

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.