



File: 23060-40 – K70059 (2012)

July 6th, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. K70059 (2012)

Issued under section 25 (2) the Wildfire Act

s.22

Dear s.22 :

This is further to the letter sent by Grant Walton dated November 17th, 2015 and your opportunity to be heard (OTBH) held on February 23rd, 2017 respecting the allegation that you caused wildfire K70059 (2012). I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, SBC 2004, c 31 (the "*Wildfire Act*"), the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of wildfire, and to make orders requiring a person to pay to the government those amounts.

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Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber;

(ii) other forest land resources,

(iii) grass land resources; and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

On April 7th, 2012 s.22 ignited a category 3 burn pile on his property situated near s.22 left the fire on April 8th returning on April 9th to check on the fire, which was still smoldering and then departed without extinguishing the fire.

On May 12th, 2012 an initial phone report was received by BC Wildfire Service (BCWS) from RCMP dispatch at approximately 13:15 reporting a fire in the vicinity of s.22 BCWS personnel responded at approximately 14:20 and attended to the fire until June 16th, 2012. The fire was declared out on September 1st, 2012.

Determination

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K70059 was \$921,957.67.

Under section 25 (2) of the *Wildfire Act*, I have determined that s.22 is an owner of the private land on which wildfire K70059 originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that s.22 s.22 caused wildfire K70059.

Based on these determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require s.22 to pay \$921,957.67 to the government.

This amount must be paid by September 15th, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The evidence in this case was presented in the form of a Ministry binder which contained, amongst other information, an Origin and Cause Report including field notes and photographs completed by Ministry investigators Herb Noren and Brad Beaupre. You appeared with your legal counsel at your OTBH held on February 23, 2017 and submitted both evidence and written legal submissions. I also received written legal submissions from legal counsel who appeared on behalf of the Minister.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 is part owner of private property legally known as PID number s.22 (the "Property")
- The Property is located at the s.22
- s.22 lit a category 3 burn pile on the Property on April 7th 2012
- s.22 left the fire on April 8th 2012 with the fire still smoldering in the middle
- s.22 checked on the fire on April 9th 2012, which was still smoldering in the middle and admitted he left without extinguishing the fire
- The Kamloops Fire Center was notified of a fire near s.22 at approximately 13:15 on May 12th 2012 and personnel were on site at approximately 14:20
- Crews continued suppression efforts until June 16th, 2012 and the fire was declared out at approximately 12:00 on September 1st, 2012.
- s.22 had a loader tractor, buckets, hose and pumps and hand tools on site but no efforts were made to suppress the fire
- s.22 was cooperative
- s.22 does not have a cost sharing agreement with the government
- s.22 is not the holder of a forest licence under the *Forest Act*
- Fire control costs totaled \$921,957.67 and the wildfire was approximately 140 hectares in size.

With respect to the facts that **are** in dispute, Ministry staff presented the following evidence including the Fire Origin and Cause in which investigators determined the cause of wildfire K70059 was s.22 category 3 burn pile.

In turn, s.22 presented evidence including an expert report denying he caused the fire and presenting alternative explanations.

In addition, s.22 raised a number of legal issues:

- Concerns were raised about the length of time that had elapsed to reach the OTBH. Upon review of a number of other statutory determinations made under the *Wildfire Act*, it appeared s.22 case has taken the longest length of time to reach an OTBH.
- This led to a question of whether procedural fairness was afforded to s.22.
- s.22 argued that Delegated Decision Makers have discretion in regards to the recovery of suppression costs.
- The defense of due diligence was presented
- The value of this potential cost recovery against s.22 versus previous decisions was introduced.

Consideration of the evidence and findings of fact

Having regard to all of the evidence, I have made the following findings with respect to the facts in dispute:

s.22 submitted a report prepared by Darren Hutchinson. Mr. Hutchinson provides a number of opinions including steps needed to prevent a fire from spreading and alternative explanations on how the fire may have started. Knowledge of fire origin, rate of spread and fire behavior are crucial elements to assist in fire investigations. I note that Mr. Hutchinson does not have experience or certification in origin and cause or fire behavior and I thus am of the view that he does not have the requisite expertise to opine in this area. In addition, I believe his opinions on how he suggests the fire may have started are speculation.

Holdover fires are common occurrences even over winter. In this case s.22 admitted that he did not have a machine guard down to mineral soil and also admitted that when he left the property the fire had not been extinguished but in fact was still smoldering in the middle. Best practice should have been to ensure the fire was completely extinguished.

Mr. Hutchinson identifies four potential alternate causes of the fire other than the burn pile. Three causes were attributed to trespassers either lighting a fire on the property, re-kindling the burn pile or staying in the cabin. The fourth was arson in or to the cabin itself. Through the Origin and Cause Investigation the investigators eliminated all other potential causes of the fire including campfires and arson. In the case of the theory that the fire could have originated from cabin itself, the investigators observed fire vector indicators showing the fire advanced from the debris pile in a southeast direction before spreading laterally toward the adjacent cabin that was burned and

not away from the cabin which would have been the case if the fire had originated in the cabin. I accept the evidence of the Ministry in respect to the cause of the fire.

Consideration of legal issues

s.22 raised the issue of delay between the time of the fire and when he received notice the Ministry was seeking to recover its fire suppression costs. He says there was a 3.5 year delay in giving him notice of the Ministry's intention to proceed in respect of cost recovery and that the delay seriously undermined two elements of procedural fairness: the right to fair notice and his opportunity to respond. He says that the administrative proceeding is a quasi-judicial process closely resembling a civil court proceeding as both parties will be represented by counsel and a designated decision maker will hear submissions and make a decision. As such, the process leading up to the OTBH should closely resemble a civil court process. He further says that had he been given reasonable notice of the Ministry's claim, he could have obtained legal advice and carried out his own investigation (or retained expert services in that regard).

Counsel for the Minister agreed that s.22 is entitled to procedural fairness which includes his right to know the case against him and the right to respond and be heard. However, she submitted the process leading up to an OTBH is not meant to resemble a civil court process and the OTBH itself is not meant to resemble a civil court proceeding. Civil court proceedings are formalized processes governed by the *Supreme Court Civil Rules* or other rules which codify the rights of parties and contain extensive provisions on procedures including pre-trial discovery and pre-trial applications. By comparison, the administrative scheme in the *Wildfire Act* is an informal, fluid process that is meant to facilitate, among other things, the Crown's cost recovery for fire suppression activities in prescribed circumstance. There are no codified procedures for discovery or pre-OTBH applications.

Counsel for the Minister further submitted that a limitation period of six years applies to this particular procedure by virtue of s. 3(5) of the old *Limitation Act*. In the absence of a provision in the *Wildfire Act* providing for a limitation period for orders under s. 25, a default limitation period provided for in the *Limitation Act* applies. This is a claim for only economic loss and, as such, falls under the six year limitation period as a claim that is otherwise not specifically provided for in the *Limitation Act*. This claim originated in 2012 and is governed by the transitional provisions of the new *Limitation Act*, which specify that the limitations in the old statute apply to pre-existing claims. I accept the submissions of counsel for the Minister on this point and, as the limitation period does not expire for well over a year, there is no issue of procedural fairness resulting from the notice provided to s.22

s.22 submitted that decision makers under the *Wildfire Act* have the discretion to vary the amount of fire suppression costs for reasons of fairness. The Forest Appeals Commission has previously found that the *Wildfire Act* and *Wildfire Regulation* do not provide the authority to decision makers to vary or reduce fire suppression costs (see *CNR v. Government of British Columbia*, 2008-WFA-001(a) and 2008-WFA-002(a)). Subsequent panels have commented on this issue to the

contrary but have not provided a clear analysis of how the legislation provides authority to vary or reduce the fire suppression costs (*Unger v. Government of British Columbia*, 2012-WFA-002(b); *Stevenson v. Government of British Columbia*, 2015-WFA-003(a)). I believe the correct interpretation is that the decision maker has the discretion to choose whether or not to require a person to pay the amounts for fire suppression costs but does not have the discretion to order a person to pay an amount other than the costs calculated in the prescribed manner unless it is the result of a mathematical error or the costs are not attributable to the fire.

s.22 made submissions in respect of the application of the defense of due diligence. No contraventions are being alleged and consequently no administrative penalties were being sought as part of this OTBH so the defense of due diligence does not factor into this proceeding. This proceeding is not penal in nature but purely about cost recovery.

s.22 made a number of references to previous decisions made by delegated decision makers under the *Wildfire Act*. I note that these previous decision are not binding.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require you to pay to the government the government's costs of carrying out fire control on wildfire K70059 (2012).

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act* and have not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

s.22 submitted I should exercise my discretion to not order him to pay the fire control costs for reasons relating to lack of procedural fairness. I have already addressed that issue. No additional reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$921,957.67

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$299,447.57
• Distance charges for use of government and private vehicles	\$19,089.98
• Food, transportation and accommodation expenditures	\$25,053.57
• Costs for expendable supplies and materials consumed	\$7,968.00
• Air tanker fuel costs and flight costs	\$13,920.50
• Helicopter fuel costs and flight costs	\$237,732.76
• Retardant and other suppressant costs	\$16,546.40
• Rent on use of equipment	\$27,104.18
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$615.73
• Private goods and services contracted, hired, rented or purchased	\$104,539.08
• Additional STOBs	\$16,280.29
SUB TOTAL	\$768,298.06
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the <i>Wildfire Regulation</i>	\$153,659.61
GRAND TOTAL	\$921,957.67

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$921,957.67 must be paid by September 15th, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by September 15th, 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) Bears interest at the prescribed rate;
- b) May be recovered in a court as a debt due to the government; and
- c) Constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by you, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by you.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 565-6193 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document on you or the person acting on your behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document on you or the person acting on your behalf;
- c) The grounds for appeal;
- d) A copy of this determination; and
- e) A statement of the relief requested.

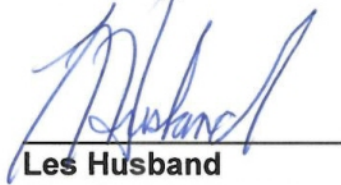
The Forest Appeals Commission must receive the appeal **no later than thirty days** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Les Husband', is written over a horizontal line.

Les Husband
Fire Center Manager
Prince George Fire Center

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Mark Haddock, Forest Practices Board
Laurence Bowdige, Wildfire Recovery Superintendent, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service Kamloops



File: 23060-40 – K70459, G70041, G10042 (2015)

April 28, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. K70459, G70041, G10042 (2015)

Issued under section 25 (2) of the Wildfire Act

Marc Bouffard, Manager General Claims, Western Canada
Canadian National Railway Company
Risk Management, Canadian National
Operations Building A, Floor 2
10229 – 127th Avenue, NW
Edmonton, Alberta T5E 0B9

Dear Mr. Bouffard:

This is further to my letter dated March 20, 2017 regarding the allegation that Canadian National Railway Company ("CN Rail") caused wildfires K70459, G70041 and G10042 (2015) (the "Wildfires"). After considering the evidence that was before me, I conclude, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order CN Rail to pay \$142,973.74 to the government for the government's fire control costs related to the Wildfires.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of wildfire, and to make orders requiring a person to pay to the government those amounts.

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Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

The Ministry of Forests, Lands and Natural Resource Operations (the Ministry) is seeking to recover the government's fire control costs related to the Wildfires, which are alleged to have been caused by CN Rail in 2015. An opportunity to be heard was offered to CN Rail by way of a letter from the Ministry dated March 20, 2017, to Mr. Marc Bouffard, Manager General Claims for CN Rail. The Ministry's letter enclosed a case binder with the Ministry's evidence in support of its allegations.

CN Rail had the opportunity to respond to this letter by requesting a meeting or submitting additional information. CN Rail did not present any of its own evidence or dispute any of the facts presented in the Ministry case binder. In particular, CN Rail has not disputed that it caused the Wildfires and has accepted the calculation of the government's fire control costs. As CN Rail did not supply any oral or written information, I have based my determination solely on the information provided by the Ministry.

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that CN Rail is the owner of the private land on which the Wildfires originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that CN Rail caused the Wildfires.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on the Wildfires was \$142,973.74.

Based on these determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require CN Rail to pay \$142,973.74 to the government.

This amount must be paid by June 2, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under sections 25 (1) (a) and 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- CN Rail caused wildfire K70459, which started on July 21, 2015 west of Spences Bridge adjacent to railroad tracks.
- CN Rail caused wildfire G70041, which started on May 11, 2015 near the Hillview Subdivision in Chetwynd adjacent to railroad tracks.
- CN Rail caused wildfire G10042, which started on May 12, 2015 west of Hansard adjacent to railroad tracks.
- The government's fire control costs related to the Wildfires is \$142,973.74. The particulars of the government's fire control costs are set out in the section below.
- CN Rail is the owner of the parcels of private land as documented in the Ministry binder on which each of the Wildfires originated.
- Railway operations caused the Wildfires. Ministry staff used standardized wildfire origin investigation techniques after the Wildfires and concluded that railway operations caused the Wildfires.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require, by order, CN Rail to pay to the government its costs of carrying out fire control related to the Wildfires.

The government's total cost for fire control related to the Wildfires was \$142,973.74, broken down as follows:

Fire Number	Fire Control Costs
G10042 (2015)	\$17,730.28
G70041 (2015)	\$12,498.32
K70459 (2015)	\$112,745.14
TOTAL COSTS:	\$142,973.74

I have considered the prescribed circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to CN Rail. In particular, CN Rail is not the holder of a forest agreement or licence under the *Forest Act* and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order CN Rail to pay the government's fire control costs that relate to the Wildfires.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs related to the Wildfires is made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars provided to me by Ministry staff and included in the Ministry binders:

• Hourly wages and overtime wages of responding employees	\$13,473.97
• Distance charges for use of government and private vehicles	\$859.51
• Food, transportation and accommodation expenditures	\$1,140.74
• Costs for expendable supplies and materials consumed	\$464.00
• Air tanker fuel costs and flight costs	\$14,730.59
• Helicopter fuel costs and flight costs	\$55,222.81
• Aircraft basing charges (preparedness) for contracted aircraft	\$0
• Retardant and other suppressant costs	\$10,659.70
• Rent on use of equipment	\$1,093.16
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$54.40
• Private goods and services contracted, hired, rented or purchased	\$21,445.90
• Investigation, research and analysis services related to <ul style="list-style-type: none"> ○ post-incident evaluation, ○ contingency plan reviews, and ○ other incident follow-up activities 	\$0
• Consulting and other professional charges	\$0
• Rehabilitation and/or slope stabilization costs	\$0
SUB TOTAL	\$119,144.78
• Mandatory 20% overhead pursuant to section 31 (b) of the <i>Wildfire Regulation</i>	\$23,828.96
GRAND TOTAL	\$142,973.74

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until CN Rail has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$142,973.74 must be paid by June 2, 2017 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 2, 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by CN Rail, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by CN Rail.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve CN Rail from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 847-6612 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of CN Rail and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on CN Rail or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on CN Rail or the person acting on its behalf;

- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Diane Mackay
Fire Centre Manager
Northwest Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Mark Haddock, General Counsel, Forest Practices Board
Doug Smith, SWO-Prevention, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO



Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

File: 23060-40 – G10485 (2015)

May 16th, 2018

Order for Recovery of Fire Control Costs and Related Amounts

No. G10485 (2015)

Issued under section 25(2) of the Wildfire Act

s.22

Dear s.22

This is further to my letter dated March 1st, 2017 and the opportunity to be heard (OTBH) given to you on January 11th, 2018 respecting the allegation that you, s.22 caused wildfire G10485. I have now made a determination based on the evidence, and I conclude by an order made under section 25(2) of the *Wildfire Act* that you caused wildfire G 10485 and I require you to pay \$208,850.60 to the government.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

Legislation

I have considered the following provision of the *Wildfire Act* in making my determination:

Wildfire Act

Page 1 of 11

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;
- (b) determine the amount that is equal to the dollar value of any:
 - (i) Crown timber;
 - (ii) other forest land resources;
 - (iii) grass land resources; and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

Wildfire Regulation

Circumstances for not seeking cost recovery

- 29** The circumstances in which the minister, under section 25 (2) or 27 (1) (d) of the Act, may not by order require a person to pay to the government the government's fire control costs determined under section 25 (1) (a) or 27 (1) (b) of the Act are that the person, through their acts or omissions, did not willfully cause or contribute to the start or spread of the fire, and
- (a) before the government has carried out fire control for the fire that gives rise to the government's costs,
 - (i) the person has entered into a cost sharing agreement or a service agreement with the government,
 - (ii) the agreement is in effect at the time of the fire, and
 - (iii) any failure of the person to act in accordance with the agreement did not directly or indirectly cause or contribute to the start or spread of the fire, or
 - (b) the fire that gives rise to the government's costs results from timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation by a person who
 - (i) is the holder of an agreement or licence under the *Forest Act*, and
 - (ii) as of the date of the fire, is not in arrears for the annual rent payable for the agreement or licence under the *Annual Rent Regulation*, B.C. Reg. 122/2003.

Background

On August 17th, 2015, ^{s.22} lit multiple category 3 open fires (authorized under his burn registration number) on his private property located approximately ^{s.22} south of Prince George. At approximately 13:30 on August 19th, one of the category 3 fires escaped the intended burn area and lit wildfire G10485. British Columbia Wildfire Service ("BCWS") personnel responded to fire G10485 from August 19th to 24th and the fire was called out about a month later on September 22nd.

Determination

After considering the evidence and submissions in this case, I order s.22
s.22 to pay the government's fire control costs related to wildfire G10485.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that s.22
s.22 is the owner of the private land on which wildfire G10485 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22
s.22 caused wildfire G10485.

Pursuant to section 25(2) of the *Wildfire Act*, by order I require s.22 to
pay \$208,850.60 determined under section 25(1)(a) to the government. This amount
is the total costs to be paid to the government pursuant to section 25(1)(a) of the
Wildfire Act. These costs must be paid by June 22nd, 2018, subject to the stay
imposed by section 36(1) of the *Wildfire Act*, which is addressed below.

In the sections that follow, I will outline the evidence in the case and explain the
reasons for my determinations and my findings under sections 25(1)(a) and 25(3),
and my order under section 25(2).

Summary of the evidence

I provided a copy of the case binder with the Ministry's evidence to you with my letter
inviting you to an OTBH. The Ministry's case binder included, among other
information, a Fire Origin and Cause Report which included field notes and
photographs completed by Ministry of Forests, Lands, Natural Resource Operations
and Rural Development investigator Michael Sidow.

At the OTBH, the Ministry presented its evidence and made an additional submission
regarding fixed wing air tanker costs that were omitted in the original case binder sent
to you. You also made submissions and provided me with your version of the events
pertaining to fire G10485.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 is and was the owner of private property legally
known as PID s.22 at all material times (the "Property").
- The Property is located at s.22
s.22
- s.22 lit multiple category 3 open fires on August 17th, 2015 on the
Property.

- At approximately 14:00 hours on August 19th, 2015, one of the fires that s.22 lit escaped the intended burn area.
- This escape became wildfire G10485 and originated from one of s.22 category 3 open fires.
- At approximately 13:33 hours on August 19th, 2015, the Sinkut lookout notified the Prince George Fire Centre of wildfire G10485. BCWS fire control personnel were at the Property soon after at approximately 15:55.
- At 16:36 hours on August 19th, 2015, the BCWS on-site Incident Commander of wildfire G10485 requested an air tanker. Seven air tanker loads were used to contain wildfire G10485 between 17:28 and 20:07 hours on that date.
- BCWS crews and contractors remained on site of wildfire G10485 until it was put into patrol status on August 24th, 2015.
- Wildfire G10485 was called out on September 22nd, 2015.
- s.22 attempted to control the fire after he realized that it had escaped his intended burn area but was not successful in containing the wildfire.
- The Fire Origin and Cause investigator determined the cause of wildfire G10485 was from windblown embers or fire brands (small pieces of burning debris) from the category 3 open fires that s.22 ignited on August 17th, 2015.
- s.22 does not have a cost sharing agreement or service agreement with the government.
- s.22 is not the holder of an agreement or forest licence under the *Forest Act*.
- On December 14, 2015, the Compliance and Enforcement branch of FLNRORD issued a violation ticket to s.22 for a violation of section 6(1) of the *Wildfire Act*.
- s.22 did not dispute the violation ticket and therefore is deemed to have pleaded guilty to the alleged offence.
- Fire control costs for wildfire G10485 totaled \$208,850.60 and the final size of the wildfire was 11.85 hectares.
- Crown timber was damaged as a direct result of wildfire G10485 but the Province is not seeking to recover the value of the damaged Crown timber.

At the OTBH, Ministry representatives presented the following relevant evidence and submissions:

- The case binder that I sent to you did not accurately reflect the costs of fire control on wildfire G10485. I presented you with the new accurate costs of fire control at and subsequent to the OTBH. The Ministry's evidence at the OTBH regarding these costs increased the total cost of fire control for wildfire G10485 from \$151,787.53 to \$208,850.60.
- I offered you an opportunity to adjourn the OTBH given that the Province's fire control costs increased and the OTBH was the first time it had been brought to your attention and you declined.
- The details of the change in costs were the following;
 - Contractor Firefighter and first aid receivables costs were improperly placed into the FS staff costs row
 - The contractor Firefighter costs were put into row (xi) Private Goods and Services Contracted, Hired, Rented or Purchased
 - The First Aid receivables costs were put into the row (ix) rent on use of equipment
 - Helicopter fuel costs were under-calculated
 - The cost of Air Tanker retardant was missed entirely in the original cost breakdown resulting in \$41,573.33 of added fire control costs
 - The costs in the new calculation were broken down into "Prep costs" and "Direct" costs

In turn, you presented a statement of the events leading up to and including August 19th, 2015 when wildfire G10485 ignited:

- You stated that wildfire G10485 ignited by wind blown embers from a category 3 open fire you started
- You stated that unforeseen, unexpected weather conditions caused the embers to spread from your category 3 open fires- specifically wind speed and wind direction
- You outlined your experience with category 3 open fires in the past ten years totaling approximately 60 category 3 open fires
- You described how you obtained a valid burn registration number, reviewed the venting index, checked the weather forecast, had two pieces of heavy equipment on site and how you checked the category 3 open fires regularly
- You indicated that you did not ignite all of the piles you intended to burn (approximately 40%)
- You discussed receiving a violation ticket for not having a pump and water on site and that even if you had it would not have assisted in controlling wildfire G10485

Analysis of the evidence

There is no dispute over the facts of this determination. The category 3 fires that s.22 lit on the Property escaped and caused wildfire G10485. Despite s.22

s.22 attempts to extinguish the wildfire, he was not successful and the BCWS incurred significant costs to control and extinguish the wildfire.

Government's fire control costs

In accordance with section 25(2) of the *Wildfire Act* I require, by order, s.22
s.22 to pay to the government the government's costs of carrying out fire control related to wildfire G10485.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you. You are not the holder of a forest agreement or licence under the *Forest Act* and you have not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* section 25, *Wildfire Regulation* section 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$208,850.60.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G10485 which, in my view, are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$19,981.96
- Distance charges for use of government and private vehicles \$2,534.40
- Food, transportation and accommodation expenditures \$366.17
- Costs for expendable supplies and materials consumed \$688.00

• Air tanker fuel costs and flight costs	\$31,893.99
• Helicopter fuel costs and flight costs	\$8,119.72
• Aircraft basing charges (preparedness) for contracted aircraft	\$-
• Retardant and other suppressant costs	\$41,573.33
• Rent on use of equipment	\$17,198.41
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$265.59
• Private goods and services contracted, hired, rented or purchased	\$51,420.60
• Investigation, research and analysis services related to <ul style="list-style-type: none">◦ post-incident evaluation,◦ contingency plan reviews, and◦ other incident follow-up activities	\$-
• Consulting and other professional charges	\$-
• Rehabilitation and/or slope stabilization costs	\$-
SUB TOTAL	\$174,042.17
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$34,808.43
TOTAL	\$208,850.60

Damage to Crown timber, other Crown resources or Crown property

Crown timber was damaged as a direct result of wildfire G10485. However, the Province is not seeking to recover the value of the damaged Crown timber from [s.22](#) and did not include evidence in the case binder that could allow me to determine the value of the damaged Crown timber. As such, I am not making a determination pursuant to section 25(1)(b)(i) of the *Wildfire Act* for the value of damaged Crown timber or an order pursuant to section 25(2) requiring [s.22](#) to pay the value of damaged Crown timber.

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until [s.22](#) has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$208,850.60 must be paid by June 22nd, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 22nd, 2018, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by s.22, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by s.22

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-554-5503 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information pursuant to section 37(1) of the *Wildfire Act*. A request for review must be in writing, must be signed by you and must contain:

- a) Your name and address; and the name of the person, if any, making the request on your behalf;

- b) The address for serving a document on you the person acting on your behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by you, or on your behalf, and must contain:

- a) Your name, address and telephone number;
- b) The name and daytime/business telephone number of the person, if any, making the request on your behalf;
- c) The address to which all official letters and documents are to be sent in respect of the appeal;
- d) A copy of this determination;
- e) A description of why the determination should be changed (the grounds for appeal); and
- f) A statement of the outcome requested (the remedy sought).

The Forest Appeals Commission must receive the appeal ***within 30 days*** of the decision being appealed.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the applicable parts of the *Administrative Tribunals Act* and the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,


Cliff Chapman
Deputy Fire Centre Manager
Kamloops Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Operations, BC Wildfire Service
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Forest Practices Board
Doug Smith, SWO-Prevention, Prince George Fire Centre, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO



Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

File: 23060-40 – G80213 (2015)

May 18, 2018

Order for Recovery of Fire Control Costs and Related Amounts

No. G80213 (2015)

Issued under section 25(2) of the Wildfire Act

Canadian Natural Resources Limited
#2100, 855 – 2 Street SW
Calgary, Alberta
T2P 4J8

Dear Sir/Madam:

This is further to my letter dated April 3, 2018 and the Opportunity to be Heard (OTBH) offered to Canadian Natural Resources Limited, which you responded to by way of written submission dated May 10, 2018, respecting a cost recovery of fire control costs for G80213 (2015). I have now made a determination based on all of the available evidence, and conclude by an order made under section 25(2) of the *Wildfire Act* that Canadian Natural Resources Limited caused wildfire G80213 (2015), and I require Canadian Natural Resources Limited to pay \$97,617.32 to the government.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

Legislation

I have considered the following provisions of the *Wildfire Act* in making my determination:

Page 1 of 14

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber,

(ii) other forest land resources,

(iii) grass land resources, and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated,

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease, or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Circumstances for not seeking cost recovery

29 The circumstances in which the minister, under section 25 (2) or 27 (1) (d) of the Act, may not by order require a person to pay to the government the government's fire control costs determined under section 25 (1) (a) or 27 (1) (b) of the Act are that the person, through their acts or omissions, did not willfully cause or contribute to the start or spread of the fire, and

(a) before the government has carried out fire control for the fire that gives rise to the government's costs,

(i) the person has entered into a cost sharing agreement or a service agreement with the government,

(ii) the agreement is in effect at the time of the fire, and

(iii) any failure of the person to act in accordance with the agreement did not directly or indirectly cause or contribute to the start or spread of the fire, or

(b) the fire that gives rise to the government's costs results from timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation by a person who

(i) is the holder of an agreement or licence under the *Forest Act*, and

(ii) as of the date of the fire, is not in arrears for the annual rent payable for the agreement or licence under the *Annual Rent Regulation, B.C. Reg. 122/2003*.

Background

The BC Wildfire Service (BCWS) received an initial fire report on June 7, 2015 at approximately 0917 hours of a wildfire at approximately kilometre 29 on the Mile 98 Road (also near the Fireweed Main Road) northwest of Fort St. John. The wildfire was assigned the description G80213. The initial report from Canadian Natural Resources Limited indicated that a fire was burning a 10-15 acre wedge of bush, contained between 3 different roads, on which it held a lease. The fire was reported as burning up to the edge of oil/gas well sites and the oil factory nearby. BCWS responded to the wildfire by dispatching BCWS resources.

A BCWS response officer arrived at G80213 at approximately 1151 hours on June 7, 2015 to find Canadian Natural Resources Limited personnel and equipment onsite assisting with fire suppression. Canadian Natural Resources Limited staff informed the response officer that on June 6, 2015 a Bailey Helicopters pilot flying on an unrelated flight had landed at the site of the wildfire and had informed Canadian Natural Resources Limited staff of a fire near the flare stack. Canadian Natural Resources Limited employees had used fire extinguishers to attempt to extinguish the original fire, and thought it was extinguished, but later realized the fire had not been extinguished.

The BCWS continued suppression operations until June 11, 2015. Wildfire G80213 was declared out on June 15, 2015 with the final fire size of 7.8 hectares.

Wildfire G80213 occurred on provincial Crown land, adjacent to Canadian Natural Resources Limited tenured right of way for wellsite HZ Fireweed, d-52-H, 94-A-13 (Fireweed wellsite). A fire origin and cause investigation determined that the fire was caused by gas flaring activities related to oil and gas operations on the Fireweed wellsite. Specifically, a hot metal fragment was blown out of a flare stack on the Fireweed wellsite under high wind conditions, which smoldered for a period of time before strong winds caused the woody material to ignite and spread to the adjacent forest fuels.

The written submission from Canadian Natural Resources Limited stated the company does not oppose the Ministry's incident report (case binder) finding that G80213 was likely caused by Canadian Natural Resources Limited's facility. Canadian Natural Resources Limited's written submission disputed some fire control costs for G80213.

As such, I am basing my decision on the Ministry case binder and the fire control cost evidence provided by Canadian Natural Resources Limited.

Determination

After considering the evidence and submissions in this case, I order that Canadian Natural Resources Limited must pay the government fire control costs related to wildfire G80213.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that Canadian Natural Resources Limited is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which wildfire G80213 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that Canadian Natural Resources Limited caused wildfire G80213.

Pursuant to section 25(2) of the *Wildfire Act*, by order I require Canadian Natural Resources Limited to pay \$97,617.32 to the government. This amount is the total costs to be paid to the government pursuant to section 25(1)(a) of the *Wildfire Act*. These costs must be paid by July 6, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act*, which is addressed below.

In particular, the amount of the government's costs for carrying out fire control on wildfire G80213 pursuant to section 25(1)(a) was \$97,617.32.

In the sections that follow, I will outline the evidence in the case and explain the reasons for my determinations and my findings under section 25(1)(a) and section 25(3), and my order under section 25(2).

Summary of the evidence

I provided a copy of the Ministry case binder with the Ministry's evidence to Canadian Natural Resources Limited with my letter inviting the company to an OTBH. The Ministry's case binder included a Wildfire Origin and Cause Report, Government Fire Control Costs Documentation, Legislation and Policy, Land Status, and Ancillary Documents.

Canadian Natural Resources Limited chose to proceed with an OTBH with written submissions only. The written submission, dated May 10, 2018, stated that Canadian Natural Resources Limited does not oppose the finding that G80213 (2015) was likely caused by Canadian Natural Resources Limited's facility.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- Wildfire G80213 originated from a parcel of land registered to the Crown, and leased to Canadian Natural Resources Limited. The parcel number is 024-371-... 319. The wellsite is HZ Fireweed, d-52-H, 94-A-13.
- Canadian Natural Resources Limited leases the Crown land and is the legal occupant of the land from which G80213 originated.
- The coordinates for wildfire G80213 are latitude: 56 52.892, longitude 121 30.772
- On June 6, 2015, Canadian Natural Resources Limited oil and gas operations caused Wildfire G80213 as a result of gas flaring activities, and a hot metal fragment being blown out of a flare stack on their Fireweed wellsite under high wind conditions.
- Wildfire G80213 was reported to the BCWS Provincial Forest Fire Reporting Centre on June 7, 2015 at approximately 0917 hours by a second hand initial phone report from Canadian Natural Resources Limited.
- On June 7, 2015, at approximately 1151 hours, a BCWS response officer arrived at wildfire G80213. He observed Canadian Natural Resource Limited personnel and equipment (a crawler tractor and a water tender) onsite assisting with fire suppression. BCWS fire suppression crews were dispatched to the wildfire at approximately 1303 hours on the same day.
- The BCWS contained the wildfire to 7.8 hectares and declared the wildfire out on June 15, 2015.

Ministry representatives presented the following relevant evidence and submissions:

- Summary of Government Fire Control Costs for G80213 totaling \$98,904.49.

The Canadian Natural Resources Limited written submission presented the following relevant evidence and submissions:

- Canadian Natural Resources Limited reviewed the cost information included in Appendix B of the Incident Report and identified the three concerns summarized below:
 - Audit Query 1 - \$3,801.96 – overtime wages relating to Wildfire G80204 were incorrectly attributed to the costs of fighting Wildfire G80213.
 - Audit Query 2 - \$1,776.60 – Wildfire G80213 was overcharged for food, transportation and accommodation costs.
 - Audit Query 3 - \$2,694.00 – accommodation charges for wildfire G80204 were incorrectly attributed to the costs of fighting wildfire G80213.

- Canadian Natural Resources Limited requests that, unless the Ministry can demonstrate that the costs references in the audit queries were incurred in relation to fighting G80213, that the costs the Ministry seeks to recover for G80213 be reduced to \$90,631.93.

Analysis of the evidence

I will address Canadian Natural Resources Limited's concerns in this section of the determination.

Hourly wages and overtime wages of responding employees:

I confirm the hourly wages and overtime wages for G80213, as described in the case binder, with the following exceptions:

- **s.22** hourly wages and overtime wages, and benefits will be deducted from G80213 fire control costs as follows:

Total wages: \$921.07 for June 7 and June 11, 2015
(\$432.99+\$39.78+\$204.26+\$19.89+\$224.15 = \$921.07)

Benefits at 24.8%: \$182.51 for June 7 and June 11, 2015
(\$417.69+\$39.78+\$69.62+\$69.62+\$119.34+\$19.89= \$735.94 x =
24.8% = \$182.51)

Total wages and benefits to be deducted: \$1,103.58

The Ministry case binder did not provide the June 7, 2015 Forest Protection Diary for **s.22** for verification, so I am removing the hourly wages and overtime for him for that date from the fire control costs for G80213.

Benefits are calculated on regular and overtime wages, but Overtime Meal Allowances (OMA) are not included in the calculation.

s.22 ; June 11, 2015 hourly wages and overtime wages were attributed to G80213 in error, and should be charged to G80054.

- **The hourly wages and overtime costs for **s.22** on June 7, 2015 for G80213 are verified and confirmed.**

All of these representatives were on standby from 0800 to 1200 on June 7, 2015 which was not charged to G80213. All of them were dispatched to G80213 at 1200 until 2330 on June 7, 2015, so the hourly wages and overtime costs are verified and confirmed for G80213 fire control costs.

- A Forest Protection Diary was not included in the Ministry case binder for s.22, and his hourly and overtime wages were not included in the fire control costs for G80213. Without this evidence, I cannot include s.22 wages in this cost-recovery order.

Food, transportation and accommodation expenditures:

Accommodation

- The hotel room charges are verified to be charged to fire control costs for G80213, as the unit crew stayed at the hotel for fire control duties on June 9, 2015 for the purposes of wildfire G80213.
- s.22
s.22 are all members of the same BCWS unit crew based in Port Alberni. The unit crew was deployed and travelled together.
- The Stonebridge Dawson Creek Inn invoices all reference the same Port Alberni unit crew base mailing address.
- While a Forest Protection Diary for s.22 was not included in the Ministry case binder, the Stonebridge Dawson Creek Inn invoice in his name shows his arrival as June 9, 2015, the same day as the rest of the unit crew, and the same Port Alberni mailing address as the rest of the unit crew.
- While the unit crew started work on G80204 on the morning of June 9, 2015, they travelled to Dawson Creek and stayed at the Stonebridge Dawson Creek Inn the evening of June 9, 2015, to start work on G80213 the morning of June 10, 2015 at 0730.

General

The Ministry is seeking to recover \$15,455.94. My review of receipts and purchase card statements in relation to G80213 have verified the food, transportation and accommodations expenditures totaled \$15,486.88. Taxes were paid (PST and GST) as required on food, transportation and accommodation expenditures, and are recoverable fire control costs.

The food, transportation and accommodation expenditures fire control costs are verified as being \$15,486.88

The following individuals were responsible for paying the expenses in the following amounts:

s.22	\$615.75
	\$6,009.12
	\$5,269.42
	\$1,903.47
	\$1,689.12
Total	\$15,486.88

s.22

Pre-tax	PST	GST	Total
94.73		3.52	98.25
236.90		11.85	248.75
3,907.25	273.51	195.36	4,376.12
1,120.00	110.00	56.00	1,286.00
\$5,358.88	\$383.51	\$266.73	\$6,009.12

s.22

Pre-tax	PST	GST	Total
190.8		4.94	195.74
224.00		11.05	235.05
107.00		5.35	112.35
3,584.40	286.8	179.28	4,050.48
61.71		3.09	64.80
122.20			122.20
122.20			122.20
122.20			122.20
122.20			122.20
22.20			122.20
\$4,778.91	\$286.80	\$203.71	\$5,269.42

s.22

Pre-tax	PST	GST	Total
64.88		2.04	66.92
104.51		5.23	109.74
210.50		10.53	221.03
103.90		5.20	109.10
1,236.00	98.88	61.80	1,396.68
\$1,719.79	\$98.88	\$84.80	\$1,903.47

s.22

Pre-tax	PST	GST	Total
37.35		1.36	38.71
80.90		4.05	84.95
25.32		1.27	26.59
711.56	92.81	30.94	742.50
240.28		8.57	248.85
226.57		11.93	238.50
54.92		2.75	57.67
247.41		3.94	251.35
\$1,531.50	\$92.81	\$64.81	\$1,689.12

*Note that the PST total for s.22 is for a mandatory gratuity added to the bill total.

Government's fire control costs

In accordance with section 25(2) of the *Wildfire Act* I require, by order, Canadian Natural Resources Limited to pay to the government the government's costs of carrying out fire control related to wildfire G80213.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to Canadian Natural Resources Limited. Canadian Natural Resources Limited is not the holder of a forest agreement or licence under the *Forest Act* and Canadian Natural Resources Limited has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 18:

18. Leased Crown land or Occupied Crown land, including Licenses of Occupation: All occupiers of Crown land, holders of a leasehold interest or occupiers of leased Crown land may be billed for the Province's fire control costs for fires that they have caused or contributed to the spread of the fire (*Wildfire Act* [section 25](#), *Wildfire Regulation* [section 31](#)).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order Canadian Natural Resources Limited to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order Canadian Natural Resources Limited to pay the government's fire control costs of **\$97,617.32**

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G80213 which, in my view, are reasonable in the circumstances.

As a result of my review, I have made changes as noted earlier, to the hourly wages and overtime wages of responding employees, including payroll loading costs, and food, travel and accommodation, reducing the grand total from \$98,904.49 to \$97,617.32

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$60,395.85
• Distance charges for use of government and private vehicles	\$3,545.04
• Food, transportation and accommodation expenditures	\$15,486.88
• Costs for expendable supplies and materials consumed	\$1,920.00
• Air tanker fuel costs and flight costs	\$
• Helicopter fuel costs and flight costs	\$
• Aircraft basing charges (preparedness) for contracted aircraft	\$
• Retardant and other suppressant costs	\$
• Rent on use of equipment	\$
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$
• Private goods and services contracted, hired, rented or purchased	\$
• Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities	\$
• Consulting and other professional charges	\$
• Rehabilitation and/or slope stabilization costs	\$
SUB TOTAL	\$81,347.77
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$16,269.55
TOTAL	\$97,617.32

Payment of amounts owing

My cost recovery order in the amount of \$97,617.32 must be paid by July 6, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act*.

Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 6, 2018, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Canadian Natural Resources Limited, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Canadian Natural Resources Limited.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve Canadian Natural Resources Limited from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact **Kathleen Werstiuk** at **250 953-3957** within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for

review must be in writing, must be signed by a representative of Canadian Natural Resources Limited and must contain:

- a) Canadian Natural Resources Limited's name and address; and the name of the person, if any, making the request on its behalf;
- b) The address for serving a document on Canadian Natural Resources Limited or the person acting on its behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by you, or on your behalf, and must contain:

- a) Canadian Natural Resources Limited's name, address and telephone number;
- b) The name and daytime/business telephone number of the person, if any, making the request on Canadian Natural Resource Limited's behalf;
- c) The address to which all official letters and documents are to be sent in respect of the appeal;
- d) A copy of this determination;

e) A description of why the determination should be changed (the grounds for appeal); and

f) A statement of the outcome requested (the remedy sought).

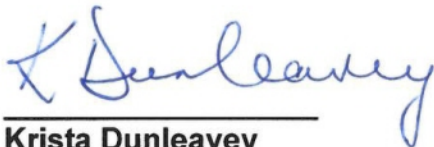
The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the applicable parts of the *Administrative Tribunals Act* and the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Krista Dunleavy
Fire Centre Manager
Cariboo Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Operations, BC Wildfire Service
John Pennington, General Counsel, Forest Practices Board
Doug Smith, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO

File: 23060-40 – G90043 (2015)

May 9, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. G90043 (2015)

Issued under section 25 (2) of the Wildfire Act

Westcoast Energy Inc.
Box 11162 Station Royal Centre
#1100 – 1055 West Georgia Street
Vancouver, BC
V6E 3P3

Dear Sir/Madam

This is further to my letter dated January 27, 2017 and the opportunity to be heard (OTBH) given to Westcoast Energy Inc. respecting the allegation that Westcoast Energy Inc. may have caused wildfire G90043 (2015). I have now made a determination based on all of the available evidence, and conclude by an order made under section 25 (2) of the *Wildfire Act* that Westcoast Energy Inc. caused wildfire G90043 (2015) and I require Westcoast Energy Inc. to pay \$29,560.72 to the government.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs as a direct result of fire, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 9

Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
 - (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

The BC Wildfire Service (BCWS) received an initial fire report on May 12, 2015, at 11:43 AM of a fire approximately 74 kilometres east of Fort Nelson adjacent to the Sierra Yoyo Desan Road. The wildfire was assigned the description G90043. Initial reports indicated that a grass and brush fire was burning 300 metres from a gas plant. BCWS responded to the wildfire by dispatching BCWS resources from the Fort Nelson Fire Zone.

The BCWS continued suppression operations until the evening of May 15, 2015. Wildfire G90043 was declared out on May 17, 2015 with the final fire size of 3.4 hectares.

Wildfire G90043 occurred on provincial Crown Land, occupied by Westcoast Energy Inc., and was caused by gas flaring activities related to oil and gas operations.

Westcoast Energy Inc. declined the offer of an OTBH and did not present any evidence or dispute any of the facts presented in the ministry case binder. As such, I am basing my decision on the information contained in the ministry case binder and the applicable statutes.

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that Westcoast Energy Inc. leases the Crown land on which wildfire G90043 originated. The parcel of land is registered as provincial crown land.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that Westcoast Energy Inc. caused wildfire G90043.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire G90043 was \$29,560.72.

Based on these determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require Westcoast Energy Inc. to pay \$29,560.72 to the government.

This amount must be paid by June 16, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence and findings of fact

Based on the evidence presented by the Fire Origin and Cause Investigators in the ministry case binder, I am satisfied that the following facts are **not** in dispute and adopt them as findings of fact:

- Wildfire G90043 originated on a parcel of land registered to the Crown and has parcel number 028-171-411.
- Westcoast Energy Inc. leases the land from the Crown and is the legal occupant of the land on which wildfire G90043 originated.
- On May 12, 2015, Westcoast Energy Inc. oil and gas operations caused Wildfire G90043 as a result of gas flaring activities.
- The fire was reported to the BCWS Provincial Forest Fire Reporting Centre on May 12, 2015 at 11:43 by a second hand initial phone report from the North Rockies Fire Station.
- On May 12, 2015, BCWS dispatched crews, equipment and aircraft from the Fort Nelson Fire Zone to carry out fire suppression activities on the wildfire.
- The BCWS contained the wildfire to 3.4 hectares and declared the wildfire out on May 17, 2015.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require, by order, Westcoast Energy Inc. to pay to the government the government's costs of carrying out fire control on wildfire G90043.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to Westcoast Energy Inc. With respect to section 29, Westcoast Energy Inc. is not the holder of a forest agreement or licence under the *Forest Act* and Westcoast Energy Inc. has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 18:

18. Leased Crown land or Occupied Crown land, including Licenses of Occupation: All occupiers of Crown land, holders of a leasehold interest or occupiers of leased Crown land may be billed for the Province's fire control costs for fires that they have caused or contributed to the spread of the fire (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order Westcoast Energy Inc. to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order Westcoast Energy Inc. to pay the government's fire control costs of \$29,560.72.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars as described in the ministry's case binder:

- Hourly wages and overtime wages of responding employees \$10,980.07
- Distance charges for use of government and private vehicles \$2,432.44
- Food, transportation and accommodation expenditures \$1,155.62
- Costs for expendable supplies and materials consumed \$464.00
- Air tanker fuel costs and flight costs \$0.00
- Helicopter fuel costs and flight costs \$9,489.80

• Aircraft basing charges (preparedness) for contracted aircraft	\$0.00
• Retardant and other suppressant costs	\$0.00
• Rent on use of equipment	\$0.00
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$112.00
• Private goods and services contracted, hired, rented or purchased	\$0.00
• Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities	\$0.00
• Consulting and other professional charges	\$0.00
• Rehabilitation and/or slope stabilization costs	\$0.00
SUB TOTAL	\$24,633.93
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the Wildfire Regulation	\$4,926.79
GRAND TOTAL	\$29,560.72

Having regard to the facts of this case, I have decided that it is appropriate to require Westcoast Energy Inc. to pay \$29,560.72 for these Crown resources.

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until Westcoast Energy Inc. has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$29,560.72 must be paid by the June 16, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 16, 2017 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favor of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Westcoast Energy Inc. and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Westcoast Energy Inc.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve Westcoast Energy Inc. from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 951 4207 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of Westcoast Energy Inc. and must contain:

- a) Westcoast Energy Inc. name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on Westcoast Energy Inc. or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) Westcoast Energy Inc. name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on Westcoast Energy Inc. or the person acting on its behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal **no later than thirty days** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Chris Hodder

Deputy Fire Centre Manager
Coastal Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Doug Smith, SWO-Prevention, BC Wildfire Service
Ian Meier, Director, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Mark Haddock, Forest Practices Board



File: 23060-40 – K10019 (2015)

May 24, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. K10019 (2015)

Issued under section 25 (2) of the Wildfire Act

s.22

Dear s.22 :

This is further to my letter dated January 24, 2017, and the opportunity to be heard (OTBH) given to you on April 13, 2017, respecting the allegation that you may have caused or contributed to the fire or the spread of wildfire K10019 that occurred on April 19, 2015. I have now made a determination based on the available evidence, and I have concluded that it is appropriate to order that you pay \$12,463.30 to the government for contributing to wildfire K10019 or spread of the fire.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control, and to make orders requiring a person to pay to the government those amounts.

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Legislation

Section 25 of the *Wildfire Act* sets out the provisions that relate to the recovery of government fire control costs and reads,

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber;

(ii) other forest land resources,

(iii) grass land resources; and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
 - (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

Wildfire K10019 was reported on April 19, 2015, at approximately 1710 hrs. to the Provincial Forest Fire Reporting Centre. Four Initial Phone Reports were received initially. Clearwater Fire Zone and Kamloops Fire Zone personnel were dispatched to assess and begin fire suppression on K10019. The Clearwater Fire Department and Blackpool Fire Department also responded to the wildfire under a mutual aid agreement with the BC Wildfire Service ("BCWS").

Fire suppression efforts continued until late on April 19, 2015 with crews returning the following day to complete suppression of the fire and patrol the fire area to ensure that no hotspots remained.

On April 20, 2015, Fire Origin and Cause personnel for the Ministry were deployed to determine the origin and cause of the wildfire. After completing an assessment of the wildfire, conducting interviews with witnesses and following and documenting the fire direction indicators, the investigators determined that wildfire K10019 was caused by the escape of a Category 2 Open Fire that was ignited on property that s.22 co-owned.

Determination

After considering the evidence and submissions in this case, I determine s.22 must pay the government's fire control costs related to wildfire K10019. In coming to this determination, I find that the wildfire ignited on s.22 property and that s.22 contributed to the wildfire and spread of the wildfire.

More specifically, under section 25 (2) of the *Wildfire Act*, I have determined that s.22 is a registered co-owner of the private land on which wildfire K10019 originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that s.22 caused or contributed to wildfire K10019.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K10019 was \$12,463.30.

Based on this determination, by an order made under section 25 (2) of the *Wildfire Act*, I require Mr. Bigg to pay \$12,463.30 to the government.

This amount must be paid by July 14, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

In the sections that follow, I will outline the evidence in the case and explain the reasons for my findings and determinations under sections 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

I provided a binder of the Ministry's evidence to s.22. The Ministry's binder included a Wildfire Origin and Cause Report and written representations from the Compliance and Enforcement Branch of the Ministry. The Ministry presented its evidence and made submissions to me at the OTBH. s.22 also gave evidence and made submissions at the OTBH.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 is a legal owner of the property on which wildfire K10019 ignited, along with s.22. The legal description of the property is:
s.22
- Wildfire K10019 ignited on April 19, 2015, on the Property.

- Wildfire K10019 ignited during a multi-day rave party that s.22 hosted on the Property.
- s.22 was aware of and approved the use of open fire (i.e. campfires) by his guests.
- s.22 was present on the Property when wildfire K10019 ignited.
- According to s.22 as many as 50 people attended the rave party over the first three to four days.
- On April 19, 2015, BCWS personnel along with the Clearwater and Blackpool Fire Departments were deployed to suppress the wildfire.
- Wildfire K10019 occurred while s.22 and numerous other individuals attending the rave party were on the Property.
- Wildfire K10019 likely was caused by one of the attendees of the rave on the Property.
- On April 18, 2015, the day before the wildfire ignited, the RCMP attended the Property at 2200 hrs. while the rave was underway. The RCMP observed camping and campfires on the Property.
- On April 28, 2015, officers with the Compliance and Enforcement Branch of the Ministry attended the Property to investigate. The officers concluded that there were no *Wildfire Act* contraventions on the basis that there was no prohibition of Category 2 open fires and there did not appear to be a deliberate intent to start a wildfire.
- The wildfire appeared to damage and destroy a number of personal items including a tent, other camping items, a pickup truck and an uninhabited structure/barn.
- The final size of wildfire K10019 was 1.7 ha.
- The government incurred \$12,463.30 in costs to suppress wildfire K10019.

Ministry staff presented the following evidence, submissions and arguments in the Ministry's case binder and at the OTBH:

- As the landowner and organizer and host of the rave, s.22 was responsible for the use of open fire.
- While it appears that s.22 did not personally "cause" the wildfire, as the landowner organizer and host of the festival he is responsible for ensuring that

resources are onsite, taking adequate steps to ensure the safe use of open fire and to prevent an escape from occurring as a result of open fire use.

- s.22 contributed to the start or spread of wildfire K10019 by inadequately preventing fires from occurring and failing to prepare to respond to a fire in the event of an (wildfire) escape.
- As the landowner, organizer and host of the festival, he did not reinforce the responsibility of festival attendees (his guests) to take proper precautions when lighting and fueling their campfires nor to extinguish the open fires when they left.
- The Wildfire Origin and Cause Report that the Ministry prepared for wildfire K10019 determined that the origin of the wildfire was one of the open fires (campfire) on the Property. The investigators who prepared the report followed the National Fire Protection Association 921 Guide for Fire Explosion Investigations. The guide is a leading resource for scientific-based investigations and analysis of fire and explosion incidents.
- The Wildfire Origin and Cause Report indicates that the Danger Class in the Kamloops area at the time of the wildfire was high, on a scale that uses very low, low, moderate, high and extreme. In addition, the report indicates that wind speeds at the time of the wildfire were 8 km/hr and gusty, based on evidence from witnesses.

In turn, you presented the following evidence and submissions:

- You did not start the fire that caused the wildfire. The people who attended your rave and camped on the Property likely started the fire.
- When the wildfire was noticed by attendees, there were approximately 15-25 people on the Property. However, they were on the upper site of the Property, not on the lower section of the Property where the wildfire ignited. The campers from the lower section of the Property had departed.
- Once the campers had left the lower section of the Property, you and others extinguished the open fire(s) in that section of the Property between 1300-1500 hrs. with water until there was no further smoke.
- You and others cleaned up the lower section of the Property between 1300 – 1500 hrs. on April 19, 2015, including extinguishing the open fire(s).
- The rave was intended to last for up to seven days but concluded after three to four days.
- On site firefighting resources during the rave consisted of a fully charged gravity fed hose, a shovel, pickaxe and a couple of backpack water cans.

- You allowed rave attendees to have campfires at the lower section of the Property as long as the fires were kept safe and not left unattended.
- While witnesses reported observing up to five fires on the Property between April 18 and 19, 2015, you disputed this number at the OTBH.
- By the time the fire department arrived, you and others had contained the "candling tree" fire and only had to borrow one shovel from the fire department. A candling tree refers to when foliage of a tree is on fire. The importance of this is the chance that the fire spreads to the foliage of nearby trees, especially when pushed by the wind.
- There are ongoing negative issues between you, your neighbours and the RCMP.

Analysis of the evidence

Having regard to the evidence, I find that s.22 did contribute to the wildfire within the meaning of section 25 (2) of the *Wildfire Act*. My finding that s.22 did contribute to the wildfire is based on the following:

- Wildfire K10019 ignited on property that s.22 partially owned.
- s.22 organized and hosted a rave on the Property with up to 50 guests over three or four days.
- s.22 was aware of and gave permission to campers to use open fire on the Property.
- s.22 failed to provide adequate proof, other than stating he told campers that were using open fires (campfires) to "keep it safe", that he had taken the necessary steps to prevent escapes, and if there was a risk of an escape, ensuring there were adequate suppression resources on site.
- s.22 failed to ensure or require that his guests extinguish fires before leaving the rave and the Property.

In these circumstances, I find that s.22 accepted the risks associated with and responsibility for the use of fire on the Property during the rave.

The wildfire likely ignited as a result of s.22 invited guests having open fire (campfires) on the Property when he was present.

At the OTBH, s.22 stated that 5-10 people cleaned up the camp area and cleared out the fire area, leaving me to conclude that campers left the Property without extinguishing their open fires.

I am not satisfied that s.22 had adequate firebreaks or other safeguards in place to prevent open fires from escaping.

s.22 and some of his guests applied water to fires on the Property until smoke was no longer visible. However, the accepted practice to extinguish an open fire is to dig up the ashes and mix them with water, cold trail and patrol the burn area for a period of time to ensure that no further hotspots remain. Cold trailing refers to the active process of using the bare hand to determine if there is heat left in the ashes after digging up and applying water.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I require, by order, s.22 to pay to the government the government's costs of carrying out fire control on wildfire K10019.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22. With respect to section 29, s.22 is not the holder of a forest agreement or licence under the *Forest Act* and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered that section 25 of the *Wildfire Act* provides me with discretion to order the payment of the government's fire control costs. In this case, no reasons have been brought to my attention not to order s.22 to pay the government's fire control costs and I am not aware of any that exist.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$12,463.30.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. I reviewed the Ministry's assessment of its fire control costs related to wildfire K10019, which in my view are reasonable in the circumstances. It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$ 2,684.35
- Distance charges for use of government and private vehicles \$900.45
- Food, transportation and accommodation expenditures \$311.78
- Costs for expendable supplies and materials consumed \$160.00
- Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control \$29.50

• Consulting and other professional charges	\$6,300.00
SUB TOTAL	\$10,386.08
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$2,077.22
GRAND TOTAL	\$12,463.30

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$12,463.30 must be paid by July 14, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 14, 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government, a lien on chattels that you own or have an ownership in.

Payment should be made by cheque, payable to the Minister of Finance, British Columbia, and sent to BC Wildfire Service 2nd Floor, 2957 Jutland Road, Victoria, BC, V8T 5J9, citing file number 23060-40- K10019 (2015).

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-951-4208 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you or on your behalf and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document to you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Ken Taekema
Fire Centre Manager
Coastal Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, BC Wildfire Service
Mark Haddock, Forest Practices Board
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO



File: 23060-40 – K30082 (2015)

June 16, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. K30082 (2015)

Issued under section 25 (2) the Wildfire Act

s.22

Dear s.22 :

This is further to my letter dated March 29, 2017 and the opportunity to be heard (OTBH) given to you on May 11, 2017 respecting the allegation that you may have caused wildfire K30082 (2015). I have now made a determination based on all of the available evidence and found that you caused wildfire K30082 (2015) and that it originated on your private property. As such, I order that you pay the government's costs of fire control in respect of wildfire K30082 (2015) in the amount of \$38,788.86.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

Legislation

Section 25 of the *Wildfire Act* provides me with the authority to determine the government's costs of fire control and to order that a person who caused the fire pay those costs. Section 25 reads,

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Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

On May 21, 2015 at approximately 15:36 hours, the Provincial Forest Fire Reporting Centre (PFFRC) recorded one of four Initial Phone Reports (IPR) for a fire in the area of Albas Provincial Park, which is north of Sicamous. The caller reported black smoke pouring into the sky but did not see any open flame. There was also concern that there was a house within a kilometre of the fire.

An air tanker request was initiated due to the close proximity of the fire to people and residences. The objective of the air tanker action was to blanket the majority of the fire with retardant. A rappel initial attack fire suppression crew (Rapattack Crew) and helicopter were also dispatched, from the Salmon Arm Fire Zone of the Kamloops Fire Centre (KFC), to attend the fire. The Rapattack Crew stayed overnight at the fire and was joined on May 22, 2015 by a unit crew based in Kamloops. On May 22, 2015 at approximately 14:58 hours, the BC Wildfire Service (BCWS) fire suppression crews completed the suppression of wildfire K30082 and departed from the fire area.

On May 22, 2015, Fire Origin and Cause Investigators were deployed to wildfire K30082 to determine the origin and cause of the fire. Private land owner s.22 stated to one of the investigators that on May 20, 2015 he had ignited a pile of slash on his property. The investigators walked the fire perimeter, reviewed the fire direction indicators and determined that wildfire K30082 originated from the Category 2 Open Fire slash pile that had been ignited by s.22 on May 20, 2015.

A natural resources officer for the Ministry of Forests, Lands and Natural Resource Operations completed a contravention investigation for wildfire K30082 and issued a \$345 violation ticket to s.22 for a contravention of section 10 (3) of the *Wildfire Act*.

As a delegated decision maker, I received the BCWS, Wildfire Incident Report Binder and understand that s.22 received the same report. On March 29, 2017, I sent a letter to s.22 offering an OTBH in relation to section 25 of the *Wildfire Act*. I accommodated s.22 request for an OTBH and I met with s.22 at the KFC and Laurence Bowdige (representative of BCWS) via phone on May 11, 2017.

s.22 does not dispute any of the facts but brought to my attention several discussion points to consider. First, s.22 believed that there was no fire ban in place since he asked a local fire department representative, who was not aware of one in place. Second, s.22 believed that the fire was in a safe condition when he left and had s.22 keep an eye on it. When fighting the fire, he had a tractor on site and up to seven people helping. Third, s.22 questions the amount of resources that BCWS used to fight the fire, including the number of BCWS crews working on the fire. s.22 also submitted that the rental charges on the vehicles were too high.

Determination

After considering the evidence and submissions in this case, I determine that s.22 must pay the government's fire control costs related to wildfire K30082. In coming to this determination, I find that the wildfire started on s.22 property and that s.22 caused the wildfire.

More specifically, under section 25 (2) of the *Wildfire Act*, I have determined that s.22 is the owner of the private land on which wildfire K30082 (2015) originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that s.22 caused wildfire K30082 (2015).

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K30082 (2015) was \$38,788.86.

Based on these determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require s.22 to pay \$38,788.86 to the government.

This amount must be paid by August 11, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under sections 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- On May 21, 2015 at approximately 15:36 hours, the PFFRC recorded one of four IPRs for a fire in the area of Albas Provincial Park. The four IPRs were assigned to wildfire K30082.
- The legal description of the private land where wildfire K30082 originated is s.22 s.22
- s.22 own the Property.
- On May 21, at approximately 15:44 hours, an air tanker request was initiated for wildfire K30082 due to the close proximity of the fire to people and residences. The objective of the air tanker action was to blanket the majority of the fire with retardant.
- On May 21, 2015 at approximately 16:14 hours, a Rapattack Crew and helicopter were dispatched from the Salmon Arm Fire Zone to attend wildfire K30082.
- On May 21, 2015 the Rapattack Crew continued fire suppression action until approximately 21:03 hours and remained at the site of the fire overnight.
- On May 22, 2015 the Bighorn Unit Crew based at the Kamloops Fire Zone was deployed to wildfire K30082 to assist with the fire suppression, arriving at the fire at approximately 08:38 hours.
- On May 22, 2015 the Bighorn Unit Crew departed from the fire at approximately 12:00 hours.
- On May 22, 2015 the Rapattack Crew continued suppressing wildfire K30082 until approximately 14:58 hours when they departed from the fire.
- On May 22, 2015 Fire Origin and Cause Investigators Brady Holliday and Peter Semenoff were deployed to wildfire K30082 to determine the origin and cause of the fire.
- s.22 stated to Mr. Holliday that on May 20, 2015 he had ignited a pile of slash on his property.
- Mr. Holliday and Mr. Semenoff determined that wildfire K30082 originated from the Category 2 Open Fire slash pile that had been ignited by s.22 on May 20, 2015 on the Property.

- Wildfire K30082 was officially declared out on May 25, 2015 with final fire size of 0.5 hectares.
- Natural Resource Officer Herb Noren investigated wildfire K30082 to determine whether a contravention of the *Wildfire Act*, *Wildfire Regulation* or both had occurred.
- Natural Resource Officer Noren determined that s.22 failed to comply with section 10(3) of the *Wildfire Act* and on May 27, 2015, issued s.22 a \$345 violation ticket.
- The BCWS incurred fire control costs in the suppression of wildfire K30082 calculated in the prescribed manner as \$38,788.86.

During the OTBH you stated that you are not disputing the facts. However, you added the follow points for discussion and for consideration:

- s.22 believed that there was no fire ban in place. s.22 asked an off duty local fire department representative if a fire ban was in effect and the representative was not aware of one in place and also it was early in the season.
- When s.22 was not on site prior to the IPR, s.22 was on site watching the slash pile. When fighting the fire, s.22 had a tractor on site and up to seven people helping to fight the fire. s.22 believes that he performed his duties to the best of his abilities and resources on hand.
- s.22 questioned the decision on the amount of resources for the fire and the number of BCWS crews working on the fire. In addition, s.22 thought the vehicle rental costs were high in his opinion.

Consideration of the evidence and findings of fact

There are no facts in dispute in this case. I conclude that the facts set out support a finding that s.22 caused fire K30082 and is the owner of the property the fire occurred on.

In terms of points for consideration brought forth by s.22 I have considered them as part of my determination. s.22 comments generally relate to the statutory defences described in section 29 of the *Wildfire Act*, which are due diligence, mistake of fact and officially induced error. However, these defences do not apply to this determination made under section 25 of the *Wildfire Act*.

In terms of not knowing if a fire ban was put in place, a mistake of fact is not a defence to an order made under section 25 of the *Wildfire Act*. In any event, s.22 should not have taken advice from an off duty fireman from the local fire department who had no authority in this regard. On May 15, 2015, which is five days

before the wildfire started, the KFC Manager made an order that prohibited all Category 2 and 3 open fires within the boundaries of the KFC. The onus is on the person that plans to light a fire to determine if there are any orders or restrictions in place. A Natural Resource Officer investigated the lawfulness of s.22 fire, and determined that a contravention of the *Wildfire Act* had occurred. A violation ticket (AH06805222) was issued to s.22 under section 10 (3) of the *Wildfire Act* for carrying out an activity that is the subject of a restriction or prohibition.

On s.22 next point, he believes that he did everything expected of him in regard to the fire. This may be true, however s.22 cannot rely on the defence of due diligence in this determination. The facts support a finding that s.22 caused fire K30082 and therefore BCWS is entitled to recover the government fire control costs expended in controlling wildfire K30082 under section 25 of the *Wildfire Act*.

In regards to s.22 last point concerning the BCWS's decision on resources to fight the fire and questioning the costs of rental vehicles, I do not have authority to question the decision making on resourcing in terms of how many crews and crew members on a fire. With respect to the cost of renting vehicles, section 31(2)(b) of the *Wildfire Regulation* requires that rates in the Equipment Rental Rate Guide apply and I am satisfied that the BCWS followed the guide.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require, by order, s.22 to pay to the government the government's costs of carrying out fire control on wildfire K30082 (2015).

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22 as s.22 is not the holder of a forest agreement or license under the *Forest Act* and s.22 has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$38,788.86.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs is made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars, all of which were attributable to wildfire K30082:

• Hourly wages and overtime wages of responding employees	\$13,394.49
• Distance charges for use of government and private vehicles	\$2,463.12
• Food, transportation and accommodation expenditures	\$34.52
• Costs for expendable supplies and materials consumed	\$480.00
• Air tanker fuel costs and flight costs	\$9,510.74
• Helicopter fuel costs and flight costs	\$2,312.86
• Aircraft basing charges (preparedness) for contracted aircraft	\$0.0
• Retardant and other suppressant costs	\$3,876.62
• Rent on use of equipment	\$0.0
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$251.70
• Private goods and services contracted, hired, rented or purchased	\$0.0
• Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities	\$0.0
• Consulting and other professional charges	\$0.0
• Rehabilitation and/or slope stabilization costs	\$0.0
SUB TOTAL	\$32,324.05
• Mandatory 20% overhead pursuant to section 31 (b) of the <i>Wildfire Regulation</i>	\$6,464.81
GRAND TOTAL	\$38,788.86

I have reviewed the ministry's rental charges as part of the Distance charges for use of government and private vehicles as part of my determination and the charges comply with section 31. This charge is consistent with the amount prescribed in the Equipment Rental Rate Guide.

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until s.22 . . . has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$38,788.86 must be paid by August 11, 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by August 11, 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) Bears interest at the prescribed rate;
- b) May be recovered in a court as a debt due to the government; and
- c) Constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Mr. Rappard, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Mr. Rappard.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve s.22 . . . from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical,

arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-565-6113 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document to you or the person acting on your behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;

- b) The address for serving a document to you] or the person acting on your behalf;
- c) The grounds for appeal;
- d) A copy of this determination; and
- e) A statement of the relief requested.

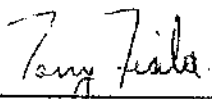
The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Tony Fiala
Deputy Fire Centre Manager
Prince George Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Laurence Bowdige, Recovery Officer, BC Wildfire Service
Jennifer Young, SWO-Prevention, Kamloops Fire Centre, BC Wildfire Service
Mark Haddock, Forest Practices Board
Nathan Murray, Manager Litigation & SDM Support, Corp. Initiatives, FLNRO



File: 23060-40 – K50619 (2015)

December 18, 2018

**Notice of determination that there are no grounds for an order
under section 25 of the *Wildfire Act***

s.22

Dear s.22 :

This is further to my letter dated January 15, 2018 respecting the allegation that you may have caused wildfire K50619 on August 14, 2015. In that letter, you were offered an opportunity to be heard ("OTBH"). You initially requested an oral hearing but then decided to send a written submission.

I have now made a determination based on all of the available evidence and conclude, pursuant to section 25(3) of the *Wildfire Act*, that you did not cause or contribute to the spread of the wildfire. Accordingly, there is no basis for me to issue a cost-recovery or damages order under section 25(1). On August 9, 2018 I called to inform you of the outcome, and this letter represents my reasons for the decision.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's costs of fire control and the value of government property damaged or destroyed as a result of the fire.

Legislation

In making my determination, I have considered section 25 of the *Wildfire Act*:

Page 1 of 7

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;
- (b) determine the amount that is equal to the dollar value of any:
 - (i) Crown timber;
 - (ii) other forest land resources;
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be

heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

On August 14, 2015, a wildfire started northwest of Oliver, BC. The wildfire was assigned the incident number K50619.

Air tankers, helicopters, and BC Wildfire Service (BCWS) fire suppression crews and personnel were dispatched by the Kamloops Fire Centre to suppress and control wildfire K50619.

The Regional District of Okanagan-Similkameen put an evacuation order in place on August 14, 2015 for the town of Oliver due to the close proximity of the wildfire. The evacuation order was downgraded to an evacuation alert on August 15, 2015, which was then rescinded on August 23, 2015.

Ministry investigators were deployed to wildfire K50619 on August 15, 2015 to determine its origin and cause.

The investigators prepared a report indicating that wildfire K50619 was caused by non-conforming wiring at an outdoor work area on your property. The BC Safety Authority corroborated that non-conforming wiring was evident in several areas after conducting its own investigation. Reports indicated that the likely cause of the fire was a circuit breaker panel box which was connected to a residential electrical extension cord. Ignition was possibly caused by electrical malfunction creating sparks and/or burning debris, igniting light forest fuels of grass and ponderosa pine needles.

BCWS fire suppression efforts continued until August 24, 2015 and the last patrol of the wildfire occurred on August 29, 2015. Wildfire K50619 was officially declared out on December 16, 2015 with a final size of 317 hectares.

Determination

After considering the evidence and submissions in this case, I determine under section 25(3) of the *Wildfire Act* that you did not cause wildfire K50619. Therefore, there is no basis and I do not have the authority, to order you to pay to the government the government's fire control costs or the value of government property damaged or destroyed as a result of the wildfire.

In the sections that follow, I will outline the evidence in the case and explain the reasons for my determination.

Summary of the evidence

I provided a copy of the Ministry's case binder to you with my letter inviting you to an OTBH. The Ministry's case binder included:

- an incident summary;
- investigative findings and reports;
- fire origin and cause analysis;
- BC Safety Authority report;
- Provincial Office of the Fire Commissioner report; and
- a comprehensive description of the firefighting costs incurred by the Province

Ministry representatives presented the following relevant evidence and submissions in its case binder:

- The investigation report indicated that the origin of the wildfire was an electrical panel box hanging from a tree in an open workshop area on your property. Investigators analyzed and excluded other possible causes, including lightning, campfire, open burning, arson, juvenile fire setter, fire use, equipment use, railroads, and discarded match or smoking substance. Possible causes included for further analysis were electrical transmission line, secondary consumer electrical and residential installed wiring.
- The BC Safety Authority reported that the electrical panel box had numerous non-conforming electrical wiring elements; there was no evidence of any protection from weather elements, it was connected to conductors unsuitable for a free air hanging application, electrical feed was from underground, and the panel box itself showed evidence of high heat and fire damage.
- The Office of the Fire Commissioner was unable to determine the cause of the wildfire.

Eileen E. Vanderburgh, of Alexander Holburn Beaudin + Lang LLP, submitted evidence and written submissions to me on your behalf consisting of:

- affidavit and statement of s.22, who is s.22;
- statement of Richard Simmons, attending fire fighter from the Oliver Fire Department;
- statement of Scott Schaffrick, attending fire fighter from the Oliver Fire Department;
- statement of Bryon Somerville, captain with the Oliver Fire Department;
- statement of Chad Parker, powerline technician from South Okanagan Line Construction; and
- photographs and video that s.22 recorded of the wildfire and the open workshop area, including the electrical panel in question

Ms. Vanderburgh presented the following evidence and submissions that I base my determination on:

- The video that s.22 recorded at 18:18 (6:18 pm) of the wildfire shows the fire on the hillside behind the open workshop area with the electrical panel still intact at that time. The land and road between the workshop area and the wildfire was unburnt at this time.
- The photographs that s.22 took at 18:22 (6:22 pm) show the area around the open workshop prior to the wildfire reaching that point, with the wildfire fully engaged in the background. The land and road between the workshop and the wildfire was unburnt at this time. Estimating an average road width and average height of the trees shown, the fire appears to be approximately 12 – 15 meters from the workshop area at this time.*

Analysis of the evidence

I conclude that the facts do not support a finding that you caused wildfire K50619. My reasons for this conclusion follow in the bullet points below:

- On a balance of probabilities, it is unlikely that your electrical panel caused wildfire K50619. My decision on the issue of cause is primarily based on the video and photographic evidence that s.22 offered. His evidence is direct and gives me confidence that the electric panel did not cause the wildfire.
- The video that s.22 recorded clearly shows the wildfire fully engaged on the hillside across the dirt road behind the open workshop area of your property and the hanging electrical panel still intact and unburnt at that time. The ground behind the outdoor work area at the time of the video was

unburnt all the way up to the road. Accordingly, I find that the electrical panel did not cause or contribute to the spread of wildfire K50619.

- s.22 photographs are consistent with his video, showing that the wildfire was fully engaged in the area behind the open workshop before spreading and burning the open workshop area.
- The video and photographic evidence is sufficiently strong and persuasive to rebut the Ministry's evidence that non-confirming wiring on the electric panel caused the wildfire. While I accept the Ministry's evidence that the wiring on the panel was non-confirming, that, on its own and in light of the other evidence, is not sufficient to establish that the wiring or panel caused the wildfire.

Based on my findings and analysis, I have no power to consider making an order under section 25 of the *Wildfire Act* regarding the payment of the government's fire control costs or the value of government property damaged or destroyed as a result of the wildfire.

Determination does not forestall other actions that may be taken

Please note that these determinations and under section 25 of the *Wildfire Act* do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making this determination, I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination, you may contact me at (250) 847-6612 within this 15 day period.

Opportunities for review and appeal

The *Wildfire Act* provides you with an opportunity to request a review if you have new information that was not available at the time that I made this determination. Since the outcome of this determination is in your favour, I am not providing details about how to request a review. Should you choose to request a review, please refer to section 37 of the *Wildfire Act* and the *Administrative Review and Appeal Procedure Regulation*. A request for review should be made in writing and directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service

2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The *Wildfire Act* also provides you with a right to appeal to the Forest Appeals Commission should you disagree with this determination. Since the outcome of this determination is in your favour, I am not providing details about how to file an appeal. Should you choose to file an appeal, please refer to sections 39 through 41 of the *Wildfire Act* and sections 140.1 through 140.7 of the *Forest and Range Practices Act*.

The appeal request must be in writing and must be signed by you, or on your behalf. The Forest Appeals Commission must receive it ***within thirty days*** of this determination. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Diane Mackay
Fire Centre Manager
Northwest Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Mark Haddock, General Counsel, Forest Practices Board
Robert Schweitzer, a/Director, Wildfire Operations, BC Wildfire Service

File: 23060-40 – K60008 (2015)

7th April 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. K60008 (2015)

Issued under section 25 (2) the Wildfire Act

s.22

Dear s.22 ::

This is further to my letter dated 6th February 2017 and the opportunity to be heard (OTBH) given to you on 15th March 2017, respecting the allegation that you caused wildfire K60008 (2015). I have now made a determination based on all of the available evidence, and I have concluded that you caused wildfire K60008 (2015) and I order that you pay the government's fire control costs for wildfire K60008 (2015) in the amount of \$18,644.57.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 10

Legislation excerpts

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) ... subject to any prescribed limits, if the person
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Wildfire Regulation

Circumstances for not seeking cost recovery

29 The circumstances in which the minister, under section 25 (2) or 27 (1) (d) of the *Act*, may not by order require a person to pay to the government the

government's fire control costs determined under section 25 (1) (a) or 27 (1) (b) of the *Act* are that the person, through their acts or omissions, did not willfully cause or contribute to the start or spread of the fire, and

- (a) before the government has carried out fire control for the fire that gives rise to the government's costs,
 - (i) the person has entered into a cost sharing agreement or a service agreement with the government,
 - (ii) the agreement is in effect at the time of the fire, and
 - (iii) any failure of the person to act in accordance with the agreement did not directly or indirectly cause or contribute to the start or spread of the fire, or
- (b) the fire that gives rise to the government's costs results from timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation by a person who
 - (i) is the holder of an agreement or licence under the Forest Act, and
 - (ii) as of the date of the fire, is not in arrears for the annual rent payable for the agreement or licence under the Annual Rent Regulation, B.C. Reg. 122/2003.

Determination of government fire control costs

31 (1) For the purposes of section 25 (1) (a) and 27 (1) (b) of the *Act*, the manner in which the amount of the government's fire control costs in respect of a particular fire is to be calculated is

- (a) by ascertaining the sum of the following costs, expenditures and charges that are attributable to the fire:
 - (i) hourly wages and overtime wages of responding employees, including payroll loading costs;
 - (ii) distance charges for use of government and private vehicles;
 - (iii) food, transportation and accommodation expenditures;
 - (iv) costs for expendable supplies and materials consumed;
 - (v) air tanker fuel costs and flight costs;
 - (vi) helicopter fuel costs and flight costs;
 - (vii) aircraft basing charges (preparedness) for contracted aircraft;
 - (viii) retardant and other suppressant costs;
 - (ix) rent on use of equipment;
 - (x) replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control;

- (xi) private goods and services contracted, hired, rented or purchased;
- (xii) investigation, research and analysis services related to
 - (A) post-incident evaluation,
 - (B) contingency plan reviews, and
 - (C) other incident follow-up activities;
- (xiii) consulting and other professional charges;
- (xiv) rehabilitation and/or slope stabilization costs, and
- (b) by adding to the sum ascertained under paragraph (a) for overhead an amount equal to the greater of
 - (i) \$200, and
 - (ii) 20% of the amount determined under paragraph (a)

to arrive at the total dollar amount of the government's fire control costs for the fire.

(2) The rates to be charged for the purposes of subsection (1) (a) are,

- (a) for wages,
 - (i) the rates, if any, that
 - (A) are applicable and in effect in the part of British Columbia in which the particular fire occurs, and
 - (B) have been established as terms and conditions of employment by collective agreement or by another method,
 - (ii) if the minister is satisfied that the person to be paid is
 - (A) an employee who immediately before carrying out the compensable fire control was paid at greater rates of remuneration than the rates under subparagraph (i), or
 - (B) an employer who carried out the compensable fire control through employees and was paying employees at greater rates of remuneration than the rates under subparagraph (i),the rates agreed to between the minister and the person, or
 - (iii) in the absence of rates as described in subparagraph (i) or (ii), the rates set out in Schedule 4, and
- (b) for use of equipment,
 - (i) the rates, if any, for that type of equipment that are set out in the Equipment Rental Rate Guide authorized by the government, as amended or reissued from time to time,

- (ii) if the minister is satisfied that the equipment supplier's costs for the equipment used in carrying out the fire control are at rates greater than those referred to in subparagraph (i), at rates agreed to between the minister and the supplier, or
- (iii) in the absence of rates as described in subparagraph (i) or (ii), reasonable rates to be approved by the minister.

Background

s.22 are the registered owners of the private property located at s.22 near Merritt, BC (the "Property"). On the afternoon of 11th April 2015, s.22 was on the Property burning a small pile of debris, about one square metre in area and half a metre in height. Despite the precautions that s.22 had taken to ensure that the fire would be contained, the fire escaped into nearby grass and eventually on to Crown land. s.22 called 911 for help at about 13.15.

BC Wildfire Service fire suppression crews and officers were dispatched by the Kamloops Fire Centre, and arrived at the Property at about 15.30. BC Wildfire Service officers requested a helicopter at about 15.45 and bucketed (dropped buckets of water) on the fire for about half an hour. Crews remained on the fire until about 20.30 that evening. The following day, 12th April 2015, crews returned and completed active suppression operations by about 13.00. The final size of the fire was about 11 hectares.

The fire that s.22 ignited was considered a Category 2 open fire, a category of fire which was not prohibited at the time of the fire, and there are no contraventions associated with wildfire K60008 (2015).

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that s.22 s.22 are the owners of the Property on which wildfire K60008 (2015) originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that s.22 caused wildfire K60008 (2015).

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K60008 (2015) was \$18,644.57.

Based on these determinations, I order, under section 25 (2) of the *Wildfire Act*, that s.22 pay \$18,644.57 to the government.

This amount must be paid by 30th June 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are not in dispute:

- Wildfire K60008 (2015) started on 11th April 2015, on the Property.
- s.22 are the registered owners of the Property.
- s.22 made a voluntary statement that at about 07.30 on 11th April 2015, he lit a three-foot-square pile of debris on his property, located directly beside the creek with four large buckets of water beside it. The wind came up out of the south and gusts spread the fire into grass and along the edge of the creek towards the house and past it, causing wildfire K60008 (2015).
- On 11th April 2015, the Kamloops Fire Centre deployed fire suppression crews, other personnel and aircraft to suppress wildfire K60008 (2015). Suppression activities were concluded on 12th April 2015, and the fire was patrolled until 13th April 2015. The fire was declared out on 28th April 2015 at a final size of 11 hectares.
- BC Wildfire Service incurred fire control costs of \$18,644.57 in suppressing wildfire K60008 (2015).

Consideration of the evidence and findings of fact

s.22 did not dispute the evidence provided by the BC Wildfire Service that the small debris pile which s.22 lit and burned on the morning of 11th April 2015 caused wildfire K60008 (2015). s.22 emphasised that he took reasonable precautions to control the burn and although I do not disagree with him, due diligence is not a defence available to s.22 in relation to an order made under section 25 of the *Wildfire Act*.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act*, I may require, by order, that s.22 pay to the government the government's costs of carrying out fire control on wildfire K60008 (2015).

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22, as he is not the holder of a forest agreement or licence under the *Forest Act*, and he has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$18,644.57.

Itemised particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

- | | |
|--|------------|
| • Hourly wages and overtime wages of responding employees | \$6,909.63 |
| • Distance charges for use of government and private vehicles | \$2,156.61 |
| • Food, transportation and accommodation expenditures | \$0 |
| • Costs for expendable supplies and materials consumed | \$496.00 |
| • Air tanker fuel costs and flight costs | \$0 |
| • Helicopter fuel costs and flight costs | \$5,870.70 |
| • Aircraft basing charges (preparedness) for contracted aircraft | \$0 |
| • Retardant and other suppressant costs | \$0 |
| • Rent on use of equipment | \$0 |
| • Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control | \$104.20 |
| • Private goods and services contracted, hired, rented or purchased | \$0 |
| • Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities | \$0 |

• Consulting and other professional charges	\$0
• Rehabilitation and/or slope stabilization costs	\$0
SUB TOTAL	\$15,537.14
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the Wildfire Regulation	\$3,107.43
GRAND TOTAL	\$18,644.57

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until s.22 has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$18,644.57 must be paid by Friday 30th June 2017, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by 30th June 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Mr. Martinick, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Mr. Martinick.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve s.22 from any other actions or proceedings that the government is authorised to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorised under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 778-799-2018 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

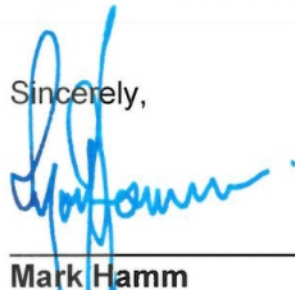
The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Sincerely,



Mark Hamm
Deputy Fire Centre Manager
Cariboo Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Mark Haddock, Forest Practices Board
Laurence Bowdige, Recovery Officer, BC Wildfire Service

File: 23060-40 – N50078 (2015)

January 05, 2017

Order for Recovery of Fire Control Costs and Related Amounts

No. N50078 (2015) – SEFC 2016

Issued under section 25 (2) of the Wildfire Act

s.22

Dear s.22

This is further to my letter dated September 20, 2016 and the Opportunity to be Heard (“OTBH”) that was conducted with you on November 24, 2016 regarding the allegation that you caused wildfire N50078 near the community of Rossland, BC. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government’s fire control costs and to make orders requiring a person to pay to the government those amounts.

Page 1 of 10

Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber;

(ii) other forest land resources,

(iii) grass land resources; and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that you are the owner of the private land on which wildfire N50078 originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you caused wildfire N50078.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire N50078 was \$61,639.43.

Based on these determinations, by an order made under section 25(2) of the *Wildfire Act*, I require you to pay \$61,639.43 to the government.

This amount must be paid by February 17, 2017 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The Ministry's evidence in this case was provided in the form of a binder, which was presented at the OTBH by Kevin Melanson, Senior Protection Officer, with the BC Wildfire Service ("BCWS"). Contained within the binder is a statement collected from s.22 during the investigation, and reconfirmed at the OTBH in Castlegar on November 24, 2016. In this statement, s.22 indicated that she had ignited the debris pile that the Fire Origin and Cause Investigator found resulted in wildfire N50078.

The first report of wildfire N50078 was received by the Trail Fire Dispatch. At 18:31 hours on May 23, 2015 the BCWS Provincial Forest Fire Reporting Centre in Victoria received its first initial phone report ("IPR") from the Trail Fire Dispatch which identified a potential urban interface wildfire. The wildfire was reported to be approximately s.22. The wildfire was determined to be on private property that belonged to s.22, located within the Rossland Fire Department response area. Firefighting resources were dispatched to the wildfire at the request of the Rossland Fire Department. The Rossland Fire Department further requested aerial firefighting resources due to the fire behavior and inaccessibility of the terrain. The Regional Operations Section Officer ("OSO") at the Southeast Fire Centre (SEFC) advised the Trail Dispatch that helicopters were unavailable to support the incident due to the limited remaining daylight but recommended fixed wing air tanker support as an option. After receiving confirmation from the Rossland Fire Department the OSO put a request forward to the Provincial Air Tanker Coordination Centre ("PATC") that dispatched aerial support to the incident. At the completion of the air tanker mission the officer in charge noted that a helicopter would be required to support the north flank. All resources were off the fire by 22:30 hours that evening.

By 0700 hours on Sunday May 24, 2015 the first BCWS suppression crew was onsite and provided an onsite update to the OSO. The OSO further dispatched a helicopter and a 10 person sustained action suppression crew to support the fire containment efforts. The Rossland Fire Department was also onsite that morning and left the fire mid-day. By 20:00 hours that evening the fire was considered to be in contained status.

BCWS crews returned to the fire Monday May 25, 2015 and by the end of the day the fire was called out. The final size of the fire was measured at 2.0 hectares.

Fire Origin and Cause Investigator Alex Richardson, SE56, was dispatched to investigate wildfire N50078 on Sunday May 24, 2015. He determined that the fire started at the base of the hill in a debris pile that contained both woody materials and household waste. He did note that the point of origin had been disturbed by fire suppression activities. Later that morning Mr. Richardson interviewed the land owner, s.22 who acknowledged that she had ignited the debris pile that was

determined to be the point of origin for wildfire N50078, on Saturday May 2, 2015. She had monitored the pile twice daily and had observed no smoke or signs of fire and had considered the fire out. The investigator did raise concern that the fire may have been ignited closer to May 23, 2015.

The SEFC had issued an open fire prohibition restricting the use of category 2 and 3 open fires at noon on Friday May 22, 2015 one day before the wildfire. The weather pattern that influenced SEFC that spring lead to having very dry forest fuels. The conditions were described as “rare for the month of May and more typical of July and August”. Forest fuels under these conditions are easy to ignite, will spread rapidly and challenge fire suppression efforts.

At the request of the SEFC, Natural Resource Officer (“NRO”) Tracey Pearson was asked to investigate wildfire N50078 for non-compliance of the *Wildfire Act*. After interviewing s.22 she again recounted igniting the fire on May 2, 2015. A Violation ticket was issued to s.22 on July 30, 2015 under section 5 (1) of the *Wildfire Act* and paid in full within thirty days.

During the OTBH s.22 brought forward two areas of concern. With respect to the cause of the wildfire, s.22 raised the concern that the debris pile that she lit was ignited 21 days before the wildfire. She questioned whether the debris pile could still have been burning and have caused the wildfire.

I do find it reasonable to conclude that a debris pile could reignite under the described burning conditions. It is not uncommon for fires to continue smoldering undetected for weeks or even months before reigniting. The Fire Origin and Cause Report ruled out all other possible sources of ignition. Although the timing of the actual ignition may be in question, I do find that s.22 did ignite the debris pile, the fire was never fully extinguished and the fire did escape the area of intended burn causing the wildfire N50078, to which the BCWS was required to respond.

The *Wildfire Act* and Wildfire Regulation are clear that it is the responsibility of a person using fire to ensure the fire does not leave the intended area of burn and that the fire is completely extinguished. s.22 had indicated that she had patrolled the fire twice daily and believed the fire to be out. On the day the fire reignited s.22, s.22 was home, reported the fire to 911 and took action on the fire with the limited resources available.

s.22 second area of concern was the fact that she had already been issued and paid a violation ticket for causing wildfire N50078. NRO Pearson did assess and issue a Violation Ticket for an offence under section 5 (1) of the *Wildfire Act* for lighting, fueling or using an open fire within 1 kilometer of forest or open grass land.

s.22 stated that she believed that by paying the ticket no further penalty could be applied.

s.22 understanding is supported by section 53 (1) of the *Wildfire Act*, which prevents the government from proceeding with both an administrative penalty and an offence penalty or violation ticket for the same matter. However, section 53 (2) of the

Act specifically allows the government to make an order respecting compensation or remediation despite section 53 (1). Compensation for costs incurred by the government in fighting a wildfire, or the costs of remediating an area damaged or destroyed by wildfire, are not considered penalties for the purposes of section 53 (1). The Ministry brought this matter forward under section 25 of the *Wildfire Act*, seeking the costs of fire suppression to be recovered, and is not seeking any additional penalty.

Consideration of the evidence and findings of fact

Based on the evidence presented, I find the following facts:

- Wildfire N50078 was discovered on Saturday May 23, 2015.
- The final fire size for wildfire N50078 was 2.0 hectares and contained within the property owned by s.22
- s.22 was the registered land owner of s.22
s.22, legally described as s.22
s.22 located
approximately s.22 southwest of Rossland, BC.
- Wildfire N50078 was located outside of the city of Rossland boundaries however it was determined to be located within the Rossland Fire Department fire response jurisdiction.
- Seventeen members and several apparatus from the Rossland Fire Department attended wildfire N50078.
- BC Wildfire Service (BCWS), after receiving a formal request from the Rossland Fire Department, responded with aerial and ground suppression resources to support containment efforts.
- The landowner, s.22 has admitted to igniting a debris pile that was determined to be the point of origin for wildfire N50078.
- I am satisfied, on a balance of probabilities, that s.22 actions did cause wildfire N50078.
- Violation Ticket (VT) AH49026025 was issued for a non-compliance under section 5 (1) of the *Wildfire Act* to s.22 on July 30, 2015 and was paid in full within 30 days.
- Wildfire N50078 was declared out on May 25, 2015.
- The Government of British Columbia incurred cost to for wildfire N50078 in the amount of \$61,639.43

Government's fire control costs

Under section 25 (2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act* and you had not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy provides the following guidance at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulations* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs, and so I am exercising my discretion to order you to do so.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$16,103.83
• Distance charges for use of government and private vehicles	\$2,209.28
• Food, transportation and accommodation expenditures	\$1,977.19
• Costs for expendable supplies and materials consumed	\$560.00
• Air tanker fuel costs and flight costs	\$8,085.99
• Helicopter fuel costs and flight costs	\$11,577.50
• Retardant and other suppressant costs	\$10,659.70
• Rent on use of equipment	\$192.70
SUB TOTAL	\$51,366.19

• Mandatory 20% overhead pursuant to section 31 (b) of the Wildfire Regulation	\$10,273.24
GRAND TOTAL	\$61,639.43

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order you to pay the government's fire control costs of \$61,639.43.

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$61,639.43 must be paid by February 17, 2017 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by February 17, 2017, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) Bears interest at the prescribed rate;
- b) May be recovered in a court as a debt due to the government; and
- c) Constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by you, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by you.

Payment should be made by cheque, payable to the **Minister of Finance**:

c/o Kathleen Werstiuk
BC Wildfire Service,
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

Citing file number: **23060-40-N50078 (2015)**

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-847-6615 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a) Your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document on you or the person acting on your behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) Your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document to you or the person acting on your behalf;
- c) The grounds for appeal;
- d) A copy of this determination; and
- e) A statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Brent Martin
Deputy Fire Centre Manager
Northwest Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Mark Haddock, Forest Practices Board
Laurence Bowdige, Recovery Officer, BC Wildfire Service
Kevin Melanson, SPO-Prevention, BC Wildfire Service



File: 23060-40 – V10356 (2015)

March 31, 2017

**Order for Recovery of Fire Control Costs and Related Amounts
No. V10356 (2015)**

Issued under section 25 (2) the Wildfire Act

Canadian Pacific Railway (CPR)
CPR Claims Division
7550 Ogden Dale Road SE
Calgary, Alberta
T2C 4X9

Attention: Dale Cisecki, Claims Manager

Dear Mr. Cisecki:

This is further to my letter dated March 13, 2017 regarding the allegation that CPR may have caused wildfire V10356 (2015). I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of wildfire, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 8

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a wildfire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the wildfire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the wildfire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the wildfire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a wildfire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a wildfire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the wildfire or the spread of the wildfire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;

- (b) the reasons for the order; and

- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

The Ministry is seeking to recover the government's costs for fire control on a fire alleged to have been caused by CPR in 2015. An opportunity to be heard (OTBH) was offered to CPR by way of a letter from the Ministry dated March 13, 2017 to Mr. Dale Cisecki, Claims Manager for CPR. The offer of an OTBH was declined, in your telephone conversation with me on March 17, 2017.

CPR did not present any of its own evidence or dispute any of the facts presented in the Ministry case binder. In particular, CPR has not disputed that it caused the wildfire and has accepted the calculation of the government's fire control costs. Accordingly, I have based my determination solely on the information provided by the Ministry.

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that CPR is the owner of the private land on which wildfire V10356 originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that CPR did cause the wildfire.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire V10356 was \$525.94.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require CPR to pay \$525.94 to the government.

This amount must be paid by April 30, 2017 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- CPR is the owner of the property located at All That Part of the North East ¼ of Section 24 Shown on Plan 286, Township 7, Range 26, West of the 6th Meridian, Yale Division, Yale District, Containing 8.50 Acres More or Less.
- The wildfire originated within the private lands owned by CPR.
- The BC Wildfire Service responded to the wildfire and provided fire suppression resources for the fire.
- By way of standardized wildfire origin investigation techniques it was determined that wildfire V10356 was caused by railway operations conducted by CPR.
- CPR did not dispute that it caused the above noted wildfire.
- CPR did not dispute any of the government's fire control costs associated with the above noted wildfire.

I conclude that the facts set out above support a finding that CPR did cause wildfire V10356 (2015).

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require, by order, CPR to pay to the government the government's costs of carrying out fire control on wildfire V10356.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those do not apply to CPR as CPR is not

the holder of a forest agreement or licence under the *Forest Act*, and CPR has not entered into a cost sharing agreement or a service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1 entitled "*Fire Control Responsibilities and Costs*", effective April 13, 2012 as it pertains to cost recovery. That policy indicates the following at paragraph 15:

Private land: Owners and/or occupants of private land will be billed for wildfire suppression costs if it is determined that they caused or contributed to the wildfire or spread of the wildfire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order CPR to pay the government's fire control costs.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$199.09
• Distance charges for use of government and private vehicles	\$59.40
• Food, transportation and accommodation expenditures	\$0
• Costs for expendable supplies and materials consumed	\$48.00
• Air tanker fuel costs and flight costs	\$0
• Helicopter fuel costs and flight costs	\$0
• Aircraft basing charges (preparedness) for contracted aircraft	\$0
• Retardant and other suppressant costs	\$0
• Rent on use of equipment	\$19.45
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$0
• Private goods and services contracted, hired, rented or purchased	\$0
• Investigation, research and analysis services related to <ul style="list-style-type: none">◦ post-incident evaluation,◦ contingency plan reviews, and◦ other incident follow-up activities	\$0
• Consulting and other professional charges	\$0

• Rehabilitation and/or slope stabilization costs	\$0
SUB TOTAL	\$325.94
• Mandatory \$200 overhead pursuant to section 31 (b) of the Wildfire Regulation	\$200.00
GRAND TOTAL	\$525.94

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until CPR has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$525.94 must be paid by April 30, 2017 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by April 30, 2017 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- Bears interest at the prescribed rate;
- May be recovered in a court as a debt due to the government; and
- Constitutes, in favour of the government,
 - a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - a lien or an interest other chattels that CPR owns.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve CPR from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 387-5538 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of CPR and must contain:

- a) CPR's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on CPR or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

It must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing, must be signed by a representative of CPR and must contain:

- a) CPR's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document to CPR or the person acting on its behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

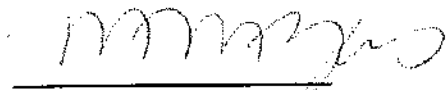
The Forest Appeals Commission must receive the appeal ***no later than thirty days*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Mary Myers
Director of Corporate Governance
BC Wildfire Service – Headquarters

cc: Kathleen Werstiuk, Manager Risk and Litigation, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Laurence Bowdige, Recovery Officer, BC Wildfire Service
Mark Haddock, Forest Practices Board
Clint Parker, SPO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO



File: 23060-40 – G70034 (2016)

August 16, 2018

Order for Recovery of Fire Control Costs and Related Amounts

No. G70034 (2016)

Issued under section 25(2) of the Wildfire Act

s.22

Dear s.22 :

This is further to my letter dated March 6, 2018 and your opportunity to be heard (OTBH) on May 2, 2018 respecting the allegation that you caused or contributed to wildfire G70034. I have now made a determination based on the evidence, and I conclude by an order made under section 25(2) of the *Wildfire Act* that you caused wildfire G70034, and I require you to pay \$15,739 to the government.

For ease of reference, I will refer to you, s.22 , in the third person for the remainder of this determination.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of the fire, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 12

Legislation

I have considered the following provisions of the *Wildfire Act* and *Wildfire Regulation* in making my determination:

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;
- (b) determine the amount that is equal to the dollar value of any:
 - (i) Crown timber;
 - (ii) other forest land resources;
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Wildfire Regulation

Circumstances for not seeking cost recovery

29 The circumstances in which the minister, under section 25 (2) or 27 (1) (d) of the Act, may not by order require a person to pay to the government the government's fire control costs determined under section 25 (1) (a) or 27 (1) (b) of the Act are that the person, through their acts or omissions, did not willfully cause or contribute to the start or spread of the fire, and

- (a) before the government has carried out fire control for the fire that gives rise to the government's costs,
- (i) the person has entered into a cost sharing agreement or a service agreement with the government,
- (ii) the agreement is in effect at the time of the fire, and

- (iii) any failure of the person to act in accordance with the agreement did not directly or indirectly cause or contribute to the start or spread of the fire, or
- (b) the fire that gives rise to the government's costs results from timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation by a person who
 - (i) is the holder of an agreement or licence under the Forest Act, and
 - (ii) as of the date of the fire, is not in arrears for the annual rent payable for the agreement or licence under the Annual Rent Regulation, B.C. Reg. 122/2003.

Background

On April 18, 2016 at approximately 14:00 hours, s.22 was burning wood waste material in a metal barrel(s) on his private property, s.22 in Kelly Lake, BC. s.22 owns the property with s.22

After the fire in the barrel(s) had died down, s.22 went into his house and upon returning outside, fire had escaped the barrel and burned into the adjacent grass and brush causing what would become wildfire G70034. Two of s.22 neighbours were present and helped him try to extinguish the fire. Strong winds were present and no Category 2 or 3 open burning restrictions were in place at the time of the incident.

The first of three reports of a wildfire in Kelly Lake, BC was made to the Provincial Forest Fire Reporting Centre at 14:38 hours on April 18, 2016. The BC Wildfire Service (BCWS) responded to the wildfire including the suppression services of a helicopter and BCWS personnel from the Dawson Creek Fire Zone.

The wildfire reached 18 hectares in size before BCWS declared it out on May 25, 2016. BCWS incurred significant costs to suppress the wildfire. The wildfire did not cause any damage to Crown Timber or grasslands.

The BCWS investigated the cause of the fire and determined that s.22 wood waste material fire in the barrel(s) escaped and caused wildfire G70034. The Compliance and Enforcement Branch (C&E) of the ministry issued a Violation Ticket under section 5(1) of the *Wildfire Act* to s.22, which he did not dispute.

Determination

After considering the evidence and submissions in this case, I order that s.22 pay the government's fire control costs related to wildfire G70034.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that s.22 s.22 is an owner of the private land on which wildfire G70034 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22 caused wildfire G70034.

Pursuant to section 25(1)(a) of the *Wildfire Act*, the amount of the government's costs for carrying out fire control on wildfire G70034 was \$15,739.

Pursuant to section 25(2) of the *Wildfire Act*, by order, I require s.22 to pay \$15,739 to the government. This amount is the total costs to be paid to the government pursuant to section 25(1)(a) of the *Wildfire Act*. These costs must be paid by November 30, 2018, subject to the stay described in section 36(1) of the *Wildfire Act* and addressed in more detail below. For certainty, I am not making any orders against s.22 since there is no evidence to suggest that she caused or contributed to the wildfire.

In the sections that follow, I will outline the evidence in the case and explain the reasons for my determinations and my findings under section 25(1)(a) and section 25(3), and my order under section 25(2).

Summary of the evidence

I provided a copy of the case file binder with the Ministry's evidence to s.22 s.22 with my letter inviting them to an OTBH. The Ministry's case binder included the following sections:

- Executive Summary
- Incident Summary
- Land Ownership
- Fire Origin and Cause Determination
- Contravention Investigation
- Fire Control Costs
- Summary of Facts

At the OTBH, the Ministry presented its evidence and submissions consistent with the case file binder. In turn, s.22 presented his evidence through a conversation with Mr. Bauder, his representative, to communicate and recall the events on the day of April 18, 2016 leading up to the wildfire incident. That conversation closely aligned with the Ministry's submission of evidence. Mr. Bauder summarized s.22 position at the end of the OTBH as follows:

- dispute the Ministry's position to recover costs;
- dispute the argument that s.22 started or caused the wildfire with the belief s.22 was duly diligent;
- do not dispute the wildfire originated on the s.22 property;
- do not dispute the fire control cost calculations;

- raised a concern about two individuals (neighbours) that s.22 saw near the burn barrel(s) (described in more detail below);
- concerned about BCWS Origin and Cause investigation team interviewing only one of the two neighbours as witnesses to the event ;
- concerned that the Wildfire Origin and Cause investigators were not on site the same day that the fire started;
- believe the area at the point of ignition was disturbed, not by s.22 as the rocks placed around the bottom of the burn barrel(s) had been displaced at the time of the Wildfire Origin and Cause Investigation;
- s.22 admission to investigators was due to the investigators telling him that the fire started from the burn barrel(s).

s.22 explained to me that when he returned to his yard, after being inside his house, two of his neighbours were present in his yard and in the vicinity of the burn barrel(s). The fire had escaped the barrel(s) by this time. s.22

s.22

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 own the property located at s.22 with a civic address of s.22, Kelly Lake, BC.
- s.22 was burning wood waste material in metal burn barrel(s) on his property at approximately 14:00 hours on April 18, 2016. The burn barrel(s) were rusty and had numerous sized holes near the bottom.
- After the fire in the metal burn barrel(s) died down to coals, s.22 went into his house. Upon returning outside, fire had escaped the barrel and was burning into the adjacent grass.
- Due to strong winds on April 18, 2016, the fire quickly burned through the grass and into the adjacent brush.
- Failed attempts were made by s.22 and his neighbours to combat and contain the spread of the fire.
- The Provincial Forest Fire Reporting Centre received the first initial report of the wildfire at 14:38 hours on April 18, 2016.
- The wildfire that ignited on s.22 property was assigned the identifier G70034.

- BCWS dispatched two fire suppression initial attack crew members from the Dawson Creek Fire Zone to the wildfire at 15:02 hours on April 18, 2016. The crews arrived on site at 16:20 hours and began suppression action including the services of a helicopter.
- The government carried out fire control efforts to suppress wildfire G70034 and incurred \$15,739 of costs in doing so.
- On April 27, 2016, RCMP Constable Ekkel recorded an interview with s.22 during which s.22 stated he was using burn barrel(s) earlier in the day to burn wood debris and later in the day went into his house and when he returned the fire was spreading.
- On May 5, 2016, C&E Natural Resource Officer Mike Boyd conducted an interview with s.22 during which s.22 admitted that burning debris in his barrels caused the wildfire.
- On May 6, 2016, C&E issued a Violation Ticket to s.22 under section 5(1) of the Wildfire Act, which s.22 did not dispute.
- The wildfire grew to 18 hectares in size before BCWS declared the wildfire officially out on May 25, 2016.
- Category 2 and 3 open fires were not prohibited when the wildfire started.
- A BCWS Fire Origin and Cause Determination Report eliminated lightning, open burning, arson, juveniles, equipment, railroads, vehicle, electrical and miscellaneous as possible causes of wildfire G70034.
- A BCWS Fire Origin and Cause Determination Report confirmed that the fire came from the burn barrel(s) and caused wildfire G70034.
- The BCWS fire control costs were not disputed by s.22.

Analysis of the evidence

s.22

In my view, the evidence supports, on a balance of probabilities, a finding that the cause of the fire was a result of an escape from a burn barrel(s) that s.22 lit to burn waste wood material. With strong winds present, the fire quickly spread to the

surrounding grass. Although the statutory defence of due diligence is not available to s.22, the fact that the burn barrel(s) had rust holes near the bottom could not have been reasonably expected to contain or prevent hot particles from escaping.

The cause of the wildfire determined by the “Wildfire Origin & Cause Determination”, which I accept as fact in this determination, was the release of hot, burning particles released from the barrel. The Fire Vector indicators (angle of char and intensity of burn) are evidence that the fire came from the burn barrel(s) on s.22 property.

Government’s fire control costs

In accordance with section 25(2) of the *Wildfire Act* I require, by order, s.22 to pay to the government the government’s costs of carrying out fire control related to wildfire G70034.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22. Specifically s.22 is not the holder of a forest agreement or licence under the *Forest Act* and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control. In addition, my research confirmed there is not a First Nation Wildfire Suppression Agreement for Kelly Lake, where s.22 property is located.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy includes the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* section 25, *Wildfire Regulation* section 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order Mr. Teuling to pay the government’s fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government’s fire control costs of \$15,739.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G70034 which, in my view are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$8,762.17
• Distance charges for use of government and private vehicles	\$0.00
• Food, transportation and accommodation expenditures	\$1,067.30
• Costs for expendable supplies and materials consumed	\$0.00
• Air tanker fuel costs and flight costs	\$0.00
• Helicopter fuel costs and flight costs	\$3,286.36
• Aircraft basing charges (preparedness) for contracted aircraft	\$0.00
• Retardant and other suppressant costs	\$0.00
• Rent on use of equipment	\$0.00
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$0.00
• Private goods and services contracted, hired, rented or purchased	\$0.00
• Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities	\$0.00
• Consulting and other professional charges	\$0.00
• Rehabilitation and/or slope stabilization costs	\$0.00
SUB TOTAL	\$13,115.83
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$2,623.17
TOTAL	\$15,739.00

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until s.22 has no further right to have the order reviewed or appealed

Payment of amounts owing

My cost recovery order in the amount of \$15,739 must be paid by November 30, 2018, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by November 30, 2018, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Mr. Teuling, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by Mr. Teuling.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve s.22 | from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making this determination and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination I have made, you may contact me at 250-997-2203 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you and must contain:

- a) Your name and address; and the name of the person, if any, making the request on your behalf;
- b) The address for serving a document on you or the person acting on your behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by you, or on your behalf, and must contain:

- a) Your name, address and telephone number;
- b) The name and daytime/business telephone number of the person, if any, making the request on your behalf;

- c) The address to which all official letters and documents are to be sent in respect of the appeal;
- d) A copy of this determination;
- e) A description of why the determination should be changed (the grounds for appeal); and
- f) A statement of the outcome requested (the remedy sought).

The Forest Appeals Commission must receive the appeal ***no later than thirty days*** from the date of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the applicable parts of the *Administrative Tribunals Act* and the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,

A handwritten signature in blue ink, appearing to read 'D. G. Schwarz', followed by a long horizontal flourish.

David G. Schwarz, RPF
District Manager
Mackenzie Forest District

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Operations, BC Wildfire Service
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Mark Haddock, General Counsel, Forest Practices Board
Doug Smith, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Nathan Bauder, Nathan R. Bauder Law Corporation



File: 23060-40 – G70037 (2016)

March 29, 2019

Order for Recovery of Fire Control Costs

No. G70037 (2016)

Issued under section 25 (2) the Wildfire Act

s.22

Dear s.22

This is further to my letter dated December 19, 2018 and your opportunity to be heard (OTBH) on February 20, 2019 respecting the allegation that you may have caused wildfire G70037 (2016). I have now made a determination based on the evidence and I conclude by an order made under section 25(2) of the *Wildfire Act* that s.22 caused wildfire G70037 and I require s.22 to pay \$346,534.03 to the government for its costs of fire control.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

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Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber;

(ii) other forest land resources,

(iii) grass land resources; and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

In early March 2016, s.22 conducted a grass burn on his private property located at s.22 in Hudson's Hope. s.22 jointly owns the property with s.22

The March 2016 grass fire escaped from its designated area of burning and burned into an adjacent small stand of timber on s.22 property and smoldered in the duff/peat under the timber.

On April 18, 2016, due to the strong winds and dry conditions in the area, the unextinguished grass fire which had moved into a small clump of spruce trees on s.22 property began to flame and caused wildfire G70037.

Fire G70037 was reported to the Provincial Forest Fire Reporting Centre at 15:02 hours on April 18, 2016. The incident required suppression services of crews and personnel

from the BC Wildfire Service (BCWS) Fort St. John Zone of the Prince George Fire Centre, helicopters, air tankers and heavy equipment.

Fire G70037 ultimately reached 272 hectares before it was officially declared out on June 20, 2016.

During the OTBH, s.22 offered that he was burning to reduce the fire hazard on his property. s.22 also explained that site conditions during April 2016 were unusually dry and that the wind on April 18, 2016 was unprecedented in strength. s.22 highlighted his many years of experience previously conducting burns with no escapes. s.22 explained that he knew of the area where the grass fire had not gone out and had been monitoring it, but felt that it was of no risk as it was surrounded by cultivated land.

Determination

After considering the evidence and submissions in this case, I order s.22 to pay the government's fire control costs related to wildfire G70037.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that s.22 is an owner of the private land on which wildfire G70037 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22 caused wildfire G70037.

Pursuant to section 25(1)(a) of the *Wildfire Act*, the amount of the government's costs for carrying out fire control on wildfire G70037 was \$346,534.03

Based on these determinations, by an order made under section 25(2) of the *Wildfire Act*, I require s.22 to pay \$346,534.03. This amount is the total costs to be paid to the government pursuant to section 25(1)(a) of the *Wildfire Act*.

This amount must be paid by July 29, 2019, subject to the stay imposed by section 36(1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25(1)(a) and section 25(3) and my order under section 25(2).

Summary of the evidence

I provided a copy of the case file binder with the Ministry's evidence to s.22 with my letter inviting them to an OTBH. The Ministry's case binder included the following sections:

- Executive Summary

- Incident Summary
- Land Ownership
- Fire Origin and Cause Determination
- Fire Control costs
- Summary of Facts

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 own the private property located at s.22 Hudson's Hope, BC.
- In March 2016, s.22 ignited a grass fire on his property with the intent to reduce fire hazard on his property.
- s.22 grass fire escaped from its original location into an adjacent stand of timber. s.22 was aware of this and the smoldering area, but felt that it posed no risk of spreading further.
- The wildfire that resulted from s.22 grass fire on his property was assigned the identifier G70037.
- The BCWS responded to the wildfire G70037 on April 18, 2016.
- The BCWS responded to wildfire G70037 with crews, personnel, air tankers, helicopters and heavy equipment.
- A BCWS Fire Origin and Cause Determination Report confirmed that the fire was the result of the landowner s.22 burning grass in the spring. The grass fire burned into a small stand of timber where it shouldered in the duff/peat until the significant wind event on April 18, 2016.
- The wildfire grew to 272 hectares before it was contained.
- Wildfire G70037 cost the government \$346,534.03 in fire control.

s.22 presented the following additional evidence at the OTBH:

- Burning was conducted on their property throughout March 2016 to reduce the fire hazard risk on their property.

- s.22 : has many years of experience burning with no previous escapes.
- s.22 did not intend for his fire to escape.
- s.22 used a "mini-hoe" to spread and extinguish piles after burning.
- s.22 was aware of a "stubborn fire" near some spruce in a "peat bog" that would not go out.
- s.22 checked on the fire often but felt that it was not at a risk of spreading since it was surrounded by cultivated fields.
- s.22 questioned what more could he have done other than bring water out? There was no evidence presented that s.22 did bring any water out to put on the un-extinguished fire.
- April 2016 was a very dry period. It is uncommon to be able to farm this early.
- s.22 described the winds of April 18, 2016 as "insane" and that they were likely 120 km/hr.
- s.22 stated that without the wind there would have been no issue.
- Wildfire G70037 has caused much stress for s.22 ..
- s.22 has taken steps to minimize the damage caused by wildfire G70037 to trails in the area.
- s.22 now owns two water tanks and has bobcats rigged to pull them.
- s.22 indicated that they do not have insurance to cover the government's costs of fire control and payment of the costs associated with wildfire G70037 would cause much financial hardship to them.

Analysis of the evidence

Fire G70037 started from a "holdover" grass burn that the landowner s.22 was conducting in approximately Mid-March of 2016. One area where he was burning burned into a small forested area where the fire shouldered in the duff/peat until the wind event of April 18th, 2016.

During the OTBH on February 20, 2019 there was no dispute of the following:

- s.22 started fire on his private property in March, 2016;

- The fire that s.22 started in March, 2016 eventually spread out of control on April 18, 2016 and became wildfire G70037;
- The BC Wildfire Service incurred costs to control wildfire G70037;

I conclude that the above facts support a conclusion that s.22 caused wildfire G70037.

As the decision maker, I acknowledge the truth of the following statements but emphasize that these statements are not relevant to the relatively straightforward question in this determination of whether the "...owner caused or contributed to the fire or the spread of the fire":

- s.22 motive for burning on his property was to reduce fire risk and thereby protect his family's home.
- I have no doubt that s.22 did not intend to start a fire and that fire G70037 has caused much ongoing stress for the s.22 family.
- The spring of 2016 was unusually dry and the wind event of April 18, 2016 was "extreme", the likelihood of wildfire G70037 spreading in the manner that it did would have been negligible without these conditions.
- s.22 has taken steps to have more fire suppression equipment on site for burning subsequent to burning that he did in 2016.
- The impact of wildfire G70037 has reduced the s.22 ability to enjoy the land around their property. Trails and hunting areas that mean a lot to the s.22 were damaged.

Government's fire control costs

In accordance with section 25(2) of the *Wildfire Act* I require, by order, s.22 to pay to the government the government's costs of carrying out fire control on wildfire G70037.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to these circumstances since s.22 are not the holders of a forest agreement or licence under the *Forest Act* and have not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 : to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$346,534.03.

Itemized particulars of the government's fire control costs

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. I have reviewed the ministry's calculation of the government's fire control costs and find that the calculation is reasonable. It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$50,041.58
- Distance charges for use of government and private vehicles \$0
- Food, transportation and accommodation expenditures \$5,880.01
- Costs for expendable supplies and materials consumed \$0
- Air tanker fuel costs and flight costs \$9,388.10
- Helicopter fuel costs and flight costs \$54,914.77
- Aircraft basing charges (preparedness) for contracted aircraft \$0
- Retardant and other suppressant costs \$8,396.64
- Rent on use of equipment \$56,036.00
- Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control \$0
- Private goods and services contracted, hired, rented or purchased \$104,121.26
- Investigation, research and analysis services related to \$0
 - post-incident evaluation,
 - contingency plan reviews, and
 - other incident follow-up activities
- Consulting and other professional charges \$0

• Rehabilitation and/or slope stabilization costs	\$0
SUB TOTAL	\$288,778.36
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$57,755.67
GRAND TOTAL	\$346,534.03

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until s.22 has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$346,534.03 must be paid by July 29, 2019 subject to the stay referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 29, 2019 case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by s.22, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by s.22.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve s.22 from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 778-799-2201 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by s.22 and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address;
- b) the name and daytime/business telephone number of the person, if any, making the request on your behalf;
- c) the address to which all official letters and documents are to be sent in respect of the appeal;
- d) a description of why the determination should be changed (the grounds for appeal);
- e) a copy of this determination; and
- f) a statement of the relief requested.

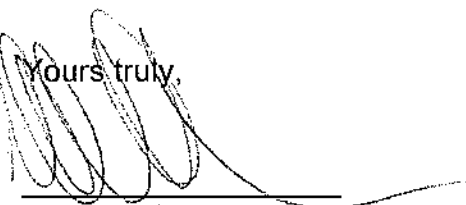
The Forest Appeals Commission must receive the appeal ***within thirty days*** of the determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Michael Gash
Fire Centre Manager
Cariboo Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Doug Smith, SWO-Prevention, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRORD
Rob Schweitzer, A/Director, BC Wildfire Service
Mark Haddock, Forest Practices Board



File: 23060-40 – G70052 (2016)

April 17, 2019

Order for Recovery of Fire Control Costs and Related Amounts

No. G70052 (2016)

Issued under section 25(2) of the Wildfire Act

s.22

Dear s.22 :

This is further to my letter dated December 21, 2018 and the Opportunity To Be Heard ("OTBH") given to s.22 on April 3, 2019 respecting the allegation that s.22 caused or contributed to the spread of wildfire G70052 (2016).

I have now made a determination based on the evidence and conclude, by an order made under section 25(2) of the *Wildfire Act*, that s.22 caused wildfire G70052 and I require s.22 to pay \$349,445.17 to the government for its costs of fire control in relation to the wildfire.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

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Legislation

I have primarily considered the following provision of the *Wildfire Act* in making my determination:

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,...

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person...

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

Background

On April 18, 2016 at 16:20 hours, the Provincial Forest Fire Reporting Centre received an initial phone report from a member of the public regarding a wildfire southwest of Dawson Creek, BC. The wildfire would later be titled wildfire G70052. The caller indicated that the fire was spreading quickly south of Highway 97 and west of range road 241.

Due to the many wildfires burning in the area on April 18, 2016, a British Columbia Wildfire Service ("BCWS") response officer was unable to attend wildfire G70052 until April 19, 2016. Local fire department volunteers took initial action while BCWS personnel responded to fire G70052 from April 19 to 27, 2016. BCWS declared wildfire G70052 out on June 20, 2016.

In January 2016, s.22 ignited a debris pile on his private property near to the area of ignition of wildfire G70052. s.22 also ignited and burned a small area of grass on his property near the area of ignition on March 22, 2016.

BCWS alleges that s.22 caused wildfire G70052 and should be liable to pay the government's costs of fire control in relation to the wildfire.

Determination

After considering the evidence and submissions in this case, I order that s.22 must pay the government fire control costs related to wildfire G70052.

Specifically, under section 25(2)(c) of the *Wildfire Act*, I have determined that s.22 is an owner of the private land on which wildfire G70052 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22 caused wildfire G70052.

Pursuant to section 25(2) of the *Wildfire Act*, by order I require s.22 to pay \$349,454.17.17 to the government. This amount reflects the government's costs of fire control calculated pursuant to section 25(1)(a). These costs must be paid by June 3, 2019, subject to the stay described in section 36(1) of the *Wildfire Act*, which is addressed below.

In the sections that follow, I will outline the evidence and explain the reasons for my determinations and findings under section 25(1)(a) and section 25(3), and my order under section 25(2).

Summary of the evidence

I provided a copy of the case binder with the Ministry's evidence to you with my letter inviting you to an OTBH.

The Ministry's case binder included, among other information, a Fire Origin and Cause Report with field notes and photographs.

You provided me with a March 29, 2019 investigative report on wildfire G70052 from Mark Hughes, P. Eng., CFEI (Certified Fire and Explosion Investigator) of CEP-Sintra.

At the OTBH, the Ministry presented evidence and made submissions. You also presented evidence and submissions at the OTBH with the assistance of legal counsel Nathan Bauder.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 was one of the registered owners of a property west of Dawson Creek with parcel identifier s.22 and with a legal description of
 - s.22(the "Property").
- In January 2016, s.22 ignited a debris pile on his Property near to where wildfire G70052 would ignite several months later.
- On March 26, 2016, s.22 ignited and burned a small area of grass on his Property, also near to where wildfire G70052 would ignite.
- On April 18, 2016, at approximately 16:20, the Provincial Forest Fire Reporting Centre received a first report of a fire on the Property.
- s.22 and volunteers conducted the initial fire response at the Property.
- On April 19, 2016, BCWS Response Officer Ian Smith arrived on site of wildfire G70052 by helicopter. A bull dozer guard had been built around three sides of the fire, water tenders were on site and approximately 50 people were helping to suppress the fire. BCWS did not take any additional action at that time largely because the personnel and equipment on site and the actions those people were taking were deemed to be sufficient considering fire behavior and the number of other active fires in the area at that time.
- On April 20, 2016, BCWS Response Officer Hans Erasmus was dispatched to wildfire G70052. Based on his assessment of the fire, it was determined that a BCWS Unit Crew would be deployed to lead and coordinate mop-up activities in combination with the volunteers and fire suppression equipment on site.
- Mr. Erasmus wrote in his Fire Management Day Use Book:
 - found homeowner at west end of the fire
 - talked to s.22 (had tears in his eyes)
 - said "fire started from one of his piles he had burned 3 weeks ago" "worried about costs"
 - said "equipment had built a guard most of the way around the fire"
- On April 21, 2016, Mr. Erasmus and a BCWS fire suppression crew arrived on site of wildfire G70052 and began fire suppression action.

- The fire was put into mop-up status on the evening of April 21, 2016. Mop-up is the act of re-enforcing the control line. It begins after the fire, or any part of it, is brought under control and before suppression work is reduced to patrol.
- On April 26, 2016, BCWS put the wildfire into patrol status.
- On June 20, 2016, BCWS declared wildfire G70052 out.
- The final size of wildfire G70052 was approximately 475 ha.
- On April 26, 2016, fire origin and cause investigators John Wahlstrom, Steve Grimaldi, Daniel Goff and Nick Hamilton were deployed to G70052 to determine the fire's origin and cause.
- On completion of data collection and information gathering, the fire origin and cause investigators determined that wildfire G70052 was caused by a holdover fire within a stump above Tremblay Creek on the Property.
- The Wildfire Origin and Cause Report for wildfire G70052 excluded other possible causes of wildfire including lightning, campfire, arson/suspicious, juvenile fire setter/fire use, equipment use, railroads, vehicle, electrical transmission/utility pole, discarded match and smoking substance.
- In a conversation with the investigators, s.22 stated that in January 2016 he had ignited a debris pile near the area of ignition of the wildfire and that in late March 2016 he had ignited and burned a small area of grass on his Property, also near the area of ignition.
- On April 26, 2016, s.22 who is s.22 and lives on the same parcel of land, stated to the origin and cause investigators that two days after wildfire G70052 started, he dug up the debris pile that s.22 lit on fire in January 2016. When he dug up the debris pile, he found no embers or steam coming from the debris pile.
- Compliance and Enforcement Branch (CEB) Natural Resources Officers (NRO) Dacen Brooks and Shayla Frechette were deployed to wildfire G70052 on April 26, 2016 to investigate the possibility of any *Wildfire Act* contraventions.
- On April 30, 2016, after completing his investigation, NRO Brooks issued violation ticket AH00164757 to s.22 under section 5(1) of the *Wildfire Act* for lighting, fueling or using open fire in forest land or grass land not in accordance with the prescribed requirements. This violation ticket was issued in relation to s.22 burning grass on his Property on March 26, 2016.

- On May 3, 2016, NRO Brooks cancelled violation ticket AH00164757 due to an incorrect amount and issued violation ticket AH00168048 to s.22 with the correct amount under section 5(1) of the *Wildfire Act*. s.22 disputed the ticket and was prepared to defend himself in court. Ultimately, the province dropped the charge because there would be too much delay from the time of the ticket to the date of a hearing in court.
- For the purposes of section 29 of the *Wildfire Regulation*, s.22 did not and does not have a cost sharing or service agreement with the government. Similarly, s.22 was not and is not the holder of an agreement or forest license under the *Forest Act*.
- Crown timber was damaged as a direct result of wildfire G70052 but the province is not seeking to recover the value of the damaged Crown timber.
- The general area of the wildfire's origin, as identified in the Wildfire Origin and Cause Report, is consistent with the fire patterns, witness information and wind direction at the time of the fire.

During the OTBH, s.22 conceded to the following in relation to section 25 of the *Wildfire Act*:

- The government carried out fire control for wildfire G70052. (section 25(1) of the *Wildfire Act*)
- The government's fire control efforts were authorized pursuant to section 9 of the *Wildfire Act*. (section 25(1) of the *Wildfire Act*)
- s.22 is an owner of the private land on which wildfire G70052 originated. (section 25(2)(c) of the *Wildfire Act*)

With Mr. Bauder's assistance, you presented the following relevant evidence and submissions:

- You primarily dispute that you caused wildfire G70052:
 - You stated that you took many precautions to extinguish fires that you ignited.
 - You said that you saw no evidence that the grass fire that you ignited along Tremblay Creek continued to burn during your inspections.
 - You also stated that the area around your property is often used by the public and that trespassing on your property is a fairly common occurrence.

- You proposed that other people on or near your property are probably responsible for causing wildfire G70052.
- On March 26, 2019, s.22 lit a narrow section of grass along a creek using snow piles as a fuel break. s.22 indicated that the snow breaks were successful in stopping the fire from spreading, as intended.
- On March 27, 2019, s.22 patrolled the burned area that he ignited on March 26, 2016 and put out any hot spots that they found. s.22 used a spade to break apart any wood that he found smoldering and put it out with water. He rechecked the area in the evening and did not notice any burning. s.22 indicated that it snowed about two to three inches that evening and the entire burn area was covered by snow.
- s.22 indicated that he checked the burn area every couple of days after that and did not notice any smoke.
- s.22 indicated that a ½ to ¾ inch of rain fell on April 4, 2016, and that there was still no sign of any smoke from the burn area.
- You submitted a CEP-Sintra report into wildfire G70052 authored by Mark Hughes, P. Eng., CFEI:
 - The CEP-Sintra report indicates that the cause of wildfire G70052 should more appropriately be classified according to the National Fire Protection Association Guide for Fire and Explosion Investigations (NFPA 921), as undetermined.
 - The report states that trespassers could intentionally or unintentionally cause a fire and may or may not leave any evidence of the ignition source.
 - The report challenges whether or not it is likely that a rekindle occurred from a live tree based on the author's interpretation of evidence and photographs in the BCWS Wildfire Origin and Cause determination report.
 - The report implies that sufficient time had elapsed between s.22 burning and wildfire G70052. The report notes four separate precipitation events prior to wildfire G70052 that would have made a rekindle unlikely.
 - The report also states that the BCWS Wildfire Origin and Cause report wrongly relied on a negative corpus approach to the determination of the cause of the fire. The report indicates that "A negative corpus

approach (absence of proof) is contrary to accepted cause determination for fire investigations”.

- s.22 was questioned by his lawyer during the OTBH about Mr. Erasmus's (BCWS) notes. s.22 said that he didn't know who s.22 s.22 was and denied meeting or talking to Mr. Erasmus.
- s.22 claims that there is a long history of trespassers on the Property and that the immediate area around the Property is often used by the public. s.22 is not a full time resident at the Property, which would make it more likely that trespassers could intentionally or unintentionally cause a fire and may or may not leave any evidence of the ignition source.

Findings of fact and analysis of the evidence

I am satisfied that s.22 caused wildfire G70052. On a balance of probabilities, I find that s.22 burning of the grass on his property along Tremblay Creek on March 26, 2019 is the likely cause of wildfire G70052. As described below, s.22 s.22 himself acknowledged the likelihood that his burning caused the wildfire. In addition, I am persuaded by the BCWS Wildfire Origin and Cause report which found that s.22 fire on his Property caused wildfire G70052.

s.22 burning

In January 2016, s.22 ignited and burned a debris pile on his Property. On March 26, 2016, s.22 ignited and burned a narrow strip of grass along a small creek running through the Property.

On March 26 and 27, 2016, s.22 and his wife patrolled the burn areas and extinguished any visible smoke. s.22 kept an eye out and checked the burn area every couple of days after that and saw no smoke.

It appears that s.22 was relying on weather conditions to completely extinguish his fires. I accept s.22 evidence that it snowed and rained on the Property during four weather events between March 26 and April 18, 2016.

s.22 essentially argues that his burning was fully extinguished and did not cause wildfire G70052 to ignite. However, to support s.22 position that his burning did not cause wildfire G70052, I would require more evidence about s.22 s.22 efforts to confirm that his burning was fully extinguished.

In my view, aggressive mop-up and patrol is essential to ensure that a fire is extinguished. Mop-up is an important component to successful fire suppression, should be taken seriously and there have been situations where fires have escaped due to inadequate mop-up and patrol.

s.22 position that his burning did not cause wildfire G70052 would be stronger if he had:

- constructed a fire guard down to mineral soil. s.22 used snow to keep the fire in the intended burn area on March 26, 2016. This may have been adequate at the time but s.22 failed to maintain the fuel break when the snow melted in April.
- ensured that no unburned fuel remained in the intended burn area. The photographs of the burned area show unburned fuel remaining thus creating a situation for unburned fuel to carry heat and fire. By ensuring a complete burn, fuel is removed and there is no fuel to feed a fire.
- doused the entire burn area with water using pump and hose in conjunction with equipment or hand tools.
- checked the entire burn area and confirmed that it was cool to the touch (cold trailing) Cold trailing is a method of determining whether a fire is still burning. It involves careful and methodical inspection of burned material and surrounding area by carefully feeling with the bare hand. Efficient use of this technique helps to detect hotspots that are otherwise not visible.
- demonstrated a thorough patrol regiment and fully understanding the importance of inspection and patrol. Patrollers must remain alert for holdovers or "sleepers", which are hidden fires burning deep inside duff layers, roots, stumps, trees or other organic material. They are virtually undetectable to sight, as they do not smoke or glow. It may take weeks before an adjacent patch of fuel is brought up to ignition temperature. Holdovers must be spotted before they have a chance to ignite the adjacent fuel and cause the fire to escape. Patrol and inspection may continue for days or weeks. The importance of adequate patrol and inspection cannot be over-emphasized.
- s.22 stated that s.22 patrolled and monitored the area and put out any hotspots that they saw with a shovel and water from the creek. s.22 also stated that they patrolled and kept an eye on the area off and on for days following burn.
I acknowledge and appreciate the steps that s.22 took to patrol and monitor his burn area. However, this evidence is not sufficient to persuade me that s.22 burning did not cause wildfire G70052. I would have required additional steps, as described in these bullet points, to convince me that something else was the cause of the wildfire."
- used an infrared heat scanner to ensure that the burn area was out.

In the absence of additional evidence to prove that s.22 fully extinguished his March 26, 2016 grass fire, I conclude on a balance of probabilities that s.22 burning led to and was cause of wildfire G70052.

s.22 statement to BCWS

It is clear to me that Mr. Erasmus was referring to s.22 when he wrote s.22 s.22 in his notes. In my view, Mr. Erasmus misunderstood or was unclear about s.22 ; surname.

I am satisfied that Mr. Erasmus talked to s.22 as described in Mr. Erasmus's notes and I have no reason to believe that the notes do not accurately reflect the conversation with s.22 (other than being mistaken about s.22 ; last name). In particular, Mr. Erasmus's notes indicate that s.22 was concerned that his burning from several weeks earlier caused the wildfire. I find it awkward that s.22 says that he did not talk to Mr. Erasmus.

When Mr. Erasmus arrived on site and assumed command of fire G70052, it became a BCWS work site and he became responsible for all fire suppression activities. There were many volunteers working on the wildfire when Mr. Erasmus arrived. In these situations, it is common to have people working without proper training and personal protective gear. Responder and public safety is always the top priority for incident commanders like Mr. Erasmus. Effective suppression and efficient use of all resources are other responsibilities of an incident commander. I do not see how Mr. Erasmus could have met his objectives without talking to s.22 . To lead and ensure the safety of all responders and coordinate mop-up activities in combination with the volunteers and fire suppression equipment on site, it is highly probable that he talked to s.22 would have had vital information including:

- the number of people working the fire;
- the location of volunteers working on the fire;
- the equipment being used on the fire;
- the suppression efforts to date by volunteers; and
- local knowledge of the area and critical knowledge regarding the Property including access to and from different areas of the fire and the water sources available.

Wildfire Origin and Cause Report

The Wildfire Origin and Cause report for wildfire G70052 concludes that a holdover fire within a stump above Tremblay Creek on the Property and near to the area where wildfire G70052 started caused the wildfire. I accept on a balance of probabilities that this is the most likely cause of wildfire G70052.

The Wildfire Origin and Cause report for wildfire G70052 eliminates numerous potential causes of wildfire as the cause of wildfire G70052. The explanations for excluding these potential causes in the Fire Cause Elimination and Explanation section of the report are straight forward, make sense and I believe are reasonable. I have no reason to doubt the exclusions based on the evidence before me.

I am satisfied that the BCWS investigators used an appropriate methodology, process and procedure in preparing the Wildfire Origin and Cause report for wildfire G70052. Their methodology is recognized by the National Wildfire Coordinating Group (NWCG) and the Canadian Interagency Forest Fire Centre (CIFFC) and is used by all provinces, many agencies throughout North America, New Zealand and Australia for wildland fire investigations.

The CEP-Sintra report states that:

"A negative corpus approach (absence of proof) is contrary to accepted cause determination for fire investigations"

The BCWS Wildfire Origin and Cause investigation and report, including the Fire Cause Elimination and Explanation section, is in accordance with a CIFFC standard that all provinces use. The NWCG also recognizes the process and it is used extensively throughout North America, Australia and New Zealand.

The CEP-Sintra report implies that wildfire G70052 may have been caused by other sources such as trespassers, vehicles or ATV. While this may be a possibility, on a balance of probabilities, I accept the findings of the BCWS Origin and Cause report which eliminates these as potential sources of the fire and concludes that ^{s.2}

^{s.22} burning caused wildfire G70052.

Government's fire control costs

In accordance with section 25(2) of the *Wildfire Act*, I require, by order, ^{s.22} to pay to the government the government's costs of carrying out fire control related to wildfire G70052.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to ^{s.2}
^{s.22} is not the holder of a forest agreement or license under the

Forest Act and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* section 25, *Wildfire Regulation* section 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$349,445.17.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G70052 which, in my view are reasonable in the circumstances.

BCWS worked to contain, mop-up and patrol the fire from April 19 to April 27, 2016. BCWS resources during this time frame consisted of a IC, a 20 person type 1 Unit Crew, and 10 contract firefighters, a water tender, several vehicles and miscellaneous firefighting equipment such as pumps, hose, chainsaws and hand tools. Several helicopter flights were required to assess and patrol the fire until the fire was declared out on June 20, 2016. The final size for G70052 was approximately 475 hectares.

You asked for an independent review regarding the costs of wildfire G70052. As the delegated decision maker, I am required to comply with the prescribed requirements of section 29 of the *Wildfire Regulation* to calculate the government's costs of fire control. You received evidence in support of the government's proposed fire control costs in the case binder, except for your counsel's inquiry into whether or not a chip on a vehicle's windshield should have been included in the cost you have not raised any specific concerns with those costs, and I am not otherwise aware of any concerns with those costs.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$122,784.34
- Distance charges for use of government and private vehicles no cost

• Food, transportation and accommodation expenditures	\$21,832.35
• Costs for expendable supplies and materials consumed	no cost
• Air tanker fuel costs and flight costs	no cost
• Helicopter fuel costs and flight costs	\$16,364.04
• Aircraft basing charges (preparedness) for contracted aircraft	no cost
• Retardant and other suppressant costs	no cost
• Rent on use of equipment	\$16,191.98
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$42.80
• Private goods and services contracted, hired, rented or purchased	\$113,988.80
• Investigation, research and analysis services related to <ul style="list-style-type: none">◦ post-incident evaluation,◦ contingency plan reviews, and◦ other incident follow-up activities	no cost
• Consulting and other professional charges	no cost
• Rehabilitation and/or slope stabilization costs	no cost
SUB TOTAL	\$291,204.31
Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$58,240.86
TOTAL	\$349,445.17

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until s.22 has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$349,445.17 must be paid by June 3, 2019 subject to the stay described in section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 3, 2019 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by s.22, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by s.22.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve s.22 from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 635 9735 or email tony.falcao@go.bc.ca within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made my order, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you or an authorized representative on your behalf and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by you, or on your behalf, and must contain:

- a) your name, address and telephone number;
- b) the name and daytime/business telephone number of the person, if any, making the request on your behalf;

- c) the address to which all official letters and documents are to be sent in respect of the appeal;
- d) a copy of this determination;
- e) a description of why the determination should be changed (the grounds for appeal); and
- f) a statement of the outcome requested (the remedy sought).

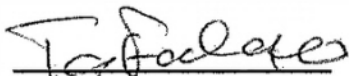
The Forest Appeals Commission must receive the appeal ***within thirty days*** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the applicable parts of the *Administrative Tribunals Act* and the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Tony Falcao
Deputy Fire Centre Manager
Northwest Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Rob Schweitzer, A/Director, Wildfire Operations, BC Wildfire Service
Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Mark Haddock, General Counsel, Forest Practices Board
Doug Smith, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Nathan Bauder, Legal Counsel [nathanbauder@nrblawcorp.ca]

File: 23060-40 – G80040 (2016)

April 12, 2019

Order for Recovery of Fire Control Costs and Related Amounts

No. G80040 (2016)

Issued under section 25(2) the Wildfire Act

s.22

Dear s.22 :

This letter is further to my letter dated December 17, 2018 and your opportunity to be heard (OTBH), which you prefer to proceed as a written hearing. This determination is in relation to the Ministry's allegation that you caused wildfire G80040 (2016).

After considering the evidence that was before me, I conclude by an order made under section 25(2) of the *Wildfire Act* that you, s.22, caused wildfire G80040 (2016) and I require you to pay \$64,655.98 to the government for the government's costs of fire control.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to assessing the government's fire control costs and issuing orders requiring a person to pay those costs to the government.

Page 1 of 10

Legislation

I have primarily considered the following provision of the *Wildfire Act* in making my determination:

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any

- (i) Crown timber;
- (ii) other forest land resources,
- (iii) grass land resources; and
- (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1)(a) and (b) and the costs determined under subsection (1)(c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
 - (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

On April 18, 2016, a fire ignited on s.22 private property near Baldonnel, BC. Personnel from the BC Wildfire Service, Taylor Fire Department and the Fort St. John Fire Department responded that afternoon with crews and equipment to the wildfire named G80040. After active suppression efforts, the BC Wildfire Service officially declared wildfire G80040 out on June 2, 2016.

The Ministry alleges that s.22 caused wildfire G80040 and should be liable for its costs of fire control. In particular, the Ministry alleges that debris piles that s.22 s.22 ignited in mid-March 2016 remained as holdover fires until April 18th when they emerged as wildfire G80040.

Determination

After considering the evidence and submissions in this case, I order that s.22 must pay the government's fire control costs related to wildfire G80040.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that s.22 is the owner of the private land on which wildfire G80040 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22 caused wildfire G80040.

Pursuant to section 25(1)(a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire G80040 was \$64,655.98.

Based on these determinations, by an order made under section 25(2) of the *Wildfire Act*, I require s.22 to pay \$64,655.98 to the government.

This amount must be paid by July 1, 2019, subject to the stay referred to in section 36(1) of the *Wildfire Act*, which is described in more detail below.

In the sections that follow, I will outline the evidence and explain the reasons for determinations and findings under sections 25(1) and 25(3), and my order under section 25(2).

Summary of the evidence

Based on the evidence in the Ministry's case binder and from s.22, I am satisfied that the following facts are **not** in dispute:

- In mid-March of 2016, s.22 ignited two piles of debris on his private property. s.22 property is located s.22 near Baldonnel, BC with a legal description:
s.22
- On April 18, 2016, a wildfire ignited on s.22 private property that spread to provincial Crown land and other privately-owned property.
- Personnel and equipment from the BC Wildfire Service, Taylor Fire Department and the Fort St. John Fire Department responded to wildfire G80040 on April 18, 2016. The Government's portion of costs incurred to suppress wildfire G80040 were \$64,655.98. The BCWS declared the fire officially extinguished on June 2, 2016.

With respect to the facts that **are** in dispute, Ministry staff presented the following evidence:

- The BCWS conducted an investigation into the cause of the wildfire. The BCWS prepared a Fire Origin and Cause Report (the Report) that concludes the cause of

the wildfire was a holdover fire from open burning done by s.22 in mid-March of 2016. The Report also delineates that the origin of the fire was on the property owned by s.22 and near to the area where s.22 ignited two piles of debris in mid-March. Furthermore, the Report provides details excluding all other potential sources of ignition.

In turn, you presented evidence and submissions through legal counsel, Eileen Vanderburgh:

- You submitted that there are 'factual errors in the Wildfire Origin and Cause Report' with respect to the actual size and location of the debris piles that s.22 lit.
- With respect to the size of the debris piles you submitted that Ministry author of the Report refers to the debris piles as 'Category 3' debris piles which you cite as incorrect. Rather, you stated the size of the piles was approximately 30 inches in diameter during your interview with the Ministry.
- With respect to the location of the debris piles, you submitted that there was a discrepancy between the Ministry's identification of the location of the debris piles in the Report and your description of the location of the debris piles during your interview with the Ministry.
- You raised concerns about the length of time that elapsed between the date on which the Compliance and Enforcement Branch of the ministry issued a ticket (AH90484305) for the contravention of section 5(2)(a) of the *Wildfire Act* and the offer of an OTBH.

Consideration of the evidence and findings of fact

Having regard to the evidence and submissions from the Ministry and Ms. Vanderburgh on behalf of s.22 I have made the following findings of fact:

- s.22 is the registered owner of the property at s.22 near Baldonnel, BC with a legal description of Parcel Identifier s.22 s.22
- On April 18, 2016, wildfire G80040 originated on s.22 ' property and spread onto provincial Crown land and other private property.
- The provincial government carried out fire control on wildfire G80040 and incurred \$64,655.98 in costs in doing so.
- s.22 ; caused wildfire G80040. s.22 ignited two debris piles in mid-March of 2016 on his private property. s.22 acknowledges doing

so in his written representations. I am satisfied that s.22 fires became holdover fires which emerged and grew as wildfire G80040. Holdover fires are common occurrences, even in winter like conditions and can be sustained for long periods of time if not properly extinguished and guarded with non-combustible materials such as mineral soil.

- s.22 disputes the Ministry's position on the size and location of the debris piles. In my view, the specific size of the debris piles (category 3 or 30 inches in diameter) is not relevant to my determination and is not influencing my findings. The location of the debris piles is relevant to my determination. However, the location of the debris piles, according to s.22, is in close proximity to the location of the debris piles that the Ministry relies on. Accordingly, the debris piles were located in the wildfire's area of origin and are located on s.22 private property. I also considered that all other ignition causes were eliminated in the Fire Origin and Cause investigation.
- The offer of an OTBH, the deadline for written submissions and this determination are all within the permitted timeframe set out in the *Wildfire Act*.

Government's fire control costs

Under section 25(2) of the *Wildfire Act* I require s.22 to pay to the government the government's costs of carrying out fire control on wildfire G80040.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22, s.22 since he is not the holder of a forest agreement or licence under the *Forest Act* and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G80040 which, in my view are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$18,681.63
• Distance charges for use of government and private vehicles	\$59.40
• Food, transportation and accommodation expenditures	\$1,788.45
• Costs for expendable supplies and materials consumed	\$680.00
• Helicopter fuel costs and flight costs	\$2,060.78
• Private goods and services contracted, hired, rented or purchased	\$30,609.72
SUB TOTAL	\$53,879.98
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the <i>Wildfire Regulation</i>	\$10,776.00
GRAND TOTAL	\$64,655.98

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$64,655.98 must be paid by July 1, 2019, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 1, 2019 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;

- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), that you own.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-312-3000 within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made my order, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you or your representative of and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk

BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

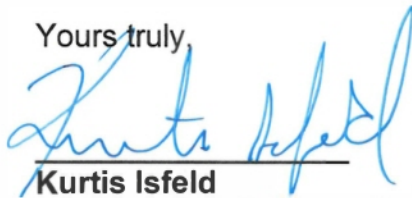
The Forest Appeals Commission must receive the appeal **within thirty days** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Kurtis Isfeld

Manager, Wildfire Operations
Provincial Wildfire Coordination Centre
Headquarters, Kamloops

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Doug Smith, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Rob Schweitzer, A/Director, BC Wildfire Service
Mark Haddock, Forest Practices Board

File: 23060-40- G80108 (2016)

April 8, 2019

s.22

Dear s.22 :

This is further to my letter dated December 19, 2018 and the opportunity to be heard (OTBH) given to s.22 on February 14, 2019 respecting the allegation that s.22 may have caused or contributed to wildfire G80108 (2016).

I have now made a determination based on all of the available evidence and I have concluded that s.22 caused wildfire G80108 (2016) and I order s.22 to pay the government's costs of fire control in the amount of \$74,740.54.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

Page 1 of 8

(b) determine the amount that is equal to the dollar value of any

- (i) Crown timber;
- (ii) other forest land resources,
- (iii) grass land resources; and
- (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and

(c) determine the costs

- (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
- (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

The BC Wildfire Service (BCWS) is pursuing the recovery of the government's cost of fire control for wildfire G80108 (2016) under section 25 of the *Wildfire Act* with direction from Policy 9.1 "Fire Control Responsibilities and Costs". This cost recovery claim is against s.22, the registered owner of the property located at s.22 s.22 approximately s.22 west of Fort St John, BC.

On November 28, 2015 s.22 who is the owner of s.22 lit debris piles on s.22 property in Upper Cache Creek. These debris piles were not extinguished prior to the spring of 2016.

On May 5, 2016, a wildfire was ignited when winds picked up and caused the smouldering piles to spread beyond the intended burn area. The fire was reported to the Prince George Fire Centre on May 5, 2016 at 17:27 hours. The fire required suppression services of crews and personnel from the BCWS Fort St John Fire Zone and the Prince George Fire Centre.

The BCWS conducted a wildfire origin and cause investigation which determined the cause of wildfire G80108 (2016) to be the result of an escaped category 3 open fire that s.22 lit on s.22 property.

Determination

Under section 25(2) of the *Wildfire Act*, I have determined that s.22 owns the private land on which wildfire G80108 (2016) originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that s.22 caused wildfire G80108 (2016).

Pursuant to section 25(1)(a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire G80108 (2016) was \$74,740.54.

Based on these determinations, by an order made under section 25(2) of the *Wildfire Act*, I require s.22 to pay \$74,740.54 to the government.

This amount must be paid by May 31, 2019, subject to the stay imposed by section 36(1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25(1)(a) and section 25(3) and my order under section 25(2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- Wildfire G80108 (2016) originated on property owned by s.22
- On November 28, 2015, s.22, who owns s.22, ignited the piles that would later become wildfire G80108 (2016).
- s.22 did not have a burn registration number.
- s.22 failed to monitor and extinguish the burning debris piles. As a result, when winds picked up on May 5, 2016 the piles spread beyond the intended area to be burned and caused wildfire G80108 (2016).
- The Prince George Fire Centre was notified of the wildfire on May 5, 2016.
- The BC Wildfire Service incurred \$74, 740.54 in costs to suppress fire G80108 (2016).
- s.22 does not have a cost sharing agreement with government.

There are no facts in dispute in this case.

Consideration of the evidence and findings of fact

Having regard to all of the evidence, I have made the following findings with respect to the facts:

- s.22 caused wildfire G80108 (2016) by igniting debris piles on land that it owns and failing to adequately control or extinguish the piles.

- The government incurred fire control costs of \$74,740.54 in relation to wildfire G80108 (2016).
- s.22 does not have a cost sharing agreement with government.

Government's fire control costs

Under section 25(2) of the *Wildfire Act* I may require, by order, s.22 to pay to the government the government's costs of carrying out fire control on wildfire G80108 (2016).

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to s.22 as s.22 is not the holder of a forest agreement or licence under the *Forest Act* and s.22 has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, *Wildfire Regulation* s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order s.22 to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order s.22 to pay the government's fire control costs of \$74,740.54.

Itemized particulars of the government's fire control costs

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs is made in accordance with section 31 of the *Wildfire Regulation*. I have reviewed and accept BCWS' assessment of its fire control costs in relation to wildfire G80108 (2016). It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$40,007.57
- Food, transportation and accommodation expenditures \$3,110.37
- Helicopter fuel costs and flight costs \$3,265.75
- Rent on use of equipment \$668.39

• Private goods and services contracted, hired, rented or purchased	\$12,631.00
• Consulting and other professional charges	\$2,600.70
SUB TOTAL	\$62,283.78
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the Wildfire Regulation	\$12,456.76
GRAND TOTAL	\$74,740.54

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until [s.22](#) has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$74,740.54 must be paid by May 31, 2019, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by May 31, 2019 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) Bears interest at the prescribed rate;
- b) May be recovered in a court as a debt due to the government; and
- c) Constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by BKF, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by BKF.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve [s.22](#) from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-260-0112 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of **s.22** and must contain:

- a) **s.22** name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on **s.22** or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) s.22 name and address; and the name of the person, if any, making the request on s.22 behalf;
- b) the address for serving a document on s.22 . or the person acting on s.22 behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal **within thirty days** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Glen Burgess
A/Deputy Fire Centre Manager
Kamloops Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Doug Smith, SWO-Prevention, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Rob Schweitzer, A/Director, BC Wildfire Service
Mark Haddock, Forest Practices Board



File: 23060-40 - G80122 (2016)

May 1, 2019

KELT Exploration (LNG) Ltd.
#300 East Tower
311 Sixth Avenue SW
Calgary, Alberta
T2P 3H2
Attn: John Metcalfe, Production and HSE Manager

Dear Mr. Metcalfe:

This is further to my letter dated November 6, 2018 and the opportunity to be heard (OTBH) offered to KELT Exploration (LNG) Ltd. (KELT) respecting the allegation that KELT caused wildfire G80122 (2016). KELT decided not to attend an OTBH and did not present any evidence or dispute any of the information presented in the Ministry case binder.

After considering the evidence before me, I conclude by an order made under section 25(2) of the *Wildfire Act* that KELT caused wildfire G80122 and I require KELT to pay \$24,780.65 to the government.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

Legislation

I have primarily considered the following provision of the *Wildfire Act* in making my determination:

Wildfire Act

Recovery of fire control costs and related amounts

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25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;...

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1)(a) and (b) and the costs determined under subsection (1)(c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or...

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

Background

The BC Wildfire Service (BCWS) responded to a report of a wildfire (G80122) on the afternoon of May 2, 2016. The first report of this wildfire was received by the Provincial Forest Fire Reporting Centre (PFFRC) at 17:37 hours. The wildfire was located approximately 52 kilometers to the northwest of Fort St. John and was visible from Highway 97. The initial reports of this wildfire described the fire as growing quickly and within 60 meters of a gas compressor station.

BCWS assigned fire suppression resources from Fort St. John. A crew arrived on site of wildfire G80122 at 18:57 hours. Suppression of this wildfire required BCWS fire crews and the support of a helicopter. BCWS declared the wildfire out on May 11, 2016 at a final fire size of 1.5 hectares.

BCWS conducted a Wildfire Origin and Cause investigation and determined that the cause of wildfire G80122 was related to a scheduled gas flaring activity associated with operations at KELT's facility.

I offered KELT an OTBH which they declined. As such, the basis of my determination solely relies on the information provided in the Ministry's case binder.

Determination

After considering the evidence and submissions in this case, I order that KELT must pay the government's fire control costs related to wildfire G80122.

Specifically, under section 25(2) of the *Wildfire Act*, I have determined that KELT is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which wildfire G80122 originated.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that KELT caused wildfire G80122.

Pursuant to section 25(2) of the *Wildfire Act*, by order I require KELT to pay \$24,780.65 to the government. This amount is the total amount to be paid to the government for its fire control costs pursuant to section 25(1)(a) of the *Wildfire Act*. These costs must be paid by June 17, 2019 subject to the stay described in section 36(1) of the *Wildfire Act*, which is addressed below.

In the sections that follow, I will outline the evidence and explain the reasons for my determinations and my findings under sections 25(1)(a) and 25(3) and my order under section 25(2).

Summary of the evidence

The evidence in this case was presented in the form of a binder prepared by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Ministry). Contained within this binder, amongst other information, is the Wildfire Origin and Cause report prepared by Nick HAMILTON and John FORREST who were assigned to wildfire G80122 as the Fire Origin and Cause investigators.

I spoke with John METCALFE, Production and Health, Safety and Environment Manager for KELT on the morning of January 29, 2019 regarding their participation in the OTBH. During this conversation they again declined my offer to attend an OTBH and waived the right to provide oral, written or telephone submissions regarding this wildfire. As no new evidence has been presented, I have based my decision solely on the Ministry's evidence.

BCWS responded to a report of a wildfire (G80122) on the afternoon of May 2, 2016. The first report of this wildfire was received by the PFFRC at 17:37 hours. The wildfire was located approximately 52 kilometers to the northwest of Fort St. John and was visible from Highway 97. The initial reports of this wildfire described the fire as growing quickly and within 60 meters of a gas compressor station.

BCWS assigned fire suppression resources from Fort St. John. A wildfire suppression crew arrived onsite of wildfire G80122 at 18:57 hours. Suppression of this wildfire required BCWS fire crews and the support of a helicopter. BCWS declared the wildfire out on May 11, 2016 at a final fire size of 1.5 hectares.

BCWS Fire Origin and Cause investigators FORREST and HAMILTON were assigned to wildfire G80122 by the Prince George Fire Centre on May 3, 2016. After concluding their investigation and ruling out all other likely sources of ignition, the cause of wildfire G80122 was determined to be KELT's flare stack system located on the KELT property located 63.7 meters from the ignition area. A statement taken by investigators FORREST and HAMILTON from Jerry BLOCK, a consultant for KELT, indicated that the flame height for the stack was normal and was blowing in the direction of where wildfire G80122 ignited. The use of a flare stack is described as a common practice in the oil and gas industry to relieve pressure in the gas line.

During the investigation, the investigators discovered a cluster of three spot fires and identified a black tarry substance. They determined that the wind aligned with the three spot fires found downwind and 40 meters from the flare stack. Both the spot fires and the main body of the wildfire were downwind of the flare stack. The substance was later collected as evidence by Compliance and Enforcement Branch (CEB) Natural Resource Officers Calvin GROLL and John COLES.

On the day of wildfire, the wind direction, the three identified spot fires, the main wildfire burn and the flare stack aligned. After ruling out all other possible sources of ignition, the investigators concluded that the cause of the wildfire was the flare stack during a scheduled venting operation to relieve pressure in the gas line on May 2, 2016 between the hours of 17:15 and 17:30 hours.

The investigators found no evidence of lightning damaged trees, campfires or camping in the area, no debris piles, no electrical transmission lines, no railroads, no suspicion of arson, no vehicle tracks, no cigarette butts, and no discarded matches near the ignition zone.

The weather at 17:00 hours on May 2, 2016 reported by the nearest weather station indicated that the temperature was 25.8 degrees Celsius (C), the relative humidity (RH) was 13% and the Fine Fuel Moisture Code (FFMC) was 93.6. The wind at 17:00 hours was 15 kilometers an hour from the (SSE). Under these conditions, forest fuels would be considered receptive to ignition.

Officers COLES and GROLL were assigned to investigate wildfire G80122 for possible contraventions of the *Wildfire Act* and *Wildfire Regulation*. At the conclusion of their investigation, officers COLES and GROLL issued violation ticket AH904465818 to KELT under section 3(1) of the *Wildfire Act* for mishandling a burning substance. KELT did not dispute the ticket.

The Ministry provided me with information in support of the position that flare stacks are known to cause wildfires. A recent ENFORM Safety Alert titled 'Flare Stack Fires' (issue #09-2016) indicates that wildfires have been caused by a build-up of carbon within the flare stacks resulting in hot embers being released and igniting the adjacent vegetation. ENFORM is the health and safety association for Canada's upstream oil and gas industry.

The government's costs to control and suppress the wildfire are in dispute. In the Ministry's case binder presented to KELT, the government's fire control costs were calculated as \$28,016.42. As described below, I have concerns with the calculation in the case binder and reduce it to \$24,780.65 to account for wages that cannot be attributed to the wildfire.

Analysis of the evidence and findings of fact

On a balance of probabilities, I find that KELT's flare stack venting operation on May 2, 2016 caused the wildfire. I am satisfied, based on the Wildfire Origin and Cause Investigation and Report, that wildfire G80122 was caused by a flare stack and the source of ignition was on land that KELT leased from the Crown.

I accept the findings of investigators FORREST and HAMILTON. In particular, I am persuaded by their analysis and conclusion around the alignment of the wind, KELT's flare stack, spot fires and ignition point of the wildfire. In addition, the timing of KELT's scheduled venting operations to relieve pressure in the gas line matches the timing of the start of the wildfire and initial report to BCWS. At the time the wildfire occurred, both the weather and the forest fuel conditions would allow for forest fuels to be receptive to ignition and sustained combustion.

There is no evidence to suggest an alternative cause of the wildfire. I accept investigator FORREST's and HAMILTON's opinion ruling out other possible causes of the wildfire.

NRO officers COLES and GROLL investigated wildfire G80122 for possible contraventions and at the conclusion of the investigation issued a violation ticket to KELT under section 3(1) of the *Wildfire Act* for mishandling a burning substance. KELT did not dispute the ticket.

A problematic issue in this determination concerns the calculation of the government's total fire control costs and what has been presented as the final cost that ought to be recovered from KELT. Having found that wildfire G80122 originated from a flare stack on lands that KELT leased from the Crown, section 25(1)(a) of the *Wildfire Act* enables me, as the Minister's delegate, to determine the government's costs of fire control, calculated in the prescribed manner. Section 31(1)(a) of the *Wildfire Regulation* sets out the prescribed manner in which to calculate the government's fire control costs in respect of a particular fire by ascertaining the sum of the specified costs, expenditures and charges attributable to the fire. Section 25(2) of the *Wildfire Act* allows me to require KELT to pay to the government the amounts determined under section 25(1)(a).

The Ministry's evidence that I find to be in dispute is the total costs for government fire control under section 25 of the *Wildfire Act*. Specifically, the costs being sought do not align with the actual costs using the prescribed calculation in section 31 of the *Wildfire Regulation*. Specifically, I find that the wages assigned to the wildfire on the day that the fire started do not align with the timeline of the wildfire.

With reference to the Ministry's evidence in Appendix B of the case binder (Government Fire Control Costs Documentation), the cost summary provided contains an error in section (i) of FS164 Summary of Government Fire Control Costs. It defines hourly wages and overtime wages of responding employees, including payroll loading costs. Wildfire G80122 started at or just before the first report from public at 17:37 hours on May 2, 2016. When the Ministry was asked to explain wages that were assigned to the wildfire starting at 13:00 hours on May 2, 2016, no reasonable explanation could be provided.

The Ministry has an obligation to provide accurate costs as prescribed under sections 31(1)(a) and (b) of the *Wildfire Regulation*. It is my opinion that the wage costs for May 2, 2016 before the wildfire ignited are unreasonable. For this reason, my decision will reflect a reduction of wages that can be recovered for May 2, 2016 and a corresponding reduction to the mandatory overhead charge of 20%.

Government's fire control costs

In accordance with section 25(2) of the *Wildfire Act* I require KELT, by order, to pay to the government the government's costs of carrying out fire control related to wildfire G80122.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to KELT. KELT is not the holder of a forest agreement or licence under the *Forest Act* and KELT has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 18:

18. Leased Crown land or Occupied Crown land, including Licenses of Occupation: All occupiers of Crown land, holders of a leasehold interest or occupiers of leased Crown land may be billed for the Province's fire control costs for fires that they have caused or contributed to the spread of the fire (*Wildfire Act* section 25, *Wildfire Regulation* section 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order KELT to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order KELT to pay the government's fire control costs of \$24,780.65.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to wildfire G80122 which, in my view, with the exception of hourly wages and the corresponding mandatory 20% overhead, are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

• Hourly wages and overtime wages of responding employees	\$17,132.81
• Distance charges for use of government and private vehicles	\$380.00
• Food, transportation and accommodation expenditures	\$30.35
• Costs for expendable supplies and materials consumed	\$1,254.00
• Air tanker fuel costs and flight costs	\$0.00
• Helicopter fuel costs and flight costs	\$1,824.50
• Aircraft basing charges (preparedness) for contracted aircraft	\$0.00
• Retardant and other suppressant costs	\$0.00
• Rent on use of equipment	\$0.00
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$28.88
• Private goods and services contracted, hired, rented or purchased	\$0.00
• Investigation, research and analysis services related to <ul style="list-style-type: none">◦ post-incident evaluation,◦ contingency plan reviews, and◦ other incident follow-up activities	\$0.00
• Consulting and other professional charges	\$0.00
• Rehabilitation and/or slope stabilization costs	\$0.00
SUB TOTAL	\$20,650.54
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$4,130.11
TOTAL	\$24,780.65

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until KELT has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$24,780.65 must be paid by June 17, 2019 subject to the stay described in the section immediately above. If KELT commences

a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 17, 2019 or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) bears interest at the prescribed rate;
- b) may be recovered in a court as a debt due to the government; and
- c) constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by KELT, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by KELT.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve KELT from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at KELT's request. If KELT thinks that there are valid reasons to correct the determinations I have made, a representative of KELT may contact me at 250-365-4054 within this 15 day period.

Opportunities for review and appeal

If you have new information *that was not available at the time I made my order*, KELT may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of KELT and must contain:

- a) KELT's name and address and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on KELT or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and

d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing and must be signed by you, or on your behalf by a representative or agent of KELT, and must contain:

- a) KELT's name, address and telephone number;
- b) the name and daytime/business telephone number of the person, if any, making the request on KELT's behalf;
- c) the address to which all official letters and documents are to be sent in respect of the appeal;
- d) a copy of this determination;
- e) a description of why the determination should be changed (the grounds for appeal); and
- f) a statement of the outcome requested (the remedy sought).

The Forest Appeals Commission must receive an appeal **within thirty days** of the determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you

must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,

A handwritten signature in black ink, appearing to read 'Brent Martin', is written over a horizontal line.

Brent Martin
Fire Centre Manager
Southeast Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Rob Schweitzer, A/Director, Wildfire Operations, BC Wildfire Service
Doug Smith, SWOP, BC Wildfire Service
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Mark Haddock, General Counsel, Forest Practices Board



File: 23060-40 –G80169 (2016)

May 14, 2019

Order for Recovery of Fire Control Costs and Related Amounts

No. G80169 (2016)

Issued under section 25(2) the Wildfire Act

Progress Energy Canada Ltd. (now Petronas Canada)
1200-205 5th Street SW
Calgary, AB
T2P 2V7
Attention: Dennis Lawrence and Glen Swanson

Dear Sir/Madam:

This is further to my letter dated December 18, 2018 and the opportunity to be heard (“OTBH”) offered to Progress Energy Canada Ltd. (“Progress”) which it waived and I confirmed in my letter to you on January 31, 2019, respecting the allegation that Progress caused wildfire G80169 (2016).

I have now made a determination based on the available evidence and although I conclude that Progress caused wildfire G80169, there is no legal basis for me to order the government’s cost of fire control against Progress. My conclusion is based on the legal interpretation of the term *lease* as it is used in section 25 of the *Wildfire Act* and section 32 of the *Wildfire Regulation*. My analysis of this issue is detailed below and it is important for all parties to understand the facts that I considered in making this determination.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government’s fire control

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costs as a result of fire and to make orders requiring a person to pay to the government those amounts.

Legislation

I have primarily considered the following provisions of the *Wildfire Act* and *Wildfire Regulation* in making my determination:

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
 - (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
 - (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

Wildfire Regulation

Prescribed category of leases

32 Leases from the government under the *Land Act* of Crown land for purposes other than for grazing, aquaculture, float homes or private moorage are the prescribed categories of leases for the purposes of section 25(2)(a) of the Act.

Background

The BC Wildfire Service (“BCWS”) received an initial fire report on May 15, 2016, at 12:38 PM of a fire in the Laprise Road area north of Fort St. John, approximately 30 km east of Highway 97. Initial reports indicated that the fire was burning in an oilfield area, that no one was currently fighting the fire, and that oil and gas infrastructure and personnel in the area may be at risk. The wildfire was assigned the description of G80169.

BCWS responded to the wildfire on the same day by dispatching BCWS air and ground fire suppression resources from the Fort St. John Fire Zone.

BCWS continued fire suppression operations on the wildfire until the afternoon of May 17, 2016, when wildfire G80169 was declared out with a final fire size of 4.26 hectares.

I offered Progress an OTBH in accordance with section 25(3) of the *Wildfire Act* but Progress declined the offer and did not otherwise present any evidence or submissions or dispute any of the facts presented in the ministry case binder. As such, I am basing my decision on the information contained in the ministry case binder and the applicable statutes.

Determination

There is no basis for me to order Progress to pay the government's fire control costs under section 25 of the *Wildfire Act*. Although Progress caused wildfire G80169 and the government incurred \$95,725.16 in fire control costs in relation to that wildfire, none of the criteria described in section 25(2) of the *Wildfire Act* apply to Progress in respect of the land at issue here.

Specifically, under section 25(2) of the *Wildfire Act*, Progress is the holder of a statutory right of way on Crown land on which wildfire G80169 originated. I have further determined that a *statutory right of way*, as defined in the *Land Act* and *Land Title Act*, does not fit within the prescribed category of leases for the purposes of cost recovery in section 25(2). In addition, Progress was not an occupant of Crown land subject to a lease.

What follows are the reasons for my determinations, my analysis of evidence and my legal analysis of the applicable statutes in this case

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- Wildfire G80169 originated north of Fort St. John in the Prince George Fire Zone on land legally described as 'that part of unsurveyed crown land within the Peace River district as shown on plan PGP47847.
- Progress (now Petronas Canada) is the registered owner of Crown land statutory right of way BT428683 which resides on 'that part of unsurveyed crown land within the Peace River district as shown on plan PGP47847 where wildfire G80169 originated.
- On May 15, 2016, Progress's oil and gas operations caused wildfire G80169 as a result of burning materials exiting a flare stack or burning material from a hand-held signal flare.
- On May 15, 2016, the fire danger class (see Schedule 2 of the *Wildfire Regulation*) registered for the Fort St. John Fire Zone was at level 4, or high fire danger, which could be associated with moderate to large fire growth.

- On May 15, 2016, BCWS deployed fire suppression Parattack crews, air tankers, and a helicopter to engage in fire suppression operations on wildfire G80169.
- On May 15, 2016, a ministry wildfire Origin and Cause Investigator was deployed to wildfire G80169 to investigate the cause of the wildfire.
- BCWS contained wildfire G80169 to 4.26 hectares and declared the wildfire out on May 17, 2016.
- Progress did not willfully cause or contribute to the start of spread of wildfire G80169.
- No cost sharing agreement or fire suppression service agreement existed between the government of British Columbia and Progress when wildfire G80169 started on May 15, 2016.
- On January 17, 2017, the Compliance and Enforcement Branch of the ministry issued violation ticket AH01499153 in the amount of \$1,150 to Dennis Lawrence, Vice-President Production and Facilities for Progress in Calgary, Alberta for the contravention of section 6(1) of the *Wildfire Act*. Progress paid the ticket on February 24, 2017.

Analysis of the evidence

In my view, the central issue of this determination is whether or not Progress's right of way is considered one of the interests or uses of land described in section 25(2) of the *Wildfire Act* that could make a person subject to a costs recovery:

25(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that

private land, or is an occupier of that private land with the permission of the owner or holder.

As I referred to earlier in this determination, a right of way is not captured by section 25(2). I do not dispute that Progress caused wildfire G80169 and, under similar circumstances in the future, could be ordered to pay the government's wildfire control costs. In short, my legal analysis of the specific language that the legislature used in section 25 of the *Wildfire Act* and section 32 of the *Wildfire Regulation* precludes me from issuing an order against Progress in these circumstances.

In arriving at this conclusion, I have considered, in detail and with supporting legal analysis, the meaning, language, application, and intent of the term *lease* as it is used in the *Wildfire Act* and whether a *statutory right of way* is a lease. This aspect of my analysis is important as it relates to the land title and physical and legal description of the land where the fire originated and the registrations attached to that land.

The legal interpretation of *lease* as it applies to sections 25(2)(a) and (b) of the *Wildfire Act* and section 32 of the *Wildfire Regulation* is problematic in terms of the government's attempt to recover its costs of fire control in the case. Progress held a *statutory right of way* over the land in question which is not a lease described in the *prescribed category of leases* outlined in the legislation. In addition, there is no evidence that Progress was occupying land on which there was a lease. The prescribed category of leases is described in section 32 of the *Wildfire Regulation* as one that is made under the *Land Act* (with the exception of several explicit exceptions). The *Land Act* makes a clear distinction between a lease and a right of way. For example, section 11(1) of the *Land Act* authorizes the minister to dispose of Crown land by selling Crown land, leasing Crown land, granting a right of way or easement over Crown land or granting a licence to occupy Crown land.

It should be understood that under different circumstances, Progress *may* have been ordered to pay the wildfire control costs to the government for wildfire G80169. For example, in circumstances that better understood the implications of a statutory right of way and how such an interest in or use of land applied (or in this case did not apply) to section 25(2) of the *Wildfire Act*, the case binder could have potentially included evidence to establish a contravention of the *Wildfire Act*.

Progress was issued violation ticket #AH01499153 on January 17, 2017 for the contravention of section 6(1) of the *Wildfire Act*. That ticket precludes me from considering levying an administrative penalty under section 53(1) but it does not preclude me from determining under section 26 of the *Wildfire Act* whether Progress contravened or not:

Wildfire Act

Limitation on proceedings

53 (1) The government may not proceed under this Act with both an offence and an administrative penalty for the same contravention.

If I concluded that Progress contravened the *Wildfire Act* and no statutory defence applied, I could, by way of a determination under sections 26 and 27(1) of the *Wildfire Act*, consider a costs recovery order:

Wildfire Act

Contravention orders

26 After giving a person who is alleged to have contravened a provision of this Act or the regulations an opportunity to be heard, or after one month has elapsed after the date on which the person was given the opportunity to be heard, the minister by order may determine whether the person has contravened the provision.

Administrative penalties and cost recovery

27 (1) If the minister determines by order under section 26 that the person has contravened a provision, the minister by order

(a) may levy an administrative penalty against the person in an amount that does not exceed a prescribed amount,

(b) may determine the amount of the government's costs of fire control under section 9 for a fire that resulted, directly or indirectly, from the contravention, calculated in the prescribed manner,

(c) may determine the amount that is equal to the dollar value of any

- (i) Crown timber,
- (ii) other forest land resources,
- (iii) grass land resources, and
- (iv) other property

of the government damaged or destroyed as a result, directly or indirectly, of the contravention, calculated in the prescribed manner,

(c.1) may determine the costs

- (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the contravention, and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the contravention, and

(d) except in prescribed circumstances, may require the person to pay the amounts determined under paragraphs (b) and (c) and the costs determined under paragraph (c.1), subject to the prescribed limits, if any.

In my view, to consider a contravention under section 26 of the *Wildfire Act* and an associated cost recovery order against Progress so close to the end of the three year limitation period described in section 33(1.1) of the *Wildfire Act* without ample time for Progress to dispute an alleged contravention or present a statutory defence would be a serious breach of procedural fairness. Presenting new information relative to an alleged contravention, without providing Progress with another opportunity to be heard under section 26 and adequate time to prepare would violate Progress's right to know the allegations against them, the evidence in support of those allegations and a meaningful opportunity to respond to the allegations.

Based on my interpretation of the *Wildfire Act* meaning of lease, the cause of wildfire G80169 is not relevant to my determination. However, I think it is nonetheless important for me to describe the cause of the wildfire to highlight the importance of conducting industrial and high risk activities in the safest way possible.

Based on my analysis of the evidence presented in the wildfire Origin and Cause report, specific to other possible sources of ignition including but not limited to lightning, other industrial or utility activity, transportation industry, open fire use, arson, and other public causes, I conclude that the only plausible source of ignition was from Progress's gas compressor site immediately adjacent to the documented point of ignition.

The evidence presented in the Wildfire Origin and Cause Report supports that burning debris from Progress's flare stack or a hand flare were the only plausible sources of ignition given the close proximity of the flare stack(s) to the wildfire point of origin and the overwhelming evidence of recently spent flare cartridges within known travelable range from the site to the wildfire point of origin.

The evidence suggests that on the day of ignition, both of Progress's flare stacks on the site were burning, and the prevailing wind direction would have contributed to carrying burning debris or a burning flare within range of the wildfire ignition point.

Based on my analysis of the weather data and fire growth pattern documented in the Wildfire Origin and Cause Report, I conclude that the gas compressor site is the only plausible source of ignition for wildfire G80169.

Government's fire control costs

Based on my findings in this case including the analysis of evidence and legislation presented above, I have determined, under section 25(2) of the *Wildfire Act*, that it is not appropriate, and there is no legal basis, to order Progress to pay the government's fire control costs.

I have considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012 and in effect on the date of wildfire G80169, as it pertains to cost recovery. That policy indicates the following at paragraph 18:

18. Leased Crown land or Occupied Crown land, including Licenses of Occupation: All occupiers of Crown land, holders of a leasehold interest or occupiers of leased Crown land may be billed for the Province's fire control costs for fires that they have caused or contributed to the spread of the fire (*Wildfire Act* s. 25, *Wildfire Regulation* s. 31).

Despite Ministry Policy 9.1 referencing 'all occupiers of Crown land', section 25(2) of the *Wildfire Act* and *Wildfire Regulation* does not define who may be responsible for a costs-recovery order this broadly. Section 25(2) is limited to leaseholders, private land owners and occupants of leased Crown land or private land. Section 25(2) does not include any reference to statutory rights of way even though they are defined in the *Land Act* and *Land Title Act* and I cannot rely on this policy to expand the clear meaning of section 25(2) of the *Wildfire Act*.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the fire control costs to suppress wildfire G80169, which in my view are reasonable in the circumstances. Despite my decision to not order cost recovery, it is important for Progress to understand the costs the government incurred, the breakdown of fire control costs and further understand that I do not dispute these costs as presented in the case binder. Pursuant to section 25(1)(a) of the *Wildfire Act*, the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

- Hourly wages and overtime wages of responding employees \$17,323.05
- Distance charges for use of government and private vehicles \$0.00
- Food, transportation and accommodation expenditures \$1,854.68
- Costs for expendable supplies and materials consumed \$0.00
- Air tanker fuel costs and flight costs \$28,291.60
- Helicopter fuel costs and flight costs \$8,132.20

• Aircraft basing charges (preparedness) for contracted aircraft	\$0.00
• Retardant and other suppressant costs	\$24,091.19
• Rent on use of equipment	\$0.00
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$0.00
• Private goods and services contracted, hired, rented or purchased	\$78.25
• Investigation, research and analysis services related to <ul style="list-style-type: none">○ post-incident evaluation,○ contingency plan reviews, and○ other incident follow-up activities	\$0.00
• Consulting and other professional charges	\$0.00
• Rehabilitation and/or slope stabilization costs	\$0.00
SUB TOTAL	\$79,770.97
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the Wildfire Regulation	\$15,954.19
TOTAL	\$95,725.16

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until Progress has no further right to have the order reviewed or appealed.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve Progress from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-365-4046 within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made my order, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of Progress and must contain:

- a) Progress's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on Progress or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

The request must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by an authorized representative for Progress, and must contain:

- a) Progress's name and address and the name of the person, if any, making the request on behalf of Progress;

- b) the address for serving a document on Progress or the person acting on Progress's behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal **within thirty days** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Darren Quinn
Deputy Fire Centre Manager
Southeast Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Doug Smith, SWO-Prevention, BC Wildfire Service
Mark Haddock, Forest Practices Board
Nathan Murray, Manager Litigation and SDM Support, FLNRO
Rob Schweitzer, A/Director, BC Wildfire Service



File: 23060-40 – K60193, K70068 (2016)

May 15, 2019

Order for Recovery of Fire Control Costs
No. K60193 (2016) and K70068 (2016)
Issued under section 25(2) the Wildfire Act

Canadian Pacific Railway
CPR Claims Division
7550 Ogden Dale Road SE
Calgary, Alberta
T2C 4X9

Attention: Dale Cisecki, Claims Manager

Dear Mr. Cisecki:

This is further to my letter dated January 2, 2019 and the opportunity to be heard (OTBH) offered to Canadian Pacific Railway ("CPR") respecting the allegation that CPR caused wildfires K60193 (2016) and K70068 (2016) (the "Wildfires"). CPR decided not to attend an OTBH but requested by email, clarification of some of the government fire control costs presented in the Ministry case binder. After considering the evidence before me, I conclude by an order made under section 25(2) of the *Wildfire Act* that CPR caused the Wildfires and I require CPR to pay \$155,246.92 to the government for the government's costs of fire control.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

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Legislation

I have primarily considered the following provision of the *Wildfire Act* in making my determination:

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a wildfire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the wildfire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the wildfire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the wildfire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a wildfire referred to in subsection (1) originated;

- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
 - (c) is an owner of the private land on which a wildfire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.
- (3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the wildfire or the spread of the wildfire.
- (4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
 - (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

K60193

On July 14, 2016 beginning at approximately 12:47 hours, the BC Wildfire Service (BCWS) recorded the first of nine phone calls reporting a wildfire north of Spences Bridge, BC in the area of Drinkwater Road. These reports were assigned to wildfire number K60193. Callers reported seeing a fire burning in sage brush and grass near railway tracks. An Air Tanker Request was submitted requesting air tanker support to assist in suppressing the wildfire and an initial attack crew was deployed from the Lillooet Fire Zone of the BCWS.

On arrival at the fire, the Air Attack Officer observed one home approximately 60 yards above the fire and a few members of the public on-scene fighting the fire. Smoke was observed but no open flame so the Air Attack Officer provided an Initial Fire Report to the Kamloops Fire Centre and returned to its base. BCWS fire suppression ground personnel arrived at the fire shortly after the Air Attack Officer and they determined the fire to be a rank 1 fire (a smoldering ground fire), burning in

grass and brush adjacent to a railway track within 100 metres of a home. A CPR crew was also on site assisting with fire control. The BCWS crew used hand tools and water from an adjacent water source to suppress the fire and stayed on site until the early evening, when they returned to their base for the night.

On July 15, 2016, BCWS fire suppression personnel returned to wildfire K60193 to complete a final mop up and patrol of the fire, looking for hotspots, smoke or other indications of fire activity. Wildfire K60193 was officially declared out on July 18, 2016 with a final fire size of 0.9 hectares.

K70068

On May 17, 2016 beginning at approximately 13:31 hours, the BCWS recorded the first of eight phone calls reporting a wildfire near Kanaka Bar south of Lytton, BC. These reports were assigned to wildfire number K70068. BCWS fire suppression crews and personnel were dispatched from the Lillooet Fire Zone to attend wildfire K70068. On arrival of the BCWS personnel, the fire was considered to be a rank 1 fire (a smoldering ground fire), burning in grass and brush adjacent to a railway track. BCWS fire suppression personnel initially used hand tools, and pumps and water to suppress the fire but shortly after their arrival, the wind increased causing the fire to expand beyond the capability of the ground crews. Air tankers and a helicopter were deployed to the fire to help contain and suppress the fire. BCWS fire suppression personnel continued suppressing wildfire K70068 until approximately 23:02 hours before returning to their base for the evening.

On May 18, 2016 the helicopter and BCWS fire suppression personnel returned to wildfire K70068 to continue fire suppression operations. BCWS fire suppression personnel returned to the fire on May 19 and 20, 2016 to mop up the fire, looking for hotspots, smoke or other indications of fire activity but the helicopter was no longer required. On May 25, 2016, BCWS fire suppression personnel returned to wildfire K70068 to complete a final patrol of the fire and the fire was officially declared out on May 31, 2016 with a final fire size of 8 hectares.

I offered CPR an OTBH which they declined to attend. Prior to declining that offer, CPR identified a number of costs in the Ministry case binder attributed to wildfire K70068 that they did not feel should have been included for that wildfire. CPR did not dispute the cause of the Wildfires or any of the other information presented in the Ministry case binder. I have therefore primarily based my determination on the information provided by the Ministry in their case binder.

Determination

After considering the evidence and submissions in this case, I order that CPR must pay the government's fire control costs related to the Wildfires.

Under section 25(2) of the *Wildfire Act*, I have determined that CPR is the owner of the private land on which the Wildfires originated or is a holder of a leasehold interest

in that private land, or is an occupier of that private land with the permission of the owner or holder.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that CPR did cause the Wildfires.

Based on these determinations, by an order made under section 25(2) of the *Wildfire Act*, I require CPR to pay \$155,246.92 to the government. This is the total amount to be paid to the government for its fire control costs related to the Wildfires pursuant to section 25(1)(a) of the *Wildfire Act*, and is the sum of the government's costs of \$11,783.90 for wildfire K60193 and \$143,463.01 for wildfire K70068.

This amount must be paid by July 30, 2019, subject to the stay described in section 36(1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25(1)(a) and section 25(3), and my order under section 25(2).

Summary of the evidence

The evidence in this case was presented in the form of binders prepared by the Ministry which contained, among other information, a Wildfire Origin and Cause report for each of the Wildfires. Based on the evidence, I am satisfied that the following facts are **not** in dispute:

Wildfire K60193

- On July 14, 2016 beginning at approximately 12:47 hours, the BCWS recorded the first of nine phone calls reporting a wildfire north of Spences Bridge, BC in the area of Drinkwater Road
- The Wildfire was assigned the number K60193
- The fire was determined to have ignited in the parcel of land with the legal description: That part of Pemynoos Indian Reserve No. 9 containing 64.37 of an Acre shown Edged in red on Plan 287
- The owner of that parcel of land is Her Majesty the Queen in Right of Canada, Indian and Northern Affairs Canada, BC Region
- The occupier of the land with the permission of the land owner is CPR
- The Kamloops Fire Centre deployed aircraft, suppression personnel and crews to suppress wildfire K60193
- On arrival at the fire, a BCWS crew person determined the fire to be a rank 1 fire (a smoldering ground fire), burning in grass and brush adjacent to a railway track
- A CPR crew was also on site assisting with fire control
- On July 14, 2016, the BCWS crew used hand tools and water from an adjacent water source to suppress the fire, and stayed on site until the early evening, when they returned to their base for the night
- On July 14, 2016 BCWS Fire Origin and Cause Investigators Michael Aldred and Peter Semenoff were deployed from the Kamloops Fire Centre to wildfire K60193 to determine the origin and cause of the fire

- Using the fire direction indicators and other information collected at the site of the fire, Aldred and Semenoff determined that wildfire K60193 was caused by carbon exhaust particles ejected from a passing CPR train
- BCWS fire suppression personnel returned to wildfire K60193 on July 15, 2016, to complete a final mop up and patrol of the fire, looking for hotspots, smoke or other indications of fire activity
- On July 18, 2016, wildfire K60193 was officially declared out with a final fire size of 0.9 hectares
- BCWS incurred fire control costs in the suppression of wildfire K60193 calculated in the prescribed manner as \$11,783.90

Wildfire K70068

- On May 17, 2016 beginning at approximately 13:31 hours, the BCWS recorded the first of eight phone calls reporting a wildfire near Kanaka Bar south of Lytton, BC
- This wildfire was assigned the number K70068
- The fire was determined to have ignited in the parcel of land with the legal description All That Portion of the North ½ of Section 25, Township 13, Range 27, West of the 6th Meridian, Kamloops Division, Yale District, Which Lies to the East of a Line Drawn Parallel to and 300 Feet Perpendicularly Distant Easterly from the Centre Line of the Right of Way of the Main Line of the Canadian Pacific Railway, as the Said Centre Line is Shown on Plan 287 and to the West of the Ordinary High Water Mark of the Adjoining Side of the Fraser River, and to the North of the Northern Limit of Kanaka Bar Indian Reserve No. 4 (Whyeek), as the Said Reserve is Shown Upon a Map or Plan of Survey of the North East ¼ of the Said Township Dated at Ottawa 5th day of October, 1915 Containing 27 Acres More or Less
- The owner of that parcel of land is CPR
- The Kamloops Fire Centre deployed initial attack crews and unit crews from the Lillooet Fire Zone to suppress wildfire K70068
- On arrival at the fire, a BCWS crew person determined the fire to be a rank 1 fire (a smoldering ground fire), burning in grass and brush adjacent to a railway track
- Shortly after the arrival of the BCWS fire suppression personnel, the wind increased causing the fire to expand beyond the capability of the ground crews
- On May 17, 2016, an Air Tanker Request was submitted to the Provincial Air Tanker Centre requesting air tanker support to assist in suppressing wildfire K70068 and to limit the spread of the fire
- On May 17, 2016 a request was submitted to the Kamloops Fire Centre for a helicopter to be deployed to wildfire K70068 to provide water bucketing support to the fire suppression ground crews
- On May 17, 2016, both the air tankers and the helicopter were deployed to wildfire K70068
- The helicopter and the BCWS fire suppression personnel continued suppressing wildfire K70068 until the evening of May 17, 2016 before returning to their base for the evening.

- On May 17, 2016, Fire Origin and Cause Investigators Peter Semenoff and Ian Ward were deployed from the Kamloops Fire Centre to wildfire K70068 to determine the origin and cause of the fire
- Using the fire detection indicators and other information collected at the site of the fire, it was determined that wildfire K70068 was caused by rail cutting operations conducted by CPR employees within the CPR right of way
- BCWS fire suppression personnel returned to wildfire K70068 from May 18-20, 2016 to mop up the fire and to look for hotspots, smoke or other indications of fire activity
- On May 25, 2016, BCWS fire suppression personnel completed a final patrol of wildfire K70068
- On May 31, 2016, wildfire K70068 was officially out with a final fire size of 8 hectares

CPR requested additional information with respect to the facts that **are** in dispute:

- In its case binder, the Ministry presented information indicating the BCWS incurred fire control costs in the suppression of wildfire K70068 calculated to be \$146,449.28
- CPR questioned whether some of the goods, services and personnel attributed to this fire should have been included as the dates on the invoices appeared to be outside of the dates that the government conducted fire control
- CPR also questioned the appropriateness of some of the personnel and services included in the costs
- After reviewing the cost information, I agree that the costs for goods and services that are dated outside of the time that the BCWS carried out fire control on this wildfire should be removed from the calculation of the government fire control costs
- Information was provided by email to CPR describing why a number of the items raised by CPR remained in the cost calculation
- Accordingly, the government fire control costs for wildfire K70068 were reduced to \$143,463.01.

Government's fire control costs

Under section 25(2) of the *Wildfire Act* I require, by order, CPR to pay to the government the government's costs of carrying out fire control on the Wildfires.

The government's total cost for fire control related to the Wildfires was \$155,246.92 broken down as follows:

	Fire Number	Fire Control Costs
1.	K60193	\$11,783.90
2.	K70068	\$143,463.01
	TOTAL COSTS:	\$155,246.92

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to CPR as CPR is not the holder of a forest agreement or licence under the *Forest Act* and CPR has not entered into a cost sharing agreement or a service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1 entitled “*Fire Control Responsibilities and Costs*”, effective April 13, 2012 as it pertains to cost recovery. That policy indicates the following at paragraph 15:

Private land: Owners and/or occupants of private land will be billed for wildfire suppression costs if it is determined that they caused or contributed to the wildfire or spread of the wildfire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order CPR to pay the government’s fire control costs.

Itemized particulars of the government’s fire control costs

I have reviewed the Ministry’s calculation of the government fire control costs related to the Wildfires which, in my view, with the exception of the goods, services and personnel that I described previously, are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government’s fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. Each item in the calculation below reflects the combined cost of the Wildfires for that item:

• Hourly wages and overtime wages of responding employees	\$43,202.83
• Food, transportation and accommodation expenditures	\$2,122.87
• Air tanker fuel costs and flight costs	\$29,588.96
• Helicopter fuel costs and flight costs	\$19,350.08
• Retardant and other suppressant costs	\$27,981.88
• Rent on use of equipment	\$48.60
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$141.42
• Private goods and services contracted, hired, rented or purchased	\$6,936.20
SUB TOTAL	\$129,372.43

• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$25,874.49
GRAND TOTAL	\$155,246.92

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until CPR has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$155,246.92 must be paid by July 30, 2019, subject to the stay described in section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if CPR commences a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 30, 2019, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- Bears interest at the prescribed rate;
- May be recovered in a court as a debt due to the government; and
- Constitutes, in favour of the government,
 - a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i) owned by CPR.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve CPR from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfires.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (778) 974-5707 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of CPR and must contain:

- a) CPR's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on CPR or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

It must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing, must be signed by a representative of CPR and must contain:

- a) CPR's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document to CPR or the person acting on its behalf;

- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.


The Forest Appeals Commission must receive the appeal ***within thirty days*** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Mary Myers
Director Corporate Governance
Victoria Headquarters

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager Wildfire Risk, BC Wildfire Service
Jennifer Young, SWO-Prevention, BC Wildfire Service
Mark Haddock, Forest Practices Board
Rob Schweitzer, A/Director Wildfire Operations, BC Wildfire Service
Nathan Murray, Manager Litigation & SDM Support, FLNRORD



Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

File: 23060-40 - K70144, K70148, K70149, R10035, R20030, V10497 (2016)

May 6, 2019

Order for Recovery of Fire Control Costs and Related Amounts

No. K70144, K70148, K70149, R10035, R20030, V10497 (2016)

Issued under section 25(2) the Wildfire Act

Noma Ngwenya
Claims Agent, General Claims
Canadian National Railway
Floor 2, Building A,
10229 – 127 Avenue NW
Edmonton, Alberta
T5E 0B9

Patrick Williams
McCarthy Tetrault LLP
#2400-745 Thurlow Street
Vancouver, BC
V6E 0C5

Dear Ms. Ngwenya and Mr. Williams:

This is further to my letter dated December 13, 2018 and the opportunity to be heard ("OTBH") offered to Canadian National Railway ("CN Rail") respecting the allegation that CN Rail caused wildfires K70144, K70148, K70149, R10035, R20030, and V10497 (2016) (the "Wildfires"). After considering the evidence before me, I conclude by an order made under section 25(2) of the *Wildfire Act* that CN Rail caused the Wildfires and I require CN Rail to pay \$199,726.66 to the government for the government's costs of fire control.

Authority

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and to make orders requiring a person to pay to the government those amounts.

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Legislation

I have primarily considered the following provision of the *Wildfire Act* in making my determination:

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a wildfire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any

- (i) Crown timber;
- (ii) other forest land resources,
- (iii) grass land resources; and
- (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the wildfire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the wildfire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the wildfire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a wildfire referred to in subsection (1) originated;

- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a wildfire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the wildfire or the spread of the wildfire.

Background

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry") is seeking to recover the government's fire control costs related to the Wildfires which are alleged to have been caused by CN Rail in 2016. An OTBH was offered to CN Rail by way of a letter dated December 13, 2018 from the Ministry to CN Rail. The Ministry's letter enclosed a case binder with the Ministry's evidence in support of its allegations.

CN Rail had the opportunity to respond to these allegations by way of an in-person (oral) hearing, through written submissions, or by telephone. By way of a letter from Mr. Patrick Williams of McCarthy Tetrault LLP, dated March 8, 2019, CN Rail declined the opportunity to attend the OTBH and did not present any evidence or dispute any of the information presented in the Ministry case binders.

In particular, CN Rail has not disputed that it caused the Wildfires and has not disputed the calculation of the government's fire control costs. Without being provided with any additional information from CN Rail, I have based my determination solely on the information provided in the Ministry's case binder.

Determination

After considering the evidence and submissions in this case, I order that CN Rail must pay the government's fire control costs related to the Wildfires.

Under section 25(2) of the *Wildfire Act*, I have determined that CN Rail is either the owner of the private land on which the Wildfires originated or is an occupier of that private land with the permission of the owner.

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that CN Rail caused the Wildfires.

Based on those determinations, by an order made under section 25(2) of the *Wildfire Act*, I require CN Rail to pay \$199,726.66 to the government. This is the total amount to be paid to the government for its fire control costs related to the Wildfires pursuant to section 25(1)(a) of the *Wildfire Act*.

This amount must be paid by August 5, 2019, subject to the stay described in section 36(1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under sections 25(1)(a) and 25(3) and my order under section 25(2).

Summary of the evidence

The evidence in this case was presented in the form of a binder prepared by the Ministry which contained, among other information, a Wildfire Origin and Cause report for each of the Wildfires.

Based on that evidence, I am satisfied that the following facts are not in dispute:

- CN Rail caused wildfire R20030, which started on May 14, 2016 east of Houston adjacent to the railway tracks.
- CN Rail caused wildfire R10035, which started on May 27, 2016 at Sheraton east of Burns Lake.
- CN Rail caused wildfire K70144, which started on June 30, 2016 south of Lytton mill adjacent to the railway tracks.
- CN Rail caused wildfire K70148, which started on June 30, 2016 at Kumsheen adjacent to the railway tracks.
- CN Rail caused wildfire K70149, which started on June 30, 2016 south of Lytton adjacent to the railway tracks.
- CN Rail caused wildfire V10497, which started on September 14, 2016 north of Boston Bar adjacent to the railway tracks.
- CN Rail did not dispute any of the government's fire control costs associated with the Wildfires, as described in the two sections immediately below.
- CN Rail is not the holder of a forest agreement or licence under the *Forest Act* and CN Rail did not have a cost sharing agreement or a service agreement with the government prior to the government carrying out fire control.

Government's fire control costs

Under section 25(2) of the *Wildfire Act* I require, by order, CN Rail to pay to the government the government's costs of carrying out fire control related to the Wildfires.

The government's total cost for fire control related to the Wildfires was \$199,726.66:

	Fire Number	Fire Control Costs
1.	K70144	\$16,045.93
2.	K70148	\$133,046.16
3.	K70149	\$1,804.08
4.	R10035	\$9,015.22
5.	R20030	\$1,544.81
6.	V10497	\$38,270.46
	TOTAL COSTS:	\$199,726.66

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to CN Rail as CN Rail is not the holder of a forest agreement or licence under the *Forest Act* and CN Rail did not have a cost sharing agreement or a service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1 entitled "*Fire Control Responsibilities and Costs*", effective April 13, 2012 as it pertains to cost recovery. That policy indicates the following at paragraph 15:

Private land: Owners and/or occupants of private land will be billed for wildfire suppression costs if it is determined that they caused or contributed to the wildfire or spread of the wildfire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order CN Rail to pay the government's fire control costs of the Wildfires.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order CN Rail to pay the government fire control costs of \$199,726.66.

Itemized particulars of the government's fire control costs

I have reviewed the Ministry's calculation of the government fire control costs related to the Wildfires, which, in my view, are reasonable in the circumstances.

Pursuant to section 25(1)(a) of the *Wildfire Act*, my determination of the government's fire control costs for the Wildfires was made in accordance with section 31 of the *Wildfire Regulation*. Each item in the calculation below reflects the combined cost of the Wildfires for that item:

• Hourly wages and overtime wages of responding employees	\$72,905.05
• Distance charges for use of government and private vehicles	\$0
• Food, transportation and accommodation expenditures	\$1,724.21
• Costs for expendable supplies and materials consumed	\$0
• Air tanker fuel costs and flight costs	\$24,456.19
• Helicopter fuel costs and flight costs	\$8,133.56
• Aircraft basing charges (preparedness) for contracted aircraft	\$0
• Retardant and other suppressant costs	\$36,548.50
• Rent on use of equipment	\$4,118.73
• Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control	\$2,829.18
• Private goods and services contracted, hired, rented or purchased	\$15,723.46
• Investigation, research and analysis services related to <ul style="list-style-type: none">◦ post-incident evaluation,◦ contingency plan reviews, and◦ other incident follow-up activities	\$0
• Consulting and other professional charges	\$0
• Rehabilitation and/or slope stabilization costs	\$0
SUB TOTAL	\$166,438.88
• Mandatory 20% overhead pursuant to section 31(1)(b) of the <i>Wildfire Regulation</i>	\$33,287.78
TOTAL	\$199,726.66

Stay of order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until CN Rail has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$199,726.66 must be paid by August 5, 2019, subject to the stay described in section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if CN Rail commences a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by August 5, 2019, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government,
 - a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i) owned by CN Rail.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25(2) do not relieve CN Rail from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfires.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25(2), I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 263-6840 within this 15 day period.

Opportunities for review and appeal

If you have new information that was not available at the time I made my order, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of CN Rail and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on its behalf;
- b) the address for serving a document on CN Rail or the person acting on its behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

It must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the *Administrative Review and Appeal Procedure Regulation*. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be in writing, must be signed by a representative of CN Rail and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on its behalf;
- b) the name and daytime/business telephone number of the person, if any, making the request on CN Rail's behalf

- c) the address to which all official letters and document are to be sent in respect of the appeal;
- d) the grounds for appeal;
- e) a copy of this determination; and
- f) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***within thirty days*** of this determination.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the *Administrative Review and Appeal Procedure Regulation*. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Thomas Reinboldt
Deputy Fire Centre Manager
Prince George Fire Centre

cc: Laurence Bowdige, Superintendent Wildfire Recovery, BC Wildfire Service
Kathleen Werstiuk, Manager Risk and Litigation, BC Wildfire Service
Jennifer Young, SWO-Prevention (Kamloops), BC Wildfire Service
Bradley Martin, SWO-Prevention (Northwest), BC Wildfire Service
Alan Berry, SWO-Prevention (Coastal), BC Wildfire Service
Nathan Murray, Manager Litigation & SDM Support, FLNRORD
Mark Haddock, Forest Practices Board
Rob Schweitzer, A/Director, Wildfire Operations, BC Wildfire Service