



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Natural Resources Division
PO Box 40100 • Olympia, WA 98504-0100

April 25, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NO. 7007 0710 0004 2566 1444

Yakima Police Department
C/O Francis S. Floyd
Floyd, Pflueger & Ringer P. S.
200 W. Thomas St. Suite 500
Seattle, WA 98119

RE: Department of Natural Resources
South Wenas Fire - Fire Cost Suppression Claim

Dear Francis:

I am writing on behalf of the Washington State Department of Natural Resources (the Department) about the wildland fire commonly known as the South Wenas Fire. That fire started on June 27, 2017, as a result of Yakima Police Officers' failure to ensure a safe shooting venue for their qualifications, thereby severing a nearby power line. The downed line ignited the South Wenas Fire, which quickly spread and eventually burned 2,806 acres of land under the Department's jurisdiction, threatening residences and costing \$157,227.68 to suppress.

The Department expended considerable resources to suppress the fire. Under Washington law, the Department is responsible for the recovery of fire suppression costs when the fire is caused by negligence. As the primary fire cost recovery attorney for the Department, this matter was referred to me to collect the fire suppression costs incurred by the Department from the Yakima Police Department.

For you, your client, and their insurer to evaluate the Department's claim, I will briefly discuss the facts surrounding the South Wenas Fire based on the available evidence. I will then provide you with the legal background applicable to a fire suppression cost recovery claim, a copy of the Department's fire investigation report, and a Department fire cost summary report of the expenses incurred by the Department as a result of the South Wenas Fire.

ATTORNEY GENERAL OF WASHINGTON

Yakima Police Department
April 25, 2018
Page 2

A. Facts and Basis for Negligence.

On the morning on June 27, 2017, Yakima Police Officers Booker Ward and Scott Grant, were conducting shooting exercises on property owned by Gary Fletcher and rented by Ryan Bonsen. Mr. Bonsen is a Union Gap Police Officer. He is also a sniper team leader for the Yakima Police Department and a Washington State Criminal Justice Training Commission lead instructor for both level one and level two sniper instruction. His rental property is located about 6 miles from Selah in Yakima County. It is used to conduct sniper training and qualification exercises. The property is also under the Department's forest fire protection.

On the day of the fire, Mr. Bonsen was not present when the sniper qualification occurred on his property. However, the shooting was authorized to proceed without him. Officers Grant and Ward met about 10:30 a.m. at Mr. Bonsen's property. The specific location where the shooting occurred was in a wheel track on a road that leads from the main driveway.

Officer Grant set up to complete a pistol and carbine qualification using a .45 caliber pistol with 230gr full metal jacket ammunition. This course of fire utilizes a standard qualification target used by the Washington State Criminal Justice Training Commission. Officer Grant set up the target next to a light pole. Officer Grant completed the pistol qualification that is a 54 round course from the 3-yard line out to the 25-yard line from different positions (standing and kneeling).

Officer Grant also completed his carbine rifle qualification. This course of fire uses the same target as the pistol course and involves 60 rounds of fire using .223 caliber 55gr full metal jacket ammunition. The carbine qualification has varying distances and shooting positions, including standing, kneeling, and prone.

Both Officer Grant and Officer Ward completed a sniper qualification for which they had two target stands set up at the light pole that they both shot at the same time. This course of fire involves 10 rounds of Hornady .308 caliber 155gr A-Max ammunition. This course required the Officers to wear a gas mask, complete a run prior to shooting at the targets, and to engage the targets at a distance of 100 yards from various positions including standing, kneeling, sitting, and prone.

According to Officer Grant, he and Officer Ward simultaneously completed four stages of fire, a total of eight rounds each. They were preparing for the fifth and final stage of fire when Dr. Bobovsky, the SWAT team doctor, arrived and pointed out a fire to the officers, who were unaware of it. Officer Grant and Dr. Bobovsky drove out to the fire and saw a severed power line on the ground. Pacific Power Corporation owns the power line which is the main feed for the area from the Naches substation.

ATTORNEY GENERAL OF WASHINGTON

Yakima Police Department
April 25, 2018
Page 3

The fire was about 5 yards by 5 yards in size and the power line was still arcing on the ground. The fire moved quickly to the north, pushed by a light wind. Neither Officer Grant nor Dr. Bobovsky took any fire suppression actions due to the growing intensity and rapid spread of the fire. Officer Ward called Mr. Bonsen and spoke to him about the fire. Mr. Bonsen called 911 to report the fire. Ultimately, the fire burned over 2,800 acres before being suppressed by the Department and other firefighting agencies.

DNR Investigation.

On June 27, 2017, the Department's Wildland Fire Investigator Chad Unland visited the fire origin area. Mr. Unland spoke with Mr. Bonsen who showed him the location and set up where the target shooting occurred. Mr. Unland commented to Mr. Bonsen that the shooters were in a direct line of sight to the power line. Mr. Bonsen replied that while that was true, the bullets would have impacted below the power line. Mr. Unland assessed the fire's directional indicators and they all led back to the suspected ignition area, the downed power line.

The next day, the Department's Wildland Fire Investigator Mike Williams joined the investigation. The investigators identified four separate ignition areas where the severed power line had ignited grasses and brush. The investigators focused their attention on where the shooters were located when the fire started. Their shooting lane was in direct line with where the power line had been severed. The distance to the power line was about 330 yards.

Upon closer review of the shooting lane, the Department's investigators noticed that some of the bullets would pass through the targets and contact an elevated mound with debris consisting of old, hard-metal farm implements, metal parts from two old horse carriages, and a concrete lawn ornament. After looking at the debris more closely, multiple shot impacts were observed on the metal and concrete. In addition, there was evidence of bullet impacts on a power pole, cross-brace, and ground wire all in the same area as the severed power line. The investigators concluded that that one of the SWAT team bullet rounds most likely ricocheted off the debris after it passed through the targets and then hit the power line, causing it to sever.

On July 7th, the Department's Officer Gary Margheim interviewed Officers Grant and Ward. They confirmed that they were shooting multiple weapons on the day of the fire and that they did not see anyone else in the area when the fire started. Officer Grant indicated that he had shot at Mr. Bonsen's property often (eight times per year) over a three year time period. The weather at the time of the fire was about 80 degrees, sunny and light winds of 5 mph.

B. Legal Background Applicable to Fire Suppression Cost Recovery Claims

With regard to the legal basis for the claim and the calculation of its amount, the following background is relevant. A forest fire suppression cost recovery claim is based on specific statutory authority. RCW 76.04.495 provides the basis for cost recovery in this case. RCW 76.04.495 defines the elements of proof required and specifies the extent of recovery which is authorized once those elements are established.

ATTORNEY GENERAL OF WASHINGTON

Yakima Police Department
April 25, 2018
Page 4

It is important to note a forest fire suppression cost recovery claim is not a tort-based action where the measure of damages is always to some degree a matter of opinion. To the contrary, RCW 76.04.495 specifically provides for recovery of any "reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees" from any person whose negligence is responsible for the starting or existence of a fire which spreads on forest land. For ease of reference, RCW 76.04.495 provides as follows:

Any person, firm, or corporation: (a) Whose **negligence** is responsible for the **starting or existence of a fire which spreads on forest land . . . shall be liable** for **any reasonable expenses made necessary** by (a) . . . of this subsection. **The state . . . may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs**, if the expense was authorized or subsequently approved by the department.

(Emphasis added.)

Enclosed is a Department fire cost summary report and itemization of the costs incurred by Department as a result of this fire. All costs totaled on the enclosed summary are specifically recoverable under RCW 76.04.495 unless they are demonstrated to have been unreasonable considering what was known at the time of the fire.

The total amount of the Department's fire suppression claim is determinable by simply adding all out-of-pocket invoices and costs. There is no discretion involved in valuing the claim, as all components of it have established market prices. This makes the actual costs of the claim "liquidated" and, under current law, entitles the Department to an award of prejudgment interest. *See Hanson v. Rothaus*, 107 Wn.2d 468, 730 P.2d 662 (1986).

This office, on behalf of the Department, demands payment of \$157,227.68 for fire suppression within thirty (30) days of the date of this letter. A check or money order made payable to the Department in the amount demanded should be forwarded to:

Department of Natural Resources
c/o Office of the Attorney General
Natural Resources Division
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

The Department will provide you with access to any additional documentation you, your client, or their insurer may require or respond to any questions concerning this claim or the amount claimed. I anticipate you will want to review the source documentation that supports the Department's claim

ATTORNEY GENERAL OF WASHINGTON

Yakima Police Department

April 25, 2018

Page 5

and I am willing to provide you this source documentation. The Department desires, if possible, to resolve this claim without the delay, substantial expense, and aggravation to all concerned that litigation necessarily creates.

If we proceed to litigation, the Department will pursue recovery of prejudgment interest, as well as all of the Department's reasonable attorneys' fees and other related litigation costs that the Department is authorized by law to collect if it prevails.

Thank you for your prompt attention to this matter.

Sincerely,



PAUL F. JAMES

Assistant Attorney General

Natural Resources Division

(360) 753-6204

PFJ/emj

Enclosures: Department Fire Investigation Report
Department Fire Cost Summary

cc: (w/o encls.) Eric Wisch, Acting Deputy Supervisor for Wildfire,
Gary Margheim, Chief Wildland Fire Investigator
Chuck Turley, Wildfire Division Manager
Todd Welker, Southeast Region Manager
Wyatt Leighton, Assistant Southeast Region Manager
Shane Martinez, Litigation Coordinator