels" <orappedaniels@fs.fed.us>, "LELAND, ARLEAN"

7-1
18

FOREST SERVICE RECORD

**HANDLED IN
FOREST SERVICE
RESPONSE**



"TROST, TAMI"
<TAMI.TROST@OGC.USDA
.GOV>

06/28/2007 04:30 PM

To "Forrest Cole" <fcole@fs.fed.us>, "Melvin Y Shibuya"
<mshibuya@fs.fed.us>
cc "Sherry Hooper" <shooper@fs.fed.us>, "Banegas, Ronald
-FS" <Ronald.Banegas@usda.gov>, "WALKOW, RON H."
<RON.WALKOW@OGC.USDA.GOV>, "LELAND, ARLEAN"
<ARLEAN.LELAND@OGC.USDA.GOV>
Subject lth Proposed Removal

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

ITH000026

Attached please find the proposed removal in the lth matter. I have added a discussion of several additional Douglas factors to demonstrate that these were considered. I still believe that the final removal notice will need to be more detailed than the proposal and will require a greater discussion of the impact the offenses have on the Forest Service. In addition, we will have to address that despite the age of the offenses, the impact is still felt on the service, particularly if the actions are ongoing or likely to recur. I appreciated your patience as I completed my review and edits of this document. If you have any questions or concerns, please feel free to contact me. I will be out of the office until July 9th, but Ron Walkow will be able to assist you in my absence and he can be reached at (202)720-6056. Thank you.

Tami

Tami Trost, Assistant General Counsel
Civil Rights Policy, Compliance & Counsel Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, SW Room 3312-S
Washington, DC 20250
telephone: (202)690-3993
facsimile: (202)720-7524
e-mail: tami.trost@usda.gov

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lth Proposed Removal.doc

4-43 19



Melvin Y
Shibuya/HCM/USDAFS
06/29/2007 04:57 AM

To: Oileke E. Rappe-Daniels/R10/USDAFS@FSNOTES
cc: Forrest Cole/R10/USDAFS@FSNOTES, Hank
Kasnoan/WO/USDAFS@FSNOTES, Danny
Bschor/R10/USDAFS@FSNOTES

bcc

Subject: Fw: Ith Proposed Removal

Oileke:

I took the liberty to make slight editorial changes to the attached (taking out redundancies, etc.).

I don't know why Tami did not address this to you, as you are, after all, the Proposing Official. Sending pre-decisional documents to Forrest (he's the Deciding Official) is dangerous because opposing counsel can make mischief because of the prohibition on ex parte communications between the proposing and deciding official.

That's why you (and all addressees) should destroy this email after reading because it's discoverable under the board's regulations. My communications to you and Forrest are NOT protected by privilege. I'm trying hard to limit folks I send this email to.

Please review and if okay, call and let me know when you're ready to issue. I need to alert the Deputy Chief prior to your issuing the notice to the employee.

- ✓ 1. Run off hard copy of the document;
- ✓ 2. Sign and date (very important);
3. Issue to employee and have him acknowledge receipt (NOTE: he might decline to sign, in which case simply annotate his declination with your writing in his signature block: "Employee declines to acknowledge receipt." Signed, Oileke R-D.
4. Send copies to Forrest and me.

Your job is over. We'll take it from there.

Again, please let me know BEFORE you issue. We'll need to alert key officials before we proceed.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 06/29/2007 06:39 AM -----



"TROST, TAMI"
<TAMI.TROST@OGC.USDA.GOV>
06/28/2007 04:30 PM

To: "Forrest Cole" <fc@fs.fed.us>, "Melvin Y Shibuya" <mshibuya@fs.fed.us>
cc: "Sherry Hooper" <shoopcr@fs.fed.us>, "Banegas, Ronald -FS" <Ronald.Banegas@usda.gov>, "WALKOW, RON H." <RON.WALKOW@OGC.USDA.GOV>, "LELAND, ARLEAN" <ARLEAN.LELAND@OGC.USDA.GOV>

Subject: Ith Proposed Removal

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE



United States
Department of
Agriculture

Forest
Service

Tongass National
Forest

648 Mission Street
Federal Building
Ketchikan, AK 99901

20
7-12

File Code: 6170

Date: July 20, 2007

Route To:

Subject: Proposed Termination of Employment

To: Glen Ith, GS-486-9 Wildlife Biologist

By this letter I am proposing to Forest Supervisor Forrest Cole that your employment with the Forest Service be terminated for the following reasons.

Charge - Improper Conduct

Specification 1: As Wildlife Biologist on the Scott Peak Project, you drafted a "Wildlife and Biological Diversity Resource Report" dated May 2, 2005. This draft report made recommendations as to the effect of proposed land use alternatives, and was intended for use as an internal deliberative document. You admit giving a copy of the draft report to Larry Edwards, an official of Greenpeace and an appellant challenging the agency's actions in the Scott Peak Project. By this unauthorized action you failed to protect government property and allowed its use for other than official purposes in a policy disagreement over which reasonable minds might differ. Standing alone, this specification would warrant termination of your employment.

Specification 2: Recently, you admitted that you reviewed, edited, and approved an article published in the Forest Service Employees for Environmental Ethics magazine. In that article you identified yourself by name as a Forest Service employee working on the Tongass National Forest as a manager of wildlife habitat, and you requested monetary contributions to help fund your anticipated litigation against the Forest Service.

Your actions violate ethical restrictions because you used your official position to further fundraising efforts for a personal cause.

Penalty Selection Factors

Seriousness of your misconduct: Draft documents are deliberative, pre-decisional, and considered internal agency working documents. Draft documents are circulated within the agency for comment. They undergo considerable revision for both substantive and editorial changes.

Agency employees must be free to engage in the deliberative process for which draft materials are circulated within its confines. In releasing your draft report to a member of the public, the contents of which formed the basis of a public member's appeal, you misused your Federal position and without authorization, released information intended for internal review only. Unless and until draft documents are finalized, including approval by line officers, their release is premature, prohibited, and unauthorized for release to the public. Your actions significantly harm the Forest Service's internal deliberative process.

Loss of trust: Your failure to safeguard internal draft material entrusted in your care is extremely serious. Worse, you admit to providing your draft to a member of the public who used that information to file an appeal challenging an agency action. I find your acts to be intentional and undermining of the trust I place in a Forest Service employee. Whether you feel justified in failing to protect internal management communications from unauthorized disclosure, the negative effect of that failure is real. Coworkers no longer trust you to keep from public release anything they say or write regarding biological, environment, or land-management use. So



serious was your act of indiscretion that you were detailed from your position with the Tongass National Forest and placed in another position to restrict access to sensitive information and minimize the damage of your failing to protect "inside" information from unauthorized use. Your actions fatally undermine my confidence you will not release draft documents drafted by you or a co-worker that have yet to be finalized for public review and comment. You took intellectual property belonging to the agency and released it to a special interest group without authorization. That group in turn used the information to support its appeal in the Scott Peak project. This offense is particularly problematic given your position in the agency.

Prior Disciplinary Record: I have considered your past disciplinary record and find that you have not been previously disciplined. However, I also find that the offenses cited above are so egregious that the lack of prior discipline does not overcome the seriousness of the misconduct and its impact on the service.

Consistency of the penalty: I have considered the consistency of the penalty of removal with those imposed upon other employees for the same or similar offenses. I have not witnessed this combination of serious and untenable misconduct from any other employee. Thus, I have reviewed the USDA Table of Penalties and find that the penalty of removal for your cited misconduct is consistent with the provisions contained in the Table. In fact, your knowing and intentional release of deliberative material standing alone warrants your removal.

Notoriety of conduct: I have considered the notoriety of your misconduct and its impact upon the reputation of the Agency. Your release of deliberative material is well-known because it was released so publicly. In addition, your solicitation of funds to support your upcoming litigation was published in an employee publication. Therefore, it is essential that management take appropriate action because the offenses are so public.

Rehabilitation potential: I see no potential for rehabilitation in your case. You accept no responsibility for wrongdoing, claiming up to this point of the process you have done nothing wrong. In addition, you have previously had ethics training and are, therefore, on notice of your responsibilities to safeguard agency information and property and not to use your Federal position for personal gain.

Mitigation: I have also evaluated whether there are any mitigating circumstances surrounding the misconduct charged in this proposal. You are a well-educated and experienced Federal employee, and you have had the benefit of Government-sponsored training. Moreover, you do not deny nor regret your intentional actions. Thus, I find that there are no mitigating circumstances that would justify a reduction in penalty.

Alternative sanctions: I have also reviewed the possibility of alternative sanctions to deter such conduct in the future by you or others, and I find that no sanction short of removing you from employment will suffice to correct the actions for which I find you responsible. You have damaged the service by violating the trust of your supervisors and co-workers by chilling the free exchange of information prior to final decision making.

Based on these factors, I conclude that removal from your employment will promote the efficiency of the service.

Reply right

You are entitled to a complete copy of all the material relied upon to support the reasons given for proposing this action. If you wish to review this material, contact me and I will make arrangements. You may respond to

this proposal letter orally and/or in writing within seven days of your receipt of this letter. You may furnish affidavits and other documentary evidence in support of your response.

Any written response is to be provided to Forrest Cole, Forest Supervisor. If you wish to make an oral response, you should contact Mr. Cole at (907) 228-6200. He will advise you of the details of an appointment with the person he selects to hear your reply. The decision made by Mr. Cole will not be implemented sooner than 30 days after your receipt of this proposal.

Effective immediately I am placing you on administrative leave for the duration of this notice period. During this time you will receive your regular pay, but you are not to report to work nor are you to attempt to access agency property (other than as a member of the public) without specific authorization to do so.

/s/ Olleke E. Rappe-Daniels

OLLEKE E. RAPPE-DANIELS
Deputy Forest Supervisor

cc: Forest Supervisor

Glen Ith (receipt received)

Date

I gave Glen Ith this letter
on Friday, July 20th at
1635.
Chris Szye



Caring for the Land and Serving People

FAX TRANSMITTAL



USDA Forest Service
Human Resource Service Center
648 Mission Street
Federal Building
Ketchikan, AK 99901

Fax (907) 228-6253

Karlene Hale (907) 228-6249 ☒

Mary Dowling (907) 228-6250 ☐

Subject _____

Date 07/30/07

To:

Melvin Shibuya

Meeting

8

To:

Fax

(505) 563-9987

Phone No _____

From:

Fax

Conf. fax

Phone No: _____

☐ For Review /Comment

☐ For Signature

Confidential!

Call me if you've questions or comments.

Karlene

7/27/07

Reply to the Proposed Termination of Employment Letter

Background

On July 20, Chris Savage, Petersburg District Ranger, delivered a letter to me, signed by Olleke E. Rappe-Daniels, Deputy Forest Supervisor, and charging me with two misconduct violations that could result in my termination. The final decision concerning my proposed termination resides with Forrest Cole, the Forest Supervisor. When I received this proposed termination letter, Chris Savage insisted that I remove all personal belongings from my workspace and relinquish my keycard to Mr. Savage. A law enforcement officer was present during this exchange. The letter allowed me a seven-day period in which to reply. This letter constitutes my response to the two charges of misconduct, identified as "Specification 1" and "Specification 2" in the letter. For the reasons I explain below, I urge you to forebear in terminating me as any such termination would be unjustified, illegal and ultimately result in significant adverse financial consequences to the Forest Service.

Specification 1. Giving the Wildlife and Biological Diversity Resource Report to Mr. Edwards.

As a wildlife biologist and Interdisciplinary Team Leader on the Scott Peak Project, my duties and responsibilities were to disclose the environmental impacts of timber harvest and related activities to the decision maker through the interdisciplinary team (IDT) process defined by the National Environmental Policy Act (NEPA). The Wildlife and Biological Diversity Resources Report, dated May 2, 2005, was one of the vehicles used to disclose impacts to wildlife habitat (hereinafter "wildlife resource report" or "report").

I compiled this report, which represented the best team effort to capture, quantify, and display environmental impacts. This report uses units of measure that directly address one of two significant environmental issues that were developed and agreed upon by the IDT and documented in IDT meeting notes. The key findings contained within this report went through substantial internal and IDT team review before completion.

The findings in the resource report were intended to be part of the public record and become an integral part of the Draft Scott Peak EIS. The "recommendations" of the wildlife resource report for "removing, avoiding, or compensating for any adverse effects" must be documented in the project's Record of Decision. By this direction, the Forest Service Manual requires that recommendations contained in the wildlife resource report be made public.

A Draft EIS is intended to be circulated widely to the public for review, and to solicit additional public comment. As IDT leader I personally inserted this report into the public planning record before I was dismissed from this project in 2005. Thus, at the

conclusion of the process the report was not a preliminary deliberative process document but was intended for public comment.

Indeed, that is how other government agencies treated it. After I was dismissed from the project in 2005, I did not retain a copy of the report. The copy I obtained and sent to Mr. Edwards was obtained through the Alaska Department of Fish and Game (ADF&G). ADF&G possessed the report because it was part of the collaboration process that helped produce the report. Forest Plan direction calls for coordination during the planning of activities that may affect wildlife species (Tongass National Forest Land and Resource Management Plan, Page 4-112). Also R-10 Forest Service directives require that the implementation of sensitive species objectives be carried out "in coordination" with "managing agencies." FSM 2670.22 (R-10 2600-2005-1). There are sensitive species within the Scott Peak project area, e.g., goshawk. The "managing agency" for wildlife is ADF&G (states own the wildlife, the Forest Service has jurisdiction only over the land and habitat).

As required by R-10 directives, to carry out my mandatory duty to coordinate with the ADF&G in implementing the sensitive species objective for the Scott Peak project area, I consulted with ADF&G biologists while preparing the wildlife resource report. *Id.* ("As appropriate, contact State of Alaska and federal wildlife, fish, and plant management agencies, Alaska Natural Heritage Program, research stations, universities, or other organizations about species occurrence and habitat requirements."). During the consultation process, I provided the wildlife resource report to ADF&G for its review and comment.

I obtained a copy of the report from ADF&G at Mr. Edwards' request only after publication of the Scott Peak Record of Decision, after I had made general references to the report in my first appeal of this project and after I discussed the report with Forrest Cole during the subsequent public appeal resolution meeting. The appeal was then upheld by the Regional Forester.

Upon conclusion of my successful appeal, none of my superiors – indeed no one – suggested that I had acted improperly by referencing this report in these public settings. Both the appeal and the appeal resolution meeting notes became public record. It is only because of this public process that Mr. Edwards became aware of the report and requested that it be made publicly available. I understand that the ADF&G has produced the report to other members of the public besides myself, thus confirming that it was not subject to any deliberative process privilege. *See, e.g.,* attached Declaration of Andy Stahl (July 26, 2007).

I sent the report to Mr. Edwards after the first appeal period and before the second appeal period ended, and only after reviewing the Scott Peak planning record, and noting that the report had been removed. In its place was another resource report with the same title, but which reached different conclusions as to environmental effects on wildlife. The planning record did not contain details, justification, or rationale to justify the changes. I also learned from evaluating the substituted report that my name was used as a major

contributor to this substituted report, yet the substitute report did not contain many of the key findings to which I subscribed based on the collaborative IDT process.

Thus, the entire premise of your first specification, that I took an “internal deliberative document” and failed to “protect government property” by allowing “its use for other than official purposes” is palpably wrong. The report was prepared for public comment, it became known as part of my formal appeal process as to which you raised no concern about impropriety; and it was made available to members of the public through the offices of a state agency that obviously disagrees with your assessment of it as an internal deliberative document that should not be made available to the public. Thus, I did not believe I violated any confidences by sharing the report with Mr. Edwards, I did not violate any such confidences, and the document could not have been given to Mr. Edwards had a state agency not agreed that the document is not confidential.

Because the premise for this specification is false, I am left to conclude that it is a pretext for retaliating against me for my past whistleblowing activity – which has been successful in ensuring that proper procedures are followed before logging of old growth timber in the Tongass National Forest – and for my whistleblowing activity in exposing the inadequacy of the Scott Peak Record of Decision. The report at issue here clearly should have been made part of the administrative record for the Scott Peak Record of Decision. It appears that someone in the Forest Service removed and destroyed it in direct contravention of the law. *See* 44 U.S.C. § 3101, § 3106. The Forest Service obviously has no deliberative process privilege in hiding its destruction of documents in direct contravention of the law. And it has no right to retaliate against me because its unlawful conduct was revealed by my sharing a publicly available document with members of the public that demonstrated the inadequacies of the Scott Peak Record of Decision and its illegal conduct.

Specification 2. Involvement in the Forest Service Employees for Environmental Ethics (FSEEE) Fundraising Newsletter

I did review, edit, and approve information contained in a fundraising letter sent to FSEEE members. This letter was not, as you state, published in FSEEE’s quarterly magazine, but it was the subject of mailing to membership. I signed the letter personally, and did not place my title or Forest Service affiliation in the signature block. The letter specifically states that FSEEE is “neither part of, nor is it affiliated with, the U.S. Forest Service,” and that the views expressed in the letter “are solely [my] own and do not represent the official position or policy of the federal government or any of its agencies.” In the letter, I described my successful lawsuit to stop illegal road reconstruction activities that were approved by the Forest Service. In describing this legal effort I described that I had been a Forest Service employee for 25 years, an important fact for describing the lawsuit and how it came about.

My letter does not contravene any regulation. Your attempt to terminate me for sending the fundraising letter violates both the letter and purpose of federal regulations.

Your threat of termination flatly violates my First Amendment speech rights, and any attempt to terminate me for writing the letter will be held to be illegal.

First, 5 CFR § 2635.808, governs fundraising activities by federal employees. Obviously, my letter does not constitute “fundraising activity as part of [my] official duties.” See 5 CFR § 2635.808(b). And while the letter does constitute fundraising in my personal capacity, it does not contravene any of the provisions of 5 CFR § 2635.808(c), which governs such private fundraising by federal employees. That regulation prohibits “[u]s[ing] or permit[ing] the use of [my] official title, position or any authority associated with [my] public office to further [a] fundraising effort.” I did not use or permit the use of my “title, position or any authority associated with [my] public office” to further FSEEE’s fundraising effort. I signed the letter personally and the letter specifically states that my views were my own and not those of the Forest Service. Nor could even the most casual reader of the letter be misled into thinking so. The subject of my letter was my lawsuit *against* the Forest Service.

All I am guilty of is describing in my letter that I am a long time employee of the Forest Service who successfully sued the Forest Service. How else could I explain the successful story of a suit by a Forest Service employee against the Forest Service without mentioning that I am in fact a Forest Service employee. Such a reference plainly does not constitute use of my office to “further” private fundraising efforts. The examples set forth in the Code of Federal Regulations confirm that my letter does not constitute “use” of my “office” or “authority” to “further” fundraising. See, e.g., 5 CFR § 2635.808, Example 1 (describing furthering fundraising with enticement of round of golf with Secretary of the Navy).

Nor does my letter constitute “use of public office for [my] own private gain” in contravention of 5 CFR § 2635.702. As discussed above, the letter does not “use” my public office for anything, let alone “private gain.” Nor did I have anything to privately gain by the letter. I sought funds for a public interest lawsuit for which I would be entitled to no remuneration personally and have received no personal gain. The letter does not use my position to induce anyone to give me a personal benefit (5 CFR § 2635.702(a)), and there is utterly no risk – based both on the letter’s disclaimer and content – that anyone could believe that the letter was sanctioned by the government. 5 CFR § 2635.702(b).

In any event, attempting to terminate me in reliance on such regulations would constitute an unconstitutional application of the regulation in violation of my free speech rights.

Again, given my strong and unblemished record¹ and the palpably illegal bases for terminating me, I have no choice but to conclude that this specification is a pretext for retaliating against me for my successful whistleblowing activity – including the lawsuit that is the subject of my allegedly offending letter.

¹ Given my unblemished record, even if you could establish that I violated some policy or regulation, termination would be a severe and unwarranted sanction.

I urge you to step back from what you appear intent upon doing. I am an experienced and highly qualified Forest Service employee who deserves to keep my job. I have successfully exercised my right as a citizen to stem illegal activity by the Forest Service and will continue to pursue all available remedies to expose illegal conduct and obtain full compensation for any future wrongdoing.

Sincerely,

/s/ Glen Ith, Wildlife Biologist
Tongass National Forest

cc: John Phillips, Esq., Phillips Law Group, PLLC

Responses to Glen Ith's, "Reply to the Proposed Termination of Employment Letter"

Specification 1. Giving the Wildlife and Biological Diversity Resource Report to Mr. Edwards.

1. *Paragraph 1A:*

- a. **Savage:** No real objections. It needs to be clear that the May 2, 2005 document was never completed and was still considered a draft. Even states it on his copy.
- b. **Slaght:** I agree it needs to be stressed that his report was a draft. I never actually read this version, but I had access to several previous versions, which were also incomplete and inaccurate. This report was not in fact the one that was used to disclose effects to the decision maker. It was Kris Rutledge's final report that did that. I also find it interesting to note that Glen's disk of files that he turned over to Kris contained several draft versions of his resource report, although this one is not on there. Many of the drafts were dated during the period when the Ranger had directed the team to stop working on the project. This was between July 17, 2004, and early May 2005. During this period Glen apparently continued working on the project without my knowledge, even though I was writer/editor on the project.

2. *Paragraph 1B:*

- a. **Savage:** This statement I believe would go against the statements made by other team members. I would read over Kris Rutledge, Tiffany Benna, and Linda Slaght's statement to Carol Kittson. Kris has mentioned that when she had to redo the Scott Peak wildlife report because Glen did not follow Forest protocols regarding the deer model; she reduced the units of measure for the fragmentation analysis; and had to change the interior old-growth habitat area of the analysis to include the total patch acres within the planning area. The report did not include the total acres available within the project area rather it had included a 300' buffer around all edges including the planning area boundary, creating an "imaginary edge" and falsely reducing the total acres of interior old-growth the total patch sizes within the project area. These are just a few things that Kris mentions that she had to change in Glen's draft report.
- b. **Benna:** I would also argue that Glen's draft report ever really saw completion as it always seemed to be a work in progress; new drafts appearing even before an earlier edition was finished being reviewed. Perhaps this is in our statements.

- c. **Slaght:** I would dispute the notion that there was any kind of team effort in putting Glen's resource report together. He often had various people, some on the team, others not, look at certain sections of his reports, but the report in question was clearly reflecting Glen's position only. The key findings most definitely did not go through "substantial internal and IDT team review before completion." Before we took a hiatus from the project in July 2004, I did make several attempts to convince him that some of his key conclusions were not supported by the data in his report, but he always disagreed and made no changes based on any of my reviews other than spelling and grammar.

3. **Paragraph 1C:**

- a. **Savage:** Glen's resource report was never completed and was never considered being part of the project record. Glen took it upon himself to submit his draft report to the project record. Since Glen's analysis did not follow Forest Protocols, it would have never been accepted.

The R-10 supplement 1909.15-96-1 states "any draft of work products or other documents if it is clear that the draft was used in the planning/decision making process, or the draft was circulated externally for comment" shall be included in the planning record. Glen's draft document was not used in the decision making process for Scott Peak. The same R-10 supplement states that working drafts or edited versions of documents or chapters should not be included in the planning record.

- b. **Benna:** The planning record itself was in a "work in progress" status when he perhaps inserted it without notification to the writer/editor who is charged with indexing the official record and creating an electronic record. I would note we rarely send out the planning record before the publication of the Draft document as up until publication, the planning record is often incomplete and has not had final review by the team leader.
- c. **Slaght:** What Glen is saying in this paragraph is that He intended it to become part of the public record, but he was alone in this.

4. **Paragraph 1D:**

- a. **Savage:** On May 25, 2005, Glen requested to be removed as team leader and wildlife biologist for the Scott Peak project and was formally removed in a Letter of Expectations on May 31, 2005 from his supervisor Tom Parker. Kris Rutledge replaced Glen as the wildlife biologist in April and had already been reworking the Scott Peak wildlife resource report that Glen started before he was formally dismissed. It was her final document that was used in the decision making process of the Draft EIS and put into the project record.

- b. **Benna:** See above about how the planning record is considered a work in progress until document publication.

5. **Paragraph 1E:**

- a. **Savage:** When Glen's computers were confiscated, the May 2, 2005 Scott Peak Wildlife Resource Report was discovered on one of the computers. So it is apparent that Glen retained a copy of the report. Glen makes references to Forest Plan direction and R-10 direction when coordinating with other agencies. When this occurs, it is done through a formal process regarding letters and meeting times. Formal or informal consultation with regulatory agencies is when this usually occurs. Walking over to one's office and sharing a document and one's opinion about a project, doesn't represent coordination.
- b. **Benna:** Do we know when Glen gave his copy of the report to ADFG? How does that date fit in with his role on or off the team? Being as it was after the May 2nd date, there would have been no reason for him to be consulting on his draft report knowing that in April Kris had taken over finishing his report – of course like I said there seemed to be some confusion during that month of April and Tom may need to be consulted – but it would seem to me after Kris began, it would have been clear Glen's role in any consultation for the project would have also been turned over to Kris – I would doubt the idea of requesting to be removed from the project didn't just occur to him on the 25th.
- c. **Slaght:** Agree strongly. Our consultations with other agencies are routinely documented in the project record, and usually require Ranger approval and signature. What Glen did was on his own.

6. **Paragraph 1F:**

- a. **Savage:** Same as 1E. It would be good to have someone more familiar with our protocols on consultation and with R-10 directives on his references. Usually review and comment of a district specialist's report is done internally by a forest level specialist.
- b. **Benna:** What I've read in the handbook supplement is pretty vague summing up to involving in a timely manner when developing things that may affect fish and wildlife. My experience is that we may sit and discuss issues, look at maps together, talk about strategies and record those meeting notes with the ADFG representative concurrence – however, we know even this is changing as we look at local area biologists and whether their concerns are the department's concerns. We usually give the published document to them for comment. I hadn't heard of anyone actually sending a report outside of internal review for comment.

- 262
- c. **Slaght:** I think Glen is clearly describing a deliberative process here, and the act of sharing his most recent draft report with ADFG does not make it a public document. Even so, I would not describe Glen's actions as a consultation process, since he was not authorized to be working on the project at that time.

7. **Paragraph 1G:**

- a. **Savage:** Like 1E, this report Glen references was discovered on his computer October 10, 2006. The date last modified was 8/12/2005, much earlier than the publication of the Scott Peak ROD, which was September 2006. Also, see what Rich Lowell's statement says regarding to these claims and to see if we have a date when Rich received Glen's report.
- b. **Benna:** I would state here like somewhere below that the only point in the appeal that was upheld was the question of cumulative effects and that the claims made on the resource report or the analysis therein were dismissed – his appeal in whole was not upheld. In fact just below #8.
- c. **Slaght:** Glen's first appeal referred only to a wildlife report he had written for the project. There was no citation to a specific document or date, so there is no way to know to which report he was referring at that time. And as I mentioned in 1A, there were several versions of his draft resources reports in his files. Because Glen never submitted a final report to the planning record, for all practical purposes such a report did not exist. In addition Glen's first appeal makes no mention of his draft report being distributed outside the agency, which is the issue at hand today. In fact, Greenpeace's appeal to the first ROD refers only to the final wildlife resource report that Kris Rutledge completed for the record.

8. **Paragraph 1H:**

- a. **Savage:** The first appeal was remanded back to the Forest and District because of cumulative effect issues and not considering potential timber sale units from past decisions, which were never logged due to economics. All other issues brought forward by Glen and Larry Edwards were denied. These included a lot of the false claims Glen made in his report.
- b. **Benna:** Here would be part of the litigation coming into this – why it was not bad behavior the first appeal but was the second – maybe we don't want to address this point – since it is in litigation?
- c. **Slaght:** Glen's reasoning in this paragraph is not sound, in my opinion. The fact that ADFG may have distributed Glen's report to others does not negate the fact that Glen compromised the deliberative process by giving the report to ADFG without authorization or documentation.

9. **Paragraph 1I:**

- a. **Savage:** Very similar to 1B. Glen's name could have been still attached to the document since he wrote a lot of affected environment section and some of the Environmental Consequences of the report. It was his approach towards the analysis of the wildlife issues that did not follow Forest protocol and the key findings or recommendations that were redone by Kris Rutledge.
- b. **Slaght:** After the first appeal period, Glen should not have had unlimited access to the planning record. Did Glen submit a FOIA to review the planning record? I don't remember. Kris's wildlife report included a paragraph at the front explaining that Glen started the report and analysis and Kris completed it. It's true that the explanation did not go into a lot of detail about what changes were made between the draft and final. That would not have been appropriate because it was more of a performance issue. A key to understanding the differences between Glen's key findings and Kris's is that Kris based her findings on the analysis, while Glen developed his "findings" early in the planning process and then did his analysis. Besides the issues with his key findings, there were so many errors in his numbers and tables that the report was not credible.

Finally, Glen's selection of 11 units of measure for Issue 2 was so cumbersome that a clear and concise explanation of the issue as required by the CEQ regulations implementing NEPA would be impossible. Kris determined that the issue could be adequately addressed using 5 units of measure, which resulted in a much more understandable and relevant treatment of the issue in the DEIS.

10. **Paragraph 1J:** More of a summary paragraph

11. **Paragraph 1K:**

- a. **Savage:** The district never destroyed Glen's report. In fact, we have copies of this document and prior ones, which reinforce that Glen could never finish the document and was always working or changing it.
- b. **Slaght:** I don't know the ultimate disposition of Glen's hard copy report, but drafts are generally replaced by finals before the DEIS is published. To accuse the agency of violating the law by throwing out an obsolete report has frightening implications. Are we to begin keeping all drafts? How often should we record a draft for the record? Glen is not the first resource specialist to submit a draft resource report to a planning record, but he is the first one I have ever known who expected it to be accepted as a final product.



File Code: 6170

Date:

Route To:

Subject: Decision on Proposed Adverse Action

To: Glen Ith, Wildlife Biologist

Background

By notice dated July 20, 2007, Olleke Rappe-Daniels, Deputy Forest Supervisor, proposed to remove you for improper conduct. You were provided an opportunity to respond to the proposed adverse action.

By written reply dated July 27, 2007, you respond to the proposed adverse action. You chose not to respond orally. I consider both the proposal notice and your written response to it in my decision-making.

Findings

Specification 1. As Wildlife Biologist on the Scott Peak Project, you drafted a "Wildlife and Biological Diversity Resource Report" dated May 2, 2005. This draft report made recommendations as to the effect of proposed land use alternatives, and was intended for use as an internal deliberative document.

You admit giving a copy of the draft report to Larry Edwards, an official of Greenpeace and an appellant challenging the agency's actions in the Scott Peak Project. Consequently, you failed to protect government property. You allowed its use for other than official purposes in a policy disagreement over which reasonable minds might differ. Standing alone, this specification would warrant termination of your employment.

I sustain this specification. Prematurely releasing your draft for public comment (to Greenpeace) without authorization hurts the internal deliberative process critical to co-workers and supervisors.

Members of the Interdisciplinary Team (IDT) – indeed, agency employees with whom you have professional interaction – are dissuaded from discussing biological and related matters with you. They fear your propensity to disclose internal deliberations to the public before they mature into policy.

In my mind, an employee who cannot be trusted to protect the integrity of the deliberative process forfeits Federal employment.

Specification 2. You admit to reviewing, editing, and approving an article published in the Forest Service Employees for Environmental Ethics magazine. In that article you identify yourself by name as



a Forest Service employee working on the Tongass National Forest as a manager of wildlife habitat, and you requested monetary contributions to help fund your anticipated litigation against the Forest Service.

You violate ethical restrictions because you used your official position to further fundraising efforts for a personal cause.

With respect to the second specification, you draw distinction in the ethics regulations that does not absolve you of the proscribed conduct. I find you engaged in prohibited fundraising in violation of the regulations.

Penalty Selection: *Douglas Factors*

1. The nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional, or technical or inadvertent or was committed maliciously or for gain;

This is a serious offense as it undermines the confidence not only of the Forest Supervisor and your immediate supervisor but also your peers and team members. Employees are no longer willing to share deliberative work with you. You worked as an Interdisciplinary Team Leader and/or member and intentionally took draft deliberative material to the public.

You used your official title and position with the Forest Service to further the fundraising effort for personal cause. Your actions were intentional and for gain.

2. The employee's job level... including fiduciary role, contacts with the public, and prominence of the position;

You are employed by the Forest Service as a Wildlife Biologist, GS-486-9, on the Petersburg Ranger District of the Tongass National Forest. Your duties include the responsibility to engage the public and to work collaboratively with both internal and external customers. Your work is performed in collaboration with a team of resource specialists while making contact with other resource agencies and the public. Your work assignments require you to work relatively independently when representing the agency with members of the public, and to safeguard sensitive agency material within your possession.

3. The employee's past disciplinary record.

No recent prior discipline.

4. The employee's past work record, including length of service, performance on the job, ability to get along with Federal workers, and dependability.

You have a total work history of 22 years of service. You were promoted to Wildlife Biologist, GS-9 level in 2001. You have fully successful performance ratings.

5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned tasks;

Your job requires that you work collaboratively in a team setting for the purpose of preparing environmental documentation of development projects on the Petersburg Ranger District. Removal from the Scott Peak project and placing you on another still leaves you in a situation of

working with the same team members as before. I no longer have confidence in your ability to perform assigned duties with the integrity expected of a government employee.

In order to safeguard deliberative information by denying your access to it, your detail to the Supervisor's Office was continued.

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;

There is no similar misconduct on record in the Tongass National Forest.

7. The consistency of the penalty with the agency's penalty guide.

The USDA Penalty Guide provides that for a first offense of unauthorized disclosure or use of (or failure to safeguard) official, sensitive, or confidential information removal is appropriate. Also, removal for improper use of official authority (improper fundraising) is an appropriate penalty in the first offense.

8. The notoriety of the offense or its impact upon the reputation of the agency.

Both offenses with which you are charged involved your communications outside the agency with members of the public. In addition, you have involved the public media in your disagreements with agency policy.

9. The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question.

You were trained in ethics and conduct related to Forest Service standards.

10. The potential for the employee's rehabilitation;

You acknowledge no wrongdoing. In fact, you find your actions to be legal and justified. You deny violating any confidences. You state you would not release the document to Mr. Edwards had the state agency not agreed that it was not confidential. As a Federal employee you are bound by *federal* laws, rules, and regulations, not by state regulations. Failure to acknowledge that you engaged in the misconduct as charged leads me to believe you have no potential for rehabilitation.

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems; mental impairment; or harassment, bad faith, malice, or provocation on the part of others involved in the matter;

You raise no mitigating circumstances.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

I have considered alternative sanctions and determined that nothing less than removal will deter similar misconduct in the future.

Decision

Your removal is effective on close of business day of the date of this memorandum.

Appeal rights

You may file a grievance under Article 9 of the negotiated grievance procedure between the National Federation of Federal Employees and the agency. You have 30 days of the effective date of the action to file your grievance.

Alternatively, you have the right to appeal this action to the Merit Systems Protection Board (MSPB). You may submit an appeal no later than thirty (30) calendar days after the effective date of this action or thirty (30) days after receipt of this letter, whichever is later. The requirements for your appeal are found in Title 5 CFR 1201.24.

The board's regulations allow you to file a grievance negotiated by the parties or an appeal with the board, but not both. You will have exercised your option to file a grievance or appeal at the time you timely file a written grievance or file a notice of appeal under the applicable MSPB procedures.

You may access the board's website by the following link: www.mspb.gov. The site accesses the board's regulations and appeal form. Your appeal must be filed within 30 calendar days of today or within 30 calendar days after the date you receive this decision, whichever is later. Your appeal, should you elect to file with the Board, is to be sent to the following address:

U.S. Merit Systems Protection Board
Western Regional Office
201 Mission Street
Suite 2310
San Francisco, CA 94105-1831

Board regulations [5 C.F.R. 1201.25(b)(2)] require duplicates of all submissions made to the Board be served on the Agency. The address for submission of the Agency's copy is:

USDA FOREST SERVICE
HUMAN RESOURCES
ATTN: Melvin Shibuya
3900 Masthead Street, NE
Mailstop 225
Albuquerque, NM 87109

FORREST COLE
Forest Supervisor

GLEN G. ITH
WILDLIFE BIOLOGIST, GS-486-9
TONGASS NATIONAL FOREST

DOUGLAS FACTOR ANALYSIS

1. The nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional, or technical or inadvertent or was committed maliciously or for gain;

This is a serious offense as it undermines the confidence not only of the Forest Supervisor and the supervisor but of peers and team members. Employees are no longer willing to perform deliberative work with Mr. Ith. Mr. Ith worked as an Interdisciplinary Team Leader and/or member and took draft deliberative material to the public thus effectively stopping future deliberative processes due to complete lack of trust among team members. Mr. Ith drafted his own environmental report, would not modify the document to address concerns raised by the team and other peers, and then provided this information to the Greenpeace organization for the purpose of promoting his own agenda regarding wildlife issues and road construction on the Tongass. Use of this draft wildlife report in Mr. Ith's appeal was inappropriate. It was not available to the public nor the decision maker, 5 U.S.C. 552.(b) (5). Mr. Ith was argumentative and refused to follow proper direction and guidance regarding the Scott Peak wildlife report, thus alienating peers and co-workers. It's important to note that Mr. Ith's successful appeal against the government was based cumulative effects, not the draft wildlife report that he released without authorization. The remand of the appeal upheld the wildlife analysis used in the final analysis of the project. Mr. Ith's resource report was finally completed by another wildlife biologist following Forest protocol and documentation used in previous planning efforts.

Mr. Ith violated 5 U.S.C. 2635.808C, which states an employee, may not participate in an official capacity in fundraising for a non-Federal organization. Mr. Ith has on several occasions solicited funds for FSEEE for the sole purpose of financing his appeal against the Government. Mr. Ith used his official title and position with the Forest Service to further the fundraising effort. These efforts were clearly for personal gain.

2. The employee's job level... including fiduciary role, contacts with the public, and prominence of the position;

Mr. Ith is employed by the Forest Service as a Wildlife Biologist, GS-486-9, on the Petersburg Ranger District of the Tongass National Forest. His duties include the responsibility to engage the public and to work collaboratively with both internal and external customers. Mr. Ith is required to collect field data; provide analysis of the field data collected following Forest protocol; and then make recommendations to a decision maker regarding effects of forest management decisions on his resource specialty. This work is performed in collaboration with a team of resource specialist while making contact with other resource agencies and the public. Varying opinions are normal relating to recommendations and the need to air differences is paramount when discussing recommendations. Mr. Ith failed to perform work in a timely manner; take recommendations from peers after being informed his work was incomplete and lacked supporting documentation to justify his recommendations; take direction from supervisors; follow Forest protocols; work collaboratively within a team environment; and did in fact work counter to the team.

Mr. Ith's use of his official authority for the unethical means of contacting the public and soliciting funds violated USDA Department of Ethics. Mr. Ith is known to have done this on at least three occasions.

3. The employee's past disciplinary record.

Mr. Ith was issued a three day suspension, dated January 9, 1995 for failure to wear required protective equipment when required. Additionally, a letter of reprimand was developed based on Mr. Ith's failure to follow direction, but as a result of his whistle blowing it was advised by counsel that the Forest not issue the reprimand due to the appearance of retaliation and timing of circumstances.

4. The employee's past work record, including length of service, performance on the job, ability to get along with Federal workers, and dependability.

Mr. Ith has a total work history of 22 years of service. He was promoted to Wildlife Biologist, GS-9 level in 2001. He has fully successful performance ratings. A letter of expectations, dated May 31, 2005, addressed to Mr. Ith cautions him to work cooperatively and professionally with peers. It was in this letter that Mr. Ith was removed as the Scott Peak EIS IDT team leader and the Scott Peak IDT wildlife biologist. Concerns were raised regarding Mr. Ith's inability to finalize his resource report, meet time frames, to cease assuming additional work without approval, and to improve communications with his supervisor. Mr. Ith was argumentative and refused to follow proper direction and guidance regarding the Scott Peak wildlife report, thus alienating peers and co-workers. The investigation identifies that Mr. Ith, after being removed from the team and the team itself being directed to not work on the Scott Peak Timber Sale, continued to work on the project.

Similar concerns associated with the attitude exhibited by Mr. Ith was documented and discussed with him regarding his work on the Port Houghton-Cape Fanshaw project. Mr. Ith acknowledged these concerns and referenced others had observed the same traits.

Mr. Ith's first appeal of the Scott Peak logging project was in 2006. Importantly, this is after he was removed from the project.

5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned tasks;

Mr. Ith's job requires him to work collaboratively in a team setting for the purpose of preparing environmental documentation of development projects on the Petersburg Ranger District. Removal of Mr. Ith from the Scott Peak project and placing him on another still leaves him in a situation of working with the same team members as before. As a result of the Scott Peak situation, co-workers felt used in some circumstances and others were concerned for the official records. The Petersburg District has one planning team and team members refuse to work with him on matters deliberative in nature. Attempts have been made to find a match for Mr. Ith on other Districts of the Forest, however, there was no confidence expressed by other teams in Mr. Ith's ability to perform his duties with the integrity expected of a government employee and placement was not possible.

Additionally, when the Management of the Tongass National Forest became aware of the appeal by Mr. Ith it was necessary to remove him from the District Office to another office in order to protect the governments ability to provide the supporting documentation necessary to defend its decision. Mr. Ith was detailed to a special project unassociated

with what he was hired to do, outside of the Petersburg Ranger District to protect the integrity of the IDT deliberative process. The work he was assigned is completed and no additional work or funding is available to continue this arrangement.

Employees felt they couldn't have open conversations around the office, in meetings or elsewhere for fear that Glen would use these conversations against them in future appeals. Mr. Ith went outside the limits of his profession to shut down Scott Peak and the Overlook timber sales.

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;

There is no similar misconduct on record in Region 10.

7. The consistency of the penalty with the agency's penalty guide.

Removal is consistent the USDA Penalty Guide on either the release of government property without authorization or the fund raising activity.

8. The notoriety of the offense or its impact upon the reputation of the agency.

The offenses have become notorious in the Forest, the Region, and the Nation. Mr. Ith, on his own volition, has provided interviews to local news stations and he has engaged other State Agencies as well as the environmental groups such as Greenpeace and FSEEE (Forest Service Employees for Environmental Ethics). Mr. Ith has on several occasions solicited the amount of \$50,000.00 through FSEEE for the purpose of bringing suit against the Tongass even after his original concerns were addressed in a new environmental analysis. Currently, members of the public are engaged in a letter writing campaign against the Forest based on misinformation provide them by Mr. Ith and FSEEE. The FSEEE website routinely updates the status of Mr. Ith's situation with information that is not factual. Most recently, Mr. Ith has filed suit on the Scott Peak Timber Sale project.

9. The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question

Mr. Ith has been routinely trained in ethics and conduct relating to Forest Service standards. He was advised on several occasions by his supervisor, co-workers and peers that he was not following standard procedures regarding his draft wildlife report. Interviews and declarations state that his report was not timely, did not substantiate his conclusions, was not clear enough to help the public understand the analysis, and did not follow protocols of previous environmental analysis projects. He was also informed that his report did not warrant placement in the record as it was not sufficiently complete to support the documents released to the public. This report was not accepted in the project record by the individual responsible for its compilation. Mr. Ith placed the document in the record on his own. Later completion of the document by another wildlife biologist and team leader updated the shortcomings identified to Mr. Ith whereby their report became the document supporting the final decision. Mr. Ith's report was not available to the decision maker nor should have been made available to the public.

10. The potential for the employee's rehabilitation;

Mr. Ith has taken the position that regardless of how the Forest addressed his issues on the Scott Peak project, with exception of not implementing it, that he intended to sue the government. This was stated during appeal resolution discussions and posted on the FSEEE website. He has in fact filed the suit he stated he would regardless of the additional analysis performed. Based on this fact, there are no positions suitable for Mr. Ith on the Tongass because of the lack of trust in his abilities to carryout the responsibilities of his position. Consequently, we are not able to find placement for him anywhere in the Forest Service.

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems; mental impairment; or harassment, bad faith, malice, or provocation on the part of others involved in the matter

There are no known mitigating circumstances.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Mr. Ith has stated that he would not cease his illegal and unethical efforts. Consequently, there are no alternative's available to the Government other than removal that would deter such conduct in the future.

To: Forrest Cole/R10/USDAFS@FSNOTES
cc: Karlene K Hale/R10/USDAFS@FSNOTES
bcc:

removed them from D-1. to S.C. for the purpose of deliberation
 & then attached to next work line
 no list

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses; (Don't know if your Region has ever faced similar misconduct. Even if you have, and have imposed lesser penalty, so long as you can justify the penalty in this case, you're okay.)

7. The consistency of the penalty with the agency's penalty guide; (Removal is consistent with the Guide.)

8. The notoriety of the offense or its impact upon the reputation of the agency; (If this one has splashed the headlines, the underlying misconduct of unauthorized leaking of information makes this factor important for you to consider.)

9. The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question; (You'll have to check on R 10's proclamations on this.)

10. The potential for the employee's rehabilitation; (Your thinking is critical in this factor.)

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems; mental impairment; or harassment, bad faith, malice, or provocation on the part of others involved in the matter; (I don't remember seeing any mitigating factors in his reply. You need to make an independent reading of the reply and determine for yourself.)

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others. (This factor is no less important than the previous ones. You need to consider a lesser penalty and justify whatever penalty you decide to take.)

The MSPB requires you to consider only the relevant factors in your decision making. While you need not refer to all in your decision making, we'll need to show the employee the basis (bases) for your decision. You will be taken to task in your decision making and especially your consideration of Douglas. So make sure you pay more than lip service to these factors.

Fourth, once you come to decision, you simply need to communicate your decision to me and I will draft a notice to the employee for your review and signature. The notice will contain appeal rights to the MSPB or the negotiated grievance procedure (and binding arbitration).

Some last thoughts. You need to destroy this email as it's subject to discovery (fancy term for opposing side to get information) under MSPB rules. I'm not an attorney. This email is therefore not protected by privilege between an attorney and his/her client. Nor does it constitute a "work product" by an attorney, again for the same reason. Tell everyone to not keep emails related to this matter.

Once you sign a document, the document is yours, not the one who drafted the document. You cannot disclaim ownership of the document by testifying the Employee Relations Guy wrote something for your signature. You need to convey the conviction of its contents. I've had many a deciding official try to distance himself from the letter by saying just that, paving the road for mitigation or reversal when the deciding official testifies he would not have taken the action but for the pressure by others to do so.

So please look carefully at the employee's rebuttal, clarify issues, consider the agency's case and the important Douglas Factors, and let me know your decision.

OGC promises to do a quick review.

Call if you have Qs.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch

Glen Ith
Chronology of Events

Need dates or best approximations based on the affidavits:

1. Resource rpt delivery to State of Alaska
2. Acquisition of Resource rpt from State by Ith
3. Transmission of Resource rpt by Ith to Edwards
4. Return of electronic version of resource rpt from Edwards to Ith
5. Date Patty Grantham told Scott Peak team to stop work on Scott Peak
6. Followup dates on work done by Ith on Scott Peak resource rpt.
7. Date Gene Preimaky worked with Ith on files
8. Date Gene Preimaky deleted files at Glenn's request
9. Date Overlook EA was removed from Slaughter's desk
10. When was new wildlife specialist assigned to team
11. When was new Resource report completed and entered into Planning Record
12. What is date on resource report that Ith used in appeal?

<u>Date</u>	<u>Subject</u>	<u>Author</u>
10/17/04	Ith Internal comments to Overlook	Ith
12/30/04	Ith Draft Wildlife & Biological Diversity Resource Report - Scott Peak	Ith
04/22/05	Overlook Project Area EA number 1	Cole
05/02/05	Ith computer confiscated	Savage
check date-did this happen later in 05. Some of the material that was on the computer I believe was a latter date than this. If I remember correctly there is an August, 05 wildlife resource report on his computer.		
05/25/05	Ith requests to be removed as EIS IDT team lead	
05/31/05	Letter of Expectations	Parker
05/31/05	Ith removed as Scott Peak EIS IDT team lead	Parker
07/08/05	Ith Overlook EA comments	Ith
06/23/05	Overlook EA Subsistence Meeting Notes	Savage
07/08/05	Ith Public Overlook EA Comments	Ith
08/12/05	Ith Public Scott Peak DEIA Comments	Ith
11/15/05	Overlook Decision Notice & Finding of No Significant Impact Number 2	Cole
11/25/05	Scott Peak Record of Decision number 1	Cole
12/17/05	Ith FOIA Request	Ith
12/20/05	FOIA response to Ith	Slaughter
01/27/06	Ith Administrative Appeal - Overlook	Ith
03/02/06	Ith Administrative Appeal - Scott Peak	Ith
03/13/06	Withdrawal - Overlook	Cole
03/15/06	Informal Appeal Meeting Notes - Scott Peak	
04/10/06	Notification of Detail - Ith	Cole
04/14/06	Appeal Reviewing Officer Recommendation - Scott Peak	Brewster

Undated	Reversal of Cole Decision – Scott Peak	Bschor
05/05/06	Ith Declaration	Ith
05/09/06	Stahl Declaration	Stahl
06/05/06	Ith Fundraising Article	Ith
07/11/06	Kittson Misconduct Investigation	
07/12/06	Ltr – Move to amend Complaint	Fink
07/13/06	Ith Letter of Instruction	Savage
07/13/06	Ith Kalkines Warning	Ith
09/20/06	Scott Peak ROD number 2	Cole
undated	Responses to draft proposal to term	Savage, Slaght
		Benna
01/21/07	Ith appeal of ROD – Scott Peak	Ith
07/20/07	Proposal of termination	Rappe-Daniels
07/26/07	Stahl response to proposal of term	Stahl
07/27/07	Ith response to proposal of term	Ith
09/10/07	FSEEE appeals – Support Whistleblower Defense (fundraiser)	
09/21/07	FSEEE appeals – Support Whistleblower Defense Fundraiser)	
Undated	Decision Letter on Proposed Adverse Action	Cole

Forrest Cole /R10/USDAFS
10/08/2007 06:15 AM

To: Karlene K Hale/HCM/USDAFS@FSNOTES, Denny
Bschor/R10/USDAFS@FSNOTES

cc

bcc

Subject: Fw: lth

Forrest Cole
Forest Supervisor
R10 - Tongass National Forest
Ph: 907-228-6281 Fax: 907-228-6292
Email: fcole@fs.fed.us

----- Forwarded by Forrest Cole/R10/USDAFS on 10/08/2007 06:08 AM -----



Melvin Y
Shibuya/HCM/USDAFS
10/06/2007 06:19 AM

To: Tami.Trost@ogc.usda.gov

cc: Roy M Roosevelt/HCM/USDAFS@FSNOTES, Ronald
Banegas/WO/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES,
Arlean.Lelan@ogc.usda.gov

Subject: Fw: lth

Counsel:

Attached is the lth decision letter would like to issue, edited as you recommended to include a detailed assessment of the Douglas factors.

Thank you for your advice on that point. If you see anything else we need to "tweak," please let me know as soon as possible.

The employee's statement on the web says he has filed a complaint with the Office of Special Counsel regarding the proposal. It is conceivable that if OSC suspects there may be merit to his claims, they might ask us to stay the action if we have not issued the decision letter by that time they decide to intervene.

We would, of course, rather not have to deal with OSC on a stay and would like to proceed as promptly as reasoned deliberation will allow.

As always we greatly appreciate your prompt attention and response.

Thank you.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 10/06/2007 08:08 AM -----

Forrest Cole /R10/USDAFS
10/05/2007 03:46 PM

To: Melvin Y Shibuya/HCM/USDAFS@FSNOTES

cc: Karlene K Hale/HCM/USDAFS@FSNOTES

Subject: lth



Sorry for the delay in getting this back but I have completed the review of the draft with Douglas in it and concur.



R10 (Tongass_Ketchikan) Gith_Dec.doc

Forrest Cole
Forest Supervisor
R10 - Tongass National Forest
Ph: 907-228-6281 Fax: 907-228-6292
Email: fcole@fs.fed.us



United States
Department of
Agriculture

Forest
Service

Tongass NF

Federal Building
648 Mission Street
Ketchikan, AK 99901

File Code: 6170

Date:

Route To:

Subject: Decision on Proposed Adverse Action

To: Glen Ith, Wildlife Biologist

Background

By notice dated July 20, 2007, Olleke Rappe-Daniels, Deputy Forest Supervisor, proposed to remove you for improper conduct. You were provided an opportunity to respond to the proposed adverse action.

By written reply dated July 27, 2007, you respond to the proposed adverse action. You chose not to respond orally. I consider both the proposal notice and your written response to it in my decision-making.

Findings

Specification 1. As Wildlife Biologist on the Scott Peak Project, you drafted a "Wildlife and Biological Diversity Resource Report" dated May 2, 2005. This draft report made recommendations as to the effect of proposed land use alternatives, and was intended for use as an internal deliberative document.

You admit giving a copy of the draft report to Larry Edwards, an official of Greenpeace and an appellant challenging the agency's actions in the Scott Peak Project. Consequently, you failed to protect government property. You allowed its use for other than official purposes in a policy disagreement over which reasonable minds might differ. Standing alone, this specification would warrant termination of your employment.

I sustain this specification. Prematurely releasing your draft for public comment (to Greenpeace) without authorization hurts the internal deliberative process critical to co-workers and supervisors.

Members of the Interdisciplinary Team (IDT) – indeed, agency employees with whom you have professional interaction – are dissuaded from discussing biological and related matters with you. They fear your propensity to disclose internal deliberations to the public before they mature into policy.

In my mind, an employee who cannot be trusted to protect the integrity of the deliberative process forfeits Federal employment.

Specification 2. You admit to reviewing, editing, and approving an article published in the Forest Service Employees for Environmental Ethics magazine. In that article you identify yourself by name as



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a Forest Service employee working on the Tongass National Forest as a manager of wildlife habitat, and you requested monetary contributions to help fund your anticipated litigation against the Forest Service.

You violate ethical restrictions because you used your official position to further fundraising efforts for a personal cause.

With respect to the second specification, you draw distinction in the ethics regulations that does not absolve you of the proscribed conduct. I find you engaged in prohibited fundraising in violation of the regulations.

Penalty Selection: *Douglas Factors*

1. The nature and seriousness of the offense and its relation to the employee's position and responsibilities, including whether the offense was intentional, or technical or inadvertent or was committed maliciously or for gain;

This is a serious offense as it undermines the confidence not only of the Forest Supervisor and your immediate supervisor but also your peers and team members. Employees are no longer willing to share deliberative work with you. You worked as an Interdisciplinary Team Leader and/or member and intentionally took draft deliberative material to the public.

You used your official title and position with the Forest Service to further the fundraising effort for personal cause. Your actions were intentional and for gain.

2. The employee's job level... including fiduciary role, contacts with the public, and prominence of the position;

You are employed by the Forest Service as a Wildlife Biologist, GS-486-9, on the Petersburg Ranger District of the Tongass National Forest. Your duties include the responsibility to engage the public and to work collaboratively with both internal and external customers. Your work is performed in collaboration with a team of resource specialists while making contact with other resource agencies and the public. Your work assignments require you to work relatively independently when representing the agency with members of the public, and to safeguard sensitive agency material within your possession.

3. The employee's past disciplinary record.

No recent prior discipline.

4. The employee's past work record, including length of service, performance on the job, ability to get along with Federal workers, and dependability.

You have a total work history of 22 years of service. You were promoted to Wildlife Biologist, GS-9 level in 2001. You have fully successful performance ratings.

5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned tasks;

Your job requires that you work collaboratively in a team setting for the purpose of preparing environmental documentation of development projects on the Petersburg Ranger District. Removal from the Scott Peak project and placing you on another still leaves you in a situation of

working with the same team members as before. I no longer have confidence in your ability to perform assigned duties with the integrity expected of a government employee.

In order to safeguard deliberative information by denying your access to it, your detail to the Supervisor's Office was continued.

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;

There is no similar misconduct on record in the Tongass National Forest.

7. The consistency of the penalty with the agency's penalty guide.

The USDA Penalty Guide provides that for a first offense of unauthorized disclosure or use of (or failure to safeguard) official, sensitive, or confidential information removal is appropriate. Also, removal for improper use of official authority (improper fundraising) is an appropriate penalty in the first offense.

8. The notoriety of the offense or its impact upon the reputation of the agency.

Both offenses with which you are charged involved your communications outside the agency with members of the public. In addition, you have involved the public media in your disagreements with agency policy.

9. The clarity with which the employee was put on notice of any rules that were violated in the committing of the offense or had been warned about the conduct in question.

You were trained in ethics and conduct related to Forest Service standards.

10. The potential for the employee's rehabilitation;

You acknowledge no wrongdoing. In fact, you find your actions to be legal and justified. You deny violating any confidences. You state you would not release the document to Mr. Edwards had the state agency not agreed that it was not confidential. As a Federal employee you are bound by *federal* laws, rules, and regulations, not by state regulations. Failure to acknowledge that you engaged in the misconduct as charged leads me to believe you have no potential for rehabilitation.

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, or harassment, bad faith, malice, or provocation on the part of others involved in the matter;

You raise no mitigating circumstances.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

I have considered alternative sanctions and determined that nothing less than removal will deter similar misconduct in the future.

Decision

Your removal is effective on close of business day of the date of this memorandum.

Appeal rights

You may file a grievance under Article 9 of the negotiated grievance procedure between the National Federation of Federal Employees and the agency. You have 30 days of the effective date of the action to file your grievance.

Alternatively, you have the right to appeal this action to the Merit Systems Protection Board (MSPB). You may submit an appeal no later than thirty (30) calendar days after the effective date of this action or thirty (30) days after receipt of this letter, whichever is later. The requirements for your appeal are found in Title 5 CFR 1201.24.

The board's regulations allow you to file a grievance negotiated by the parties or an appeal with the board, but not both. You will have exercised your option to file a grievance or appeal at the time you timely file a written grievance or file a notice of appeal under the applicable MSPB procedures.

You may access the board's website by the following link: www.mspb.gov. The site accesses the board's regulations and appeal form. Your appeal must be filed within 30 calendar days of today or within 30 calendar days after the date you receive this decision, whichever is later. I caution you that failure to file within the timeframe prescribed by the board could result in dismissal of your appeal for untimely filing.

Your appeal, should you elect to file with the Board, is to be sent to the following address:

U.S. Merit Systems Protection Board
Western Regional Office
201 Mission Street
Suite 2310
San Francisco, CA 94105-1831

Board regulations [5 C.F.R. 1201.25(b)(2)] require duplicates of all submissions made to the Board be served on the Agency. The address for submission of the Agency's copy is:

USDA FOREST SERVICE
HUMAN RESOURCES
ATTN: Melvin Shibuya
3900 Masthead Street, NE
Mailstop 225
Albuquerque, NM 87109

FORREST COLE
Forest Supervisor

4-127

30

Forrest Cole/R10/USDAFS
11/21/2007 07:44 AM

To "TROST, TAMI" <TAMI.TROST@OGC.USDA.GOV>, Denny
Bschor/R10/USDAFS@FSNOTES
cc "LELAND, ARLEAN"
<ARLEAN.LELAND@OGC.USDA.GOV>, "MOULTON,
JEFF" <JEFF.MOULTON@OGC.USDA.GOV>,
bcc
Subject RE: Ith

I do have some significant concerns and as I stated a few weeks back we had new information that needed to be gathered before an opinion was rendered. The interviews were completed three weeks ago and as have not been completed yet due to the interviewer having an accident. I will contact her again to see if the final document can be completed and then get with all the interest to go over this information as well as the issues you have raised.

Forrest Cole
Forest Supervisor
R10 - Tongass National Forest
Ph: 907-228-6281 Fax: 907-228-6292
Email: fcole@fs.fed.us
"TROST, TAMI" <TAMI.TROST@OGC.USDA.GOV>



"TROST, TAMI"
<TAMI.TROST@OGC.USDA.
GOV>
11/21/2007 07:23 AM

To "Melvin Y Shibuya" <mshibuya@fs.fed.us>
cc "Roy M Roosevelt" <rroosevelt@fs.fed.us>, "Ronald
Banegas" <rbanegas@fs.fed.us>, "Forrest Cole"
<fcole@fs.fed.us>, "MOULTON, JEFF"
<JEFF.MOULTON@OGC.USDA.GOV>, "USTASIEWSKI,
JIM" <JIM.USTASIEWSKI@OGC.USDA.GOV>, "LELAND,
ARLEAN" <ARLEAN.LELAND@OGC.USDA.GOV>,
"Burgers, Kathy -FS" <Kathy.Burgers@usda.gov>, "Hooper,
Sherry -FS" <Sherry.Hooper@usda.gov>, "MILLET,
THOMAS" <THOMAS.MILLET@OGC.USDA.GOV>
Subject RE: Ith

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

Melvin,

I have completed my thorough review of the Ith removal decision letter, rebuttal evidence, and the applicable case law. On behalf of OGC, I have several concerns that lead me to recommend a reduction in penalty to a 14-day suspension. I also recommend accepting the Office of Special Counsel suggestion for mediation of this case. I believe this is a situation that is ripe for resolution.

First, I was not aware that Mr. Ith has been on administrative leave since July. I am not sure why the decision was made to place him on administrative leave, but I hope it is consistent with an agency policy to place all persons facing proposed removal on administrative leave. Otherwise, I am concerned that there is a potential reprisal claim here.

Second, the rebuttal evidence provided by Mr. Ith, including the two affidavits from external witnesses, will be very persuasive to an

ITH000090

adjudicating body. Although the Agency will appropriately argue that it determines what is deliberative and available for public release, it is possible that the fact that the Alaska Department of Fish & Game had a copy of the draft report may be considered a waiver of the Federal deliberative process privilege. This is particularly true since it seems that the agency made little effort to safeguard release of the document or advise its partners not to release the document to the public.

Third, the agency should be sure that draft reports of this nature are never made a part of the EIS, despite Mr. Ith's claims. If these draft reports are part of public deliberations in other matters, then the agency will be hard-pressed to explain why this particular report should have been withheld, other than it did not like the conclusion.

Fourth, with respect to the fundraising specification, it seems the agency has a stronger argument. The actions were clearly deliberate but it will come down to an interpretation of whether or not Mr. Ith was acting in his official capacity. I think an adjudicating body would be more persuaded if the agency had an independent ethics evaluation to support its position. Since it appears that Mr. Ith has not ceased this activity, I recommend the reduced penalty of suspension immediately followed by additional disciplinary action for the repeated behavior. This will show that despite being disciplined for the action, Mr. Ith willfully continued the behavior, thus, supporting a stronger subsequent penalty.

Given the whistleblower allegations and the fairly persuasive rebuttal arguments, I think the fact that there is no progressive discipline in this case will be fatal. The agency is on much steadier ground if it suspends Mr. Ith now, and then punishes any subsequent violations with the harsher penalty of removal. This places the agency in a far better position than the risk of removing him now and ultimately being required to reinstate him.

If you have any questions or concerns about this recommendation, please feel free to contact me.

Tami

Tami Trost, Assistant General Counsel
Civil Rights Policy, Compliance & Counsel Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, SW Room 3312-S
Washington, DC 20250
telephone: (202)690-3993
facsimile: (202)720-7524
e-mail: tami.trost@usda.gov

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4-141

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HIGH VISIBILITY CASES (December 2007)

(b) (6)

Concerns unrelated
individuals

(b)(6)

unrelated
individuals

ITH, Glenn (Wildlife Biologist, GS-486-9, Tongass National Forest. Date initiated: 7/20/07)

ACTION: Proposed adverse action (removal).

ISSUE: Whether administrative action can/should be taken on a whistleblower for misconduct unrelated to the whistleblowing.

May/June 06: Employee approves article in FSEEE pleading for funds for lawsuit against the FS, in apparent violation of the regulations prohibiting fundraising. Employee elected not to discuss disclosure of information to FSEEE and fundraising to any management official of the Petersburg Ranger District, Tongass National Forest, or the Region.

IMPORTANCE: The employee went public on a matter involving an alleged illegal road construction without clearing NEPA requirements. Employee went to Forest Service Employee for Environmental Ethics (FSEEE) who took the matter went to court and an injunction was apparently granted, staying further development.

STATUS:

- 3/26/07: Draft of proposed removal sent to Region for comment. Once the draft passes initial muster, it will be sent to WO and OGC and probably Gary Gilbert, as well, for comment.
- 4/2/07: Draft sent to OGC and Gary Gilbert for response.
- 4/9/07: Telephonic meeting with OGC/GG. Talked with Ron Walkow and associate. FedEx'd casfile to OGC today. Due to scheduling conflict, GG unable to participate.
- 5/1/07: Draft continues to be reviewed by OGC (Ron Walkow/Tami Trost).
- 5/31/07: OGC to give review by 6/4/07.
- 6/5/07: OGC to give review by 6/7/07.
- 7/20/07: Proposed adverse action served on employee.
- 7/27/07: Employee responds to reply.
- 9/7/07: Sent draft of notice to Deciding official for review.

- 9/19/07: Sent draft of decision notice to OGC for review
- 9/25/07: OGC returns draft, seeking Douglas discussion in decision notice.
- 10/6/07: Sent OGC revised decision notice for approval.
- 10/23/07: OGC says review to be completed by 10/26
- 10/28/07: D.O. says he has new information that will strengthen the case.
- 10/29/07: OGC wants to look at this new information.
- 10/31/07: D.O. is warned against considering the new information in decision-making.
- 12/7/07: D.O. receives new information and sends to OGC for review and comment.
- Deciding official prepared to move forward with decision. However, employee has filed whistleblower complaint, alleging proposed AA is in retaliation for protected activity. OSC is asking if we're receptive to mediation. R10 is. Agency wants employee off the agency rolls and is willing to drop AA proceedings in favor of a resignation. [NOTE: Employee should be removed from the agency, not reassigned to another R/S/A, since the misconduct of releasing deliberative material strikes at the very heart of his employment.]

THIRD-PARTY CASES

(b)(6) Unrelated
Individuals

4-126

32

Forrest Cole /R10/USDAFS

12/21/2007 06:39 AM

To: Karlene K Hale/HCM/USDAFS@FSNOTES

cc

bcc

Subject: Re: Glen Ith update 

I am good to go with the statements from Zane and Elaine. While the comments may not be specific other statements add some clarification and if necessary witnesses can attest to him working on projects he was told not to do. Patty Grantham and his supervisor can be very specific.

Forrest Cole

Forest Supervisor

Tongass National Forest

Karlene K Hale

----- Original Message -----

From: Karlene K Hale

Sent: 12/20/2007 07:01 PM

To: Melvin Shibuya

Cc: Forrest Cole; Olleke Rappe-Daniels; Alexandro Montano; Duane Padilla

Subject: Glen Ith update

Melvin - When we spoke a week ago you asked me to develop a letter to Mr. Ith introducing the two new sworn statements given to the misconduct investigator, Carol Kittson. At the time, you indicated that you did not need to see the sworn statements.

I haven't been able to meet that commitment as of this time. I did forward the investigative sworn statements to OGC-Region 10 for review and comment. The response they gave was concern for a lack of specificity in the information. I.e., the statement makes clear that Mr. Ith discussed (in part) that he was spending time doing work that he was directed not to do, and that he knew he could lose his job for doing this work but he thought it was worth it.

OGC comment is that it doesn't say what work. OGC thought it could be work as simple as cleaning up the parking lot (for example). Based on this feedback I wondered if we should ask Carol if she wanted to address this with the interviewee's?

I am sure that Forrest Cole is ready to make the decision to remove Mr. Ith, but we all want him to have the most defensible case available to us. I haven't been able to discuss this with Carol Kittson yet, but wanted you to be aware of the delay.

I'm interested in your opinion regarding this concern as well. Thank you. Karlene

Karlene K. Hale

HR Specialist (Employee/Labor Relations)

Workforce Effectiveness Unit, HRSC


(907)228-6249

4-123

33

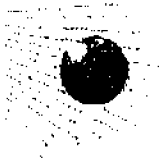


Melvin Y
Shibuya/HCM/USDAFS
01/10/2008 03:50 AM

To: Karlene K Hale/HCM/USDAFS@FSNOTES
cc
Subject: Re: Glen Ith 

I thought you had already had this done, no? There's no date?

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us
Karlene K Hale/HCM/USDAFS



Karlene K
Hale/HCM/USDAFS
01/09/2008 06:14 PM

To: Alexandro Montano/HCM/USDAFS@FSNOTES, Duane Z
Padilla/HCM/USDAFS@FSNOTES, Melvin Y
Shibuya/HCM/USDAFS@FSNOTES
cc
Subject: Glen Ith

The Forest Supervisor has indicated that he would like to move forward with introducing the new material, i.e. sworn statements of Zane and Elaine Cornett. He understands that OGC has concerns with the lack of specifics of the information, however, he believes that witnesses can attest to him working on the specific projects outside of the supervisor's instruction.

The process used in introducing new material (outside of amending the proposal letter) is a new approach to me. I would appreciate your review and edits of the attached draft.

Thank you for your help and feedback. Karlene



ith_amendment_prop.doc

Karlene K. Hale
HR Specialist (Employee/Labor Relations)
Workforce Effectiveness Unit, HRSC
(907)228-6249

H-122

34



Melvin Y
Shibuya/HCM/USDAFS
01/11/2008 10:05 AM

To Karlene K Hale/HCM/USDAFS@FSNOTES, Alexandro
Montano/HCM/USDAFS@FSNOTES
cc Ronald Banegas/WO/USDAFS@FSNOTES

bcc

Subject Fw: Glen lth

Dear Gang:

Ronald says to hold off because of outstanding issues that need resolution. We may participate in mediation with the employee via OSC. If so, it may obviate our proceeding with adverse action.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

— Forwarded by Melvin Y Shibuya/HCM/USDAFS on 01/11/2008 12:03 PM —



Ronald
Banegas/WO/USDAFS
01/11/2008 07:27 AM

To Melvin Y Shibuya/HCM/USDAFS@FSNOTES
cc Sherry Hooper/WO/USDAFS@FSNOTES

Subject Re: Glen lth

Melvin, hold off. Don't do anything on this. We need to talk. So call Karlene and let her know that we'll get back to her. I don't want this to get away from us cause we are checking on some other matters not to mention the OSC request to mediate. Also, please create another e-mail versus sending this one on to anyone else. Thanks.

Ronald J. Banegas
Deputy Director, Human Resources Management
Washington Office, HRM
Phone: (703) 605-0878
Fax: (703) 605-5105

Comments on my Service? Please click on the following link.
<http://www.fs.fed.us/hrm/commentcard/>

Melvin Y Shibuya/HCM/USDAFS



Melvin Y
Shibuya/HCM/USDAFS
01/11/2008 09:04 AM

To Ronald Banegas/WO/USDAFS@FSNOTES
cc Alexandro Montano/HCM/USDAFS@FSNOTES, Karlene K
Hale/HCM/USDAFS@FSNOTES

Subject Glen lth

Ronald, a little update.

In the 2nd week of December, I asked Karlene for an update on where we are on the lth case. I had earlier voiced my sense that we had everything Forrest needed to make decision, without having to

consider the statements of the 2 contractors. Neither could speak to the misconduct, only to what Glen said about working on a matter on which he was directed not to do and that doing so could possibly cost him his job.

Nevertheless, I said if Forrest insisted on considering the new information, we'd give the employee the new information and an opportunity to respond to it. We need not have to rescind the original proposal notice.

Karlene reminds me she sent me an email on 12/20 telling me she got caught up in other matters and was unable to do the notice to GI with the new information. She asked Regional OGC to review and comment on the statements. She writes that OGC voiced concern over the lack of specificity in the statements (i.e., specifically, the statements don't say what work).

Karlene wondered if the deficiency could be rectified by asking Carol Kittson to get the affiants to specify what work GI was referring to.

I thought it was a simple matter for Karlene to go back to Carol and have her do a supplemental interview (you know, a one-line question). Did not think she was asking me whether to go for a supplemental interview.

So she was waiting for me. My fault. We're now proceeding. I'm also addressing the fundraising issue.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 01/11/2008 05:55 AM -----

Karlene K
Hale/HCM/USDAFS
01/10/2008 10:08 AM

To: Melvin Y Shibuya/HCM/USDAFS@FSNOTES
cc: Alexandro Montano/HCM/USDAFS@FSNOTES, Duane Z
Padilla/HCM/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES, Olieke E
Rappe-Daniels/R10/USDAFS@FSNOTES
Subject: Re: Glen lth [E]

Hi Melvin - Sorry about any confusion. I did draft this after last we spoke. I also shared the information, including the sworn testimonies, with OGC in R10 and he raised concerns about the lack of specifics in the testimonies. At that time I sent you an email to share the concern and ask your advice before proceeding. I figured it must have got caught up in Christmas confusion because I didn't hear anything more.

So, after conferring with Forrest Cole, he decided that he would rather argue in court than leave Glen any longer in admin. leave so I am introducing this draft for review and hope to issue asap.

Thanks for your help. Karlene

Karlene K. Hale
HR Specialist (Employee/Labor Relations)
Workforce Effectiveness Unit, HRSC
(907)228-6249

Melvin Y Shibuya/HCM/USDAFS



10

I am ignorant of the process of engaging the services of a mediator in a whistleblower matter. Can you assist us in contacting OSC and moving the process forward? We would appreciate any assistance you can provide.

If you can't, can you give us a phone number of OSC so we can move the process forward? Thanks for any help you can give.

Melvin Y. Shibuya
Chief, Labor/Employee Relations Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

4-132



Melvin Y
Shibuya/HCM/USDAFS
01/25/2008 10:59 AM

To: Karlene K Hale/HCM/USDAFS@FSNOTES, Forrest
Cole/R10/USDAFS@FSNOTES

CC

bcc

Subject Fw: lth OSC Matter

Can you look into this and get back to me?

Melvin Y. Shibuya
 Chief, Labor/Employee Relations Branch
 USDA Forest Service, ASC-HCM
 3900 Masthead St., NE
 Mailstop 225
 Albuquerque, NM 87109
 Phone # (505) 563-9500
 Cell # (505) 331-2848
 Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 01/25/2008 12:58 PM -----



Sherry Hooper /WO/USDAFS

01/25/2008 09:51 AM

To Melvin Y Shibuya/HCM/USDAFS@FSNOTES

cc Ronald Banegas/VO/USDAFS@FSNOTES

Subject Fw: lth OSC Matter

Another request from OSC.

◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶◀▶

Sherry Hooper
Human Capital Management
Branch Chief
Resolution Management
1601 N. Kent St., #600
Arlington, VA 22209

Phone: 703-605-0835

NEW CELL PHONE # 571-278-6804

*****NEW FAX # 505-563-9184*****

Blackberry address: 24racin@tmo.blackberry.net

[illegible]

----- Forwarded by Sherry Hooper/WO/USDAFS on 01/25/2008 11:51 AM -----



"McClain, Robert"
<RMcClain@OSC.gov>

01/25/2008 11:39 AM

To "Sherry Hooper" <shooper@fs.ted.us>

CC

Subject RE: Ith OSC Matter

Rob

4

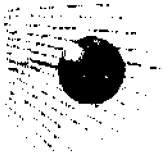
ITH000103

To: Karlene K Hale/HCM/USDAFS@FSNOTES
cc
bcc

Yes, in mediation, the employee can have a representative that can participate. We will also have a Resolving Official - not sure if that will be the FS or someone above him and we will be represented by OGC probably from the WO office. But right now, these answers are not known. We'll talk before any decisions are made.

Sherry Hooper
Human Capital Management
Branch Chief
Resolution Management
1601 N. Kent St., #600
Arlington, VA 22209

Karlene K Hale/HCM/USDAFS



To Sherry Hooper/WO/USDAFS@FSNOTES
cc

Thanks Sherry - I'll be watching this one with interest. I have one question, should there be mediation, is the employee allowed to have his attorney there and are they allowed to participate. If so I'm sure that R10 would need there attorney as well. I'm just thinking ahead should we proceed. Appreciate your thoughts. Karlene

Sherry Hooper/WO/USDAFS



To Melvin Y Shibuya/HCM/USDAFS@FSNOTES,
tami.trost@ogc.usda.gov
cc Denny Bschor/R10/USDAFS@FSNOTES, Forrest

February 1, 2008

FROM: Raymond Sheehan
Designated Agency Ethics Official

TO: Tammy Trost
Office of the General Counsel

SUBJECT: Proposed Termination of Employment; Glen Ith, U.S. Forest Service

We have reviewed the materials provided in terms of the Charge and two supporting Specifications put forth by the Forest Service as its basis for issuing its July 20, 2007, Proposed Termination of Employment to Glen Ith, Wildlife Biologist, Tongass National Forest. Based on our review, we cannot determine with any level of confidence that Mr. Ith violated any ethical rules under Specification 1. We believe, however, that his actions, as allegations under Specification 2, appear supported and that those actions could have violated ethical rules.

The Forest Service based its charge of "Improper Conduct" on the following specifications:

Specification 1: As Wildlife Biologist on the Scott Peak Project, [Ith] drafted a "Wildlife and Biological Diversity Resource Report" dated May 2, 2005. This draft report made recommendations as to the effect of proposed land use alternatives, and was intended for use as an internal deliberative document. [Ith admits] giving a copy of the draft report to Larry Edwards, an official of Greenpeace and an appellant challenging the agency's actions in the Scott Peak Project. By this unauthorized action you failed to protect government property and allowed its use for other than official purposes in a policy disagreement over which reasonable minds might differ. Standing alone, this specification would warrant termination of your employment.

Specification 2: Recently, you admitted that you reviewed, edited, and approved an article published in the Forest Service Employees for Environmental Ethics [FSEEE] magazine. In that article you identified yourself by name as a Forest Service employee working on the Tongass National Forest as a manager of wildlife habitat, and you requested monetary contributions to help fund your anticipated litigation against the Forest Service.

Specification 1.

In his "Reply to the Proposed Termination of Employment Letter," dated July 27, 2007, Mr. Ith alleges, with regard to the Wildlife and Biological Diversity Resource Report ("resource report") that:

[t]he findings in the resource report were intended to be part of the public record and become an integral part of the Draft Scott Peak EIS. The "recommendations" of the wildlife resource report for "removing, avoiding,

or compensating for any adverse effects,” must be documented in the project’s Record of Decision. By this direction, the Forest Service Manual requires that recommendations contained in the wildlife resource report be made public.

Mr. Ith goes on to state that the “Draft EIS is intended to be circulated widely to the public for review” In our review, we could not determine whether this statement was correct or not. It is not within our scope of authority to determine what documents are properly part of the Record of Decision in an EIS or what documents will ultimately be made public. However, that really is a moot issue because Mr. Ith then contends that:

I did not retain a copy of the [resource] report. The copy I obtained and sent to Mr. Edwards was obtained through the Alaska Department of Fish and Game (ADF&G). ADF&G possessed the report because it was part of the collaborative process that helped produce the report . . . I obtained a copy of the report from ADF&G at Mr. Edwards’ request only after the publication of the Scott Peak Record of Decision . . . I understand that the ADF&G has produced the report to other members of the public besides myself, thus confirming that it was not subject to any deliberative process privilege.

In support of this contention, Mr. Ith provides a Declaration of Andy Stahl, Executive Director of FSEEE attesting to the fact that he requested and obtained a copy of the resource report from ADF&G under the Alaska Public Records Act.

While the Report of Investigation contains numerous differing concerns on the part of Forest Service (FS) employees over Mr. Ith’s actions, the Specification is limited to giving Mr. Edwards, a person challenging FS policy decisions, a copy of the resource report and, in so doing, failing to protect government property. The closest ethics rule to this allegation would be under 5 CFR 2635.703. Under that provision, employees are prohibited from, among other actions, allowing “the improper use of nonpublic information to further his own private interest or that of another.” The problem with the facts here is that it appears that when Mr. Ith obtained the resource report at the request of Mr. Edwards, the document was publicly available. If publicly available, Mr. Ith’s policy differences with the Forest Service become irrelevant. He is entitled, as any private citizen in his personal capacity, to participate in public issues in a manner so long as his actions do not violate law or applicable rules. To the extent that the Specification alleges a violation of ethics rules based solely upon giving a copy of the resource report to Mr. Edwards, we see none that apply.

Specification 2.

Here, we believe the facts could support a conclusion that Mr. Ith violated Federal ethical rules.

Misuse of Position. Under 5 CFR 2635.702, an employee generally is prohibited from using his public office for private gain. Under subsection (a), an employee is prohibited from using his “Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, beneficial or otherwise.

to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” 5 CFR 2635.702(a).

In his FSEEE article, Mr. Ith clearly identifies himself by name as having “worked for the Forest Service for 25 years; the last 5 years as a manager of wildlife habitat ... as a Forest Service employee....” He goes on to provide greater detail on his official involvement at the Tongass National Forest and then finishes with:

Together with FSEEE, I filed suit in federal district court in Anchorage, Alaska. FSEEE and I need your help... There is some risk to my career from this lawsuit... Now I hope that you can help us with this case. Please consider making an extra contribution to FSEEE today to help protect the Tongass National Forest. I sure do appreciate it.

In so doing, we believe that he used not just his Federal employee status, but his Federal position and experience at the Tongass National Forest as a means to strengthen the legitimacy of his request for financial support for FSEEE and its litigation. Mr. Ith made his official position clear in the FSEEE statement and in his two separate statements to the investigator in which he stated that the purpose of the article was to raise funds for his lawsuit.

Teaching, Speaking and Writing. 5 CFR 2635.807(b) states an employee engaged in writing as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his writing activity. In his statements to the investigator, Mr. Ith stated that he reviewed, changed and approved the article to be published in the FSEEE magazine. The article clearly employs his official title and position. Moreover, as the writing is in support of litigation against the Forest Service, the writing activity clearly was undertaken in his personal capacity.

Fundraising. While the article seeks fund for litigation, Mr. Ith’s article requests that readers “consider making an extra contribution to FSEEE” Under 5 CFR 2635.808(c)(2), an employee may engage in fundraising in his personal capacity provided that he does not “[u]se or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort” Here, there appears no other reason for providing details as to Mr. Ith’s official position and duties other than to legitimize his request for additional funds to FSEEE.

For the above reasons, we believe that the Mr. Ith’s actions, as alleged in this Specification, could have run afoul of ethics rules.

Hi Tami, please see OSC's e-mail below. Now that we are in receipt of the Office of Ethics assessment we need to discuss next steps. We do need to get back to OSC to let them know whether we are going to mediate (not sure what that would look like). Please let me know your thoughts and the status of the Decision Letter. Thanks in advance.

Ronald J. Banegas
Deputy Director, Human Resources Management
Washington Office, HRM
Phone: (703) 605-0878
Fax: (703) 605-5105

Comments on my Service? Please click on the following link.
<http://www.fs.fed.us/hrm/commentcard/>

----- Forwarded by Ronald Banegas/WO/USDAFS on 02/14/2008 11:49 AM -----

Sherry

Hooper/WO/USDAFS

To 02/14/2008 07:54 Ronald Banegas/WO/USDAFS@FSNOTES

AM

CC

Subject

Pw: RE: Ith OSC Matter

Ron, would you be able to respond to OSC on Ith?

[illegible]

Sherry Hooper
Human Capital Management
Branch Chief
Resolution Management
1601 N. Kent St., #600
Arlington, VA 22209

ITH000098

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✓

Principal: CN=Melvin Y Shibuya/OU=HCM/O=USDAFS
\$LangPrincipal:
\$AltPrincipal:
\$AutoSpell: 1
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Logo: StdNotesLtr20
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Sign:
Subject: Glen Ith -- Status of Case
SendTo: CN=Ronald Banegas/OU=WO/O=USDAFS@FSNOTES
CopyTo: CN=Forrest Cole/OU=R10/O=USDAFS@FSNOTES,CN=Olleke E Rappe-
Daniels/OU=R10/O=USDAFS@FSNOTES,CN=Denny
Bschor/OU=R10/O=USDAFS@FSNOTES,CN=Karlene K Hale/OU=HCM/O=USDAFS@FSNOTES
INetSendTo: rbanegas@fs.fed.us
INetCopyTo:
fcole@fs.fed.us,orappedaniels@fs.fed.us,dbschor@fs.fed.us,kkhale@fs.fed.us
\$StorageTo: 1
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From: CN=Melvin Y Shibuya/OU=HCM/O=USDAFS
INetFrom: mshibuya@fs.fed.us
PostedDate: 02/19/2008 03:26:36 PM
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Shibuya/OU=HCM/O=USDAFS,CN=ENTR3B/OU=E/O=USDAFS,CN=Denny Bschor/OU=R10/O=USDAFS
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\$MiniView:

Ronald:

Not to have too many folks in this email. Share with whomever you think should see this.

We need to put closure to this case. Either we proceed with the proposed adverse action (removal). Or, we drop the case.

USDA

We've gotten a reading from the Department regarding the ethics issue. I'm told the employee "could (or may) have" violated the fundraising regulations. Further, he "could have" released a draft document without prior authorization.

OSC

The employee has gone to OSC to seek protection from the agency's adverse

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action. And, OSC asks if we're receptive to mediation. We said we are.

However, there is nothing to mediate because we have not taken adverse action against the employee. So what's there to mediate? We have not even made a decision to take adverse action. If we did, OSC would have imposed a stay on the effective date of the action pending its investigation into whether the adverse action is retaliatory to some protected disclosure.

We have cooperated with OSC's request for information. But we sit with no one knowing what to do. No one seems to know in whose court the ball is.

Action Plan

I recommend Forrest issue the decision letter and force the matter to some resolution. Whether we mediate the matter of an adverse action allegedly tainted by a WB complaint, or OSC issues a finding of no taint.

Or, we remove the employee (if that's Forrest's decision) and do battle in the MSPB arena. Or, we go the grievance/arbitration route. Or, we reverse the proposed action altogether and return the employee to work with no restrictions.

Harmful Effects of Doing Nothing

We have to do something, else the employee continues on administrative leave for which there is no end. This matter has gone on long enough and the toll of waiting for someone to do something threatens to doom this case. (Stale charges get increasingly difficult to defend.)

Prolonging decision does the parties no good. OGC is reluctant to give blessings. Their reluctance is noted. But the Region should not be paralyzed by OGC's hesitance. If Forrest is prepared to make decision, he should be allowed to act. We've asked the Department for a reading on the ethics side and they gave us a definite maybe.

We've gotten input from everyone and now it's up to Forrest. He's prepared to decide. I'm for letting him. The decision letter has been with him for months and it does neither the agency nor the employee any good to allow this matter to fester.

I ask for your thoughts (and anyone else who wants to weigh in on this).

Melvin Y. Shibuya
Chief, L/ER Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

4-130

41



Melvin Y
Shibuya/HCM/USDAFS
02/21/2008 03:28 PM

To Forrest Cole/R10/USDAFS@FSNOTES
cc Olleke E Rappe-Daniels/R10/USDAFS@FSNOTES, Karlene
K Hale/HCM/USDAFS@FSNOTES
bcc

Subject Fw: lth OSC Matter

Info, Forrest...

Melvin Y. Shibuya
Chief, L/ER Branch
Phone # (505) 563-9500
Cell # (505) 331-2848
Email: mshibuya@fs.fed.us

----- Forwarded by Melvin Y Shibuya/HCM/USDAFS on 02/21/2008 05:26 PM -----



"TROST, TAMI"
<TAMI.TROST@OGC.USDA.
GOV>

02/20/2008 03:34 PM

To rbanegas@fs.fed.us

cc mshibuya@fs.fed.us, shooper@fs.fed.us,
kburgers@fs.fed.us, "LELAND, ARLEAN"
<ARLEAN.LELAND@OGC.USDA.GOV>, "MILLET,
THOMAS" <THOMAS.MILLET@OGC.USDA.GOV>

Subject RE: lth OSC Matter

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

Ron,

After discussions with Arlean Leland, we have decided that the Forest Service could likely sustain a longer suspension than I previously advised. If you want to reduce the removal to a 45-day suspension, we think that is defensible given the new ethics opinion. Please feel free to contact me if you wish to discuss this further. Thanks.

Tami

Tami Trost, Assistant General Counsel
Civil Rights Policy, Compliance & Counsel Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, SW Room 3312-S
Washington, DC 20250
telephone: (202) 690-3993
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e-mail: tami.trost@usda.gov

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please immediately notify the sender by telephone or e-mail and permanently delete the message from all servers and backup instruments. Thank you.

-----Original Message-----

From: TROST, TAMI
Sent: Tuesday, February 19, 2008 3:53 PM
To: 'rbanegas@fs.fed.us'
Cc: mshibuya@fs.fed.us; shooper@fs.fed.us; kburgers@fs.fed.us
Subject: RE: Ith OSC Matter

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION - NOT FOR RELEASE

Ron,

I see no problem with mediating the OSC complaint. The ethics opinion makes our case for discipline stronger, but it does not overcome the lack of progressive discipline in this case. I stand by my previous opinion of November 21, 2007, calling for a reduction to a 14-day suspension. Please let me know if I can be of any further assistance. Thanks.

Tami

Tami Trost, Assistant General Counsel
Civil Rights Policy, Compliance & Counsel Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, SW Room 3312-S
Washington, DC 20250
telephone: (202)690-3993
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-----Original Message-----

From: rbanegas@fs.fed.us [mailto:rbanegas@fs.fed.us]
Sent: Thursday, February 14, 2008 12:21 PM
To: TROST, TAMI
Cc: mshibuya@fs.fed.us; shooper@fs.fed.us; kburgers@fs.fed.us
Subject: Fw: Ith OSC Matter

JOHN W. PHILLIPS
(206) 382-6163
fax (206) 382-6168
jphillips@jphillipslaw.com
www.jphillipslaw.com

February 27, 2008

Via Facsimile (907) 772-5995
and E-mail: csavage@fs.fed.us

Mr. Chris Savage
District Ranger
Petersburg Ranger District
PO Box 1328
Petersburg, AK 99833

Re: Mr. Glen Ith

Dear Mr. Savage:

I write on behalf of my client, Mr. Glen Ith. Glen has informed me that the Forest Service plans to eliminate Mr. Ith's position as a district wildlife biologist and that Mr. Ith must proceed to apply for a different position through priority placement in the Pre-WRAPS placement plan. This would seem a hopeless endeavor for Mr. Ith in light of his current status with the Forest Service.

As you are well aware, on July 20, 2007, you personally delivered to Mr. Ith a letter in which the Forest Service proposed to terminate him, placed him on administrative leave and instructed him not to access agency property without specific authorization. Mr. Ith responded to each of the Forest Service's false bases for termination. In response the Forest Service has done nothing, but warehouse Mr. Ith away from the Forest Service. With such a termination letter hanging over Mr. Ith's head, it would be utterly futile for Mr. Ith to seek placement anywhere else within the Forest Service.

It is readily apparent that the Forest Service has embarked on a strategy of "terminating Mr. Ith without actually terminating him," in the vague hope that he will disappear and the Forest Service will not create an appealable event. There is precedent

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FEB 28 2008

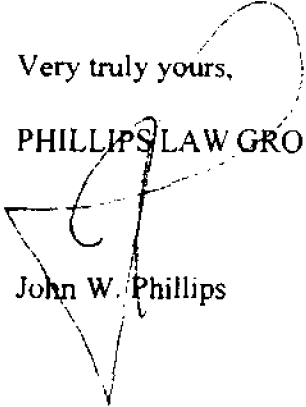
Mr. Chris Savage
February 27, 2008
Page 2

for this kind of illicit conduct by the Forest Service, as in the case of Forest Service employee Mary Dalton, who the Forest Service "surplused" in 1997, soon after she appealed a Forest Service timber sale when her conclusions regarding environmental impact were simply ignored. Mr. Ith, like Ms. Dalton, has every intention to vindicate his rights, notwithstanding this strategy.

If the Forest Service withdraws its July 20, 2007, letter of proposed termination and permits Mr. Ith to return to work, he will consider applying for priority placement. By failing to do so, the Forest Service will have doomed any chance Mr. Ith has of obtaining another placement in the Forest Service. Mr. Ith will not be put in such an untenable position.

Very truly yours,

PHILLIPS LAW GROUP, PLLC



John W. Phillips

cc: Mr. Robert McClain, OSC Investigator



U.S. OFFICE OF SPECIAL COUNSEL

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Tel: (510) 637-3464
Fax: (510) 637-3474

San Francisco Bay Area Field Office

April 9, 2008

Sherry Hooper, Branch Chief
Resolution Management
U.S. Forest Service
Human Capital Management
1601 North Kent Street, Suite 600
Arlington, VA 22209

Re: OSC File No. MA-07-2530 (Glen Ith)

Dear Ms. Hooper:

We were very sorry to learn of the recent death of U.S. Forest Service Wildlife Biologist Glen Ith. As you know, Mr. Ith had filed a complaint with the Office of Special Counsel (OSC). Under the present circumstances, we have decided to close that complaint without further action.

We appreciate your cooperation during the processing of Mr. Ith's complaint. If you have any questions or need further information, you can contact me at (510) 637-3464, ext. 5230, rvenier@osc.gov, or at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel A. Venier".

Rachel A. Venier
Attorney
Investigation and Prosecution Division