

DARYL SERR

IBLA 2001-169

Decided April 30, 2001

Appeal from a decision of the Shoshone (Idaho) Field Office of the Bureau of Land Management, issuing a Bill for Collection for fire trespass. ID076-10-543.

Affirmed.

1. Trespass: Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3(a), burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser.

2. Trespass: Generally

When wind carries a fire set by an individual beyond the original site of the fire and onto public lands, the setting of the fire remains the "cause" of the fire, and the fact that wind is an "Act of God," or an act not of human origin, does not excuse the originator of the fire from liability for trespass.

3. Trespass: Generally

A claim that wind carries a fire deliberately set by an individual beyond the original site of the fire and onto public lands, and that the fire was thereby caused by an "Act of God" does not justify a hearing under 43 C.F.R. § 4.415, when the trespasser admits that he set the fire.

APPEARANCES: Daryl Serr, pro se, Paul, Idaho; Derinda D. Rapp, Trespass Coordinator, Shoshone (Idaho) Field Office, Bureau of Land Management; Kenneth Sebby, Office of the Field Solicitor, Boise, Idaho.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Daryl Serr has appealed a February 13, 2001, decision of the Field Manager, Shoshone (Idaho) Field Office, Bureau of Land Management (BLM).

The decision issued a Bill for Collection (F99-023) for fire trespass in connection with the October 25, 1999, "Hidden Valley" fire which took place on public lands administered by BLM. According to the decision, Serr was responsible for ignition of the fire. The Bill for Collection seeks recovery of \$533.91 for fire suppression costs. Serr does not dispute that he deliberately set the fire on his own lands, or that it was blown out of control onto public lands. The basis for Serr's appeal is that the wind was an "Act of God" that caused the fire to spread.

According to Serr's statement of events in this matter, Serr had burned a stubble field on his property in mid-August of 1999. On October 25, 1999, he undertook to burn grass and brush surrounding a rock-outcropping that was located within the land area covered by the August fire. The wind caught the fire and carried sparks which resulted in the fire on Federal lands. (Notice of Appeal, February 20, 2001, and Statement of Reasons, March 6, 2001.) This statement of events is consistent with the record of Serr's contemporaneous remarks. On October 26, 1999, Serr signed and submitted the following Voluntary Statement:

On 10/25/99, I started burning 1/10 acre of grass and weeds on an isolated knob within a stubble field which I had already burned, under a burning permit on 9/15/99. I did not know my permit had expired or that the ban on open burning was still in effect. The burning was started about 4 p.m. At 6 p.m. I noticed additional smoke from the fire and came back with a triple disk and attempted to cut the fire off. After tearing up my disks in the rocks I could see I wasn't going to catch the fire and went for help. I ran into the Beet Dump Manager (David Chestnut) and I had him call BLM around 8 p.m.

BLM's Initial Report of Unauthorized Use, dated October 25, 1999, contains the same analysis of the facts.

Initially, BLM employees advised Serr that the cost of fire suppression was approximately \$1,200. The record documents a contemporaneous cost estimate of \$1,296.88. The February 13, 2001, decision reduces this charge to the stated \$533.91 Bill for Collection. The record indicates that BLM voluntarily "suspend[ed] all collection action" on the Bill pending the appeal. (E-mail dated March 8, 2001, re: Hidden Valley Fire.)

[1] By way of background, "causing" a fire, other than one specifically excepted by regulation, on public lands is a "prohibited act." 43 C.F.R. § 9212.1. Under 43 C.F.R. § 9239.0-7, any injury to public lands is an act of trespass for which the trespasser will be liable for damages to the United States. Damages are measured pursuant to 43 C.F.R. § 9239.1-3(a). To the extent an "injury" to public lands is occasioned by fire, fire suppression and related administrative costs may properly be assessed as damages against the trespasser. Greg Heidemann, 143 IBLA 305, 306-07 (1998).

[2] The question presented here is whether Serr's assertion that the wind intervening in the fire that he set to burn grass is an "Act of God"

justifying reversal of the decision. While we can agree that the wind in this case was not man-made and therefore an act of a higher power, this does not answer the question of Serr's liability. No "Act of God" started the fire. By Serr's admission, he set it on purpose. Without concluding that Serr set it in bad faith and acknowledging his willingness to report the fire when it got out of hand, the wind did not set the fire, nor was the wind the ultimate "cause." The wind blew the existing fire, set or "caused" by Serr away from its initial situs. Wind is a factor to be taken into account in setting a fire and consequences from setting fires that blow out of control onto Federal lands include damages payable under 43 C.F.R. § 9239.1-3(a). See, e.g., Greg Heidemann, 143 IBLA at 306-07.

[3] Finally, where fire trespass cases frequently present complex factual issues which justify a hearing before an administrative law judge, pursuant to 43 C.F.R. § 4.415, see Greg Heidemann, 143 IBLA at 307, we do not find any complex fact issue or defense here. The Board will exercise its discretionary authority to order a hearing before an administrative law judge only when an appellant presents a material issue of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Natel Minerals, Inc., 143 IBLA 362 (1998). We find no such issue here. For this Board to determine that wind catching hold of a deliberately set fire and carrying it to public lands is an "Act of God" releasing the fire-setter from liability is to create the exception that swallows the trespass rule. Fire does not exist in a vacuum. It is always subject to whatever weather may exist at the time. If it gets out of control, the trespasser is the fire-setter. If the fire-setter chooses a windless day for a fire, this "Act of God" will ensure that he or she bears no responsibility for a trespass.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is affirmed.

Lisa Hemmer
Administrative Judge

I concur:

James P. Terry
Administrative Judge

