



United States
Department of
Agriculture

Forest
Service

Washington Office

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File Code: 6570
Route To: (5100)

Date: September 9, 2002

Subject: Documentation for Potential Fire-Related Claims Against the Government

To: Regional Foresters, WO Staff Directors

Due to Forest Service involvement in the suppression of catastrophic wildfires, many have questioned whether the Forest Service should order "Claims Damage Assessment Teams" to survey and document damage to and/or loss of property. This discussion has occurred at all levels of the Agency, from the fire incident sites to various Washington Office Staffs. Some Managers have requested further discussion and advice in this arena. We have discussed this issue with the USDA Office of the General Counsel (OGC).

It is the responsibility of private property owners to document and substantiate any claims filed for damage to or loss of personal property. Claimants must determine and initiate their claims without the aid of Government employees. They must rely on their own knowledge and records, and assume the burden for proving the Government negligent and for documenting their losses. Title 18 of the United States Code, Section 205, specifically prohibits Government officials from assisting a property owner in the filing and substantiation of a claim. Therefore, excepting unusual circumstances, the Agency should **not** be commissioning special "Claims Damage Assessment Teams."

Enclosed is a list providing information regarding documentation the Government should provide to the OGC to assist in adjudicating fire-related tort claims against the Agency and in working with the United States Attorneys' Office in defending the Government in any related litigation. This list is not all-inclusive, but rather provides some general guidance for Incident Commanders and their staffs at, during and following, the fire situations.

If you have any questions regarding this matter, please contact Janet Arling, Washington Office Claims Specialist, at (304) 636-1800, Ext. 208.

/s/ Sally Collins, for
DALE N. BOSWORTH
Chief

Enclosure



cc:

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FIRE-RELATED CLAIM DOCUMENTATION

Forest Service Documentation Requirements Relative To Potential Fire-Related Claims Filed Against the Government By Private Property Owners:

Claim documentation should incorporate information that identifies and substantiates critical decisions made and actions taken by the agency managing the fire.

Forest Service/Federal policy relative to wildland firefighting provides fire managers with the discretion of making well-reasoned, documented decisions which meet the incident (fire) objectives and which conform to established policy, law, and Federal regulations. These discretionary decisions and actions should be documented. Records must be available to support the Government's position in defending against claims and related litigation.

The Incident Claims Specialist should coordinate with the Incident Management Team to assure the following information is documented in Incident Action Plans, Unit Logs, Daily Diaries, and/or potential claim documentation and made a part of the claims documentation package:

1. What action is or is not being taken (or was or was not taken), and ***why or why not***. For example, state why firefighters have not been placed to protect certain areas (e.g., safety reasons), why certain areas/structures are not being protected, etc.
2. Information regarding weather conditions and fire danger prevailing the five days immediately prior to the start of the fire and for the duration of the fire. Include weather reports and lightning detection reports. Include information about and copies of applicable fire closure orders.
3. Relative to back fires and burning out, ensure required planning documentation is completed prior to burn. Document structures and/or private property that are not feasibly defensible and will possibly or most likely sustain damage in the burn (e.g., pipeline, fence, etc.).
4. Division Supervisors' Unit Logs for each day should reference structures and/or private property that have or may have sustained damage.
5. Include information regarding structure protection and what is being (or has been) done, and ***why***.
6. Include other pertinent documentation, such as:
 - a. Copies of line officer briefings.
 - b. Wildland Fire Situation Analysis (WSFA).
 - c. Incident Action Plans for each shift.

IMPORTANT NOTE - DO NOT:

- (1) Comment on the merits of a claim,**
- (2) Comment on the liability of the Incident Agency,**
- (3) Advise anyone to file a claim, or**
- (4) Refuse to accept a claim.**

DO:

**Refer claim-related questions and claimants to your Unit's Claims Specialist.
For more information contact one of the following:**

Washington Office - Janet Arling; (304) 636-1800, Ext. 208; jarling@fs.fed.us

Region 1 – Micki Tourtelotte; (406) 329-3687; mtourtelotte@fs.fed.us

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