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14 UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF WASHINGTON

16 UNITED STATES OF AMERICA,)
)
17 Plaintiff,)
)
18 v.)
)
19 AVISTA CORPORATION,)
)
20 Defendant.)

CIVIL ACTION NO. 2:24-cv-358
COMPLAINT

1 The United States of America, by the authority of the Attorney General of
2 the United States and through the undersigned attorneys, acting at the request of
3 the United States Department of the Interior, National Park Service (“NPS”), files
4 this Complaint and alleges as follows:

5 **NATURE OF ACTION**

6 1. This is a civil action against Defendant Avista Corporation, under the
7 System Unit Resource Protection Act (“SURPA”), 54 U.S.C. §§ 100721 to
8 100725, and federal and state law prohibiting trespass, including 36 C.F.R. §§ 2.1,
9 2.31, 4.10, and 5.7, and the Revised Code of Washington §§ 4.24.630 and
10 64.12.030, to recover response costs and damages resulting from Defendant’s
11 unauthorized activities to stabilize and replace an unpermitted power pole within
12 the Lake Roosevelt National Recreation Area (hereinafter “the Park”), in
13 northeastern Washington. Defendant’s activities destroyed, caused the loss of,
14 and/or injured System unit resources within the Park. The destroyed, lost, and/or
15 injured resources include both cultural resources (such as archaeological features
16 and artifacts) and natural resources (such as trees, shrubs, and groundcover).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject-matter jurisdiction over the United States’
3 claim under 54 U.S.C. § 100723(a) and 28 U.S.C. §§ 1331 and 1345.

4 3. Venue is proper in the Eastern District of Washington under 28 U.S.C.
5 § 1391(b) because Defendant resides in this district and the events at issue
6 occurred in this district.

7 4. Authority to bring this action is vested in the United States
8 Department of Justice under 28 U.S.C. §§ 516 and 519, and 54 U.S.C.
9 § 100723(a).

10 **PARTIES**

11 5. Plaintiff, the United States of America, is acting on behalf of the NPS.
12 At all times relevant to this Complaint, the United States owned the land where the
13 matters alleged in this Complaint occurred.

14 6. Defendant, Avista Corporation, is a public utility corporation
15 organized under the laws of Washington, with a principal office address at 1411 E
16 Mission Ave, MSC-10, Spokane, Washington, 99202-1902.

17 **LEGAL BACKGROUND**

18 7. The purpose of the National Park System is “to conserve the scenery,
19 natural and historic objects, and wild life in the System units and to provide for the
20 enjoyment of the scenery, natural and historic objects, and wild life in such manner

1 and by such means as will leave them unimpaired for the enjoyment of future
2 generations.” 54 U.S.C. § 100101(a).

3 8. SURPA requires the Secretary of the Interior to “undertake all
4 necessary actions to -- (A) prevent or minimize the destruction, loss of, or injury to
5 System unit resources; or (B) minimize the imminent risk of destruction, loss, or
6 injury to System unit resources.” *Id.* § 100723(b)(1).

7 9. SURPA further requires the Secretary of the Interior to “assess and
8 monitor destruction, loss, or injury to System unit resources.” *Id.* § 100723(b)(2).

9 10. “[A]ny person that destroys, causes the loss of, or injures any System
10 unit resource is liable to the United States for response costs and damages resulting
11 from the destruction, loss, or injury.” *Id.* § 100722(a).

12 11. In determining the meaning of any Act of Congress, the term “person”
13 includes “corporations, companies, associations, firms, partnerships, societies, and
14 joint stock companies, as well as individuals.” 1 U.S.C. § 1.

15 12. A “System unit” is “any area of land and water administered by the
16 Secretary [of the Interior] . . . for park, monument, historic, parkway, recreational,
17 or other purposes.” 54 U.S.C. §§ 100501, 100102(2), (6).

18 13. A “System unit resource” is “any living or non-living resource that is
19 located within the boundaries of a System unit.” 54 U.S.C. § 100721(3)(A).

1 14. SURPA defines “response costs” as “the costs of actions taken by the
2 Secretary [of the Interior] to —

3 (A) prevent or minimize destruction or loss of or injury to a System
4 unit resource;

5 (B) abate or minimize the imminent risk of the destruction, loss, or
6 injury; or

7 (C) monitor ongoing effects of incidents causing the destruction, loss,
8 or injury.”

9 *Id.* § 100721(2).

10 15. SURPA defines “damages” as:

11 “(A) compensation for —

12 (i)(I) the cost of replacing, restoring, or acquiring the equivalent
13 of a System unit resource; and

14 (II) the value of any significant loss of use of a System unit
15 resource pending its restoration or replacement or the
16 acquisition of an equivalent resource; or

17 (ii) the value of the System unit resource if the System unit
18 resource cannot be replaced or restored; and

19 (B) the cost of a damage assessment under section 100723(b) of this
20 title.”

1 *Id.* § 100721(1).

2 16. Liability under SURPA “is in addition to any other liability that may
3 arise under Federal or State law.” *Id.* § 100722(d).

4 17. The NPS Organic Act, 54 U.S.C. § 100101(a), requires the Secretary
5 of the Interior, acting through the Director of the NPS, to “promote and regulate
6 the use of the National Park System by means and measures that conform to the
7 fundamental purpose of the System units.”

8 18. The NPS Organic Act further provides that the Secretary of the
9 Interior “shall prescribe such regulations as the Secretary considers necessary or
10 proper for the use and management of System units.” 54 U.S.C. § 100751.

11 19. Under the NPS Organic Act, 54 U.S.C. §§ 100101(a), 100751, the
12 NPS has promulgated regulations that prohibit destroying, injuring, or damaging
13 NPS-managed lands, 36 C.F.R. § 2.31; prohibit destroying, injuring, or disturbing
14 natural, cultural, or archeological resources on NPS-managed lands, 36 C.F.R.
15 § 2.1(a); prohibit unauthorized, off-road vehicle travel on NPS-managed lands,
16 36 C.F.R. § 4.10(a); and prohibit constructing or attempting to construct a power
17 line through park areas without a valid permit, contract, or other written agreement
18 with the United States, 36 C.F.R. § 5.7.

19 20. Under Washington law, wrongful entry on land owned by another is
20 trespass.

1 21. Section 4.24.630(1) of the Washington Revised Code provides that:

2 Every person who goes onto the land of another and who
3 removes timber, crops, minerals, or other similar valuable
4 property from the land, or wrongfully causes waste or injury to
5 the land, or wrongfully injures personal property or
6 improvements to real estate on the land, is liable to the injured
7 party for treble the amount of the damages caused by the
8 removal, waste, or injury.

9 22. Under Washington Revised Code § 4.24.630(1), “a person acts
10 ‘wrongfully’ if the person intentionally and unreasonably commits the act or acts
11 while knowing, or having reason to know, that he or she lacks authorization to so
12 act.”

13 23. Damages recoverable under Washington Revised Code § 4.24.630(1)
14 “include, but are not limited to, damages . . . for injury to the land, including the
15 costs of restoration.”

16 24. Section 64.12.030 of the Washington Revised Code provides:

17 Whenever any person shall cut down, girdle, or otherwise injure,
18 or carry off any tree . . . , timber, or shrub on the land of another
19 person . . . , without lawful authority, in an action by the person
20 . . . against the person committing the trespasses . . . , any
21 judgment for the plaintiff shall be for treble the amount of
22 damages claimed or assessed.

23 25. The United States is a “person” as that term is used in Washington
24 Revised Code §§ 4.24.630 and 64.12.030. *See* Wash. Rev. Code § 1.16.080(1)
25 (defining “person” to include the United States).

1 **GENERAL ALLEGATIONS**

2 **Lake Roosevelt National Recreation Area**

3 26. Lake Roosevelt was formed in 1941 when the U.S. Department of the
4 Interior Bureau of Reclamation constructed the Grand Coulee Dam on the
5 Columbia River.

6 27. To accommodate Lake Roosevelt, the Bureau of Reclamation
7 acquired property along the banks of the Columbia River, including the Park land
8 that was injured due to Defendant’s unauthorized activities in March 2017.

9 28. In 1946, the Secretary of the Interior designated the NPS as the
10 manager for the Park, which was known at the time as the “Coulee Dam National
11 Recreation Area.”

12 29. In 1997, the Park’s name changed to the “Lake Roosevelt National
13 Recreation Area.”

14 30. The Park’s purpose is to protect, conserve, and preserve the natural
15 and cultural resources of the Upper Columbia River Basin behind Grand Coulee
16 Dam and provide for appropriate diverse recreation opportunities.

17 31. The Park manages more than 300 miles of publicly accessible
18 shoreline along Lake Roosevelt that provides a wide range of recreational
19 opportunities.

1 32. At all times relevant to this Complaint, the Secretary of the Interior,
2 acting through the NPS, administered the Park “for park, monument, historic,
3 parkway, recreational, or other purposes” within the meaning of 54 U.S.C.
4 §§ 100102 and 100501.

5 33. At all times relevant to this Complaint, the Park has been a “System
6 unit” within the meaning of SURPA and 54 U.S.C. §§ 100102 and 100501.

7 **Defendant’s Unauthorized Activities to Stabilize, Move, and Replace a Power**

8 **Pole at Lake Roosevelt National Recreation Area**

9 34. Between March 23 and 31, 2017, Defendant sent a crew to first
10 stabilize, and ultimately move and replace, a power pole located within the Park.

11 35. Defendant’s most recent NPS special use permit for the power pole
12 expired on September 30, 1999.

13 36. Between September 30, 1999, and March 31, 2017, Defendant did not
14 apply for any new permits for the power pole or for Defendant’s work to stabilize,
15 move, and replace the pole in March 2017.

16 37. To stabilize, move, and replace the power pole, Defendant and/or its
17 contractor used several motor vehicles off-road in Park areas not designated for
18 off-road use.

1 38. To stabilize, move, and replace the power pole, Defendant and/or its
2 contractor cut down trees, mechanically damaged trees and shrubs, and removed,
3 trimmed, and displaced other native vegetation in the Park.

4 39. Before the Defendant's unauthorized activities at the Park in March
5 2017, the pole was located on the edge of a previously documented archaeological
6 site (hereinafter "the Site").

7 40. The Site contains numerous surface and subsurface artifacts and
8 archaeological features.

9 41. When Defendant moved and replaced the pole, Defendant moved the
10 power pole farther into the Site, disturbing numerous archaeological features and
11 artifacts, and the archaeological record at the Site.

12 42. Defendant did not notify the NPS of any of its activities to stabilize,
13 move, and replace the pole until April 2017, after it had finished all work at the
14 Park.

15 **The NPS's Injury Assessment**

16 43. NPS staff conducted several site visits between April and September
17 2017 to assess the injuries to natural and cultural resources in the Park and to take
18 some initial response actions to protect resources from further injury.

19 44. Based on the injury assessments, the NPS concluded that, in the
20 process of stabilizing, moving, and replacing the pole, Defendant destroyed,

1 caused the loss of, or injured numerous cultural resources at the Site (including
2 artifacts, archaeological features, and the Site’s archaeological record),
3 approximately 70 big sagebrush shrubs, approximately 29 ponderosa pine trees,
4 and many native grasses, forbs, and herbaceous species.

5 **FIRST CLAIM FOR RELIEF**

6 **(Liability under the System Unit Resource Protection Act)**

7 45. The allegations in Paragraphs 1 through 44 are re-alleged and
8 incorporated herein by reference.

9 46. Defendant is a “person” within the meaning of SURPA, 54 U.S.C.
10 § 100722.

11 47. At all times relevant to this Complaint, the natural and cultural
12 resources described in paragraph 44 of this Complaint were each a “System unit
13 resource” within the meaning of SURPA, 54 U.S.C. § 100721(3)(A).

14 48. Defendant’s unauthorized activities to stabilize, move, and replace the
15 power pole at the Park destroyed, caused the loss of, and/or injured System unit
16 resources at the Park within the meaning of SURPA, 54 U.S.C. § 100722(a).

17 49. At all times relevant to this Complaint, the NPS took actions and will
18 take additional actions to prevent or minimize destruction of, loss of, and/or injury
19 to System unit resources that resulted from Defendant’s activities to stabilize,
20 move, and replace the power pole at the Park.

1 50. At all times relevant to this Complaint, the NPS took actions and will
2 take additional actions to abate or minimize the imminent risk of destruction, loss,
3 and/or injury to System unit resources that resulted from Defendant's activities to
4 stabilize, move, and replace the power pole at the Park.

5 51. At all times relevant to this Complaint, the NPS took actions and will
6 take additional actions to assess the extent of, and to monitor the ongoing effects
7 of, the destruction, loss, and/or injury to System unit resources that resulted from
8 Defendant's activities to stabilize, move, and replace the power pole at the Park.

9 52. The United States will incur costs to restore, replace, or acquire the
10 equivalent of destroyed, lost, or injured System unit resources due to Defendant's
11 activities to stabilize, move, and replace the power pole at the Park.

12 53. The United States has already incurred and will continue to incur
13 damages from the lost use of System unit resources pending their restoration or
14 replacement or the acquisition of equivalent resources due to Defendant's activities
15 to stabilize, move, and replace the power pole at the Park.

16 54. The United States has already incurred and will continue to incur
17 damages for destroyed, lost, or injured System unit resources that cannot be
18 replaced or restored due to Defendant's activities to stabilize, move, and replace
19 the power pole at the Park.

1 55. The United States has already incurred and will continue to incur
2 costs to conduct a damage assessment under SURPA, 54 U.S.C. § 100723(b), due
3 to Defendant’s activities to stabilize, move, and replace the power pole at the Park.

4 56. Defendant’s activities to stabilize, move, and replace the power pole
5 at the Park has caused the United States to incur significant “response costs” and
6 “damages,” as those terms are defined by SURPA, 54 U.S.C. § 100721.

7 57. Under SURPA, 54 U.S.C. § 100722(a), Defendant is liable for all past
8 and future response costs and damages resulting from the destruction of, loss of,
9 and/or injury to System unit resources caused by Defendant’s activities to stabilize,
10 move, and replace the power pole at the Park.

11 **SECOND CLAIM FOR RELIEF**

12 **(Liability for Trespass in Violation of NPS Regulations)**

13 58. The allegations in Paragraphs 1 through 44 are re-alleged and
14 incorporated herein by reference.

15 59. Defendant’s unauthorized destruction, injury, and disturbance of land
16 and natural, cultural, and archaeological resources at the Site while stabilizing,
17 moving, and replacing the power pole constitute an unlawful trespass on federal
18 land in violation of 36 C.F.R. §§ 2.1(a) and 2.31(a).

1 60. Defendant’s unauthorized off-road, motor-vehicle travel while
2 stabilizing, moving, and replacing the power pole constitutes an unlawful trespass
3 on federal land in violation of 36 C.F.R. § 4.10(a).

4 61. Defendant’s unauthorized activities to stabilize, move and replace the
5 power pole without a valid permit constitutes an unlawful trespass on federal land
6 in violation of 36 C.F.R. § 5.7.

7 62. Defendant is liable to the United States for such monetary damages as
8 were caused by Defendant’s unlawful trespasses and the resulting destruction,
9 injuries, and damage to federal property, including, but not limited to, such
10 monetary damages as are necessary to restore the injured Park land and natural,
11 cultural, and archaeological resources to their pre-trespass condition to the greatest
12 extent possible.

13 **THIRD CLAIM FOR RELIEF**

14 **(Liability for Trespass under Washington Revised Code § 4.24.630)**

15 63. The allegations in Paragraphs 1 through 44 are re-alleged and
16 incorporated herein by reference.

17 64. Defendant is a “person” within the meaning of Washington Revised
18 Code § 4.24.630.

19 65. Defendant committed trespass under Washington Revised Code
20 § 4.24.630 by intentionally and unreasonably causing its employees and agents to

1 enter the Park to stabilize, move, and replace the power pole, while knowing or
2 having reason to know that it lacked authorization to so act.

3 66. Defendant's trespass wrongfully caused waste and injury to land at the
4 Park.

5 67. Under Washington Revised Code § 4.24.630, Defendant is liable to
6 the United States for treble the amount of damages resulting from the injuries to
7 land at the Park.

8 68. Under Washington Revised Code § 4.24.630, Defendant is also liable
9 to the United States for the United States' reasonable costs, including, but not
10 limited to, investigative costs, reasonable attorneys' fees, and other litigation-
11 related costs.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Liability for Trespass under Washington Revised Code § 64.12.030)**

14 69. The allegations in Paragraphs 1 through 44 are re-alleged and
15 incorporated herein by reference.

16 70. Defendant is a "person" within the meaning of Washington Revised
17 Code § 64.12.030.

18 71. Defendant committed trespass under Washington Revised Code
19 § 64.12.030 by causing its employees and/or agents to cut down and/or injure trees
20 and shrubs at the Park.

1 78. Grant the United States such other relief as this Court deems
2 appropriate.

3 Respectfully submitted this 17th day of October 2024,

4 FOR THE UNITED STATES OF AMERICA:

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8 United States Department of Justice

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