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* Application for admission *pro hac vice* pending

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; ANDREW
WHEELER, Acting Administrator, United
States Environmental Protection Agency;
CHRIS HLADICK, Region 10 Administrator,
United States Environmental Protection
Agency,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Clean Water Act
(33 U.S.C. §§ 1251, *et seq.*)

INTRODUCTION

1. Oregon's coastal waters are experiencing a dramatic water quality problem. As the ocean absorbs carbon dioxide emissions from the atmosphere, the carbon dioxide reacts with

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seawater, lowering the ocean's pH and making it more acidic. In addition, land-based pollution in the form of nutrient runoff and other local sources increases acidity. This process is called "ocean acidification."

2. Ocean acidification strips seawater of calcium carbonate, an essential building block for marine organisms that build shells. Consequently, shellfish in Oregon have experienced a dramatic collapse in production. Beginning in 2005, billions of oyster larvae have perished in the Pacific Northwest hatcheries that rely on the region's seawater, with some hatcheries losing up to 80 percent of their larvae. Scientists have definitively linked the oyster production problems in hatcheries to ocean acidification.

3. Documented changes in water chemistry and shellfish production declines in Oregon signal a serious water quality problem.

4. The Clean Water Act, the nation's strongest law protecting water quality, aims to halt water pollution and protect the beneficial uses of water bodies. Toward those goals, Section 303(d) of the Clean Water Act requires each state to identify any water bodies that fail to meet the state's water quality standards and list those bodies as "impaired" waters. 33 U.S.C. § 1313(d).

5. The state must then submit its 303(d) list of impaired waters (a "303(d) list") to the Environmental Protection Agency ("EPA"), and EPA must either approve the list if it meets the requirements of the law or disapprove the list. 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2). If EPA disapproves the list, Section 303(d) requires that EPA identify any impaired water bodies omitted from a state's list within thirty days. 33 U.S.C. § 1313(d)(2).

6. A state's list of impaired water bodies serves several purposes. Primarily, for each water on the list, the state must identify the pollutant causing the impairment, when known, and

then develop a plan to improve water quality for the impaired water body based on the severity of the pollution and the sensitivity of the water's use. 40 C.F.R. § 130.7(b)(4).

7. States are required to submit 303(d) lists every two years. The mandated thirty-day time limit imposed on EPA to identify impaired waters after disapproval ensures impaired waters are promptly included on the state's list before the next listing cycle begins.

8. Despite available scientific data and information on ocean acidification and its harmful impact on Oregon's marine waters, the Oregon Department of Environmental Quality ("DEQ") failed to include any marine waters impaired due to ocean acidification on its 2012 303(d) list. The state submitted its impaired waters list to EPA on November 5, 2014.

9. More than two years after DEQ's submission of Oregon's 2012 303(d) list, EPA partially approved and partially disapproved the list. EPA partially disapproved the list due to DEQ's failure to list 332 impaired water bodies. EPA proposed to add these 332 segments to Oregon's 303(d) list because data indicate that these water bodies are not attaining water quality standards.

10. In its partial disapproval, EPA solicited data and information on ocean acidification impacts to marine waters in Oregon. EPA described the numerous lab and field studies that show impacts to shellfish and other marine life under corrosive conditions and acknowledged that data conclusively demonstrated corrosive conditions off the Oregon coast.

11. EPA is legally required to finalize its rulemaking and identify any of Oregon's marine waters impaired by ocean acidification. But EPA has failed to do so.

12. Accordingly, Plaintiff seeks a declaration that EPA's failure to identify impaired waters in Oregon within thirty days of EPA's disapproval of Oregon's 2012 303(d) list violates EPA's mandatory duty under Section 303 of the Clean Water Act, 33 U.S.C. § 1313(d)(2), and

constitutes an agency action unlawfully withheld or unreasonable delayed under the Administrative Procedure Act, 5 U.S.C. § 706(1). Plaintiff also seeks an order requiring EPA to promptly identify and finalize its rulemaking to add additional impaired waters, including those due to ocean acidification, to Oregon's 2012 303(d) list.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365(a)(2) (Clean Water Act), and 5 U.S.C. §§ 702–03 (Administrative Procedure Act). The requested relief is authorized by 33 U.S.C. § 1365(a), and by 5 U.S.C. §§ 551(13) and 706(1).

14. As required by the Clean Water Act, 33 U.S.C. § 1365(b)(2), Plaintiff provided Defendants with notice of their intent to sue over the violations of law alleged in this Complaint more than sixty days ago. Defendants have not remedied these violations of law.

15. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e)(1) because the violations alleged in this Complaint are affecting ocean waters in this judicial district.

PARTIES

16. Plaintiff the Center for Biological Diversity (“the Center”) is a nonprofit corporation dedicated to the preservation of biodiversity, native species, and ecosystems. The Center's Oceans Program focuses specifically on conserving marine ecosystems, and seeks to ensure that imperiled species are properly protected from destructive practices in our oceans. In pursuit of this mission, the Center has worked extensively to protect ocean ecosystems in Oregon and nationwide from various threats including ocean acidification. The Center has engaged in efforts to protect endangered marine species threatened by ocean acidification such as oysters in Oregon and Washington, black abalone in California, and corals in Florida and Hawaii.

17. The Center currently has more than 68,000 members, many of whom live in Oregon. Center members and staff live in and regularly visit the Pacific Northwest's coastal and marine areas, including the waters at issue in this case. Center members regularly use Oregon's ocean and coastal areas for research, aesthetic enjoyment, observation, fishing, harvesting shellfish, and other recreational, scientific, and educational activities and intend to continue doing so in the future. The maintenance of a healthy marine ecosystem and water quality is important to the Center's members' interests.

18. Center members and staff also regularly research, observe, photograph, enjoy habitat, and seek protection for numerous marine species that are affected by ocean acidification in Oregon, including abalone, mussels, clams, oysters, and other shellfish. Center members and staff also regularly view and use the habitat of other marine animals such as salmon, sea otters, and whales that are affected by the ecosystem changes, including prey availability, caused by ocean acidification. Center members and staff derive aesthetic, scientific, recreation, conservation, and other benefits from the existence of marine animals in the wild and their ocean habitat. The Center brings this action on behalf of itself and its members.

19. The Center and its members' interests are harmed by EPA's failure to identify impaired waters in Oregon and finalize the list of such waters. The Center and its members' injuries are directly traceable to EPA's failure to identify impaired waters in Oregon and finalize the list of such waters. States must identify impaired water bodies – those failing to meet water quality standards – and establish limits on pollutants causing their impairment. If a state fails to list an impaired water body, EPA must reject the state's list and identify impaired waters on its own. Marine waters in Oregon do not meet state water quality standards, and therefore when Oregon failed to identify waters impaired by ocean acidification, EPA was required to

disapprove Oregon's list and identify those waters as impaired. Once a water body is identified as impaired, either the state or EPA must set total maximum daily load of pollutants that will ensure the protection of water quality. As a result of EPA's failure to finalize approval of Oregon's impaired waters lists, there has been a continued influx of pollutants that are harming marine wildlife and ecosystems. EPA's failure to complete its mandatory rulemaking and finalize Oregon's 303(d) list inhibits the protection of water quality and denies important pollution regulations for water bodies and marine species, and decreases the Center's members' ability to use, research, view, and enjoy affected marine species and habitats.

20. The Center and its members are also suffering procedural and informational injuries resulting from EPA's failure to finalize Oregon's list of impaired waters, including those waters impaired by ocean acidification. With no final 303(d) list, the State of Oregon will fail to establish total maximum daily loads and take other actions as required by the Clean Water Act. EPA regulations make it clear that impaired water listings and total maximum daily loads shall be developed with public participation. Due to EPA's violations of law, the Center and its members are deprived of informational and procedural benefits that would aid them in their activities to conserve ocean wildlife and habitat.

21. The Center and its members' injuries can be redressed by the declaratory and injunctive relief sought herein. An order compelling EPA to finalize Oregon's impaired waters lists and add water bodies not attaining water quality standards due to ocean acidification will be more protective of water quality. Listing triggers a duty for Oregon or the EPA to develop total maximum daily loads necessary to attain applicable water quality standards, which are incorporated into water quality management plans. The addition of waters impaired by ocean acidification to Oregon's impaired list would also result in increased monitoring and

management of those waters as well as benefits from educating the public and policymakers about ocean acidification. Listing would focus funding, research, and management on those areas that are vulnerable to ocean acidification. Therefore, a final list, which may include waters impaired by ocean acidification, will likely improve ocean water quality, and increase and improve the Center's members' opportunities to use and enjoy marine waters and species of Oregon.

22. Defendant United States Environmental Protection Agency is the federal agency charged with the implementation of the Clean Water Act. EPA has the duty, authority, and ability to remedy the injuries alleged in this complaint.

23. Defendant Andrew Wheeler is the Acting Administrator of EPA and is sued in his official capacity. As Acting Administrator of EPA, he is responsible for the agency's implementation of the Clean Water Act. Acting Administrator Wheeler has the ultimate duty, authority, and ability to remedy the injuries alleged in this complaint.

24. Defendant Chris Hladick is the Administrator of Region 10 of EPA and is sued in his official capacity. EPA Region 10's jurisdiction covers the Pacific Northwest of the United States, including Oregon and its ocean waters that are harmed by EPA's unlawful actions and inactions. Administrator Hladick is responsible for EPA's implementation of the Clean Water Act within Region 10, including ocean waters in Oregon. The Regional Administrator has the duty, authority, and ability to remedy the injuries alleged in this complaint.

LEGAL BACKGROUND

The Clean Water Act

25. Congress enacted the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, with the express purpose "to restore and maintain the chemical, physical, and biological integrity of the

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Nation’s waters.” 33 U.S.C. § 1251(a). One of the Act’s goals is to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water” *Id.*

26. To meet the Act’s goals, each state must establish water quality standards that protect specific uses of waterways within the state’s boundaries. *Id.* § 1313(a)–(c); 40 C.F.R. § 130.3. To do so, a state first designates the use or uses of a particular body of water, *see* 40 C.F.R. § 131.10, and then designates water quality criteria necessary to protect their designated uses. *Id.* § 131.11.

27. These water quality standards include numeric criteria, narrative criteria, water body uses, and antidegradation requirements and should “provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation” 40 C.F.R. § 130.3.

28. Section 303(d) of the Act requires states to establish a list of impaired water bodies within their boundaries for which existing pollution controls “are not stringent enough” to ensure “any water quality standard applicable” will be met. 33 U.S.C. § 1313(d)(1)(A). This list is often referred to as a state’s “303(d) list” or list of “impaired waters.”

29. The state’s 303(d) list must include all water bodies that fail to meet “any water quality standard,” including “numeric criteria, narrative criteria, water body uses, and antidegradation requirements.” 40 C.F.R. § 130.7(b)(1), (3). The list must also include waters that are threatened, defined as waters currently attaining water quality standards but are not expected to meet applicable water quality standards before the next listing cycle. *Id.* § 130.7(b)(5)(iv); EPA, *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (2005)*.

30. Once a state develops its 303(d), or impaired waters, list, the state must submit the list to EPA, and EPA must approve, disapprove, or partially disapprove the list within thirty days. 33 U.S.C. § 1313(d)(2). If EPA does not approve a state's 303(d) list, the Administrator "shall not later than thirty days after the date of such disapproval identify such waters" in the state that should have been listed as impaired. *Id.*; 40 C.F.R. § 130.7(d)(2). The Regional Administrator must "promptly issue a public notice comment" on the identified impaired waters, and transmit the list of impaired waters to the state, and "the State shall incorporate them into its current plan" 40 C.F.R. § 130.7(d)(2); 33 U.S.C. § 1313(d)(2).

31. Once a water body is listed as impaired pursuant to Clean Water Act Section 303(d), the state has the authority and duty to control pollutants from all sources that are causing the impairment. Specifically, the state or EPA must establish total maximum daily loads of pollutants that a water body can receive and still attain water quality standards. 33 U.S.C. § 1313(d). States then implement the maximum loads by incorporating them into the state's water quality management plan and controlling pollution from point and nonpoint sources. 33 U.S.C. § 1313(e); 40 C.F.R. §§ 130.6, 130.7(d)(2). The goal of Section 303(d) is to ensure that our nation's waters attain water quality standards whatever the source of the pollution.

32. EPA has long-acknowledged that, as a result of absorbing large quantities of human-made carbon dioxide emissions, ocean chemistry is changing, and this is likely to negatively affect marine ecosystems and species including coral reefs, shellfish, and fisheries. EPA also has acknowledged the Clean Water Act and its 303(d) program can and must be used to address the water quality problem of ocean acidification. EPA guidance directs states to include waters threatened or impaired by ocean acidification in their 303(d) lists of impaired water bodies and to solicit data and information on ocean acidification.

33. Section 505 of the Clean Water Act authorizes citizens to bring a civil action against the Administrator “where there is alleged a failure of the Administrator to perform any act or duty . . . which is not discretionary with the Administrator.” 33 U.S.C. § 1365(a)(2).

The Administrative Procedure Act

34. The Administrative Procedure Act allows for judicial review of agency actions. 5 U.S.C. § 702. Agency action includes an agency’s failure to act. *Id.* § 551(13).

35. The Administrative Procedure Act allows a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed. *Id.* § 706(1).

FACTUAL BACKGROUND

Ocean Acidification

36. When carbon dioxide is released into the atmosphere, the oceans absorb a portion of those emissions. Carbon dioxide absorption by the ocean alters seawater chemistry, causing ocean waters to become more acidic and the pH to decline. This process, termed “ocean acidification,” represents one of the greatest threats to ocean ecosystems in the United States and throughout the world.

37. The oceans have absorbed approximately thirty percent of the carbon dioxide released into the atmosphere by human activities, contributed largely from fossil fuel use and land-use changes such as deforestation. At present, the atmospheric carbon dioxide concentration is over 400 parts per million and continues to rise over two parts per million per year. The ocean will continue to absorb carbon dioxide until it reaches equilibrium with the atmosphere.

38. Globally, human sources of carbon dioxide have changed the pH of oceans an average of 0.11 units since the Industrial Revolution – a thirty percent increase in acidity. By the

end of the century, the pH of the world's oceans is predicted to drop by another 0.3 to 0.5 units, amounting to a 100 to 150 percent increase in acidity.

39. Regional factors, such as nutrient runoff and algal blooms, combine with high carbon dioxide waters to influence ocean acidification in the coastal waters off Oregon. Nutrient runoff and algal blooms can result from anthropogenic causes, and human sources are a major contributor to nutrient loads on the Oregon coast.

40. Oregon coastal waters are especially vulnerable to ocean acidification. Ocean acidification is affecting coastal waters at rates and magnitudes greater than scientists had previously estimated. Ocean acidification is already at levels that were not predicted until the end of the century. The entire West Coast is currently experiencing an upwelling of "corrosive acidified" waters onto the continental shelf, exposing shellfish and plankton in surface waters to corrosive conditions. Scientific studies have shown that these levels can have adverse effects on marine animals.

41. Ocean acidification poses a threat to marine animals and ecosystems. Ocean acidification impairs the ability of marine animals to build the shells and skeletons required for their survival. When carbon dioxide concentrations in seawater increase, the availability of carbonate ions decreases, making it more difficult for marine organisms to form, build, and maintain calcium carbonate shells and other calcium carbonate-based body parts. As a result of ocean acidification, calcifying marine plants and animals experience greater difficulty in making or maintaining their shells, slower growth rates, and higher mortality.

42. Numerous lab and field studies have shown impacts to shellfish from corrosive conditions. Mollusks, such as mussels, clams, and oysters, have been shown to be sensitive to ocean acidification, and both early life stages and adults have shown reduced calcification,

growth, and survival when exposed to corrosive conditions. (e.g., aragonite saturation less than 1). Laboratory studies have shown that oyster larvae experience conditions detrimental to their development and growth at an aragonite saturation level of 1.5 and below. Laboratory studies have also demonstrated impacts on the early stages of Dungeness crabs, including delays in hatching and significantly reduced larvae survival at lower pH levels. Further, mollusk shell dissolution increases as aragonite saturation state decreases. Some of the conditions simulated in these studies have been recorded off the coast of Oregon, as well as in Oregon state waters.

43. EPA reviewed National Oceanic and Atmospheric Administration data and found it demonstrated an aragonite saturation state of less than 1, which is corrosive to pteropods, in 73 percent of observations in Oregon state waters. In 2014, a study was published on the shell dissolution of pteropods (small pelagic snails that make up an important part of the oceanic food web), off the coast of Washington, Oregon, and California. In Oregon, the pteropod samples were collected at stations outside Oregon's state coastal waters. The stations located closest to shore exhibited the highest proportion of signs of dissolution.

44. The 2014 study found that 24 percent of offshore pteropods and 53 percent of onshore pteropods had severe damage from acidic waters dissolving their shells. The authors estimated that the incidence of severe pteropod shell dissolution owing to anthropogenic ocean acidification has doubled since pre-industrial times in near shore habitats across the study area, and is on track to triple by 2050.

45. Coastal upwelling zones, located to shore, may be more vulnerable to enhanced acidification. Upwelling causes low aragonite saturation state waters to be forced to the surface, while the aragonite saturation state is further suppressed by anthropogenic carbon dioxide and freshwater inputs.

46. Ocean acidification also harms larvae of bivalves such as oysters and mussels. Saturation state effects on shell formation carry over into later life stages, where pH or carbon dioxide effects can further exacerbate initial ocean acidification effects. Laboratory studies demonstrating increased shell dissolution in the presence of aragonite saturation states less than 1, present in Oregon state waters, indicates impairments of aquatic life within Oregon waters.

Oregon's 2012 303(d) List

47. On June 10, 2009, Plaintiff submitted comments and scientific information requesting the Oregon Department of Environmental Quality ("DEQ") to identify coastal waters as impaired due to ocean acidification on Oregon's 303(d) list.

48. On December 6, 2010, May 2, 2011, April 18, 2012, and June 20, 2012, Plaintiff submitted additional information and comments on ocean acidification and its impact on Oregon's marine waters.

49. In 2014, Plaintiff submitted additional information and comments on ocean acidification and its impact on Oregon's marine waters in response to DEQ's draft integrated report.

50. On information and belief, federal and other scientists provided data and information to the State of Oregon on ocean acidification along the Oregon coast and its impact on aquatic life for its 2012 water quality assessment.

51. On November 5, 2014, DEQ submitted Oregon's 2012 Section 303(d) list of impaired waters to EPA. This list did not include marine waters impaired due to ocean acidification.

52. On December 21, 2016, EPA partially approved and partially disapproved Oregon's 2012 303(d) list. EPA disapproved DEQ's submittal for the removal of eight water

quality limited segments and for failing to list 332 impaired water bodies. EPA proposed to add these 332 segments to Oregon's 2012 303(d) list because the segments did not attain water quality standards.

53. In its partial disapproval, EPA solicited data and information on ocean acidification impairments of Oregon marine waters. EPA described that numerous lab and field studies showed impacts to shellfish and pteropods under corrosive conditions, and acknowledged that data showed corrosive conditions off the Oregon coast. EPA acknowledged that the scientific information showed that aquatic life impairments occur at aragonite saturation states of less than 1.0, and that such conditions occur in Oregon state waters. EPA stated it would act on marine waters impaired by ocean acidification once it considered the public comments.

54. On April 3, 2017, the Center submitted a public comment to EPA containing data and information on ocean acidification impacts in Oregon's marine waters. Plaintiff urged EPA to list several water bodies as threatened or impaired due to ocean acidification under its 303(d) list, and to obtain all readily available data on ocean acidification from the sources identified in the comment and analyze them for its water quality assessment.

55. EPA has not yet identified Oregon's marine waters impaired by ocean acidification.

56. EPA has not yet finalized its rulemaking adding any additional impaired waters to Oregon's 2012 303(d) list, including the 332 impaired waters it proposed or any waters threatened or impaired by ocean acidification.

CLAIMS FOR RELIEF

(Violations of the Clean Water Act and Administrative Procedure Act)

57. Plaintiff realleges and incorporates by reference all the allegations set forth in this

Complaint.

58. EPA's failure to identify Oregon's threatened and impaired waters and finalize its rulemaking adding any additional impaired waters, including those impaired due to ocean acidification, to Oregon's 2012 303(d) list within thirty days of EPA's partial disapproval violates the Clean Water Act Section 303(d)(2), 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2), and/or constitutes agency action unlawfully withheld or unreasonable delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

REQUEST FOR RELIEF

For the reasons listed above, Plaintiff respectfully requests that the Court grant the following relief:

1. A declaration that EPA's failure to identify threatened and impaired waters and finalize its rulemaking adding additional impaired waters, including those impaired due to ocean acidification, within thirty days after its partial disapproval of Oregon's 2012 303(d) list, violated, and continues to violate, EPA's mandatory duties under Section 303(d)(2) of the Clean Water Act, 33 U.S.C. § 1313(d)(2) and 40 C.F.R. § 130.7(d)(2), and/or constitutes agency action unlawfully withheld or unreasonable delayed under the Administrative Procedure Act, 5 U.S.C. § 706(1);
2. An order compelling EPA to identify and finalize its rulemaking to add additional impaired waters, including those impaired due to ocean acidification, within thirty days to Oregon's 2012 303(d) list;
3. Award Plaintiff its costs of litigation, including reasonable attorneys' fees as authorized by Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and/or the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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4. Grant Plaintiff such other relief as the Court deems just and proper.

Respectfully submitted this 27th day of November, 2018.

s/Kristen Monsell

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*Application for admission *pro hac vice*
pending

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Center for Biological Diversity

(b) County of Residence of First Listed Plaintiff Pima County, AZ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kristen Monsell, Emily Jeffers, Center for Biological Diversity
1212 Broadway, Suite 800, Oakland, CA 94612
(510) 844-7100

DEFENDANTS

Environmental Protection Agency; Andrew Wheeler, Acting Administrator; Chris Hladick, Region 10 Administrator

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. 1313

Brief description of cause:

Failure to identify impaired waters under the Clean Water Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/27/2018

s/ Kristen Monsell

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff(s)

v.

Civil Action No.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, Acting Administrator, United States Environmental Protection Agency; CHRIS HLADICK, Region 10 Administrator, United States Environmental Protection Agency,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kristen Monsell
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, Acting Administrator, United States Environmental Protection Agency; CHRIS HLADICK, Region 10 Administrator, United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Andrew Wheeler, Acting Administrator Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Kristen Monsell Center for Biological Diversity 1212 Broadway, Suite 800 Oakland, CA 94612

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, Acting Administrator, United States Environmental Protection Agency; CHRIS HLADICK, Region 10 Administrator, United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Chris Hladick, Region 10 Administrator
Environmental Protection Agency
Park Place Building
1200 6th Avenue
Seattle, WA 98101

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kristen Monsell
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

CENTER FOR BIOLOGICAL DIVERSITY)

Plaintiff(s)

v.

Civil Action No.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, Acting Administrator, United States Environmental Protection Agency; CHRIS HLADICK, Region 10 Administrator, United States Environmental Protection Agency

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Matthew G. Whitaker
Acting U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kristen Monsell
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, Acting Administrator, United States Environmental Protection Agency; CHRIS HLADICK, Region 10 Administrator, United States Environmental Protection Agency,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Civil Process Clerk
U.S. Attorneys Office
District of Oregon
1000 SW Third Ave, Suite 600
Portland, Oregon 97204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kristen Monsell
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: