

INTERIOR BOARD OF LAND APPEALS

Gene Goold

155 IBLA 299 (August 24, 2001)

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GENE GOOLD

IBLA 2001-249

Decided August 24, 2001

Appeal from decision of the Shoshone, Idaho, Field Office of the Bureau of Land Management, issuing a Bill of Collection for fire trespass. (ID076-10-541).

Set aside and referred for a hearing.

1. Trespass: Generally

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

2. Trespass: Generally

To the extent a fire trespass case presents complex factual issues, it will justify a hearing before an administrative law judge, pursuant to 43 CFR 4.415. The Board will exercise its discretionary authority to order a hearing if an appellant presents sufficient material issues of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures.

APPEARANCES: Gene Goold, *pro se*, Twin Falls, Idaho; Bill Baker, Field Manager, Shoshone Field Office, Bureau of Land Management; Kenneth Seby, Esq., Office of the Field Solicitor, Boise, Idaho.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Gene Goold has appealed a March 15, 2001, decision of the Acting Field Manager, Shoshone (Idaho) Field Office, Bureau of Land Management (BLM). The decision issued a Bill for Collection (F99-026) for fire trespass in connection with the October 5, 1999, "Burmah Road" fire which took place on public lands administered by BLM. ^{1/} According to the

^{1/} The BLM decision was issued to "Gene Gauld," and name appears throughout BLM's file. The appeal is signed by "Gene Goold" and we follow Goold's spelling of his name.

decision, Goold was responsible for ignition of the fire. The Bill for Collection seeks recovery of \$14,675.95 for fire suppression costs. Goold does not dispute that he deliberately set the fire on his own lands, or that it was blown out of control onto public lands. The basis for Goold's appeal is that he "took every precaution that I could have to prevent the fire from doing damage" and that he could not have predicted the movement of the winds in this incident. Goold also states that the \$14,675.95 Bill for Collection is "adverse and incorrect."

Goold filed a one page "statement of appeal." We construe this document as a Statement of Reasons (SOR) in that Goold's cover letter advises the reader that "[a]ny further discussion regarding this matter should be directed to my adjuster at Allied Insurance." According to Goold's 11 numbered paragraphs relating events, Goold had a permit for weed burning, issued on the date of the fire. (SOR at ¶ 1.) He mowed a 30-foot perimeter around the burn site, and placed a water tank on site. *Id.* at ¶ 2. During the burn, Goold states that unpredictable "dust devil" type winds" spread the fire onto about 20 acres of his own property and 2 acres of public land. *Id.* at ¶¶ 5-6. When the fire moved toward BLM property, he called BLM and "suggested that they could send a truck with some water since we were running out of water in our tank and would have to leave the fire in order to refill." *Id.* at ¶ 8. This statement of events is basically consistent with a memorandum in the record documenting a phone conversation between BLM and Goold, and the Trespass Investigation Report contemporaneous with the fire, except that both of those documents indicate that Goold used a 24-foot buffer around the burn site. (E-mail from Derinda Rapp, BLM, regarding conversation with Goold, November 27, 2000; Investigation Report, October 5, 1999.)

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

[2] Fire trespass cases frequently present complex factual issues which justify a hearing before an administrative law judge, pursuant to 43 CFR 4.415. Greg Heidemann, 143 IBLA at 307. The Board will exercise its discretionary authority to order a hearing if an appellant presents sufficient material issues of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Daryl Serr, 155 IBLA 21, 23 (2001), citing Natel Minerals, Inc., 143 IBLA 362 (1998). While Goold does not dispute that he intentionally set a fire, he does argue that he is not responsible for its spread, or more to the point, that his actions did not constitute fire trespass. Further, he alleges error in BLM's assessment of damages that can be construed as raising issues of fact.

To the extent Goold argues that the "dust devil" winds, and not his own action, are the proximate cause of the fire on Federal lands, we note that granting a hearing could appear to be inconsistent with our recent decision refusing to transfer a case to the hearings division on similar claims regarding an unpredictable wind. In Daryl Serr, 155 IBLA at 21, the authoring judge of this decision held:

Without concluding that Serr set it in bad faith and acknowledging his willingness to report the fire when it got out of hand, the wind did not set the fire, nor was the wind the ultimate "cause." The wind blew the existing fire, set or "caused" by Serr, away from its initial situs. Wind is a factor to be taken into account in setting a fire and consequences from setting fires that blow out of control onto federal lands include damages payable under 43 CFR 9239.1-3(a). See, e.g., Greg Heidemann, 143 IBLA at 306-07.

155 IBLA at 23.

We stand by the decision in Serr but the similar arguments by the parties in this and that case compel us to take this opportunity to clarify the holding in Serr, to explain the difference in outcome here. In that case, Serr's statement, as taken by BLM, was that: "On 10/25/99, I started burning 1/10 acre of grass and weeds on an isolated knob within a stubble field which I had already burned, under a burning permit on 9/15/99. I did not know my permit had expired or that the ban on open burning was still in effect." 155 IBLA at 22 (emphasis added, citation omitted). Serr did not contest this statement or argue that these facts were not as represented by BLM's report. Serr's position before the Board was that he had deliberately set a fire adjacent to federal lands at a time when his permit had expired and, more crucial, at a time during a ban on open burning. Yet, his claim was that it was an "Act of God" that caused this fire to burn onto Federal lands.

A hearing was not required in Serr because whatever the wind was denominated — an Act of God or an event of nature — it could not alter his own admissions of negligence. While any fire is affected by physical conditions surrounding it, a hearing on liability is not required when appellant has conceded his own deliberate actions in negligently setting the fire. To the extent that Serr can be read to establish strict liability for fire damage on federal lands in any case stemming from human-caused fire, no Board decision has gone this far, and we clarify that Serr is not to be read so broadly.

Here, the appellant and BLM have together agreed to facts contrary to those in Serr. Goold had a permit, burned a fire on the same day as the permit, established a buffer zone, alleged that he was aware of weather conditions, and retained a water tank on site. Such statements as "we were running out of water and would have to leave the fire in order to refill" indicate factual questions going to the merits that would provide cause for a hearing. We will leave for the hearings process analysis of further

issues, a ruling on which may be considered if the case returns to the Board after hearing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is set aside, and the case is referred to the Hearings Division, Office of Hearings and Appeals, for an evidentiary hearing.

Lisa Hemmer
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge