



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Western Region - Investigations
1333 Broadway, Suite 400
Oakland, California 94612
TEL: 510-208-6860 FAX: 510-208-3751



AUG 07 2013

TO: David Ferrell
Director
Law Enforcement and Investigations, FS
Arlington, Virginia (b)(6)

FROM: Lori Chan (b)(6)
Special Agent-in-Charge

SUBJECT: Phoebe Creek Recreational Site, Payette National Forest, Valley
County, Idaho – Personnel/Archaeological Resources Protection
Act Violation (OIG File No. SF-0801-0733)

Attached is a copy of our Report of Investigation. It should be noted that this investigation was initially opened under the case title of Rocky Bear Project. During the course of our investigation, the case title was changed to Phoebe Creek Recreational Site. Due to the lack of criminal violation, we are referring the matter back to your office. Please feel free to take any administrative action you deem appropriate, and notify our office of any action taken as a result of this investigation.

If adverse action is proposed based on this report, care should be taken to make available to the employee, or employee's representative, only those portions of the report on which the proposed adverse action is based. Should you have any questions or need additional information, please contact Special Agent (b)(6),(b)(7)(C) at (b)(6),(b)(7)(C) or Assistant Special Agent-in-Charge Greg McDiffett directly at (303) 969-6950.

Attachment

cc:

Mike McKinney, Assistant Special Agent-in-Charge, Law Enforcement and
Investigations, Intermountain Region, FS, Ogden, UT
Keith Lannon, Forest Supervisor, Payette National Forest, McCall, ID
AIG for Investigations, OIG (via email) (b)(6),(b)(7)(C)@oig.usda.gov



United States Department of Agriculture
OFFICE OF INSPECTOR GENERAL-INVESTIGATIONS
Western Region
Oakland, California



REPORT OF INVESTIGATION

FILE NUMBER: SF-0801-0733

DATE: AUG 07 2013

TITLE: PHOEBE CREEK RECREATIONAL SITE
Payette National Forest
McCall, Idaho 83638
(Valley County)

CASE TYPE: Personnel/Archaeological Resources
Protection Act Violation

SPECIAL AGENT:

(b)(6), (b)(7)(C)

Salt Lake City, Utah

(b)(6)

APPROVED BY:

LORI CHAN

Special Agent-in-Charge

Distribution:

- 1-David Ferrell, Director, Law Enforcement and Investigations, FS
- 1-Mike McKinney, Assistant Special Agent-in-Charge, Law Enforcement and Investigations, Intermountain Region, FS, Ogden, UT
- 1-Keth Lannon, Forest Supervisor, Payette National Forest, McCall, ID
- 1-AIG for Investigations, OIG (via email) (b)(6), (b)(7)(C) @oig.usda.gov
- 1-File

This document is for OFFICIAL USE ONLY. It and its contents are not to be distributed outside your agency, nor duplicated, without prior clearance from the Office of Inspector General, USDA.

SYNOPSIS

This investigation was conducted to determine if violations of the Archaeological Resources Protection Act (ARPA) occurred at the PHOEBE CREEK RECREATIONAL SITE (PHOEBE CREEK), Payette National Forest (NF), Valley County, ID, between June 5 and June 8, 2012.

Investigation determined that PHOEBE CREEK was acquired from private ownership in 2006. Since that time, several proposals and projects have been initiated at that site, including archaeological studies. The PHOEBE CREEK area included the South Fork of the Salmon River and is a public recreation area. This area has been impacted by several factors including high foot traffic, high vehicle traffic and refuse.

On June 5, 2012, members of the Forest Service (FS), Krassel Ranger District, began a recreation and "riparian" restoration project at PHOEBE CREEK, located within the Payette NF in Valley County, ID. The project was completed on June 8, 2012.

A visit to the completed project by FS personnel revealed that a large amount of land was excavated from the area and moved approximately 1.5 miles down the road. It was determined that the earth removed from the site contained American Indian archaeological materials.

Prior to beginning the project, PHOEBE CREEK restoration was in compliance with the ID State Historic Preservation Office (SHPO) and the National Historic Preservation Act, Section 106. Several factors contributed to this incident, which lead to the disturbance and removal of American Indian archaeological materials, including: poor communication; large gaps of time from approval to completion; and lack of proper oversight.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT – 16 U.S.C. § 470

On September 4, 2012, U.S. Department of Agriculture (USDA) Office of Inspector General (OIG), Investigations, Salt Lake City, UT, received a referral from FS, Law Enforcement and Investigations (LE&I), Intermountain Region, Ogden, UT, requesting an investigation in regard to a possible violation of ARPA, which occurred at PHOEBE CREEK between June 5 and June 8, 2012. An initial referral was made to FS LE&I by (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

A review of the documentation provided by LE&I and the Payette NF, by Report Agent (RA), showed the following:

In 2006, PHOEBE CREEK was acquired from private ownership through the Brundage Mountain Land Exchange.

The site has historically, and presently, been a recreational site that was used by visitors to the Payette NF. The South Fork Salmon River ran through PHOEBE CREEK and was a primary reason for high use, especially during the salmon runs.

In 2008, the PHOEBE CREEK project was initiated by the (b)(6),(b)(7)(C). The initial design included barriers to restrict or prohibit motor vehicle use in designated areas, provided a toilet/outhouse and fire rings.

In 2009, initial archaeological testing of the site was conducted.

In 2010, consultations were held with the Shoshone-Paiute and Nez Perce tribes. Archaeological testing was done for the fire ring and toilet placement. The proposal was given to SHPO. It was signed by (b)(6),(b)(7)(C) on (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) ID on (b)(6),(b)(7)(C). The SHPO was signed by (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) on (b)(6),(b)(7)(C), after (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) signed it, with a note that contained the following information (Exhibit 1):

(b)(6),(b)(7)(C)

In 2011, the Shoshone-Bannock tribe was consulted on the project. A letter from the Nez Perce (Exhibit 2) further recommended riparian restoration, to include pulling back the berm and leveling out the area. (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

In 2012, members of the restoration planning team, including (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C), and members of the Nez Perce Tribe, attended two field trips. One trip was on February 8, 2012 and the other on May 9, 2012. (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) During those field trips, there was talk about a riparian restoration project to occur at the same time.

(b)(6),(b)(7)(C)

On June 5, 2012, the project began, and it was completed by June 8, 2012.

On September 25, 2012, RA traveled to the Payette FS offices in McCall, ID to meet with various personnel involved in the PHOEBE CREEK project. RA met with (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

In an interview with (b)(6),(b)(7)(C) stated the following (Exhibit 3):

(b) recently transferred from the (b)(6),(b)(7)(C) and had (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) At the time of the PHOEBE CREEK incident, (b) had only been the (b)(6),(b)(7)(C) for approximately (b)(6),(b)(7)(C) The day the project was completed, (b) was notified by (b)(6),(b)(7)(C) of the possible ARPA violation. Notifications were made to all three tribes, the State of ID and everyone involved with the project. LE&I and FS general counsel were also notified.

(b) began conducting (b) own investigation into this matter. (b) looked at, not only what went wrong, but what implementations needed to be made in order to ensure this did not happen again. (b)(5)

(b)(5)

(b)(5)

In an interview with (b)(6),(b)(7)(C) stated the following (Exhibit 4):

(b)(6),(b)(7)(C)

In an interview with (b)(6),(b)(7)(C) stated the following (Exhibit 5):

(b)(6),(b)(7)(C)

In an interview with (b)(6),(b)(7)(C) stated the following (Exhibit 6):

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

On February 22, 2013, RA interviewed (b)(6),(b)(7)(C)
(b)(6),(b)(7)(C) and (b)(6) stated the following:

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

On February 27, 2013, RA interviewed (b)(6),(b)(7)(C) stated the following:

(b)(6),(b)(7)(C)

On May 24, 2013, RA interviewed (b)(6),(b)(7)(C) stated the following:

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

A review of the documents provided to RA by LE&I revealed that previous allegations of ARPA violations have been investigated in the past within the Payette NF. In a letter dated April 15, 2008, by FS Special Agent (b)(6),(b)(7)(C) addressed three incidents investigated by LE&I (b)(5) (b)(6),(b)(7) stated that (b)(6) contacted the U.S. Attorney's Office, District of ID, and presented the three above listed incidents. It was concluded by the U.S. Attorney's Office (b)(5)

(b)(5)

(b)(5)

(b)(5) no civil ARPA prosecution can be initiated by the Forest Service against its own agents."

From December 2012 through May 2013, RA received several communications from (b)(6),(b)(7)(C). During that time, (b)(6),(b)(7) conducted inquiries and worked on implementing a plan to help ensure that these types of issues did not occur again. (b)(6),(b)(7) identified common themes which have contributed to disturbances at archaeological sites, including, but not limited to:

(b)(5),(b)(6),(b)(7)(C)

On April 1, 2013, (b)(6),(b)(7) conducted a "roundtable" exercise with Payette NF employees to address future planning and implementation. (b)(6) objective was to provide a venue for planners, implementers and line and staff officers to communicate key components of a project. It was also to assist in eliminating the abovementioned common themes.

Due to the fact that there was no criminal violation, no further action will be taken by USDA OIG. This matter will be referred back to FS.

* * * * *

MEMORANDUM OF INTERVIEW

Name: (b)(6),(b)(7)(C) **Case Number:** SF-0801-0733
Title: (b)(6),(b)(7)(C) **Date & Time:** 09/25/12 1000 hrs
Address: (b)(6),(b)(7)(C) **Agent(s):** SA (b)(6),(b)(7)(C)

On September 25, 2012, at approximately 10:00 am, I conducted an interview with (b)(6),(b)(7)(C) at the Payette National Forest main office in McCall, ID. (b)(6),(b)(7)(C) was the (b)(6),(b)(7)(C) assigned to the Payette National Forest. (b)(6) has been assigned to the Payette NF since (b)(6),(b)(7)(C). (b)(6),(b)(7)(C) stated the following:

(b)(6) transferred to the Payette NF after spending most of (b)(6) career in the (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C). On June 8, 2012, (b)(6) received notice from (b)(6),(b)(7)(C) that a possible ARPA violation occurred at the Phoebe Creek Recreational Area. (b)(6) immediately contacted the various tribes in the area, as well as referred it to (b)(6) superiors. FS General Counsel and FS LE& I were also notified.

(b)(6) began conducting (b)(6) own investigation into this matter. (b)(6) looked at, not only what went wrong, but what implementations needed to be made in order to ensure this doesn't happen again. (b)(5)

(b)(5)

(b)(5)

Another concern (b)(6) had was that (b)(6) was aware that (b)(6),(b)(7)(C) (b)(5)
(b)(6),(b)(7)(C) (b)(5)