



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-202732

July 30, 1981

The Honorable M. Karl Shurtliff  
United States Attorney  
Federal Building - Room 693  
Box 037, 550 W. Fort Street  
Boise, Idaho 83724

Attention: Deborah Bail, Assistant U.S. Attorney

Dear Mr. Shurtliff:

Subject: Idaho v. United States Civ. 81-1046 (D. Idaho,  
February 3, 1981).

By letter of February 13, 1981 (file reference JA;rb 157-22-330), the Justice Department requested the Air Force to prepare a litigation report in the above-entitled case. Soon thereafter the Air Force forwarded the matter to this Office, suggesting that we prepare the report since (1) the action forming the basis of the complaint was our withholding of funds and (2) after referring Idaho's claim to us for settlement in January 1979, it considered the case closed, and, as required by its administrative regulations, had disposed of its file. Copies of relevant materials from our file are enclosed.

The amount in question, \$6,025.22, represents the amount in excess of \$25,000 of an award of \$31,025.22 made by the Air Force to Idaho in January 1979 under the Military Claims Act, 10 U.S.C. § 2733, for damages to Idaho school endowment lands caused by Air Force Aerial gunnery activities which caused a fire. (This is referred to in the enclosed file materials as "The Brown's Creek Fire.") Payments of claims under that Act from agency appropriated funds are limited to \$25,000, with any excess being paid pursuant to 31 U.S.C. § 724(a), the permanent indefinite appropriation for the payment of judgments and certain awards and compromise settlements against the United States. The Air Force thus referred the settlement to the GAO, for payment of the balance due to Idaho.

The claimed amount was not paid to Idaho but instead was withheld by our Office in partial liquidation of a debt asserted against Idaho by the Department of Interior's Bureau of Land Management (BLM) for costs incurred by the Government in fighting an earlier, unrelated fire on Idaho land. It was referred to our Claims Division in June 1976 as an uncollectible debt.

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This fire (referred to in the files as the "Robber's Roost Fire") apparently started on state-owned lands. BLM began fire fighting activities from a highway right-of-way area because the fire was threatening United States lands very near its point of origin. BLM then billed Idaho for \$25,953.56, representing 81% of the costs incurred by BLM in fighting the fire. (The 81% figure was used because 81% of the land ultimately affected by the fire was state owned.) Idaho refused to pay.

BLM's claim is based on its assertion that an oral contract was consummated in a phone call between a BLM employee and a state employee which took place after BLM had begun fighting the fire. BLM's version of the discussion is that the state employee agreed to reimburse BLM for BLM's cost in fighting that portion of the fire which burned Idaho land. This is disputed by the state employee, whose authority to enter into an arrangement in any event is not demonstrated by the file. A memorandum dated September 10, 1975, from BLM's Boise, Idaho Field Solicitor states:

"Under the circumstances, therefore, there does not appear to be enough information in the file to press this claim against the State Fish and Game Department. The conflict in the recollections between the Bureau personnel and the Fish and Game Department personnel may be impossible to reconcile."

Our review of the file material concerning BLM's claim confirms the weakness of the Government's position. Although the fire in question may have started on state land, (Idaho's Director of the Department of Lands denies this) it clearly endangered adjacent Government land and was probably fought by BLM primarily for that reason. There is no indication of negligence on the state's part in connection with the fire. Further, no cooperative fire agreement was in effect covering the land burned by the fire, nor is there any evidence of a written agreement that BLM was to fight Idaho's fire on a reimbursable basis. The evidence of an oral agreement to this effect is based on the unsupported recollection of a BLM Wildlife Biologist about a telephone conversation with Idaho's regional Fish and Game Department supervisor. Idaho denies that any State official asked or agreed to pay for BLM's fire fighting activities.

In view of the uncertain prospects for success with the Government's counterclaim, we recommend that you seek settlement on the best possible terms for the United States with respect to the \$6,025.22 which is the subject matter of Idaho's suit. Concerning the remainder of BLM's claim,

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which amounts to \$19,928.34, we suggest that no further collection action be attempted. Our records show no other debts which would serve as the basis for a set off.

Sincerely yours,

(His) Rollee Efros

Rollee Efros  
Associate General Counsel

Enclosures