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7 **STATE OF WASHINGTON**
8 **FERRY COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF NATURAL
RESOURCES,

11 Plaintiff,

12 v.

13 AVISTA CORPORATION, a Washington
14 corporation,

15 Defendant.

NO.

**COMPLAINT TO RECOVER
FIRE SUPPRESSION COSTS**

16 **INTRODUCTION**

17 This action is brought by the State of Washington, Department of Natural Resources (DNR),
18 under its statutory authority to recover the expenses incurred for suppressing and investigating a
19 wildfire referred to as “the Boyds Fire,” that occurred in Ferry County in the summer of 2018.

20 On August 11, 2018, the Boyds Fire was caused by a hazardous dead ponderosa pine tree
21 (hereafter referred to as the “Hazard Tree”) that collapsed onto electrical lines owned, maintained,
22 and operated by Avista Corporation (Avista). Avista negligently failed to identify and remove the
23 Hazard Tree prior to its collapse, despite that Avista knew, or through the exercise of reasonable
24 diligence should have known, of the tree and the hazard it posed to Avista’s power lines.

25 Therefore, DNR, by and through its attorneys, ROBERT W. FERGUSON,
26 Attorney General and PAUL F. JAMES, Assistant Attorney General, state and allege as follows:

1 duty to perform vegetation management and to timely identify and remove any hazard trees that
2 threatened its electrical lines.

3 **2.4** Avista also had an obligation for public safety and to minimize power outages.
4 Tree-conductor conflicts are a leading cause of unplanned power interruptions.

5 **B. The Risk of Wildfires Posed by Avista's Electrical Distribution Lines.**

6 **2.5** Among the serious risks to person or property posed by Avista's activities in
7 operating high-voltage overhead electrical lines in Ferry County is the risk of igniting an
8 uncontrolled wildland fire. This substantial risk was or should have been known by Avista.

9 **2.6** A primary cause of wildland fires ignited by utility lines is direct or indirect
10 contact between a tree and a power line. This was or should have should have been known by
11 Avista.

12 **2.7** Avista knew or should have known that its overhead electrical lines posed a
13 substantial likelihood of igniting a wildland fire that would result in significant property damage,
14 fire suppression costs, and potential bodily injury or loss of life, should Avista fail to properly
15 monitor and maintain the lines to prevent tree/power line contact.

16 **2.8** Avista knew or should have known that failure to properly monitor its overhead
17 electrical lines for hazard trees, including dead trees that were well within striking distance of
18 its electrical lines, and failure to promptly remove such hazard trees would significantly increase
19 the likelihood that Avista's electrical lines would cause a devastating wildfire.

20 **2.9** Avista's own policies and implementing procedures are designed to keep tree
21 limbs safely away from power lines and provide for the removal of trees which pose a potential
22 threat that could damage electric facilities. The dead ponderosa pine tree responsible for causing
23 the Boyds Fire was visibly defective and should have been removed by Avista prior to its
24 inevitable collapse.

25 **2.10** The American National Standards Institute's generally accepted standard for
26 managing hazard trees associated with utility lines is to remove or prune dead, dying, diseased,

1 or otherwise defective trees that are within striking distance of energized power lines to remove
2 risk to the conductors. The National Electric Safety Code, utility industry, and other state
3 standards impose similar requirements upon utilities for the removal of hazard trees such as the
4 one that caused the Boyds Fire.

5 **2.11** Avista had a duty to ensure that its high-voltage overhead power lines did not
6 cause injury or property damage, including injury caused by wildfires ignited by its electrical
7 lines.

8 **C. The Boyds Fire.**

9 **2.12** On August 11, 2018, a wildfire originated near power lines owned by Avista
10 alongside Highway 20, close to a Washington Department of Fish & Wildlife parking area east
11 of Kettle Falls, about 1.5 miles east of the junction of Highway 20 and Highway 395.

12 **2.13** The fire that originated near the power lines that parallel Highway 20 burned
13 approximately 4,712 acres of grass and trees, and damaged or destroyed several structures.

14 **2.14** The fire was the result of Avista's negligence in failing to identify and remove the
15 Hazard Tree in close proximity to Avista's power lines prior to the tree's inevitable collapse.

16 **2.15** The Boyds Fire started when the dead ponderosa pine tree collapsed, falling across
17 power lines owned, maintained, and operated by Avista. The weight of the Hazard Tree caused the
18 power lines to break and fall to the ground where arcing or sparks ignited receptive fuels
19 consisting of dried grass and shrubs. The cause of the fire was further corroborated by the location
20 of the origin of the fire just southwest of the power lines where the tree came down and by
21 eyewitness observations.

22 **2.16** After the Hazard Tree collapsed and struck and severed Avista's power lines,
23 igniting the Boyds Fire, dry conditions and winds caused the fire to spread rapidly to the north and
24 northwest.

25 **2.17** The Hazard Tree that caused the Boyds Fire showed signs of bark beetle
26 infestation and had been dead for about a year. The tree was 52 feet in length from the base of

1 the stump to the top of the tree. The stump was 32 feet east of the centerline for the Avista power
2 lines. Several other standing and fallen dead trees were located near the Avista power lines and
3 there was a splice in the power lines just south of the specific origin area. The Hazard Tree
4 involved in the fire, as well as these other dead trees, would have been clearly visible to a repair
5 crew working on this section of the power lines and clearly visible from Highway 20.

6 **2.18** Avista holds a utility right-of-way in the immediate vicinity of the Hazard Tree
7 that allows it to cut down, from time to time, all dead, weak, leaning, or dangerous trees that are
8 tall enough to strike their electrical distribution lines in falling.

9 **2.19** The Hazard Tree was obviously defective and should have been identified by
10 Avista and removed prior to its collapse.

11 **2.20** The primary defects in the Hazard Tree, evident from its exterior, arose from the
12 presence of dead wood, insect exit holes, and very few needles remaining on any of its branches.
13 The few remaining needles on the tree's branches were brownish red in color, indicating a
14 weakened state. The Hazard Tree was located close to, and easily seen from, Highway 20.

15 **2.21** The Hazard Tree was a readily observable and obvious hazard. Avista should
16 have identified and removed it, long before it collapsed and caused the Boyds Fire. The longer
17 a Hazard Tree, such as this one, remains without eliminating it, the greater the potential hazard.
18 Moreover, the Hazard Tree separated from its base at ground level.

19 **2.22** DNR responded to the Boyds Fire pursuant to RCW 76.04 and ultimately
20 suppressed the fire. As a consequence, DNR incurred reasonable and necessary expenses for fire
21 suppression and investigation in an amount to be proven at trial, such expenses being authorized
22 or subsequently approved by DNR.

23 **III. CLAIMS AND CAUSES OF ACTION**

24 **Fire Suppression Cost Recovery Under RCW 76.04.495.**

25 **3.1** DNR realleges and incorporates by this reference paragraphs 1.1 through 2.22.
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