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US government to announce \$102m forest fire settlement with railroad

McClatchy newspapers

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A plane drops fire retardant on a wildfire in California. Photograph: Andrew Gombert/EPA

In a landmark case, the federal government will announce a \$102m settlement today with the Union Pacific Railroad Co over a forest fire that devastated a massive national forest area near the Feather River Canyon in California eight years ago.

It is the largest settlement ever in a lawsuit over the origin of a forest fire case, thanks in no small part to a groundbreaking order by a federal judge. The judge ruled UP must pay for the loss of public scenery and recreation and habitat and wildlife, rather than merely the costs of the lost timber and fire-fighting resources used to douse the blaze.

Federal officials would not discuss details of the settlement, which is to be announced today in Sacramento. But US attorney McGregor Scott said it is the largest civil settlement ever in the eastern district of California, which is based in Sacramento and extends from the Oregon border to the Tehachapi Mountains.

"I consider this to be the most significant civil case in the history of the district," Scott said.

The largest previous settlement in a wildfire origin case was \$14m, and until today the biggest civil settlement in the district was \$54m paid by Tenant Healthcare in its role as owner of the Redding Medical Centre.

Today's settlement stems from the Storrie fire, which broke out August 17, 2000, while a UP section crew was repairing track in the Plumas National Forest.

The fire burned for three weeks and eventually required 2,600 fire fighters to extinguish it.

More than 52,000 acres were burned in the Plumas and Lassen National Forests - an area larger than San Francisco.

The fire burned so fiercely that vast stretches of the landscape have yet to begin recovering, and the settlement agreement calls for most of the money - \$80m - to go directly to foresters in the Plumas and Lassen forests to pay for rehabilitation of the area.

Federal officials also are expected to announce that the success in settling this case convinced authorities in Washington, DC, to create three new "fire litigation teams" to pursue such cases throughout the West.

One will be based in Sacramento because the Eastern District includes 16m acres of national forest system land, 8.3% of the country's total. The others will be in Los Angeles and Utah.

The federal government sued UP over the fire in 2006, claiming \$200m in damages had been done by the blaze.

Union Pacific is the largest railroad in North America, operating in the western two-thirds of the United States. Its 2007 operating income was \$3.4bn and its net income was \$1.86bn.

The government's lawsuit over the fire's origin turned into a rout, and one of the reasons was the wildly divergent stories the five section crew members told in sworn pre-trial testimony about how they put the fire out.

They were repairing track in a rugged area of the Feather River Canyon just north of Storrie, a Plumas County hamlet that is one of eight places in the nation with a population of 5. The repair work involved using a high-speed rail saw to cut the track, and then using a grinder to smooth the cut. The saw shoots out sparks - small, hot pieces of rail and saw blade - and tests show the sparks can travel as far as 39 feet.

While the cut was in progress, sparks started a fire in a bed of dry leaves. Two of the crewmembers testified they dumped water on it; two others testified they didn't dump water on it. Two of them testified they stomped on it; the three others testified they didn't stomp on it.

One testified they patted it with their hands; another said they did not pat it with their hands; yet another

said they spread it around with their hands.

A train went through the area about 15 minutes after the crew departed, fanning the smouldering ash and embers.

"If the results were not so tragic, UP crew members' varying descriptions of their attempts to put out the fire would be somewhat comical," assistant US attorney Kendall Newman, the government's lead lawyer in the case, observed in court papers.

At the end of January, the railroad conceded its liability and the reasonableness of the government's suppression tactics.

US district judge Frank C Damrell Jr ruled that "this court must consider, as many courts have, the unique character of the land at issue".

Over the railroad's objections, the judge found the government could seek damages for injuries other than to timber, including harm to the soil; destruction of trees too young for harvest; and destruction of wildlife, habitat, and the area's grandeur, as well as denial of its use for recreation.

He also ruled the government could seek its reforestation costs, noting "much of the devastated areas involved old growth forests, designated wilderness and trees that were hundreds of years old."

Government experts estimate the Storrie Fire burned more than 1,600 acres of spotted owl habitat, 12,000 acres of carnivore habitat, 9,000 acres of old growth forests - affecting bald eagles, goshawks and pine martens - and impacted amphibians and fish with silt run-offs into streams.

UP spokeswoman Zoe Richmond said yesterday, "We believe that when this fire occurred, our employees took reasonable precautions to put it out. Unfortunately, we had a situation that was pretty much extraordinary and unanticipated, and that caused the fire to flare up again."

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