



| POLICY SUBJECT | | |
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| Compensation for Fire Control Damage | | |
| EFFECTIVE DATE | RESPONSIBLE BRANCH | NUMBER |
| October 18, 2021 | BC Wildfire Service | 9.9 |
| APPROVED | | |
| October 20, 2021 | | |
|  | | Mary Myers, Director, Corporate Governance |

Scope

Policy 9.9 entitled “Compensation for Fire Control Damage” is based on legislation.

The focus of this policy is on the requirements for compensation for damage to private land caused by the government’s fire control pursuant to sections 9(4) and (5) of the [Wildfire Act](#) and section 15 of the [Wildfire Regulation](#).

Purpose

The purpose of this policy is to provide guidance for the interpretation of the legislation, and to ensure compliance and consistency with the applicable legislation when claims are made for compensation for damage caused to private land by fire control.

This policy provides guidance only. The actual legislation should be referenced for the legal requirements on this topic. Legal advice may be required for specific questions about the legal requirements under sections 9(4) and (5) of the *Wildfire Act* and section 15 of the *Wildfire Regulation*.

Definitions

In this policy, the following words have the following meanings, unless the context dictates otherwise:

- a) **“Aboriginal Title”** is a subcategory of Aboriginal rights arising from Indigenous people’s exclusive, continuous and sufficient occupation of land. Aboriginal Title creates ownership rights that are similar, but not identical, to those of fee simple landowners;
- b) **“Act”** means the [Wildfire Act](#), S.B.C. 2004, c. 31 as it may be amended or replaced from time to time;

- c) **“Claim”** means a claim for compensation under section 9(4) and (5) of the *Act* by owners and tenants of private land for damage caused to that private land by the government carrying out the fire control;
- d) **“Claimant”** means a person who has submitted a claim to BC Wildfire Service for compensation under section 9 of the *Act*;
- e) **“Fire Control”** means an action to contain, extinguish or limit the spread of a fire;
- f) **“Planned Ignition”** means any planned use of fire to remove forest fuel from an area, including burning off, burning out, backfiring (back burns), and broadcast or prescribed burning;
- g) **“Private Land”** means land other than Crown land; and, private land includes personal property on the land;
- h) **“Regulation”** means the [Wildfire Regulation](#), B.C. Reg. 38/2005 as it may be amended or replaced from time to time;
- i) **“Treaty First Nation”** means a First Nation that has signed an agreement with Canada and the Province that defines the rights of the First Nation people with respect to lands and resources over a specific area; and
- j) **“Treaty Settlement Lands”** means the lands which, in accordance with the provisions of the treaty, were transferred to a Treaty First Nation and/or are under the governance, jurisdiction and management of the Treaty First Nation.

Overview of Legislative Mandate Regarding Compensation

When the government has entered onto private land to carry out fire control, and there is damage to private land caused by the fire control, there may be a claim for compensation pursuant to sections 9(4) and (5) of the *Act*.

Sections 9(4) and/or 9(5) of the *Act* and section 15 of the *Regulation* set out the requirements for compensation when there is damage to private land caused by the government’s fire control in certain circumstances. If these legislative requirements are met, the government is obligated to pay compensation for the damage to private land caused by the government carrying out fire control.

Section 9(4) establishes that “if the government enters on private land to carry out fire control on other land, the government must compensate the owner of the private land and any tenant of the private land for damage caused to the private land by the government in carrying out the fire control”.

Section 9(4) requires compensation when the government enters onto private land to carry out fire control on “other land”, and the government causes damage to the private land. The key to section 9(4) is that the government is going onto private land so that the government can carry

out fire control on “other land”.

Section 9(5) establishes that “if the government enters on private land to carry out fire control on that land, the government, in prescribed circumstances, must compensate the owner of the private land and any tenant of the private land for damage caused to the private land by the government in carrying out the fire control”.

Section 9(5) requires compensation when the government enters onto private land to carry out fire control on that private land, and the government causes damage to that private land in carrying out fire control. The key to section 9(5) is that the government is going onto private land so that the government can carry out fire control on “that” [private] “land”.

The different wording in sections 9(4) and 9(5) results in different requirements for compensation under sections 9(4) and 9(5).

The government must provide compensation for damage to private land when carrying out fire control under section 9(4) when the following four requirements are met:

- i. the government entered the private land to carry out fire control on other land;
- ii. the government caused damage to the private land or damage to personal property located on the private land in carrying out fire control;
- iii. the damage claimed is not for consequential damage to the property, lost opportunities, reforestation costs, or aesthetics; and
- iv. proof of loss is provided by the claimant.

The government must provide compensation for damage to private land when carrying out fire control under section 9(5) when the following five requirements are met:

- i. the government entered the private land to carry out fire control on that private land;
- ii. the government caused damage to the private land or damage to personal property located on the private land in carrying out fire control;
- iii. the damage claimed is not for consequential damage to the property, lost opportunities, reforestation costs, or aesthetics;
- iv. proof of loss is provided by the claimant; and
- v. the damage to private land is “avoidable damage” as required by section 15(2)(a) of the *Regulation*.

The difference between unavoidable and avoidable damage may be explained as follows. When a wildfire is burning on private land and the government has conducted fire control on that same private land or any portion of it, then the government does not compensate for the fire control damage if the wildfire would have damaged that land or portion of land in any event and the

damage was therefore unavoidable. Conversely, if the wildfire would not have damaged that portion of the private land that was damaged by fire control, and therefore the damage was avoidable, the government does compensate for the damage to the private land caused by fire control.

For claims under section 9(5), the government may deny compensation where the government's fire control, including any planned ignitions, caused damage to private land that likely would have been damaged by the wildfire had the government not conducted the fire control. In short, there is no compensation when the damage was unavoidable. However, if there was avoidable damage and if the other four requirements under section 9(5) are met, then compensation must be paid by the government.

Based on the legislation, the government makes a distinction between damage caused to private land by its fire control, and damage caused to private land by wildfire. Therefore, the government does not pay compensation for damage to private land and property caused by the wildfire itself.

Compensation or Rehabilitation

When there is damage to private land caused by the government's fire control, the government must compensate when the prescribed circumstances are met as discussed above. However, the government has the discretionary power to rehabilitate certain damage to private land caused by its fire control under section 9(6) of the *Act* if the requirements are met. Rehabilitation is addressed in section 17 of the *Regulation*. More specifically, the government may rehabilitate land to minimize any fuel hazard created by the fire control and/or to maintain natural drainage patterns to minimize surface soil erosion.

The government may decide to address damage to private land through compensation rather than rehabilitation. The decision to compensate lies with the BC Wildfire Service Manager of Wildfire Risk. In the case of private land over which a claim for compensation has been made, the decision to rehabilitate will be made by the Manager of Wildfire Risk who may consult with the appropriate Fire Centre Manager.

Damage to private land due to fire control that has been rehabilitated is not eligible for compensation. However, in most circumstances, the government will provide compensation for eligible damage to private land caused by fire control rather than conduct rehabilitation of that damage.

The Common Law

Claims for compensation or damages involving fire control may be made under the common law as well as under the legislation. For example, damage caused by a planned ignition that spreads onto adjacent land may result in a claim in tort for compensation depending on the circumstances. If there is a claim based on the common law, then section 66.1 of the *Act* may apply, and the BC Wildfire Service may obtain a legal opinion from the Ministry of Attorney General – Legal Services Branch if necessary.

Declared State of Emergency

The requirements to qualify for compensation and/or rehabilitation under section 9 of the *Act* do not change during a declared state of emergency.

Indigenous Land

Indian Reserve

Indian Reserve land is federal Crown land therefore it will be assessed as though it was private land for the purposes of compensation under sections 9(4) and (5) of the *Act*.

Treaty Settlement Land

Treaty Settlement Land is not held by the Crown and will be assessed as private land for the purposes of compensation under sections 9(4) and (5) of the *Act*.

Aboriginal Title Land

Aboriginal Title Land is not held by the Crown and will be assessed as private land for the purposes of sections 9(4) and (5) of the *Act* unless there is an agreement with the Indigenous group.

Standard Operating Guidelines

BC Wildfire Service Standard Operating Guideline for Compensation for Fire Control Damage

This Standard Operating Guideline sets out a detailed process for the evaluation of a claim for compensation when the government causes damage to private land in carrying out fire control. The Standard Operating Guideline also describes a claimant's opportunity to respond to the government prior to a final decision being made concerning the compensation, and the right to appeal the final compensation decision.

Standard Operating Guideline for Wildfire Suppression Rehabilitation

This Standard Operating Guideline sets out the process for rehabilitation of Crown land, private land and other types of land that have been damaged by the government in carrying out fire control.

References

- [Wildfire Act](#)
- [Wildfire Regulation](#)
- BCWS Standard Operating Guideline for Compensation for Fire Control Damage
- Standard Operating Guideline for Wildfire Suppression Rehabilitation