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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SNAKE RIVER WATERKEEPER,
Plaintiff,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS; and LIEUTENANT
GENERAL SCOTT A. SPELLMON, in his
official capacity as the Commanding General
and Chief of Engineers of the United States
Army Corps of Engineers,
Defendants.

Case No. 3:21-cv-101

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This action is a citizen suit brought under section 505 of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1365. Plaintiff Snake River Waterkeeper seeks declaratory and injunctive relief to compel defendants the United States Army Corps of Engineers and

Lieutenant General Scott A. Spellmon, in his official capacity as Commanding General and Chief of Engineers of the United States Army Corps of Engineers (collectively, the “Corps”), to comply with sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by discontinuing unpermitted discharges of pollutants from the Dworshak Dam and Reservoir Hydroelectric Project (the “Dam”)¹ located on the North Fork Clearwater River and/or Clearwater River unless and until the Corps obtains a National Pollutant Discharge Elimination System (“NPDES”) permit authorizing the discharges.

2. The Corps owns and operates the hydroelectric Dam on the North Fork Clearwater River and/or Clearwater River that discharges pollutants, including oils, greases, other lubricants, and cooling water and the heat associated therewith. These discharges are not authorized by an NPDES permit and therefore violate section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over Snake River Waterkeeper’s claim under section 505(a) of the CWA, 33 U.S.C. § 1365(a), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346(a)(2) (United States as Defendant). Section 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d) authorizes the relief requested. The relief requested is also proper under 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

4. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), waives the Corps’ sovereign immunity for Snake River Waterkeeper’s claim.

¹ The term “Dam,” as used herein, includes the Dworshak Dam and all associated structures and facilities, including turbines, powerhouses, transformers, spillways, and cranes.

5. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2, Snake River Waterkeeper notified the Corps of its violations of the CWA and of Snake River Waterkeeper's intent to sue by letter dated and postmarked December 21, 2020 ("Notice Letter"). A copy of the Notice Letter is attached to this Complaint as Exhibit 1. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and 40 C.F.R. § 135.2(a)(3), Snake River Waterkeeper provided copies of the Notice Letter to Lieutenant General Spellmon, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of Region 10 of the EPA, the Attorney General of the United States, and the Director of Idaho Department of Environmental Quality ("IDEQ") by mailing copies to these individuals on December 21, 2020, via certified mail, return receipt requested.

6. At the time of the filing of this Complaint, more than sixty days have passed since the Notice Letter and the copies thereof were issued as described in the preceding paragraph.

7. As of the filing of this Complaint, neither EPA nor IDEQ has commenced any action constituting diligent prosecution to redress the violations addressed in the Notice Letter and herein.

8. The violations complained of in the Notice Letter are continuing and/or reasonably likely to continue to occur. The Corps is in violation of the CWA.

9. The source of the violations complained of is located in Clearwater County, Idaho, within the Central Division of the District of Idaho, and venue is therefore appropriate in the District of Idaho under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1).

III. PARTIES

10. Plaintiff Snake River Waterkeeper is suing on behalf of itself and its members. Snake River Waterkeeper is a 501(c)(3) non-profit corporation registered in the State of Idaho. The mission of Snake River Waterkeeper is to apply science and law to protect, restore, and sustain waters of the Snake River Basin. The organization's strategy for protecting the Snake River and its tributaries includes working with and within communities that depend on local waterways and enforcing laws that promote public health and safety while protecting trout, salmon, and other native fish and wildlife.

11. Snake River Waterkeeper has representational standing to bring this action. Snake River Waterkeeper has members who reside in Idaho and Washington in the vicinity of waters affected by the Corps' illegal discharges of pollutants. Members of Snake River Waterkeeper use and enjoy the waters and the surrounding areas that are adversely affected by the Corps' discharges. Snake River Waterkeeper's members use these areas for, inter alia, fishing, rafting, hiking, walking, windsurfing, photographing, boating, and observing wildlife. The environmental, health, aesthetic, and recreational interests of Snake River Waterkeeper's members have been, are being, and will be adversely affected by the Corps' illegal discharges of pollutants from the Dam and by the members' reasonable concerns related to the effects of the discharges. The members are further concerned that, because these discharges are not subject to an NPDES permit as required by the CWA, there are not sufficient restrictions imposed on and monitoring and reporting of, the discharges to minimize the adverse water quality impacts of the discharges. These injuries are fairly traceable to the violations and redressable by the Court.

12. Snake River Waterkeeper has organizational standing to bring this action. Snake River Waterkeeper has been actively engaged in a variety of educational and advocacy efforts to

improve water quality degradation in the waters of the Snake River and its tributaries. The Corps' failure to obtain an NPDES permit for its discharges has deprived Snake River Waterkeeper of information that would be required by the permit's monitoring and reporting conditions and available to Snake River Waterkeeper. This information would assist Snake River Waterkeeper in its efforts to educate and advocate for greater environmental protection. Thus, Snake River Waterkeeper's organizational interests have been adversely affected by the Corps' violations. These injuries are fairly traceable to the violations and redressable by the Court.

13. Defendant United States Army Corps of Engineers is a federal agency within the United States Department of Defense. The United States Army Corps of Engineers owns and/or operates the Dam.

14. Defendant Lieutenant General Scott A. Spellmon is the Commanding General and Chief of Engineers of the United States Army Corps of Engineers. Mr. Spellmon is being sued in his official capacity. As the Commanding General and Chief of Engineers, Lieutenant General Spellmon is responsible for ensuring the United States Army Corps of Engineers complies with applicable laws at the Dam.

IV. LEGAL FRAMEWORK

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the discharge of any pollutant by any person unless authorized by, inter alia, an NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

16. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States including the territorial seas."

18. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

V. FACTUAL BACKGROUND

The Affected Community & Environment

19. The Snake River and its tributaries make up one of the West’s most scenic and productive aquatic ecosystems, flowing from the headwaters of Wyoming, across the full breadth of Idaho, and to its mouth near Washington’s Tri-cities, where it joins the Columbia River. This river system supports rich fishing traditions, provides water for communities and agriculture, recreation opportunities, and power for hydroelectric dams. The river system is also severely degraded by pollution. Toxic pollution threatens the health of people that eat local fish and jeopardizes the public’s right to eat fish caught locally. Rising water temperatures also threaten the health of salmon and other aquatic life that rely on cool waters for survival. The Columbia River, to which the Snake River is a tributary, faces the same threats.

20. Units of the Clearwater Basin, Snake River, and Columbia River watersheds have a variety of designated beneficial uses, including cold water aquatic life, salmon spawning, primary contact recreation, domestic water supply, and more. *E.g.*, Idaho Admin. Code r. 58.01.02.120, Wash. Admin. Code § 173-201A-602. Waterbodies downstream of the Dworshak Dam are listed as impaired and require or have total maximum daily loads (“TMDLs”) for

temperature and toxic pollutants, including mercury, PCBs, DDE, dieldrin, dioxins, and toxaphene.² Studies have confirmed the pollution crisis that exists on these critical waterbodies.³

21. Pollution discharges from the Corps' Dam contribute to the pollution crisis on the Snake River and Columbia River. According to the National Oceanic & Atmospheric Administration ("NOAA"):

Spilled oil can harm living things because its chemical constituents are poisonous. This can affect organisms both from internal exposure to oil through ingestion or inhalation and from external exposure through skin and eye irritation. Oil can also smother some small species of fish or invertebrates and coat feathers and fur, reducing birds' and mammals' ability to maintain their body temperatures.⁴

22. The vicinity of the Dam that is the subject of this Complaint and the Snake and Columbia Rivers and their tributaries are used by the citizens of Idaho, Oregon, and Washington, and visitors, including by Snake River Waterkeeper's members, for recreational activities. Snake River Waterkeeper's members also derive aesthetic, scientific, and spiritual benefits from the receiving waters. Its members' enjoyment of these activities and waters is diminished by the polluted state of the receiving waters, shorelines, air, and the nearby areas, and by the Corps' contribution to such polluted state.

² See Idaho Dep't of Env'tl. Quality, Integrated Report, *available at* <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integratedreport.aspx>; Wash. Dep't of Ecology, Washington State Water Quality Assessment, *available at* <https://apps.ecology.wa.gov/ApprovedWQA/ApprovedPages/ApprovedSearch.aspx>.

³ E.g., U.S. Env'tl. Prot. Agency, *Columbia River Basin State of River Report for Toxics* (hereafter State of the River Report) (January 2009), <https://www.epa.gov/columbiariver/2009-state-river-reporttoxics>; Lower Columbia River Estuary Partnership, *Lower Columbia River and Estuary Ecosystem Monitoring: Water Quality and Salmon Sampling Report* (2007).

⁴ Nat'l Oceanic & Atmospheric Admin., Office of Response and Restoration, *How Oil Effects Fish and Wildlife in Marine Environments*, <http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oilharms-animals-and-plants-marine-environments.html>.

The Corps' Dam and Discharges of Pollutants

23. The Corps owns and operates the hydroelectric Dam on the North Fork Clearwater River and/or Clearwater River. The North Fork Clearwater River and the Clearwater River are tributaries to the Snake River.

24. The Dam is located approximately three miles northeast of the town of Ahsahka, Idaho. The Dam is located within and discharges pollutants to waters within Clearwater County, Idaho.

25. Upon information and belief, the Corps discharges oils, grease, lubricants, and other pollutants at the Dam collected from various sources through sumps, including powerhouse drainage sumps, unwatering sumps, spillway sumps, and/or other systems to the North Fork Clearwater River and/or Clearwater River. These discharges have occurred each and every day during the six years and sixty days prior to the filing of this Complaint and are continuing to occur and/or are reasonably likely to recur. These discharges are not authorized by an NPDES permit.

26. Upon information and belief, the Corps discharges from the Dam cooling water, and the associated heat, used to cool a variety of Dam components and materials, including transformers, lubricating oils, shaft and thrust bearings, turbines, and/or generators to the North Fork Clearwater River and/or Clearwater River. These discharges have occurred each and every day during the last six years and sixty days prior to the filing of this Complaint and are continuing to occur and/or are reasonably likely to recur. These discharges are not authorized by an NPDES permit.

27. Upon information and belief, the Corps utilizes Francis turbines, which discharge grease to the North Fork Clearwater River and/or Clearwater River. Wicket gates control the

amount of water flowing through the turbines at the Dam. The wicket gate bearings are lubricated with grease or another lubricant. This grease or lubricant is continuously fed into bearings and discharged directly to surface waters. These discharges have occurred each and every day during the six years and sixty days prior to the filing of this Complaint and are continuing to occur or are reasonably likely to recur. These discharges are not authorized by an NPDES permit.

28. Upon information and belief, the Corps also discharges oils, greases, lubricants, and other pollutants from the Dam to the North Fork Clearwater River and/or Clearwater River due to spills, equipment failures, operator errors, and other similar events. For example, on or about May 10, 2018, the Corps discharged approximately one quart of turbine oil into the North Fork Clearwater River and/or Clearwater River from a unit on the Dam. As another example, on May 21, 2018, the Corps discharged approximately one cup of turbine oil into the North Fork Clearwater River and/or Clearwater River from the Unit One generator. Additional examples are listed in Table 1 of the Notice Letter, attached hereto as Exhibit 1, and are incorporated in this Complaint by reference. Discharges of this nature at the Dam are continuing to occur and/or are reasonably likely to recur. These discharges are not authorized by an NPDES permit.

29. The discharges from the Dam described herein are made from pipes and/or other discernible, confined, and/or discrete conveyances.

30. The discharges from the Dam described herein are made to Waters of the United States. The discharges are made directly to a navigable water body or to a continuously flowing water body that is tributary to a navigable water body.

31. The North Fork Clearwater River is a navigable water body at the location of the Dam. Alternatively, the Clearwater River is a navigable water body at the location of the Dam.

32. The North Fork Clearwater River is a navigable water body. The Clearwater River is a navigable water body.

33. The discharges from the Dam described herein are discharges of pollutants to navigable waters from point sources that violate section 301(a) of the CWA, 33 U.S.C. § 1311(a), when made without the authorization of an NPDES permit.

34. The Corps' violations were avoidable had the Corps been diligent in overseeing facility operations and maintenance and regulatory compliance.

35. In accordance with section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), and 40 C.F.R. § 135.4, Snake River Waterkeeper will mail copies of this Complaint that are either filed and date-stamped copies or conformed copies to the Administrator of the EPA, the Regional Administrator for Region 10 of the EPA, and the Attorney General of the United States.

36. All allegations in the Notice Letter, attached hereto as Exhibit 1, are incorporated in this Complaint by reference.

VI. CAUSE OF ACTION

37. Snake River Waterkeeper realleges and incorporates by reference each and every allegation set forth in the paragraphs above.

38. The Corps is in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants to navigable waters from the Dam as described herein and in the Notice Letter without an NPDES permit. These violations are violations of an "effluent standard or limitation" as defined by section 505(f) of the CWA, 33 U.S.C. § 1365(f).

39. Upon information and belief, these violations committed by the Corps are continuing and/or reasonably likely to recur. Any and all additional violations of the CWA which

occur after those described in the Notice Letter but before a final decision in this action should be considered continuing violations subject to this Complaint.

VII. RELIEF REQUESTED

Wherefore, Snake River Waterkeeper respectfully requests that this Court grant the following relief:

A. Issue a declaratory judgment that the Corps has violated and continues to be in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants from the Dam to the North Fork Clearwater River and/or Clearwater River without the authorization of an NPDES permit as described herein;

B. Issue an injunction enjoining the Corps from discharging pollutants from the Dam to the North Fork Clearwater River and/or Clearwater River as described herein until such discharges are authorized by an NPDES permit;

C. Issue an injunction requiring the Corps to take specific actions to evaluate and remediate the environmental harm caused by its violations;

D. Grant such other preliminary and/or permanent injunctive relief as Snake River Waterkeeper may request during the pendency of this case;

E. Award Snake River Waterkeeper its costs of litigation, including reasonable attorney and expert witness fees, as authorized by section 505(d) of the CWA, 33 U.S.C. § 1365(d), and any other applicable authorization; and

F. Grant such additional relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED this 4th day of March, 2021.

[Signatures on following page.]

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EXHIBIT 1

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December 21, 2020

Via CERTIFIED MAIL – Return Receipt Requested

Lieutenant General Scott A. Spellmon
Commanding General & Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

**Re: NOTICE OF INTENT TO SUE THE U.S. ARMY CORPS OF ENGINEERS AND
LIEUTENANT GENERAL SPELLMON UNDER THE CLEAN WATER ACT**

Dear Lieutenant General Spellmon:

This letter is to provide you with sixty days' notice of Snake River Waterkeeper's ("SRW") intent to file a citizen suit against the United States Army Corps of Engineers and Lieutenant General Scott A. Spellmon, in his official capacity as the Commanding General and Chief of Engineers of the United States Army Corps of Engineers (collectively, the "Corps"), under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described herein. The CWA prohibits any person from discharging any pollutant to waters of the United States except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit. Continuing to discharge pollutants without securing an NPDES permit constitutes an ongoing violation of the CWA.

The Corps has and continues to violate section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants to waters of the United States and to the State of Idaho from the Dworshak Dam and Reservoir Hydroelectric Project and from its associated structures and facilities (collectively "Dam").¹ Specifically, the Corps discharges oils, greases, other lubricants, and cooling water from the Dam without the authorization of an NPDES permit in violation of the CWA.

This notice of intent to sue is part of SRW's effort to protect people who rely on the Snake River and its tributaries throughout the Snake River Basin—which includes the North Fork Clearwater River and Clearwater River—for uses including drinking water, food, and

¹ The term "Dam," as used herein, includes the Dworshak Dam and Reservoir Hydroelectric Project and all associated structures and facilities, including turbines, powerhouses, transformers, spillways, and cranes. The approximate location of the Dam is identified in Appendix 1.

recreation. SRW's mission is "applying science and law to protect, restore, and sustain waters of the Snake River Basin." The organization's strategy for protecting the Snake River and its tributaries includes working with and within communities that depend on local waterways and enforcing laws that promote public health and safety while protecting trout, salmon, and other native fish and wildlife.

I. Legal Background.

Idaho's rivers, and the use of rivers by people, fish, and wildlife, are protected by both federal and state law. In 1972, Congress passed the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA is the cornerstone of surface water quality protection in the United States. In the forty years since its passage, the CWA has dramatically increased the number of waterways that are once again safe for fishing and swimming. Despite the great progress in reducing water pollution, many of the Nation's waters still do not meet the water quality goals. In fact, the vast majority of rivers and streams in Idaho are not assessed for or fail to meet basic state water quality standards for pollutants such as toxics and temperature.² These standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

The NPDES permitting scheme is the primary means by which discharges of pollutants are controlled. At a minimum, NPDES permits must include technology-based effluent limitations, any more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1311, 1342, 1318. EPA formerly and now the state of Idaho issue permits for pollution discharges into the rivers and streams of Idaho. These include permits that regulate the discharge of toxic pollution, hot water, bacteria, and other pollutants. According to EPA, improvements to the quality of water in our rivers are directly linked to the implementation of the NPDES program and the associated control of pollutants discharged from both municipal and industrial point sources.³

II. The Heavy Toll of Pollution on the Snake River and Its Tributaries.

The Snake River and its tributaries make up one of the West's most scenic and productive aquatic ecosystems, flowing from the headwaters of Wyoming, across the full breadth of Idaho, and to its mouth near Washington's Tri-cities where it joins the Columbia River. This river system supports rich fishing traditions, provides water for communities and agriculture, recreation opportunities, and power for hydroelectric dams. The river system is also severely degraded by pollution. Toxic pollution threatens the health of people that eat local fish and jeopardizes the public's right to eat fish caught locally. Rising water temperatures also threaten the health of salmon and other aquatic life that rely on cool water for survival. The Columbia River, to which the Snake River is a tributary, faces these same threats.

² *See* Idaho Dep't of Env'tl. Quality, Integrated Report, *available at* <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>.

³ U.S. EPA, *Water Permitting 101* at 11, <http://www.epa.gov/npdes/pubs/101pape.pdf>.

Indeed, relevant units of the Clearwater Basin, Snake River, and Columbia River watersheds have a variety of designated beneficial uses, including cold water aquatic life, salmon spawning, primary contact recreation, domestic water supply, and more.⁴ And unfortunately, waterbodies downstream of the Dworshak Dam are listed as impaired and require or have total maximum daily loads (“TMDLs”) for temperature and toxic pollutants, including mercury, PCBs, DDE, dieldrin, dioxins, and toxaphene.⁵ Studies have confirmed the pollution crisis that exists on these critical waterbodies.⁶

Pollution discharges from the Corps’ Dam contribute to the pollution crisis on the Columbia River. According to the National Oceanic & Atmospheric Administration (“NOAA”):

Spilled oil can harm living things because its chemical constituents are poisonous. This can affect organisms both from internal exposure to oil through ingestion or inhalation and from external exposure through skin and eye irritation. Oil can also smother some small species of fish or invertebrates and coat feathers and fur, reducing birds’ and mammals’ ability to maintain their body temperatures.⁷

The impacts of oil pollution are sobering. Yet the Corps discharges oil and other pollution from the Dam without the NPDES permit authorization required by the CWA. In turn, the Corps fails to monitor and report pollution in a manner that enables the public to fully understand the extent and severity of the problem.

The Dam also discharges heat in the form of cooling water to a river system recognized by EPA as too warm to support designated uses, including salmon habitat. Salmon need cool water to survive. Hot water pollution from point sources, including the Dam, contributes to elevated water temperatures in the Snake and Columbia Rivers. Specifically, the Corps uses water to cool a variety of Dam components and materials, including turbines, generators, transformers, and lubricating oils. The Corps discharges this cooling water directly to the North

⁴ E.g., Idaho Admin. Code r. 58.01.02.120, Wash. Admin. Code § 173-201A-602.

⁵ Idaho Dep’t of Env’tl. Quality, Integrated Report, *available at* <https://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx>; Wash. Dep’t of Ecology, Washington State Water Quality Assessment, *available at* <https://apps.ecology.wa.gov/ApprovedWQA/ApprovedPages/ApprovedSearch.aspx>.

⁶ E.g., U.S. EPA, *Columbia River Basin State of River Report for Toxics* (hereafter *State of the River Report*) (January 2009), <https://www.epa.gov/columbiariver/2009-state-river-report-toxics>; Lower Columbia River Estuary Partnership, *Lower Columbia River and Estuary Ecosystem Monitoring: Water Quality and Salmon Sampling Report* (2007).

⁷ NOAA, Office of Response and Restoration, *How Oil Effects Fish and Wildlife in Marine Environments*, <http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html>.

Fork Clearwater River and/or Clearwater River, which contributes warm water to a river system that is already too warm to support healthy fish populations.

III. Unpermitted Pollutant Discharges from the Dam.

Section 301(a) of the CWA prohibits discharges of oils, greases, lubricants, cooling water, and other pollutants to the North Fork Clearwater River and/or Clearwater River from the Dam without NPDES permit authorization. 33 U.S.C. § 1311(a). Without an NPDES permit, the Corps is failing to monitor, report, and reduce pollution discharges pursuant to the CWA and state and federal implementing rules.

A. Chronic Pollutant Discharges from the Dam.

The Dam discharges oils, greases, lubricants, and other pollutants collected from various sources through sumps, including powerhouse drainage sumps, unwatering sumps, spillway sumps, and/or other systems to the North Fork Clearwater River and/or Clearwater River. The Corps violates section 301(a) of the CWA by discharging pollutants from these various drainage and/or un-watering sumps and other systems at the Dam. These violations occurred each and every time the Corps made these discharges in the past six years and continue to occur.⁸

The Dam discharges cooling water, and the associated heat, used to cool a variety of Dam components and materials, including transformers, lubricating oils, shaft and thrust bearings, turbines, and/or generators to the North Fork Clearwater River and/or Clearwater River. The Corps is in violation of section 301(a) of the CWA by discharging cooling water, and the associated heat, from the Dam each and every day for the past six years.

The Dam utilizes Francis turbines, which discharge grease to the North Fork Clearwater River and/or Clearwater River. Wicket gates control the amount of water flowing through the turbines at the Dam. The Wicket gate bearings are lubricated with grease or another lubricant. This grease or lubricant is continuously fed into the bearings and discharged directly into surface waters. The Corps is in violation of section 301(a) of the CWA by discharging grease or lubricant from the bearings at each of the turbine wicket gates at the Dam each and every day for the past six years.

B. Acute Pollutant Discharges from the Dams.

The Corps violates section 301(a) of the CWA every time it discharges oil, a lubricant, or other pollutants to the North Fork Clearwater River and/or Clearwater River from the Dam, including when such discharges occur as a result of machinery, equipment, or structural failure. SRW reviewed the United States Coast Guard's National Response Center Website, which maintains a national database of oil spills. Table 1 describes reported acute pollution discharges

⁸ The Corps is in the best position to know the specific location of the point sources (i.e., the structures that discharge pollutants from drainage sumps, unwatering sumps, spillway sumps, and other systems into the North Fork Clearwater River and/or Clearwater River) at the Dam.

from the Dam to the North Fork Clearwater River and/or Clearwater River during the last six years. SRW does not concede that the amount of pollution reported is, in fact, the amount of pollution actually discharged from the Dam.

Table 1 Dworshak Dam Reported Discharges			
Reported Date of Discharge	Reported Pollutant Discharged	Reported Amount Discharged	Comments from Discharge Report
6/8/2015	Gasoline: Automotive (Unleaded)	Unknown	Vessel parked at the docks and sank overnight for unknown reasons.
5/10/2018	Turbine Oil	1 quart	Turbine oil discharged into the North Fork of the Clearwater River and/or Clearwater River from a unit on the Dam due to an unknown cause.
5/19/2018	Unknown	Unknown	Sheen discovered on waters of the Dam; possible spill from facility.
5/21/2018	Turbine Oil	1 cup	Turbine oil discharged from the Unit #1 generator, due to a turbine bearing cooler burp.
6/27/2018	Turbine Oil	½ cup	Turbine oil was released into the North Fork Clearwater River and/or Clearwater River from a generator at a dam that has been down for a couple years. They watered the unit up and any residual oil on the walls was released into the river.
6/27/18	Turbine Oil	Unknown	Sump of a hydropower unit overflowed, discharging turbine oil into the North Fork Clearwater River and/or Clearwater River. This resulted in a sheen on the water within the boom.
7/2/18	Turbine Oil	Unknown	Turbine oil released from Unit #3 of the power house.
7/12/18	Turbine Oil	1 cup	Turbine oil released into the North Fork of the Clearwater River and/or Clearwater River from the Generator Unit #3 of the Dam due to equipment failure.
8/11/2018 or 8/15/2018	Transformer Oil	10 gallons	Transformer's bushings blew up, resulting in a spray of transformer oil on the deck and the roof of the facility from the pad mounted transformer.
1/23/20	Turbine Oil	1 cup	Turbine oil discharged from Unit #1, which is shutdown, due to an unknown cause at the time. It possibly has something to do with the maintenance on Unit #1.
1/24/20	Turbine Oil	1 cup	Turbine oil discharged from Unit #1, after an investigation and restart due to an unknown reason.

IV. Public Documents Announce the Need for an NPDES Permit for Dam Discharges.

The Corps is aware that the CWA prohibits its discharges of oil, greases, lubricants, cooling water, and other pollution to waters of the United States from the Dam absent an NPDES permit. Notably, the Corps has been sued several times in the past for failing to obtain pollution discharge permits for dams on the Columbia River and Snake River (Bonneville, The Dalles, Ice Harbor, John Day, Little Goose, Lower Monumental, McNary, Lower Granite, Chief Joseph).⁹ As the Corps is aware, these lawsuits have required the Corps to:

1. Apply to EPA for NPDES discharge permits;
2. Investigate using less harmful lubricants in dam equipment; and
3. Monitor the type and quantity of pollution being discharged into the rivers.¹⁰

Although the Corps agreed to apply for NPDES permits for the above dams, the Corps still has not obtained an NPDES permit for the Dworshak Dam.

And while EPA began the permitting process for hydroelectric dams in Idaho,¹¹ it never completed that process. Since then, the State of Idaho has taken over permitting authority and has yet to permit the Corps' Dworshak Dam operations.

In short, the Corps has been aware since long before this notice of intent to sue letter that discharges associated with the Dam require an NPDES permit. Yet, based upon the information available to SRW, the Corps has neither applied for nor obtained an NPDES permit for discharges of oils, greases, lubricants, cooling water, and other pollution from the Dam.

V. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Snake River Waterkeeper
2123 N. 16th Street
Boise, ID 83702
(208) 806-1303

⁹ *E.g.*, COLUMBIA RIVERKEEPER, STOPPING OIL POLLUTION FROM DAMS, <https://www.columbiariverkeeper.org/our-work-saving-salmon/stopping-oil-pollution-dams> (last visited July 24, 2018).

¹⁰ *Id.*

¹¹ THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, NPDES FACT SHEET: WASTEWATER DISCHARGES FROM HYDROELECTRIC GENERATING FACILITIES GENERAL PERMIT (2018), *available at* <https://www.epa.gov/sites/production/files/2018-04/documents/r10-npdes-idaho-hydroelectric-gp-idg360000-fact-sheet-2018.pdf>.

VI. Attorneys Representing Snake River Waterkeeper.

The attorneys representing SRW in this matter are:

KAMPMEIER & KNUTSEN, PLLC
Brian A. Knutsen
Emma Bruden
1300 SE Stark Street, Suite 202
Portland, Oregon 97214
Tel.: (503) 841-6515 (Knutsen)
(503) 719-5641 (Bruden)
Email: brian@kampmeierknutsen.com
emma@kampmeierknutsen.com

SNAKE RIVER WATERKEEPER
Ferrell S. Ryan, III
2123 N. 16th Street
Boise, ID 83702
Tel.: (208) 806-1303
Email: buck@snakeriverwaterkeeper.org

VII. Conclusion.

The violations described herein reflect those indicated by the information currently available to SRW. SRW intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice of intent to sue.

SRW intends to seek injunctive relief to prevent further CWA violations under sections 505(a) and (d) of the CWA, 33 U.S.C § 1365(a) and (d), and such other relief as is permitted by law. SRW will further seek to recover its litigation expenses as authorized by section 505(d) of the CWA, 33 USC § 1365(d).

SRW believes that this notice of intent to sue sufficiently states grounds for filing suit. SRW intends to file a citizen suit against the United States Army Corps of Engineers and Lieutenant General Scott A. Spellmon, in his official capacity as the Commanding General and Chief of Engineers of the United States Army Corps of Engineers, under section 505(a) of the CWA, 33 U.S.C. § 1365(a), for the violations described herein at the expiration of the sixty-day notice period or shortly thereafter.

SRW is willing to discuss effective remedies for the violations addressed in this notice of intent to sue letter and appropriate settlement terms. Please direct all correspondence to Brian A. Knutsen at (503) 841-6515 or brian@kampmeierknutsen.com.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By:

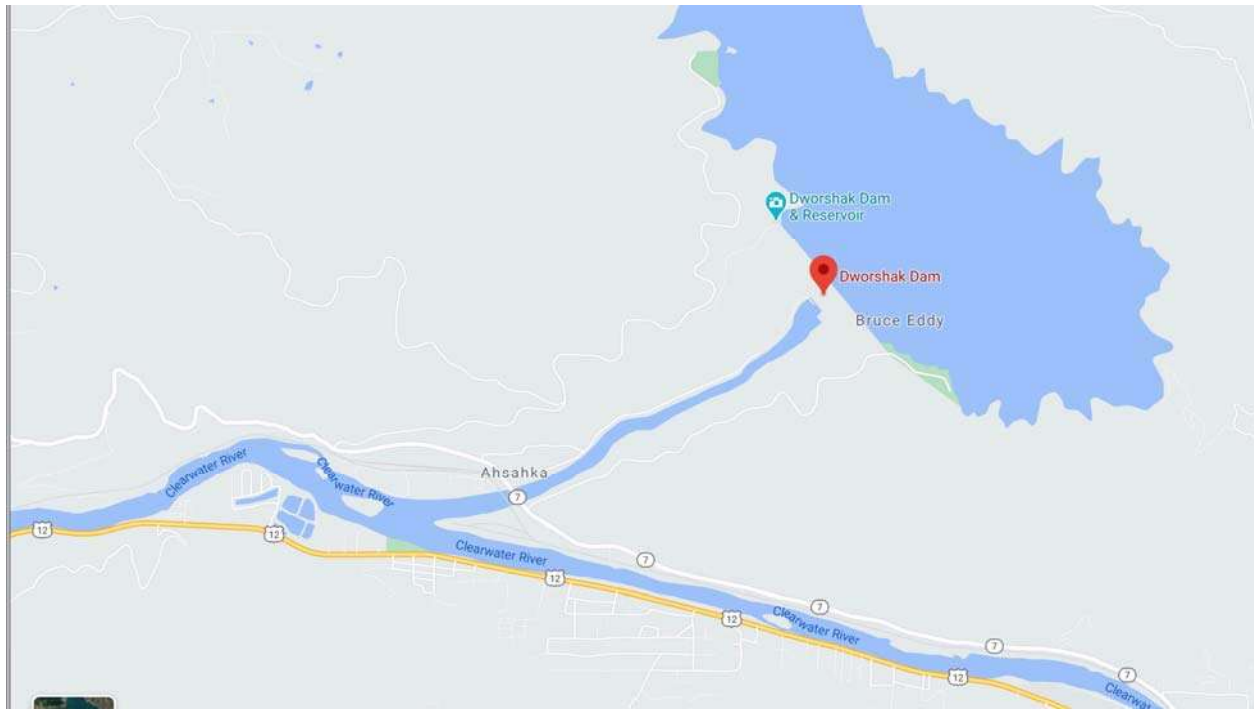

Brian A. Knutsen

APPENDIX I

Dworshak Dam: Ahsahka, Idaho 83520

Approximate Coordinates: 46°30'57"N, 116°17'49"W

Map:



CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for Snake River Waterkeeper and that on December 21, 2020, I caused copies of the foregoing Notice of Intent to Sue the U.S. Army Corps of Engineers and Lieutenant General Spellmon under the Clean Water Act to be served on the following by depositing them with the United States Postal Service, certified mail, return receipt requested, postage prepaid:

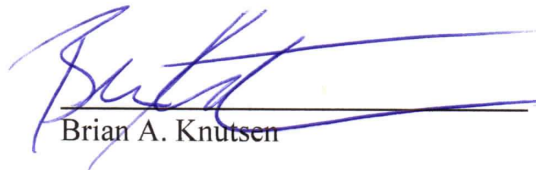
Lieutenant General Scott A. Spellmon
Commanding General & Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

Regional Administrator Chris Hladick
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Director Jess Byrne
Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, ID 83706



Brian A. Knutsen