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7	STATE OF WASHINGTON		
8	FERRY COUNTY ST	JPERIOR COURT	
9	STATE OF WASHINGTON,	NO.	
10	DEPARTMENT OF NATURAL RESOURCES,	COMPLAINT TO RECOVER	
11	Plaintiff,	FIRE SUPPRESSION COSTS	
12	v.		
13	AVISTA CORPORATION, a Washington	*	
14	corporation,		
15	Defendant.	*	
16	TAMES OF A COMPANY		
17	INTRODUCTION This said is the state of the CNA to the		
508 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 i	ts attorneys, ROBERT W. FERGUSON,	
26	Attorney General and PAUL F. JAMES, Assistar	nt Attorney General, state and allege as follows:	
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I. PARTIES AND JURISDICTION

- 1.1 Plaintiff State of Washington, Department of Natural Resources (DNR), is an agency of the State of Washington that provides forest fire protection and the suppression of forest fires occurring or existing on state and privately-owned forest lands in the State of Washington. By virtue of RCW 76.04.495 and other provisions of law, any person, firm, or corporation whose negligence is responsible for the starting or continued existence of any fire on "forest lands" bears liability for all expenses incurred and made necessary in suppressing such fire, together with costs of investigation and litigation, including reasonable attorneys' fees and court costs.
- 1.2 Defendant Avista was, at all times mentioned herein, and still is, a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Spokane, Washington. Avista owned, operated, and maintained the overhead electrical distribution lines that are the subject of this action.
- 1.3 This Court is vested with jurisdiction pursuant to RCW 2.08.010, and venue is properly laid in this court pursuant to RCW 4.12.025. Defendant does business in Ferry County, Washington, and the incident giving rise to this action occurred in Ferry County.

II. FACTS

A. AVISTA.

- 2.1 Avista is a Washington corporation that provides electrical power through high-voltage overhead electrical utility lines to customers located throughout Ferry County, Washington.
- 2.2 Avista owned, operated, and maintained the overhead electrical distribution lines which are the subject of this litigation.
- 2.3 Avista had a duty to operate and maintain its overhead electrical lines in a safe and responsible manner. Among Avista's duties in operating its overhead electrical lines was its

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

- **2.4** Avista also had an obligation for public safety and to minimize power outages. Tree-conductor conflicts are a leading cause of unplanned power interruptions.
- B. The Risk of Wildfires Posed by Avista's Electrical Distribution Lines.
- 2.5 Among the serious risks to person or property posed by Avista's activities in operating high-voltage overhead electrical lines in Ferry County is the risk of igniting an uncontrolled wildland fire. This substantial risk was or should have been known by Avista.
- 2.6 A primary cause of wildland fires ignited by utility lines is direct or indirect contact between a tree and a power line. This was or should have should have been known by Avista.
- 2.7 Avista knew or should have known that its overhead electrical lines posed a substantial likelihood of igniting a wildland fire that would result in significant property damage, fire suppression costs, and potential bodily injury or loss of life, should Avista fail to properly monitor and maintain the lines to prevent tree/power line contact.
- 2.8 Avista knew or should have known that failure to properly monitor its overhead electrical lines for hazard trees, including dead trees that were well within striking distance of its electrical lines, and failure to promptly remove such hazard trees would significantly increase the likelihood that Avista's electrical lines would cause a devastating wildfire.
- 2.9 Avista's own policies and implementing procedures are designed to keep tree limbs safely away from power lines and provide for the removal of trees which pose a potential threat that could damage electric facilities. The dead ponderosa pine tree responsible for causing the Boyds Fire was visibly defective and should have been removed by Avista prior to its inevitable collapse.
- 2.10 The American National Standards Institute's generally accepted standard for 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		

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

- 2.18 Avista holds a utility right-of-way in the immediate vicinity of the Hazard Tree that allows it to cut down, from time to time, all dead, weak, leaning, or dangerous trees that are tall enough to strike their electrical distribution lines in falling.
- **2.19** The Hazard Tree was obviously defective and should have been identified by Avista and removed prior to its collapse.
- 2.20 The primary defects in the Hazard Tree, evident from its exterior, arose from the presence of dead wood, insect exit holes, and very few needles remaining on any of its branches. The few remaining needles on the tree's branches were brownish red in color, indicating a weakened state. The Hazard Tree was located close to, and easily seen from, Highway 20.
- 2.21 The Hazard Tree was a readily observable and obvious hazard. Avista should have identified and removed it, long before it collapsed and caused the Boyds Fire. The longer a Hazard Tree, such as this one, remains without eliminating it, the greater the potential hazard. Moreover, the Hazard Tree separated from its base at ground level.
- **2.22** DNR responded to the Boyds Fire pursuant to RCW 76.04 and ultimately suppressed the fire. As a consequence, DNR incurred reasonable and necessary expenses for fire suppression and investigation in an amount to be proven at trial, such expenses being authorized or subsequently approved by DNR.

III. CLAIMS AND CAUSES OF ACTION

Fire Suppression Cost Recovery Under RCW 76.04.495.

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

1	4.2	For prejudgment interest on the suppression and investigation expenses incurred	
2	at the statutor	tutory rate of 1 percent (1%) per month;	
3	4.3	For DNR's costs of litigation, including reasonable attorneys' fees and court costs	
4	as specifically	y authorized by RCW 76.04.495, and as may be provided by other provisions of	
5	applicable law	licable law; and	
6	4.4	For any further or additional relief which the Court finds equitable, appropriate,	
7	or just.		
8	DATE	DATED this 14th day of August, 2019.	
9		ROBERT W. FERGUSON	
10	A	Attorney General	
11	9	PAUL F. JAMES, WSBA #13525	
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15	6	Attorneys for Plaintiff State of Washington,	
16	Department of Natural Resources		
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