

November 1, 2013

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
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Washington, DC 20460

Sally Jewell, Secretary of the Interior  
U.S. Department of the Interior  
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Dennis McLerran, Regional Administrator  
U.S. Environmental Protection Agency  
Region 10  
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William W. Stelle, Jr.  
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NOAA Fisheries West Coast Region  
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Penny Pritzker  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

Robyn Thorson, Regional Director  
U.S. Fish & Wildlife Service  
Pacific Region  
911 NE 11th Avenue  
Portland, OR 97232

**Re: Supplemental 60-Day Notice of Intent to Sue EPA for Clean Water Act Violations  
Related to Idaho Water Quality Standards**

Dear Mses. and Messrs:

This letter provides notice that Northwest Environmental Advocates (NWEA) and the Idaho Conservation League (ICL) intend to file suit pursuant to Section 505(a)(2) of the Clean Water Act (CWA), 33 U.S.C. § 1365(a)(2), against the U.S. Environmental Protection Agency (EPA) for violating the CWA with regard to its failure to act on Idaho water quality standards.

By letters dated December 26, 2012 and May 13, 2013, NWEA and ICL notified EPA of their intent to sue for CWA and Endangered Species Act (ESA) violations related to Idaho's water quality standards.<sup>1</sup> This supplemental notice concerns additional CWA violations of which NWEA has become aware.

As explained below, EPA has failed to act on Idaho's revised water quality standards that include exemptions from meeting water quality standards for nonpoint sources. These exemptions

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<sup>1</sup> NWEA and ICL's December 26, 2012 and May 13, 2013 Notices of Intent to Sue are hereby incorporated by reference.

Kevin Cassidy  
Staff Attorney

include IDAPA 58.01.02.350.01.a, -350.01.b, and -350.02.a, all of which are in effect as Idaho water quality standards in the absence of EPA action, pursuant to 40 C.F.R. § 131.21(c).

NWEA and ICL are concerned about the harm caused by EPA's failure to take action on these water quality standard revisions, particularly given the widespread impacts of nonpoint source pollution on the state's water quality and the effect of that pollution on numerous sensitive species including but not limited to those listed as threatened or endangered pursuant to the ESA. EPA's failure to act also harms the interests of NWEA and ICL by undermining the procedural requirements of the CWA, which ensure that agencies, such as EPA, engage in appropriate oversight of state water quality standards programs, make informed decisions and act in conformity with the CWA's substantive requirements.

Upon expiration of the 60 days NWEA and ICL intend to file suit in United States federal court in the District of Idaho against EPA pursuant to the Clean Water Act. We are available to discuss potential remedies prior to the expiration of this notice.

## **I. Clean Water Act Violations**

### **A. Legal Framework**

States must submit revised or newly adopted water quality standards to EPA for review and approval or disapproval. 33 U.S.C. § 1313(c)(2)(A). EPA must notify the state within 60 days if it approves the new or revised standards as complying with the CWA. 33 U.S.C. § 1313(c)(3). If EPA concludes the state standards do not meet CWA requirements, within 90 days of the state's submission, EPA must notify the state of the disapproval and "specify the changes to meet such requirements." *Id.* If the state does not adopt the specified changes within 90 days of the notification, EPA shall itself promulgate standards for the state. *Id.*; 33 U.S.C. § 1313(c)(4).

### **B. EPA Has Failed to Act on Water Quality Standards Submitted for Approval by Idaho**

On or about April 5, 2000, December 31, 1999, and July 1, 1993 (amended March 29, 2012), Idaho adopted revisions to its water quality standards that included exemptions for nonpoint sources. These exemptions included IDAPA 58.01.02.350.01.a, -350.01.b, and -350.02.a, all of which are in effect as Idaho water quality standards in the absence of EPA action, pursuant to 40 C.F.R. § 131.21(c). In failing to take action on Idaho's revised water quality standards EPA has violated its mandatory duty to act pursuant to CWA Section 303(c)(3), 33 U.S.C. § 1313(c).

## **II. Persons Giving Notice and Representing Attorneys**

The full name, address, and telephone number of the parties providing this notice are:

Nina Bell, Executive Director  
Northwest Environmental Advocates

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Boise, ID 83701  
(208) 345-6933

The attorneys representing the parties in this notice are:

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Kevin Cassidy (OSB No. 025296)  
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Lauren M. Rule  
Advocates for the West  
P.O. Box 1612  
Boise, ID 83701  
(208) 342-7024

**III. Conclusion**

Upon expiration of the 60 days NWEA and ICL intend to file suit against EPA pursuant to the Clean Water Act. NWEA and ICL anticipate amending their existing complaint on similar issues now pending in the United States District Court District of Idaho, requesting declaratory and injunctive relief. We are available to discuss potential remedies prior to the expiration of this notice.

Sincerely,



Kevin Cassidy  
Allison LaPlante  
Staff Attorneys  
Earthrise Law Center

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cc: Curt Fransen, Director  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

Also electronic copies to DOJ counsel: Elizabeth Dawson, John Martin