

INTERIOR BOARD OF LAND APPEALS

Leo R. Haag, Jr.,
v.
Bureau of Land Management

170 IBLA 320 (November 21, 2006)

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LEO R. HAAG, JR.

v.

BUREAU OF LAND MANAGEMENT

IBLA 2004-231

Decided November 21, 2006

Appeal from a decision by Administrative Law Judge Robert G. Holt ruling that Haag had negligently caused a fire on public lands and assessing damages resulting from the fire. AK310-10-0012.

Affirmed.

1. Trespass: Generally

Causing a fire on public lands, other than one permitted in writing by BLM or specifically exempted by the regulations, is one of the prohibited acts enumerated in 43 CFR 9212.1. When such a fire injures vegetative materials on public lands, it constitutes an act of trespass under 43 CFR 9239.0-7.

2. Trespass: Generally

Pursuant to 43 CFR 9239.1-3(a), damages for trespass include administrative costs and costs “associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.” Thus, to the extent a fire produces an injury to public lands, BLM may properly assess fire suppression and related administrative costs against the trespasser, upon a showing of either intent or negligence by a preponderance of the evidence. However, BLM may only assess the costs that result from the trespasser’s negligence, and not those additional costs resulting from the Government’s decision to allow the fire to continue to burn, or those additional costs resulting

from the fire suppression measures required when, after the Government decides to allow the fire to continue to burn, it burns out of control.

APPEARANCES: Patrick M. Rodey, Esq., Anchorage, Alaska, for appellant; Joseph D. Darnell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Leo R. Haag, Jr., has appealed from a March 31, 2004, decision by Administrative Law Judge Robert G. Holt concluding that Haag's negligence in leaving a campfire unextinguished resulted in a May 20, 2001, fire known as the Palmer Hayflats Fire; that the fire injured vegetative materials on public lands; that the fire constituted an act of trespass under 43 CFR 9239.0-7; and that Haag is obligated to pay the Bureau of Land Management (BLM) \$5,133.85 for fire suppression and related administrative costs incurred.

BLM issued a Letter of Collection (Letter), dated July 22, 2002, to Haag, asserting that he was responsible for the Palmer Hayflats Fire, and imposing \$16,626.00 in costs incurred "as a result of the fire." Haag appealed from and petitioned for a stay of BLM's Letter. He did not contest BLM's determination that he was responsible for the fire, but challenged BLM's assessment of costs and damages. He argued that the amount BLM sought to collect was "excessive due to the fact that the area was scheduled to have a controlled burn that year," and that he should "be responsible only for that amount which was in [excess] of the budgeted amount for the scheduled burn." (Petition for Stay, IBLA 2002-441, at 1.)

By order dated May 20, 2003, the Board set aside BLM's decision and referred the matter to the Hearings Division, Office of Hearings and Appeals, pursuant to 43 CFR 4.415, for an evidentiary hearing concerning "disputed issues of material facts * * * concerning the appropriate measure of damages." (Order, IBLA 2002-441 (May 20, 2003), at 1-2.) Noting that Haag's "unauthorized burning of public lands is an act of trespass," the Board stated that "fire suppression and related administrative costs may properly be assessed as damages for the trespass." *Id.* at 1, citing Idaho Power Co., 156 IBLA 25, 28 (2001); see Gene Goold, 155 IBLA 299, 300 (2001); Greg Heidemann, 153 IBLA 305, 306 (1998). The Board stated further that under the regulations, "damages for trespass include administrative costs and other costs 'associated with the rehabilitation and stabilization of any resources damage as a result of the trespass.'" (Order, IBLA 2002-441 (May 20, 2003), at 1, quoting 43 CFR 9239.1-3(a).) The Board stated that at the hearing BLM would bear the "burden of proving by a preponderance of the evidence that the damages assessed in the decision are justified." (Order, IBLA 2002-441 (May 20, 2003), at 1-2.)

Judge Holt issued his decision following an evidentiary hearing held on October 24, 2003, in Anchorage, Alaska. As noted, the Board limited the hearing to the damages issue because Haag had not disputed that he was responsible for causing the fire. However, both Haag and BLM stipulated before the hearing that liability was in fact disputed and that the hearing should also consider the liability issue. (Decision at 2.) At the hearing, BLM reduced the amount owed to \$10,267.70 because the earlier amount had included charges for personal services that had been erroneously charged to this fire. See Tr. at 38-39; Ex. A-5 at p. 2. Judge Holt concluded that the fire would have been controlled in half the time had the land manager not allowed it to spread, so he divided BLM's total of \$10,267.70 in half, obligating Haag to pay \$5,133.85. (Decision at 9.) BLM did not appeal from Judge Holt's reduction of the damages.

The facts are as follows. The Palmer Hayflats Fire occurred in an area about six miles from Palmer, Alaska (Tr. at 48-49), on BLM land that is partly surrounded by the Palmer Hayflats State Game Refuge.^{1/} (Ex. A-7 at 8.) Haag had visited the area where the fire occurred since 1967 and, like other duck hunters, maintained a campsite without BLM's permission along the bank of the Knik River. (Tr. 78-79, 98-99; Ex. A-7 at 20-25.) BLM had urged him to clean up the site, but he was unable to do so during the winter because there was inadequate snow cover to enable him to reach the site by snowmobile. (Tr. 79-80.) He waited until spring after the ice in the river had broken up. He arrived at 8 or 9 o'clock on the morning of May 20 with Glen D. Simmons, after launching their boat from a place near the Knik River Bridge. (Tr. 129-30.) Simmons, an employee of the State of Alaska's Division of Forestry, testified that he has known Haag for 18 years and that he had visited the area of the fire with him 4 years previously. (Tr. 118.) Simmons also worked for Haag at his towing business. (Tr. 141.) Haag and Simmons started a fire to burn some paper trash and, believing the fire to be extinguished, they left the site around noon.

An incident report prepared by Norm McDonald, the incident commander from the State of Alaska's Department of Natural Resources (DNR), states that a fire was reported at 2:29 p.m. north of the Knik River bridge in the Palmer Hayflats area. (Ex. A-7 at 14.) At 2:35, a helicopter and four crew members departed and arrived at the fire at 2:43, when only one acre was "burning in grass and brush, 40% active with 3-4 [foot] flame lengths, winds 5 mph out of the South * * * [and] no additional resources needed." Id. At 2:50, the crew was told to "hold off on suppression until contact can be made with Refuge manager." Id. At 2:51, the fire was two acres in size and still burning actively. The crew still took no action, "[s]tanding by for orders." Id. At 2:59, the dispatch advised the crew to start suppressing the fire, even

^{1/} BLM was in the process of conveying the land to the State at the time of the fire and the hearing. (Tr. 79.)

though there had been no contact with the refuge manager.^{2/} Suppression was started at 3:05, but the crew was advised to cease suppression at 3:09, because the refuge manager “would like to let it burn unless it becomes a problem.’ Fire origin is located next to a camp site. Still smoldering camp fire is the cause.” Id. At 3:11, the helicopter was loaded. Id.

There was a helicopter reconnaissance of the fire at 3:44 when the fire was approximately five acres and actively burning. A fixed wing aircraft flew over the fire at 4:36, by which time it had spread to 20 acres and was “still active on the west side.” Id. At 5:00, the crew was requested to return to protect a cabin. The crew arrived at 5:30, by which time the fire had spread to 30 acres, and completed a successful burnout around the cabin by 7:00. At that point, the crew’s suppression efforts were directed to the east flank of the fire to protect the Glen Highway. The crew had completed its “[b]ucket work” on the east flank by 8:15, “clean[ed] up the line to the North of the cabin,” and decided to remain on the scene “until they [felt] that the cabin is safe for the evening.” Id. When the helicopter departed at 9:53, the fire was sized at 45 acres, and the west flank was still burning. Id. The helicopter crew returned at 11:45 the next morning and found the fire to have spread to 75 acres. The final size of the fire was 240 acres. Id.

David Stimson, a Law Enforcement Ranger from BLM’s Anchorage Field Office who investigated the fire, traced its origin to Haag’s campsite. (Tr. 78.) McDonald, who accompanied Stimson on his investigation, stated that Haag’s campsite was the only one in the perimeter of the fire, and that it contained charred pieces of unsplit wood. (Tr. 82, Ex. A-7 at 26-28.) Stimson testified that he met with Haag and

^{2/} The DNR responded to the fire but awaited instructions from the refuge manager pursuant to a policy explained by Joseph Ribar, Jr., a fire staff officer of BLM’s Alaska Fire Service (AFS), who testified about fire management options selected by land managers in Alaska. Referring to a map (Ex. A-1) indicating various fire management options across the State, Ribar testified that the “critical” option involves “an aggressive initial attack to try to keep the fire as small as possible.” (Tr. at 21.) The “modified” option involves “an initial attack, but not necessarily to keep the fire as small as possible for many reasons.” Id. Ribar further explained that the map does not show ownership lines because managers want “to try to manage the lands in the best way possible for everybody.” (Tr. at 22.) BLM and the State have divided fire management responsibility, with the State managing the southern half of Alaska and BLM’s AFS managing the north. Id. If the State suppresses a fire on federal lands, Native lands, and military lands, the State bills BLM.

The land at issue here is subject to the “modified” option, under which, during a portion of the year, it is treated as “an initial attack area” when a fire is reported, but the “fire is not necessarily managed to keep it as small as possible” if “[t]here may be opportunities to gain some resource value * * *.” (Tr. at 26.)

showed him photographs of the fire. He testified further that Haag acknowledged that he had had a campfire, but that because no flames were showing he had assumed the fire was out, and that he had not poured water on it. (Tr. 83.) Stimson issued a criminal citation to Haag for failure to extinguish his fire. Haag also later paid a \$250 civil fine. (Tr. 84-85.)

Stimson focused his investigation on Haag because he expected Haag to return to the area to clean up his campsite. Stimson testified that it was unlikely that other boaters would have been present in the area of the fire, given that boating in the spring generally occurs upstream of the Hayflats duck hunting area. (Tr. 89.) On the day of the fire, the tides were at their low point around noon, making it particularly difficult for boaters to reach the area at that time. (Tr. 92.)

Haag testified that he had burned paper and small items, but not logs, the day of the fire. (Tr. 100-01.) He testified that other individuals were in the area, having observed eight to ten cars at the bridge two miles east of his campsite, where people put in to boat. He testified that Big Lake was still frozen, and that there were people canoeing in a pond about ½ mile from the camp. (Tr. 102-03.) He testified that there are other fire places in the area. *Id.* He stated that he paid the fine to “get it over with,” unaware that he would be later be held liable for more than \$16,000. (Tr. 107.)

Both Haag and Simmons testified that Simmons set the fire, which Simmons was extinguishing as they were “just about loaded up and ready to go * * *.” (Tr. 108, 134.) Haag testified that he took a 10-minute walk out to the ponds, that the fire was about 4 or 5 feet from the river bank, and that the grass starts to get deep about another 15 or 20 feet beyond that. (Tr. 109.) Simmons testified that he went to the river to get water two or three times and that there were no embers. (Tr. 120, 134.) He also denied that the photographs in Exhibit A-7 were of their fire, because their fire had no large debris and his pit did not have a stump, as shown in the photograph. (Tr. 121-22.)

[1] Judge Holt and the parties have referred to our holding in Idaho Power Company, 156 IBLA 25, 28-29 (2001), as setting forth the applicable law governing this matter:

The Board has held that “[i]n the absence of a rule adopted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1996), BLM may not administratively adopt procedures which ultimately result in the imposition of strict liability on all members of the public whose actions, regardless of whether they might be deemed nonculpable, result in the ignition of fire on the Federal lands.” Pamela Neville, 155 IBLA 303, 309 (2001). Instead, until such a rule is

duly promulgated, BLM must establish either intent or negligence as a prerequisite to the assessment and collection of trespass damages. Pamela Neville, 155 IBLA at 309. Accordingly, we expressly held that “in the absence of a showing of either intent or negligence, the mere fact that human actions may have contributed in some way to the initiation of fire on or spread of fire to Federal lands is an insufficient basis on which to predicate liability for fire suppression and restoration costs.” Pamela Neville, 155 IBLA at 309-310.

When a fire trespass case involves disputed issues of material facts, the Board will exercise its discretionary authority under 43 CFR 4.415 and refer the case to the Hearings Division, Office of Hearings and Appeals, for an evidentiary hearing to resolve those conflicts. See Gene Goold, 155 IBLA at 301-302; Darryl Serr, 155 IBLA at 23; Greg Heidemann, 143 IBLA at 307; see also Yates Petroleum Corp., 131 IBLA 230, 235 (1994); Jerome P. McHugh & Associates (On Reconsideration), 117 IBLA 303, 307 (1991); Norman G. Lavery, 96 IBLA 294, 299 (1987); Woods Petroleum Co., 86 IBLA 46, 55 (1985). In these cases, Idaho Power disputes BLM’s factual conclusions as to the origins of the fires and the amount of the damages and expressly denies that any negligence on its part caused the fires. Since the record before us contains inconclusive evidence concerning the ignitions of the fires and suggests that BLM’s liability determinations may have been predicated on the strict liability standard recently repudiated in Pamela Neville, we find that a hearing is warranted in these cases. At the hearing, BLM shall have the burden of proving by a preponderance of the evidence that negligence on Idaho Power’s part was the cause of the fires and that the damages assessed are justified.

Applying these principles and, on the basis of Stimson’s testimony that he had observed no other fire pits at the campsite, Judge Holt found that the campfire identified by Stimson as the source of the fire was the one set by Haag and Simmons. (Decision at 6; Tr. 192-93.) Judge Holt noted that Simmons testified that he had in fact poured water on the fire, and that there was steam coming from it. (Tr. 119.) Moreover, McDonald testified that he found the campfire to be still hot at 3:00 the day of the fire. The Judge found that the fire had not been started by others based on McDonald’s testimony that others were not observed in the area. The Judge also found that the Government’s witnesses were more credible, while Haag’s testimony was equivocal and Simmons’ testimony was not consistent with his demeanor or other testimony. (Decision at 6.)

Judge Holt rejected Haag's argument that he was not liable because Simmons started the fire, although he found the evidence "somewhat conflicting" because Haag had stated to Stimson during the investigation that he had had a fire without mention of Simmons. In any event, Judge Holt held Haag liable for the fire even though it was set by Simmons, because Simmons may have been acting either as Haag's employee or as part of the joint effort to clean up Haag's campsite. He noted that Simmons met Haag that morning at Haag's place of business and was present there when Stimson visited Haag while investigating the fire. Judge Holt concluded that "Haag had employed Simmons on the day of the fire to assist in cleaning up the camp site," and that therefore "Haag would be responsible for Simmons' actions as his employer." (Decision at 5.) Judge Holt reasoned as follows:

Even if no employer/employee relationship existed between Haag and Simmons on the day of the fire, the evidence is clear that Simmons was acting under the direction of Haag. Haag was at the campsite because Haag, not Simmons, had agreed with BLM to clean it up. Tr. 98-99. No reason existed for Simmons to be at the camp site except to assist Haag. It can therefore be concluded that Simmons was Haag's agent at the time. Therefore Haag was responsible for Simmons' actions.

Id. Judge Holt concluded further that "even if Haag and Simmons were independent actors, the evidence is clear that they were engaged in a joint effort or enterprise to clean up the camp site at the time," and that "[t]he law of negligence has long recognized that persons acting in concert are responsible for each other[']s actions." (Decision at 6, citing 4 Restatement (Second) of the Law of Torts § 876 (1979).) Judge Holt concluded that BLM had "satisfied its burden of showing by a preponderance of the evidence that Haag started a fire on public land, that Haag failed to extinguish the fire, and that the fire caused fire fighting expenses to be incurred." (Decision at 7.) He ruled that BLM had proved by a preponderance of the evidence that Haag was negligent in causing the Palmer Hayflats Fire. Id.

We agree with Judge Holt's ruling on the issue of Haag's negligence, notwithstanding Haag's arguments to the contrary. See United States v. Denver & Rio Grande Western Railroad Co., 547 F.2d 1101, 1103 (1977), quoting 30 Am. Jur, Evidence § 1164 (1967) (other possible causes of a forest fire eliminated, leaving the railroad responsible for the fire). In his statement of reasons (SOR) for appeal, Haag attacks Judge Holt's conclusion that Simmons was acting as his employee, contending that Simmons "freely joined [him] to enjoy boating on a sunny Sunday." (SOR at 5.) Haag further faults Judge Holt for dismissing Simmons' testimony, "against his own interest," that he "started and extinguished the fire in question." Id. at 6-7. BLM responds that Haag and Simmons were not there that day simply to go boating but were there to clean up Haag's illegal campsite, debris from which was burned by the

fire. (Answer at 7-8.) We agree with Judge Holt that Haag and Simmons were acting in concert so that Haag may be properly charged with the trespass. See 75 Am. Jur. 2d Trespass §§ 66, 67 (1991); 4 Restatement (Second) of the Law of Torts §§ 875, 876 (1979); see also Curtis Sand & Gravel, 95 IBLA 144, 152, 94 I.D. 1, 5 (1987) (concerning joint and several liability).

Haag contends that BLM failed to establish negligence by a preponderance of the evidence and argues that he and Simmons did “everything reasonable to insure the campfire was extinguished.” (SOR at 6-7.) He asserts that under Pamela Neville, 155 IBLA at 309-10, “the mere fact that human actions may have contributed to the initiation of fire on Federal lands is an insufficient basis on which to predicate liability.” (SOR at 7.) We agree completely with this assessment of Pamela Neville. However, we must emphasize that the Board stated that “what is necessary for each individual case of human-caused fire is for BLM to ultimately establish either intent or negligence as a prerequisite to the assessment and collection of damages.” 155 IBLA at 309. The Board found that “BLM had made no showing or even allegation that appellant was in any way at fault in the propane explosion which initiated the fire,” id., and set aside BLM’s decision and remanded the matter to BLM for a determination of whether “intent or negligence * * * may have contributed to initiation of the fire on or spread of fire to Federal lands * * *.” Id. at 310. In this case, as noted, Haag did not initially contest BLM’s determination that he was responsible for the fire; however, Haag and BLM stipulated before the hearing that liability was in fact disputed. Judge Holt weighed the evidence presented at the hearing and evaluated the demeanor of the witnesses to conclude that BLM had satisfied its burden by showing by a preponderance of the evidence that Haag was negligent in causing the fire. (Decision at 7.) We affirm Judge Holt’s ruling. See also Daryl Serr, 155 IBLA 21, 22 (2002) (the Board held that a person who set a fire was negligent when the fire later spread out of control).

[2] Turning to the question of damages, Judge Holt observed that imposing appropriate “damages that flow from Haag’s negligence present[s] issues which are not clearly resolved by existing regulations or Board precedent,” and that “[t]he issue of whether fire fighting expenses on BLM managed land may be apportioned among causes presents an issue of first impression.” (Decision at 8.) On the one hand, Judge Holt views BLM’s position that it should recover all of the fire fighting expenses as not “unreasonable,” given that no expenses at all would have been incurred had Haag not started the fire, “including those consequences that flowed from the policy of letting the fire burn at the discretion of the land manager.” Id. On the other hand, Judge Holt also sees merit in Haag’s argument “that if BLM had not made the initial decision to let the fire burn the fire could have been extinguished with much less expense than was actually incurred.” Id. Judge Holt’s analysis on this point is set forth below:

[I]f BLM had not made the initial decision to let the fire burn itself out the fire could have been extinguished with less expense than was actually incurred later in the day. Therefore, it was BLM's initial decision to let the fire burn that caused the fire suppression efforts to be more expensive. The law of negligence recognizes that damages are to be apportioned among causes where there is a reasonable basis for determining the contribution of each cause to the single harm. See, 2 Restatement (Second) of the Law of Torts § 433A (1965).

(Decision at 8.) Judge Holt concluded that Haag should not be held responsible for damages caused by the decision to let the fire burn, but that he should be responsible for the expenses that would have been incurred had the decision been made to immediately suppress the fire.

We are in agreement with Judge Holt's general approach to determining the level of damages attributable to Haag for his negligence in causing the Palmer Hayflats Fire. The record leaves no question that the Government's decision not to extinguish the fire resulted in far more extensive damage than would have resulted had BLM extinguished the fire immediately. BLM could have eradicated the fire when it was confined to an area of less than an acre, but deliberately chose otherwise, resulting in a fire that consumed 240 acres. This case therefore is appropriate for apportionment among the two causes of the fire, given that, as Judge Holt shows, "there is a reasonable basis for determining the contribution of each cause to the single harm." Id. To hold otherwise would be incompatible with our holding in Pamela Neville that "the mere fact that human actions may have contributed in some way to the initiation of the fire on or spread of fire to Federal lands is an insufficient basis on which to predicate liability for fire suppression and restoration costs." 155 IBLA at 309-10. While Haag's actions contributed to the initiation of the Palmer Hayflats Fire, BLM may not predicate liability for all the costs of fire suppression and restoration costs that resulted from its own calculated decision to let the fire burn.

Although neither BLM nor the refuge manager started the fire, the decision to let it spread in order "to gain some resource value" became the proximate cause of whatever costs were later incurred. Arnhold v. United States, 284 F.2d 326, 330-31 (9th Cir. 1960), involved an action by property owners against the Government and others for damages caused by a forest fire in the State of Washington. The basic facts parallel, in certain respects, those presented in Haag's appeal. The fire in question in Arnhold broke out south of the town of Heckelville, Washington, about noontime when a locomotive operated by the Port Angeles and Western Railroad Company (Railroad Company) started the so-called Heckelville spot fire on its right-of-way across a 60-acre tract owned entirely by the United States. This fire swept through a 1,600-acre area owned in part by the United States, eventually expanding to destroy property owned by various plaintiffs. The Ninth

Circuit addressed whether the United States was liable under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. (2000), for the various losses, which had been stipulated and were not in dispute.

Observing that the record contained a “great deal of matter on the subject of ‘proximate cause’ or ‘legal’ cause,” the Ninth Circuit stated that before it could address “the question of legal cause, the [United States’] breach of duty must be shown by the plaintiff * * * to be a ‘cause in fact’ of the plaintiff’s asserted loss.” 284 F.2d at 328. The Ninth Circuit stated that “everybody concedes that the fire that caused the losses in question can be traced back in unbroken sequence to the Heckelville spot fire previously mentioned, which smoldered for a time and perhaps was erroneously thought to be under control, but which ultimately broke loose and spread to the plaintiffs’ premises in September of 1951.” Id. at 328-29. The Ninth Circuit noted the District Court’s finding that Forest Service District Ranger Floe, the Government’s chief fire control officer in that area, and his subordinates, were negligent because they had “failed to act as promptly, vigorously and continuously as they were required to do in the exercise of ordinary care in attacking the Heckelville spot fire and in attempting to confine it to the 60-acre tract,” id., and agreed with the District Court that it was “perfectly clear” that but for such negligence the “fire would have been extinguished before it finally spread.” Id. at 330. The Ninth Circuit ruled, inter alia, that the plaintiffs were entitled to recover against the United States for their stipulated losses.

In our case, as in Arnhold, we are met with a situation where negligence initially caused the fire, but the Government failed to contain the fire “promptly, vigorously and continuously.” Id. at 329. The decision to “hold off on suppression” resulted in the spread of the fire to 240 acres. Thus, we must consider, as did Judge Holt, how to calculate and impose damages as between two parties whose actions contributed to the consequent damage to the public lands.

Haag agrees that the issue of the amount of time that passed before BLM acted to suppress the fire is critical, as well as the delay resulting from difficulty in contacting the land manager. (SOR at 8.) He argues that BLM’s “efforts border on nonfeasance * * * rais[ing] the cost of fire suppression,” making Haag’s role “insignificant,” so that BLM’s given “result is overstated, but more importantly is erroneous.” (SOR at 9.)

We agree with Judge Holt that Haag is properly held liable for the estimated costs of initially suppressing the fire but not the full costs. See 4 Restatement (Second) of the Law of Torts §§ 918, 919 (1979). We further agree with Judge Holt’s conclusion “that an allocation of time expended among the causes of the total fire fighting expenses provides a better method for apportioning damages than does a comparison of acres burned.” (Decision at 9.) As Judge Holt states, “BLM is not

seeking the value of the vegetation destroyed,” but “to recover the costs of fire fighting,” costs that “are measured in terms of time expended and not acres burned.” Id.

In determining these costs, Judge Holt found that BLM’s exhibit showing the costs did not list them by time period but itemized them for the entire fire-fighting effort. He noted that the incident commander’s log showed that about a ½ hour was expended for the first effort from 2:30 to 3:00 and that 4½ hours were expended from about 5:30 to 10:00, thus concluding that 5 hours were spent fighting the fire. On the basis of McDonald’s testimony that the fire initially could have been extinguished “in probably a couple of hours, maybe longer” (Tr. at 55), Judge Holt concluded that the fire would have been controlled in half the time had the fire not been allowed to spread. Accordingly, he divided BLM’s total of \$10,267.70 in half, obligating Haag to pay \$5,133.85. (Decision at 9.) BLM did not appeal this finding, and we see no reason to disturb it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James F. Roberts
Administrative Judge

I concur:

T. Britt Price
Administrative Judge