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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CENTER FOR ENVIRONMENTAL )  
LAW AND POLICY; and WILD )  
FISH CONSERVANCY, )

Plaintiff, )

v. )

UNITED STATES FISH AND )  
WILDLIFE SERVICE; and )  
DANIEL M. ASHE, in his official )  
capacity as the Director of the United )  
States Fish and Wildlife Service, )

Defendants. )

COMPLAINT

COMPLAINT - 1

Kampmeier & Knutsen, PLLC  
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(503) 841-6515

## I. INTRODUCTION

1  
2 1. This is a civil action by plaintiffs Center for Environmental Law and  
3 Policy and Wild Fish Conservancy (collectively, “CELP”) for declaratory and  
4 injunctive relief to compel defendants the United States Fish and Wildlife Service  
5 and Daniel M. Ashe in his official capacity as the Director of the United States  
6 Fish and Wildlife Service (collectively, “FWS”) to comply with sections 301(a)  
7 and 402 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a) and 1342, by  
8 discontinuing unpermitted discharges of pollutants from the Leavenworth National  
9 Fish Hatchery (the “Hatchery”) to Icicle Creek and connected waters until FWS  
10 obtains a National Pollutant Discharge Elimination System (“NPDES”) permit  
11 authorizing the discharges.

12  
13 2. FWS owns and operates the Hatchery, which is located adjacent to  
14 Icicle Creek near Leavenworth, Washington. The Hatchery discharges numerous  
15 pollutants to Icicle Creek that degrade water quality and contribute to violations of  
16 water quality standards. These discharges are not authorized by a NPDES permit  
17 and therefore violate section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18  
19 3. CELP seeks a declaratory judgment, injunctive relief, and the award  
20 of costs, including attorneys’ and expert witnesses’ fees.

## II. JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over CELP'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). Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), authorize the requested relief. The requested relief is also proper under 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

5. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), waives the sovereign immunity of FWS for CELP's claim.

6. 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, CELP notified FWS of its violations of the CWA and of CELP's intent to sue by letter dated July 21, 2015 ("Notice Letter"). A copy of the Notice Letter is attached to this complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. 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), CELP provided copies of the Notice Letter to 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 the Washington Department of Ecology ("Ecology").

10. The source of the violations complained is located in Chelan County, Washington within the Eastern District of Washington and venue is therefore appropriate in this district under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1).

11. Plaintiff Center for Environmental Law and Policy is a membership-based 501(c)(3) nonprofit organization incorporated in Washington State, with its principal office located in Seattle, Washington. Center for Environmental Law and Policy brings this action on behalf of itself and its approximately 213 members. Center for Environmental Law and Policy is dedicated to preserving and protecting the freshwater resources of western Washington and the Columbia River Basin, including protection of instream flows, water levels and water quality in rivers,

1 streams and drinking water aquifers. Center for Environmental Law and Policy  
2 achieves its goals through education, litigation, and advocacy.

3  
4 12. Plaintiff Wild Fish Conservancy is a membership-based 501(c)(3)  
5 nonprofit organization incorporated in the State of Washington with its principal  
6 place of business in Duvall, Washington. Wild Fish Conservancy is dedicated to  
7 the preservation and recovery of Washington's native fish species and the  
8 ecosystems upon which those species depend. Wild Fish Conservancy brings this  
9 action on behalf of itself and its approximately 2,400 members. Wild Fish  
10 Conservancy changed its name from "Washington Trout" in 2007. As an  
11 environmental watchdog, Wild Fish Conservancy actively informs the public on  
12 matters affecting water quality, fish, and fish habitat in the State of Washington  
13 through publications, commentary to the press, and sponsorship of educational  
14 programs. Wild Fish Conservancy also conducts field research on wild fish  
15 populations and has designed and implemented habitat restoration projects. Wild  
16 Fish Conservancy has lobbied, advocated, and publicly commented on federal and  
17 state actions that affect the region's native fish and ecosystems. Wild Fish  
18 Conservancy routinely seeks to compel government agencies to follow the laws  
19 designed to protect native fish species, particularly threatened and endangered  
20 species.  
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1           13. CELP has representational standing to bring this action. CELP's  
2 members regularly spend time in areas in and around Icicle Creek and the  
3 Wenatchee River. CELP's members intend to continue to visit these areas on a  
4 regular basis, including in the coming months and beyond. These members  
5 observe, study, photograph, and appreciate wildlife and wildlife habitat in and  
6 around these waters. These members also fish, hike, camp, and swim in and  
7 around these waters.  
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10  
11           14. CELP's members derive scientific, educational, recreational, health,  
12 conservation, spiritual, and aesthetic benefits from Icicle Creek, the Wenatchee  
13 River and its tributaries, the surrounding areas, and from wild native fish species in  
14 those waters and from the existence of natural, wild and healthy ecosystems.  
15

16  
17           15. The past, present, and future enjoyment of CELP's interests and those  
18 of its members, including the recreational, aesthetic, spiritual, and scientific  
19 interests, have been, are being, and will continue to be harmed by FWS' illegal  
20 discharges of pollutants from the Hatchery and by the members' reasonable  
21 concerns related to the effects of the discharges. The members are further  
22 concerned that, because these discharges are not subject to a valid NPDES permit  
23 as required by the CWA, there are not sufficient restrictions imposed on, and  
24 monitoring and reporting of, the discharges to minimize the adverse water quality  
25 impacts of the discharges. These injuries include reduced enjoyment of time spent  
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1 in and around the Wenatchee River and its tributaries, including Icicle Creek, and  
2 refraining from engaging in certain activities while visiting these areas. These  
3 injuries are fairly traceable to the violations and redressable by the Court.  
4

5 16. CELP has organizational standing to bring this action. CELP has  
6 been actively engaged in a variety of educational and advocacy efforts to improve  
7 habitat, including water quality, in Icicle Creek and the Wenatchee River. FWS'  
8 failure to obtain a NPDES permit for its discharges at the Hatchery has deprived  
9 CELP of information that would be required by a current NPDES permit's  
10 monitoring and reporting conditions and available to CELP. This information  
11 could assist CELP in its efforts to educate and advocate for greater environmental  
12 protection. Thus, CELP's organizational interests have been adversely affected by  
13 FWS' violations. These injuries are fairly traceable to the violations and  
14 redressable by the Court.  
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19 17. Defendant United States Fish and Wildlife Service is a sub-agency,  
20 referred to as a "bureau," within the United States Department of the Interior, an  
21 agency within the executive branch. The United States Fish and Wildlife Service  
22 owns and operates the Hatchery.  
23  
24

25 18. Defendant Daniel M. Ashe is the Director of the United States Fish  
26 and Wildlife Service and is being sued in that official capacity. Mr. Ashe is  
27  
28

1 responsible for ensuring that the United States Fish and Wildlife Service complies  
2 with applicable laws in its operations and maintenance of the Hatchery.

#### 3 4 **IV. LEGAL FRAMEWORK**

5 19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the  
6 discharge of any pollutant by any person unless authorized by, *inter alia*, a NPDES  
7 permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.  
8

9 20. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines  
10 “discharge of a pollutant” to include “any addition of any pollutant to navigable  
11 waters from any point source.”  
12

13 21. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term  
14 “navigable waters” as “the waters of the United States, including the territorial  
15 seas.”  
16

17 22. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point  
18 source” as “any discernible, confined and discrete conveyance, including but not  
19 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,  
20 rolling stock, concentrated animal feeding operation, or vessel or other floating  
21 craft, from which pollutants are or may be discharged.”  
22

23 23. EPA has issued a regulation that defines the term “point sources” to  
24 include “concentrated aquatic animal production facilities,” which EPA defines to  
25 include hatcheries that discharge at least thirty (30) days per year, produce more  
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1 than 20,000 pounds of salmon per year, and feed more than 5,000 pounds of food  
2 in the month of maximum feeding. 40 C.F.R. § 122.24 and 40 C.F.R. § 122

3 Appendix C.  
4

5 24. Section 402 of the CWA provides that the EPA may issue NPDES  
6 permits authorizing discharges. 33 U.S.C. § 1342. The CWA implements a  
7 technology-forcing approach under which increasingly more stringent NPDES  
8 permit requirements are imposed over time in an effort to fulfill the CWA's goal of  
9 eliminating pollution. *See Natural Res. Def. Council v. U.S. Env'tl. Prot. Agency*,  
10 859 F.2d 156, 211 (D.C. Cir. 1988); *and Natural Res. Def. Council v. U.S. Env'tl.*  
11 *Prot. Agency*, 822 F.2d 104, 124 (D.C. Cir. 1987). NPDES permits therefore are  
12 valid for a period not to exceed five years, after which new permits are required  
13 that incorporate any new and more stringent standards. *See* 33 U.S.C. §§  
14 1342(a)(3), (b)(1)(B).  
15

16 25. Expiring NPDES permits continue and remain effective and  
17 enforceable if the permittee timely submits a complete application for a new permit  
18 and EPA, through no fault of the permittee, does not issue a new permit prior to  
19 expiration. 40 C.F.R. § 122.6; 5 U.S.C. § 558(c). Applications to renew an  
20 expiring NPDES permit are timely if submitted at least 180 days before the  
21 expiration date. 40 C.F.R. § 122.21(d)(2).  
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## V. FACTUAL BACKGROUD

### A. Icicle Creek.

26. Icicle Creek originates in the Cascade Mountains in Washington State and is a fifth-order tributary to the Wenatchee River, which is a tributary to the Columbia River. Icicle Creek enters the Wenatchee River in Leavenworth, Washington.

27. Icicle Creek contains natural populations of steelhead trout (*Oncorhynchus mykiss*), spring Chinook salmon (*Oncorhynchus tshawytscha*), bull trout (*Salvelinus confluentus*), and other fish species, and provides important habitat for these species.

28. Portions of Icicle Creek and the Wenatchee River, including portions located downstream of the points where the Hatchery discharges pollutants, have been identified as failing to meet water quality standards established to protect aquatic species, including standards for temperature, dissolved oxygen, pH, and phosphorus.

### B. The Hatchery.

29. The Hatchery was constructed from 1939 to 1941 on the banks of Icicle Creek approximately three miles from Icicle Creek's confluence with the Wenatchee River. The Hatchery was designed to maintain salmon stocks blocked by construction of the Grand Coulee Dam on the Columbia River.

1           30. The Hatchery currently targets an annual release of 1.2 million  
2 yearling spring Chinook salmon. The Hatchery uses Carson-stock spring Chinook  
3 salmon, which are not native to Icicle Creek and are not part of the Upper  
4 Columbia River spring-run Chinook salmon evolutionary significant unit that is  
5 listed as an endangered species under the Endangered Species Act.  
6

7           31. The Hatchery discharges numerous pollutants to Icicle Creek,  
8 including uneaten fish food, fish fecal matter, live fish, fish carcasses and portions  
9 thereof, adipose fins, spawning waste, disease control chemicals, pathogens,  
10 nitrogen, phosphorus, antibiotics, chemicals used for disinfection and other fish  
11 culture purposes, residual chemical reagents and salt, chlorinated waters, and  
12 polychlorinated biphenyls (PCBs).  
13

14           32. The Hatchery discharges these pollutants to Icicle Creek via pipes,  
15 channels, and/or other discrete conveyances. These conveyances constitute point  
16 sources.  
17

18           33. The Hatchery discharges to Icicle Creek at least thirty (30) days per  
19 year, produces more than 20,000 pounds of salmon per year, and feeds more than  
20 5,000 pounds of food in the month of maximum feeding. The Hatchery is  
21 therefore a concentrated aquatic animal production facility under EPA regulations,  
22 40 C.F.R. § 122.24 and 40 C.F.R. § 122 Appendix C, and is itself a point source.  
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1 34. Discharges from the Hatchery contribute to the nonattainment of  
2 water quality standards in Icicle Creek and the Wenatchee River.

3  
4 **C. The Hatchery's NPDES Permit History.**

5 35. EPA issued a NPDES permit authorizing FWS to discharge pollutants  
6 from certain discharge points at the Hatchery to Icicle Creek on December 30,  
7 1974.

8  
9 36. EPA assigned the permit number as WA-000190-2.

10  
11 37. The permit became effective on January 30, 1975.

12 38. The NPDES permit provided that the permit and the authorization to  
13 discharge would expire at midnight on August 31, 1979.

14  
15 39. EPA modified the NPDES permit on May 20, 1977.

16 40. The permit modification became effective on June 20, 1977.

17  
18 41. The expiration date of midnight on August 31, 1979, was retained for  
19 the NPDES permit as modified.

20  
21 42. The expiration date of midnight on August 31, 1979, passed without  
22 an application being submitted for a new NPDES permit for discharges from the  
23 Hatchery.

24  
25 43. The permit and the authorization to discharge pollutants to Icicle  
26 Creek from the Hatchery therefore expired at midnight on August 31, 1979.

1           44. An application was submitted to EPA dated November 12, 1980, for a  
2 new NPDES permit authorizing discharges from the Hatchery. This was over one  
3 year after the prior NPDES permit expired by its own terms.  
4

5           45. The NPDES permit authorizing discharges from the Hatchery was not  
6 administratively extended by EPA's CWA regulations because a complete  
7 application for a new permit was not timely submitted.  
8

9           46. The NPDES permit authorizing discharges from the Hatchery was not  
10 administratively extended by the Administrative Procedure Act, 5 U.S.C. § 558(c),  
11 because a complete application for a new permit was not timely submitted.  
12

13           47. There has not been a valid NPDES permit authorizing discharges of  
14 pollutants from the Hatchery since midnight on August 31, 1979.  
15

16           48. The General Permit for Federal Aquaculture Facilities and  
17 Aquaculture Facilities located in Indian Country within the State of Washington,  
18 effective August 1, 2009, does not authorize any discharge of pollutants by the  
19 Hatchery.  
20

21           49. The Upland Fin-fish Hatching and Rearing NPDES General Permit,  
22 issued by the Washington Department of Ecology, does not authorize any  
23 discharge of pollutants by the Hatchery.  
24

25           50. In 2015, the Hatchery commenced discharging pollutants from one or  
26 more new pipes and/or other discrete conveyances that were never authorized by a  
27

1 NPDES permit. These include discharges to the manmade canal constructed at the  
2 Hatchery. The canal is tributary to Icicle Creek.

3  
4 51. The lack of a valid NPDES permit for the last **thirty-six years** has  
5 resulted in the Hatchery discharging pollutants to Icicle Creek without adopting  
6 and installing technological improvements to treat its discharges that would be  
7 required by a new NPDES permit incorporating current effluent limitations and  
8 standards. It has further resulted in the Hatchery discharging pollutants to Icicle  
9 Creek without being subject to permit conditions necessary to prevent violations of  
10 water quality standards.  
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13  
14 52. FWS has contributed to the failure to obtain a new NPDES permit for  
15 the Hatchery. For example, FWS has repeatedly withdrawn applications submitted  
16 to the Washington Department of Ecology for a certification under section 401 of  
17 the CWA, 33 U.S.C. § 1341, which is required before EPA can issue a new  
18 NPDES permit. Upon information and belief, FWS has also made requests that  
19 EPA delay or not act on a NPDES permit application because of FWS' intent to  
20 modify the application.  
21  
22

23  
24 53. The discharges from the Hatchery described herein are discharges of  
25 pollutants to waters of the United States from point sources that violate section  
26 301(a) of the CWA, 33 U.S.C. § 1311(a), if made without the authorization of a  
27 NPDES permit.  
28

1           54. In accordance with section 505(c)(3) of the CWA, 33 U.S.C. §  
2 1365(c)(3), and 40 C.F.R. § 135.4, CELP will mail either a filed, date-stamped  
3 copy of this Complaint or a conformed copy of this Complaint after it is filed to the  
4 Administrator of the EPA, the Regional Administrator for Region 10 of the EPA,  
5 and the Attorney General of the United States.  
6  
7

## 8                                   **VI. CAUSE OF ACTION**

9           55. CELP realleges and incorporates by reference each and every  
10 allegation set forth in the paragraphs above.  
11

12           56. FWS has violated section 301(a) of the CWA, 33 U.S.C. § 1311(a), by  
13 discharging pollutants from point sources to navigable waters from the Hatchery as  
14 described herein without a NPDES permit each and every day during the last six  
15 years. These violations are violations of an “effluent standard or limitation” as  
16 defined by section 505(f) of the CWA, 33 U.S.C. § 1365(f).  
17  
18

19           57. On information and belief, these violations committed by FWS are  
20 continuing and/or are reasonably likely to reoccur. Any and all additional  
21 violations of the CWA which occur after those described in the Notice Letter but  
22 before a final decision in this action should be considered continuing violations  
23 subject to this Complaint.  
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**VII. RELIEF REQUESTED**

Wherefore, CELP respectfully requests that this Court grant the following relief:

A. Issue a declaratory judgment that FWS 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 Hatchery to Icicle Creek and the canal without the authorization of a NPDES permit as described herein;

B. Issue an injunction enjoining FWS from discharging pollutants from the Hatchery to Icicle Creek and the canal as described herein until such discharges are authorized by a NPDES permit;

C. Issue an injunction requiring FWS 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 CELP may from time to time request during the pendency of this case;

E. Award CELP its litigation expenses, including reasonable attorneys' and expert witness fees, as authorized by section 505(d) of the CWA, 33 U.S.C. § 1365(d), any other applicable authorization; and

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

RESPECTFULLY SUBMITTED this 28th day of September, 2015.



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CENTER FOR ENVIRONMENTAL LAW AND POLICY

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*Attorney for Center for Environmental Law and Policy*

# **EXHIBIT 1**

# KAMPMEIER & KNUTSEN PLLC

ATTORNEYS AT LAW

BRIAN A. KNUTSEN  
Licensed in Oregon & Washington  
503.841.6515  
brian@kampmeierknutsen.com

July 21, 2015

**Certified U.S. Mail – Return Receipt Requested**

Director Daniel M. Ashe  
United States Fish and Wildlife Service  
1849 C Street N.W., Room 3331  
Washington, D.C. 20240

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT**

Dear Director Ashe:

This letter is submitted on behalf of the Center for Environmental Law & Policy (“CELP”) and Wild Fish Conservancy (the “Conservancy”). This letter provides sixty days’ notice of CELP and the Conservancy’s intent to file a citizen suit against the United States Fish and Wildlife Service and Daniel M. Ashe in his official capacity as the Director of the United States Fish and Wildlife Service (collectively, “FWS”) under section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, for discharging pollutants to Icicle Creek from the Leavenworth National Fish Hatchery (the “Hatchery”) without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of section 301(a) of the CWA, 33 U.S.C. § 1331(a).

The Hatchery was constructed around 1939 and is located adjacent to Icicle Creek near Leavenworth, Washington.<sup>1</sup> The Hatchery is operated by FWS.

FWS discharges a variety of pollutants from the Hatchery to Icicle Creek, including, but not limited to: uneaten fish food, fish fecal matter, live fish, fish carcasses and portions thereof, adipose fins, spawning waste,<sup>2</sup> disease control chemicals,<sup>3</sup> pathogens, nitrogen,

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<sup>1</sup> The Hatchery is located at approximately the following coordinates: Latitude: 47° 33’ 30” N; Longitude: 120° 40’ 25” W.

<sup>2</sup> Spawning waste may include fish eggs, fish blood, fish parts, and residual alcohol.

<sup>3</sup> Disease control chemicals include may include Amoxicillin, Formalin, Terramycin, epsom salts, Erythromycin, Romet 30, Florfenicol, penicillin, Lincomycin, Albuterol, Clindamycin, Vibrio Vaccine, trimethoprim-sulfadiazine, Chlortetracycline, Tylosin, Fumagillin, Cephalexin, Benzocaine, Sulfamethoxazole (Albon), gonadotropin releasing hormone, Isogugenol (Aqui-S), Calcein, BKD vaccine, Flavobacterium Columnare B vaccine, acetic acid, buffered iodophor, Chloramine-T, Formalin, hydrogen peroxide, potassium permanganate, sodium chloride, Diquat, citric acid, copper sulfate, and others.



phosphorus, antibiotics, chemicals used for disinfection and other fish culture purposes,<sup>4</sup> residual chemical reagents and salt, chlorinated water, and polychlorinated biphenyls (PCBs).

FWS discharges these pollutants to Icicle Creek from several conveyances at the Hatchery, including from the Hatchery's main discharge structures just below the spillway,<sup>5</sup> from the pollution abatement ponds,<sup>6</sup> from a culvert used to release smolts approximately 50 feet upstream of the pollution abatement pond discharge, and from the outfall discharging fish screen return water.<sup>7</sup> This notice covers all points from which the Hatchery discharges pollutants to Icicle Creek, including any discharges to the Hatchery's canal, which discharges into Icicle Creek at the spillway dam.

The wastewater discharged by the Hatchery contains excess phosphorus and violations of the applicable water quality criterion for pH have been recorded in lower Icicle Creek as a result. This phosphorus loading also contributes to violations of water quality standards in the Wenatchee River. Pollutant discharges from the Hatchery contribute to violations of the water quality standard for dissolved oxygen in Icicle Creek. The wastewater discharged by the Hatchery also likely contributes to violations of water quality temperature criterion for lower Icicle Creek.

The CWA prohibits discharges of pollutants except as otherwise in compliance with the statute. 33 U.S.C. § 1331(a). Section 402 of the CWA provides that the Environmental Protection Agency ("EPA") may issue NPDES permits authorizing discharges. 33 U.S.C. § 1342. The CWA implements a technology-forcing approach under which increasingly stringent NPDES permit requirements are imposed over time. *See Natural Res. Def. Council v. U.S. Envtl. Prot. Agency*, 859 F.2d 156, 211 (D.C. Cir. 1988). NPDES permits therefore are valid for a period not to exceed five years. 33 U.S.C. §§ 1342(a)(3), (b)(1)(B). Expiring permits are extended if the permittee submits a complete application for a new permit at least 180 days before the expiration date. 40 C.F.R. §§ 122.6, .21(d)(2) (in 1981, this was re-codified at 40 C.F.R. § 122.5).

EPA issued FWS a NPDES permit for discharges of pollutants from the Hatchery to Icicle Creek on December 30, 1974. That permit expired by its own terms on August 31, 1979. FWS did not submit an application for a new permit prior to expiration and the permit therefore was not extended by operation of 40 C.F.R. § 122.6. As a result, FWS has not had a NPDES permit for the Hatchery since that date—*i.e.*, for the last **thirty-five (35) years**.

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<sup>4</sup> Such chemicals may include formalin, chlorine, bromine, hypochlorite, iodophor, sodium sulfite, iodine, MS-222 (a fish anesthetic), quaternary ammonia, sodium thiosulfate, Aquashade, LLMO, chlorhexidine, lime type-S, hydrogen peroxide, and others.

<sup>5</sup> These are referred to as Outfalls 1 and 4 and are located approximately at river mile 2.8.

<sup>6</sup> Pollutants from the Hatchery's older pollution abatement pond are discharged from what is referred to as Outfall 2.

<sup>7</sup> This discharge point is referred to as Outfall 3.

The lack of a NPDES permit has had significant consequences. The Washington Department of Ecology has identified the Wenatchee River and Icicle Creek as failing to meet water quality standards for pH and dissolved oxygen and therefore issued a total maximum daily load ("TMDL") in 2009. The TMDL allocates daily phosphorus loading limits for the Hatchery deemed necessary to restore water quality. However, because the Hatchery has not been issued a new NPDES permit, it does not even monitor the phosphorus levels in its discharges.

FWS has discharged pollutants from the Hatchery to Icicle Creek as described herein in violation of section 301(a) of the CWA each and every day during the last six years.

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

Wild Fish Conservancy  
15629 Main Street N.E.  
Duvall, WA 98019  
Tel: (425) 788-1167

Center for Environmental Law & Policy  
911 Western Avenue, Suite 305  
Seattle, WA 98104  
Tel: (206) 829-8299

The attorney representing the Center for Environmental Law & Policy and Wild Fish Conservancy in this matter is:

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Portland, OR 97214  
Tel: (503) 841-6515

The above-described violations reflect those indicated by the information currently available to CELP and the Conservancy. These violations are ongoing. CELP and the Conservancy intend to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.


CELP and the Conservancy believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. CELP and the Conservancy intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against the United States Fish and Wildlife Service and Daniel M. Ashe in his official capacity as the Director of the United States Fish and Wildlife under section 505(a) of the CWA.

CELP and the Conservancy are willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period.



Very truly yours,

Kampmeier & Knutsen, PLLC

By:   
Brian A. Knutsen

cc: Regina A. McCarthy, Administrator, U.S. EPA  
Dennis J. McLerran, Region 10 Administrator, U.S. EPA  
Loretta E. Lynch, Attorney General of the United States  
Maia Bellon, Director, Washington Department of Ecology

### **CERTIFICATE OF SERVICE**

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for the Center for Environmental Law & Policy and Wild Fish Conservancy and that on July 21, 2015, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act to be served on the following by depositing it with the U.S. Postal Service, postage prepaid, in the manner specified:

**Via Certified Mail - Return Receipt Requested:**

Director Daniel M. Ashe  
United States Fish and Wildlife Service  
1849 C Street N.W., Room 3331  
Washington, D.C. 20240

Administrator Regina A. McCarthy  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., N.W., Mail Code 1101A  
Washington, D.C. 20460

Regional Administrator Dennis J. McLerran  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Code RA-210  
Seattle, WA 98101

Attorney General Loretta E. Lynch  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

Director Maia D. Bellon  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

  
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Brian A. Knutsen