



Cascade Resources
ADVOCACY GROUP

May 15, 2003

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Jon Esler
Chair
Oregon Fish and Wildlife Commission
PGE
121 SW Salmon St.
Portland, OR 97204

Oregon Fish and Wildlife Commission
PO Box 59
Portland, OR 97207-0059

Mr. Lindsay Ball
Director
Oregon Department of Fish and Wildlife
2501 SW First Avenue
Portland, OR 97207

Oregon Department of Fish and Wildlife
2501 SW First Avenue
Portland, OR 97207

**Re: Notice of Intent to Sue Pursuant to the Clean Water Act, 33 U.S.C. §
1365, Regarding the Operation of Oregon's Fish Hatcheries**

Dear Messrs. Esler and Ball:

This office represents Northwest Environmental Defense Center, the Oregon Natural Resources Council Fund, Oregon Trout, Pacific Rivers Council, Trout Unlimited and the Native Fish Society (collectively, the "Parties"). On behalf of the Parties, we are notifying you, in your individual official capacities, the Oregon Fish and Wildlife Commission (the "Commission") and the Oregon Department of Fish and Wildlife ("ODFW") (collectively, the "Defendants"), that Defendants are in violation of the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA" or the "Act") and its implementing regulations, 40 C.F.R. Part 100 et seq.

Common Name	County	Address	State/File ID #
Big Creek	Clatsop	Astoria, OR	64420
Butte Falls	Jackson	580 Fish Ladder Road; Butte Falls, OR	64430
Cascade	Multnomah	74152 NE Eagle Creek Loop; Cascade Locks, OR	64435
Cedar Creek	Tillamook	33465 Hwy 22; Hebo, OR	64440
Irrigon	Morrow	74135 Riverview Lane; Irrigon, OR	64478
Klaskanine	Clatsop	Astoria, OR	64485
Marion Forks	Marion	HC 73 BOX 71; Idanha, OR	64495
McKenzie	Lane	43863 Greer Dr.; Leaburg, OR	64500
Nehalem	Clatsop	36751 Fish Hatchery Lane; Nehalem, OR	64510
Oak Springs	Wasco	85001 Oak Springs Rd; Maupin, OR	64515
Rock Creek	Douglas	425 McCarn Ln; Idleyld, OR	64530
Sandy	Clackamas	39800 SE Fish Hatchery Rd.; Sandy, OR	64550
South Santiam	Linn	43182 North River Dr.; Sweet Home, OR	64560
Umatilla	Morrow	73959 Riverview Lane; Irrigon, OR	107454-003
Wallowa	Wallowa	82119 Fish Hatchery Ln.; Enterprise, OR	64580

ODFW operates all of these hatcheries pursuant to NPDES General Permit 300J issued by the Oregon Department of Environmental Quality ("DEQ").¹ A list of the alleged violations of NPDES General Permit 300J is attached as Exhibit A. The Parties

¹ DEQ revised NPDES General Permit 300J in October of 2002. This Notice covers alleged violations under the old 300J before October of 2002 and alleged violations under the current version of 300J.

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also provide notice that they intend to pursue other violations of the same type and nature that occur in the future and/or which may not have been listed in Exhibit A.

The research assembled by the Parties indicates that **ODFW has violated the CWA more than 1500 times in the past two years alone.** These violations are ongoing, because ODFW continues to violate the CWA on a regular basis. The contaminants in the illegal discharge threaten the natural resources of this state as well as the interests of the general public. We hope you will take this opportunity to rectify a long-standing problem.

I. The Clean Water Act

Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), and 40 C.F.R. Part 135, authorize the commencement of a civil action against any person who violates an effluent standard or limitation, including limitations under Section 311 of the CWA. Furthermore, the CWA authorizes suits against state agencies for the same purpose. 33 U.S.C. § 1365(a)(i).

Federal courts have the authority to enforce the requirements that have been violated while fashioning appropriate equitable relief. The Court may also award attorney and expert witness fees. 33 U.S.C. § 1365(d). The sixty (60) day notice is designed to provide the violator and appropriate federal agencies with adequate time to ensure that the violator has come into compliance with the Act prior to litigation being filed. We encourage ODFW and the Commission to use the 60-day notice period to correct the violations and resolve the outstanding disputes with the Parties.

II. Notice

The entirety of this letter and the exhibit constitute Parties' **Notice of Intent to Sue.** This notice covers all violations of the Act currently known to the Parties, and they intend to file suit in federal court in the District of Oregon in Portland. This suit, if and when filed, will also address such other violations of the Act that may occur or become apparent after service of this notice letter. The Parties intend to seek appropriate injunctive relief requiring both compliance with the Clean Water Act and remediation of damage caused by the ongoing violations. The Parties also intend to seek costs and fees, including expert and attorney fees.

Please note the following contact information for the Parties as required by regulation:

Northwest Environmental Defense Center
Mark Riskedahl
Executive Director
10015 SW Terwilliger Blvd.
Portland, OR 97219

Oregon Trout
Joe Whitworth
Executive Director
117 SW Naito Parkway
Portland, OR 97204

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ONRC Fund
Doug Heiken
Field Representative
PO Box 11648
Eugene, OR 97440

Native Fish Society
Les Helgeson
Legislative Coordinator
40805 Upper Nestucca River Road
Beaver, OR 97108

Trout Unlimited
Kaitlin L. Lovell
Salmon Policy Coordinator
213 SW Ash St., Suite 205
Portland, OR 97204

Pacific Rivers Council
Mary Scurlock
Senior Policy Analyst
PMB 376, 4888 NW
Bethany Blvd.
Suite K5
Portland, OR 97229-9260

All communication should be directed to the Parties' legal counsel at:

Chris Winter
Cascade Resources Advocacy Group
917 SW Oak St.
Suite 417
Portland, OR 97205
Tel. 503.525.2725
Fax. 503.294.5656
chris@crag.org

During this 60-day period, my clients and I will be willing to discuss effective remedies and actions that will assure future compliance with the Clean Water Act. In addition, we can discuss any other facts you believe are relevant. Please do not hesitate to contact me if you wish to discuss this matter.

Sincerely,



Chris Winter

cc:

Stephanie Hallock
Director
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

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Christine Todd Whitman
Administrator
United State Environmental Protection Agency
Ariel Rios Building
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Mr. L. John Iani
Region 10 Administrator
U.S. EPA, Region 10
Regional Administrator's Office, RA-140
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John Ashcroft
U.S Department of Justice
950 Pennsylvania Ave., NW
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