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Department of
Agriculture

Forest
Service

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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