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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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KRISTINE J. LUKOS, Democratic Chief Counsel and Staff Director

March 27, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Sally Quillian Yates
Acting Deputy Attorney General
U.S. Department of Justice

Dear Acting Deputy Attorney General Yates:

Last September, Senator Grassley wrote to the Justice Department's Executive Office for United States Attorneys (EOUSA) and the Government Accountability Office (GAO) concerning a report from the Office of Inspector General (OIG) that the Department had declined to prosecute three separate cases in which federal prosecutors apparently broke the law.¹ We write today with similar concerns relating to the Department's handling of attorney misconduct in two lawsuits² arising out of the "Moonlight Fire," which burned 65,000 acres in California in 2007.³

According to the *Washington Post* and the *Wall Street Journal*, a California judge and two Assistant United States Attorneys (AUSA) involved in the case have exposed serious wrongdoing by officials at the U.S. Forest Service and the U.S. Attorney's Office for the Eastern District of California.⁴ The misconduct includes the withholding of 5,000 pages of documents, false statements about where the fire started, and the failure to disclose an error in the damage calculation of another case which would have reduced potential liability by \$10 million.⁵

Disturbingly, according to reports, the AUSA who led the Moonlight Fire investigation claimed in a 15-page sworn statement that he was kicked off the case when he disclosed one of these documents, even though he had consulted with the Justice Department's Office of

¹ Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Judiciary, to Monty Wilkinson, Director, Executive Office for United States Attorneys, U.S. Department of Justice (Sep. 17, 2014); Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Judiciary, to Gene Dodaro, Comptroller General, U.S. Government Accountability Office (Sep. 17, 2014).

² *California Dept. of Forestry v. Howell*, et al., GN CV09-00205 (Cal. Sup. Ct.) and *United States v. Sierra Pacific Industries*, et al., 2:09-CV-02445 (E.D. Cal.).

³ Kathleen Parker, "A wildfire of corruption," *The Washington Post*, Dec. 16, 2014 [hereinafter Post Article].

⁴ "Prosecutors Burn Down the Law: How fire investigators distorted evidence to loot a company," *The Wall Street Journal*, Jan. 2, 2015 [hereinafter WSJ Article]; see also Post Article and Jonathan Keim, "The Next Attorney General Should Make Sure This Never Happens Again," *National Review*, Dec. 17, 2014.

⁵ *Id.*

Professional Responsibility (OPR) before doing so.⁶ A second federal prosecutor reportedly stepped down after discovering “prosecutorial abuse directed squarely at raising revenue.”⁷

As a result of the “corrupt and tainted” investigation and discovery abuses, the plaintiffs in the state court case have been ordered to pay more than \$32 million in attorney fees, and the \$55 million settlement reached in 2012 in the federal case may be overturned.⁸

Accountability for prosecutors fulfills a basic expectation from the general public that the government will be held to the same standards as everyone else. If anything, United States investigators and prosecutors--who occupy positions of public trust and exercise significant discretion afforded them in enforcing the law—should be held to a higher standard.

Accordingly, by April 10, 2015, please have your staff provide a briefing to the Committee on this matter and please also provide written responses to the following:

1. Has OPR initiated an investigation of any of the Justice Department employees involved in this case? If not, why not?
2. Has the Justice Department initiated an investigation of any of the U.S. Forest Service employees in this case? If not, why not?
3. The Department recently announced changes to its asset seizure program in response to concerns that it incentivized law enforcement to police for profit. Given the similar concerns raised in this case, how will you ensure that fire investigations and prosecutions are not “directed squarely at raising revenue?”

Should you have questions, please contact Jay Lim at (202) 224-5225 or Benji McMurray at (202) 224-5444. Thank you.

Sincerely,



Charles E. Grassley
Chairman



Mike Lee
Member

cc: The Honorable Michael E. Horowitz
Inspector General, U.S. Department of Justice

The Honorable Monty Wilkinson
Director, Executive Office for United States Attorneys, U.S. Department of Justice

The Honorable Gene Dodaro
Comptroller General, U.S. Government Accountability Office

⁶ WSJ Article.

⁷ WSJ Article.

⁸ See note 4, *supra*.