



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Forest Service Payment and Billing for Fire  
Suppression Service

File: B-227272

Date: April 22, 1988

### DIGESTS

1. Forest Service payment to the state of Oregon and cancellation of billing to the Douglas Fire Protection Association for fire suppression services are unaffected by a subsequent decision of a federal district court in an action brought by a private landowner, which made a different factual finding on the issue of liability. Subsequent court decision imposed no duty on government accounting officer to reopen settlements and reexamine them.
2. Certifying officer is not liable for payment he originally certified because payment was not illegal, improper or fraudulent. At the time of certification, payment was based on a thorough joint investigation and final administrative decision.

### DECISION

An authorized certifying officer of the Forest Service, Department of Agriculture, has requested our views on the effect of a decision by the United States District Court for the District of Oregon on the Forest Service's prior payment to the Oregon State Department of Forestry, and billing to the state's fire protection contractor, the Douglas Forestry Protective Association, for fire suppression services, pursuant to a cooperative agreement between the Forest Service and Oregon. For the reasons discussed below, we find that the court's decision does not affect the propriety of the Forest Service's prior payment to the State of Oregon and that there is also no basis to pursue collection action against the Douglas Fire Protection Association. Further, the certifying officer would not incur any liability for the original payments.

### BACKGROUND

During 1982, the Forest Service was engaged in burning logging debris--commonly referred to as "slash"--in the Umpqua National Forest. On September 1, 1982, a wildfire

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broke out (Treehorn fire) in the general area of the slash burning operation, which spread to adjoining private lands. The fire caused extensive damage and required the expenditure of considerable fire fighting resources from both federal and state agencies, which are bound by a cooperative agreement to furnish reciprocal fire protection services. That agreement provides that fire suppression costs caused by escaped slash fires ignited at the direction and supervision of one of the parties are the responsibility of that party.

After the fire was extinguished, a joint investigation was conducted by U.S. Forest Service and state investigators. The state of Oregon concluded that the fire originated from the Forest Service's slash burning and that the cost of suppressing the fire was thereby the responsibility of the Forest Service. Accordingly, under the cooperative agreement, Oregon billed the Forest Service \$215,528.89 for fire suppression costs.

On May 31, 1983, the Forest Service determined that the evidence showed the Treehorn fire started from an unknown cause at a point of origin quite some distance from the slash piles; it could find no conclusive evidence that the fire resulted from the slash burning. Oregon's claim for reimbursement was therefore denied. However, upon further investigation, the Forest Service reversed itself and concluded that "the most likely cause of the fire was from the Forest Service's slash burning." Letter from Jeff Shirmon, Regional Forester, to Mike Miller, State Forester, Sept. 15, 1983. This conclusion was based on additional evidence submitted by the state of Oregon, i.e., photographs taken soon after the start of the fire, examination of on-ground evidence, and knowledge about probable fire behavior. On January 10, 1984, the Forest Service issued a final administrative decision reaffirming its finding and authorizing reimbursement to the state of Oregon. On February 27, 1984, the certifying officer certified payment to Oregon.

In another incident related to the Treehorn fire, the Douglas Fire Protection Association (Douglas), under the same cooperative agreement, requested Forest Service suppression action on private land in Douglas' jurisdiction. Douglas was billed \$90,554 by the Forest Service. On January 10, 1984, however, the bill was canceled based on the Forest Service's determination that, under the

cooperative agreement, it was responsible for the costs resulting from the fire.<sup>1/</sup>

On October 31, 1986, in a subsequent action brought by a private landowner for damages caused by the Treehorn fire, the United States District Court for the District of Oregon made a factual finding that the Forest Service was not liable for the damage caused by the Treehorn fire to the plaintiff's land. Rosenberg Lumber v. United States, Civ. No. 84-73-BU (D. Ore. Oct. 31, 1986).

#### DISCUSSION

First, in our opinion, the Forest Service has no duty or responsibility to attempt collection for the previous settlement. At the time of the decision to pay, there had been a joint state and federal investigation of the circumstances surrounding the Treehorn fire and independent reviews by outside fire behavior analysts. According to the Forest Service, a final administrative determination was made on the basis of the facts uncovered in the joint investigation. Even though some discrepancies remained, the Forest Service accepted full responsibility for the damage, in accordance with the cooperative agreement, and settled the claim.

Our Office has held that there is no duty on the part of accounting officers of the government to reopen settlements and examine them on the basis of subsequent court decisions that may require different action than that on which the prior settlements were made. See Poloron Products, Inc., 54 Comp. Gen. 928 (1975); See also Blazek v. United States, 44 Ct. Cl. 188, 192 (1909). Here, the subsequent court decision in Rosenberg Lumber merely reached a different conclusion concerning liability for damage to private land caused by the Treehorn fire. This does not invalidate the Forest Service's prior determination of its responsibility to the parties under the terms of the cooperative agreement. Moreover, the presiding United States District Judge stated that he held for the United States only because the plaintiff's evidence "just barely fails to reach the weight sufficient to preponderate." Rosenberg Lumber, supra, at 6.

Thus the "adverse" factual finding in the subsequent court decision is an insufficient basis on which either to support

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<sup>1/</sup> Although the Forest Service accepted responsibility for the costs associated with the fire, under the provisions of the cooperative agreement, it denied any negligence as to the cause of the fire.

a collection action against the state of Oregon or a reinstatement of collection against Douglas.2/

Second, the certifying officer is not liable for the payment he originally certified because the payment was not illegal, improper or fraudulent. Section 3528(a) of Title 31, United States Code (1982), states that a certifying official is responsible for the correctness of the information stated in the certificate, the voucher and the supporting documentation. He is also accountable for the amount of any "illegal, improper, or incorrect payment" certified by him.

In this case, at the time of certification, the certifying officer acted properly in certifying the payment. A number of thorough investigations had been made to determine the cause of the Treehorn fire. Also at the time of certification, the legal responsibility of the Forest Service was established by a final administrative decision, which determined that the most likely cause of the fire was the slash burning. This finding was later reaffirmed. No improper payment existed in relation to the facts as then ascertained. As we have already explained, the subsequent district court decision has no impact on the validity of the original payment. Under the circumstances, we conclude that the certification of payment was proper and the certifying officer would therefore incur no liability for the payment made to the state of Oregon.3/

*for*   
Comptroller General  
of the United States

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2/ Since we have answered the question regarding collection responsibility in the negative, we do not reach the other submitted inquiry regarding method of collection.

3/ In any event, the certifying officer could not be held liable at this point in time because his account in this matter must be regarded as settled under 31 U.S.C. § 3526(c) (1984). According to the Forest Service Accounting Operations Division, all accounts were probably substantially completed in the last weeks of March 1984. Therefore, the certifying officer's account must be regarded as settled by operation of law as of the end of March 1987. See generally 62 Comp. Gen. 499, 501-02 (1983).