

Moonlight Fire Misconduct Alleged in Federal Court

SACRAMENTO – Sierra Pacific Industries and related defendants who were sued by the United States for allegedly causing the 2007 Moonlight Fire settled that matter two years ago by paying \$55 million and providing 22,500 acres of private land to the Forest Service. That 65,000 acre fire was near Westwood.

Since then, evidence of a totally corrupt investigation and prosecution has come to light. As a result, those defendants have recently filed a motion alleging the federal court which maintains jurisdiction over the matter was the victim of an egregious fraud perpetrated by Moonlight Fire investigators and certain Assistant United States Attorneys in this judicial district.

The motion is supported by two lengthy orders issued earlier this year by State Superior Court Judge Leslie C. Nichols in Cal Fire's related Moonlight Fire cost recovery action. That action involved the same defendants and relied upon the same evidently corrupt investigation and prosecution. In the CalFire case, Judge Nichols found “egregious,” “pervasive” and “reprehensible” abuses involving governmental corruption. Nichols also called the prosecution “corrupt and tainted”. Judge Nichols terminated the state action and issued sanctions in favor of the defendants for more than \$32 million, saying “the misconduct in this case is so pervasive that it would serve no purpose for the court to even attempt to recite it all here”.

Judge Nichols found the state case was a “betrayal of the primary purpose of the judicial system – to reveal the truth”. Judge Nichols’ findings are one of several catalysts driving the new motion in federal court.

Because the federal and state prosecutors claimed a “common interest” in suing SPI et. al. they prosecuted their two actions together under what is known as a ‘joint prosecution agreement’. Judge Nichols’ decisions also brought forward additional information now supporting the federal motion. Specifically, the new federal case includes a 15 page declaration from Robert Wright, the former Assistant United States Attorney who led that office’s Affirmative Fire Litigation Team at the time of the Moonlight Fire. Wright drafted and filed the original Moonlight Fire complaint.

Wright states he now believes investigators falsified material in their 2009 Origin and Cause Report for the Moonlight Fire and that investigators and certain government lawyers “obstructed discovery of the truth” during their prosecution.

Wright believes these same prosecutors repeatedly breached their professional responsibilities duties to the court intentionally and seriously enough to warrant consideration of obstruction of justice charges under U.S. law.

The penalty for such a crime is up to 20 years in prison. Those prosecutors won't lose any sleep: prosecutorial misconduct is so rarely punished the operative term might be "never".

Wright also reveals that, roughly two months later, his immediate supervisor removed him from his lead role on the Moonlight Fire action and barred him from working on the case in any capacity.

Speaking of Judge Nichols' decision and steps he took thereafter, Wright declares: "In light of what has finally been exposed regarding the Moonlight Fire action, I suspect that someone connected with the Forest Service or CalFire communicated with Civil Division management in late 2009 that there might be or was a problem with the Moonlight Fire investigation and report, and that with my zero tolerance of litigation misconduct by the government, I should be removed from the case."

The alleged prosecutorial misconduct occurred after Wright's removal from the case.

Wright is not alone. The defendants' brief reveals that Eric Overby, another highly respected former federal prosecutor, ultimately left the Moonlight Fire prosecution in disgust, saying "It's called the Department of Justice. It's not called the Department of Revenue".

Before leaving, Overby reached out to defense counsel and, in talking about the federal prosecution of this matter said, "In my entire career, yes, my entire career, I have never seen anything like this. Never".

Finally, and most importantly, defendants' motion for fraud upon the Court is also supported by declarations, deposition excerpts, and hundreds of pages of newly discovered evidence, all supporting the contention that "lead prosecutors turned a blind eye to a thoroughly corrupt investigation, transported that corruption into the jurisdiction of this Court, and then permitted pervasive dishonesty by the investigators on issues going to the core of this matter.

The defendants' motion exposes a species of fraud including the following facts:

- The jointly authored origin and cause report was a work of fiction regarding its most important conclusions, including where and how the fire started. A critical government expert ultimately testified that a "shadow of deception" hung over the investigators' primary work.
- An air attack video taken from above the fire showed CalFire and Forest Service investigators' alleged points of origin were still not within the boundary of the fire's smoke plume more than an hour after the fire began.
- Federal prosecutors aided the investigators' pre-litigation efforts to cover up harmful information regarding the Red Rock lookout tower on the day of the fire by serving interrogatory responses which omitted material information harmful to the government.
- The lead CalFire investigator was receiving benefits from an illegal "off-book" California District Attorneys Association account which he and others funded through the money they collected from the defendants they targeted on wildland fires.
- Federal and state prosecutors were aware investigators failed to properly explore other causes of the fire, several of which were ignored or suppressed.

According to the Supreme Court, the court has inherent powers to restore justice in such cases