

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*

Dustin Lee Chambers  
s.22

Dear Mr. Chambers:

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, Dustin Lee Chambers, 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.

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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,
- (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**

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### **Determination**

After considering the evidence and submissions in this case, I order that Mr. Chambers 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 Mr. Chambers 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 Mr. Chambers 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 Mr. Chambers 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 Mr. Chambers, I am satisfied that the following facts are **not** in dispute:

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- 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

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In turn, you presented evidence and submissions through legal counsel, Eileen Vanderburgh:

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### **Consideration of the evidence and findings of fact**

Having regard to the evidence and submissions from the Ministry and Ms. Vanderburgh on behalf of Mr. Chambers, I have made the following findings of fact:

- Mr. Chambers is the registered owner of the property at s.22  
s.22  
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- The provincial government carried out fire control on wildfire G80040 and incurred \$64,655.98 in costs in doing so.
- Mr. Chambers caused wildfire G80040. s.22  
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- 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 Mr. Chambers 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 Mr. Chambers 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 Mr. Chambers 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 Mr. Chambers 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
<b>SUB TOTAL</b>	<b>\$53,879.98</b>
• Mandatory 20% overhead pursuant to section 31 (1) (b) of the <i>Wildfire Regulation</i>	\$10,776.00
<b>GRAND TOTAL</b>	<b>\$64,655.98</b>

### **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  
2<sup>nd</sup> 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.

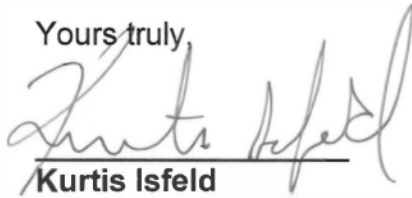
The Forest Appeals Commission must receive the appeal **within thirty days** of this determination.

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,

A handwritten signature in black ink, appearing to read 'Kurtis Isfeld', written over a horizontal line.

**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