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COVER STORY



Daily Journal Photo

Senior U.S. District Judge William B. Shubb of Sacramento was unmoved by the arguments of two logging companies that accused prosecutors of fraud and corruption during an investigation into the Moonlight Fire.

Loggers lose bid to toss \$122M settlement

By Laura Hautala / Daily Journal Staff Writer

Two logging companies lost their bid Friday to throw out a \$122 million settlement with the federal government over damage caused by the 2007 Moonlight Fire.

Sierra Pacific Industries and Howell's Forest Harvesting Co. had accused the prosecutors of fraud and corruption in covering up corrupt actions during the government investigation that led to the deal.

Senior U.S. District Judge William B. Shubb of Sacramento was not moved by the companies' arguments and denied their motion to set aside the settlement.

"Stripped of all its bluster, defendants' motion is wholly devoid of any substance," Shubb wrote at the end of his 63-page order.

The fire burned 46,000 acres of land in Plumas and Lassen National Forests. The federal government pursued a lawsuit to recover damages after its investigation revealed the source of the fire was related to a bulldozer owned by Howell's

Forest Harvesting Co. Howell's was working under contract with Sierra Pacific to log the area.

William R. Warne, a partner at Downey Brand LLP who represented Sierra Pacific, spearheaded the effort to toss the settlement.

In his motion to the court, filed in October, he described the settlement as the result of "a corrupt investigation prosecuted by federal and state lawyers focused on winning regardless of their own professional responsibilities and despite pervasive dishonesty on key facts at the core of the moonlight fire's underlying origin and cause investigation."

Benjamin Wagner of the U.S. Attorney's office in the Eastern District led the government's opposition to Warne's effort to get the settlement thrown out.

"I have repeatedly stated that a full examination of the actual record in this case would demonstrate that the misconduct claims made by the attorneys for Sierra Pacific were bogus, and I am very gratified by the Court's thorough and thoughtful ruling," Wagner said Friday in a prepared statement.

Sierra Pacific received some aid from former federal prosecutor E. Robert Wright, who wrote in a declaration that he had been pulled off of the Moonlight Fire investigation by David T. Shelledy, who heads the office's civil division, before the alleged corruption took hold.

Wright, who had left the U.S. attorney's office and was helping the companies fight the settlement, claimed to know critical information about the fire's origin from the U.S. Forest Service Investigator Diane Welton.

Wright said in his declaration that he was taken off the case after a disagreement over his ethical obligation to provide Sierra Pacific and the other defendants with a document that showed an error that had made a difference of \$10 million to the fire's estimated damages. *U.S. v. Sierra Pacific Industries et al.*, CV09-2445 (E.D. Cal., filed Aug. 31, 2009).

Kelli L. Taylor, an assistant U.S. attorney, replaced him, he said.

But Shubb said in his order Friday that the timeline didn't add up.

"Wright never suggests that he told any of the other AUSAs assigned to this case about his pre-litigation conversation with Welton," Shubb wrote, noting that Sierra Pacific failed to show they could claim fraud as a result.

Wagner blasted the allegations, noting the publicity they received.

"Sierra Pacific's reckless accusations have been broadcast in open court and in numerous media stories throughout the country," he said in a statement. "It is not an inconsequential thing to besmirch the integrity of dedicated public servants."

"Assistant United States Attorneys David Shelledy and Kelli Taylor provided skilled representation to the United States in holding the Sierra Pacific defendants responsible for the incredible damage they caused, and they provided that representation in accordance with the high ethical standards regularly demanded of Department of Justice employees," Wagner added.

Wright could not be reached for comment Friday.

"All of the defendants are disappointed by the court's order today and we strongly disagree with it," Warne said. "The defense motion shows there was a scheme by the government that defiled our judicial system."