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Prosecutors Aided 'Sham' Wildfire Probe, Sierra Pacific Says

By **Lance Duroni**

Law360, Chicago (January 16, 2015, 3:36 PM ET) -- Sierra Pacific Industries Inc. and others on Thursday laid out a scathing account of alleged prosecutorial misconduct that pushed them into a \$122.5 million settlement over a devastating California wildfire, claiming federal prosecutors "sat on their hands" as investigators worked to frame them.

In a 138-page brief backing their bid to unwind the settlement, Sierra Pacific and its fellow defendants alleged that prosecutors perpetrated a fraud on the court in pursuit of a "pay day" for the government, allowing investigators from the California Department of Forestry and Fire Protection to lie under oath and falsely pin blame for the fire on the defendants after a "sham" probe.

"The investigation was neither scientific nor systematic. Indeed, it was 'corrupt and tainted,'" the defendants said. "Worse, federal prosecutors, charged with the solemn responsibility of protecting the truth, ignored their 'gatekeeper' function in favor of assisting the investigators with their treachery."

The feud stems Sierra Pacific's **\$122.5 million settlement** of a civil case over the massive 2007 Moonlight Fire, which destroyed 65,000 acres of forest near Sacramento over two weeks. The government had claimed a contract logger hired by Sierra Pacific had negligently started the Moonlight Fire after his bulldozer struck a rock and created sparks that ignited the surrounding dry ground fuels.

But Sierra Pacific moved to set aside the deal in October, claiming state and federal investigators made up their official fire origin points after finishing their examination of the scene and suppressed information about a "secret point of origin" they had actually examined. The investigators then lied about the report under oath, which federal prosecutors allegedly knew about.

In Thursday's brief, the defendants, which also include a pair of Sierra Pacific contractors and some private landowners, accused prosecutors for the Eastern District of California of crafting false interrogatory responses, concealing important information from the defense, and "knowingly and recklessly" submitting "blatantly false" information to the court, among other misconduct.

One of the prosecutors on the case was so troubled by the government's tactics that he left the team in May 2011 and shared his concerns with one of the defense attorneys, according to the brief. On his way out the door, Assistant U.S. Attorney Eric Overby took a parting shot at his fellow prosecutors over their zeal to recover money in the case, the

defendants alleged.

"It's called the Department of Justice. It's not called the Department of Revenue," he told his colleagues, according to the brief.

A representative for the U.S. attorney's office in Sacramento said Friday that prosecutors would respond to the allegations in writing by Feb. 17.

In a November statement, prosecutors said they "strongly dispute the truth of Sierra Pacific's allegations, which constitute unfair attacks upon the integrity of hardworking and valued public servants."

The fallout from the investigation scandal has been spreading for nearly a year. In February, a California judge overseeing a related case slammed Cal Fire with **\$32 million in sanctions** over the probe, which he called "corrupt" and "reprehensible."

Then, in October, U.S. District Judge Morrison C. England Jr. **recused himself** and all other judges from the Eastern District of California from the federal case, finding the impartiality of all judges from the district could be questioned after Sierra's allegations.

Sierra Pacific is represented by William R. Warne, Michael J. Thomas, Annie S. Amaral and Meghan M. Baker of Downey Brand LLP and Richard W. Beckler and Jennifer T. Lias of Bracewell & Giuliani LLP. The property owners are represented by Richard S. Linkert and Julia M. Reeves of Matheny Sears Linkert & Jaime LLP. The contract logger is represented by Phillip R. Bonotto and Derek VanDeviver of Rushford & Bonotto LLP.

The government is represented by U.S. Attorney Benjamin B. Wagner and Assistant U.S. Attorneys David T. Shelledy and Kelli L. Taylor.

The case is U.S. v. Sierra Pacific Industries Inc. et al., case number 2:09-cv-02445, in the U.S. District Court for the Eastern District of California.

--Additional reporting by Juan Carlos Rodriguez. Editing by Chris Yates.

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