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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

WATERWATCH OF OREGON,

Plaintiff,

v.

Q BAR X RANCH, JACQUELINE M.
DOHERTY, MARY L. ANDRADE, JANINE M.
PFOHL, and WILLIAM T. PFOHL,

Defendants.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. This citizen suit, brought under the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), seeks to enjoin the Defendants to implement measures to eliminate “take” of Southern

Oregon/Northern California Coast Coho Salmon (“Southern Oregon Coast Coho”) at Pomeroy Dam and its associated water diversion system on the Illinois River in Oregon.

2. Pomeroy Dam (the “Dam”) and its associated water diversion system is owned, operated, and/or controlled by each of the Defendants, jointly and singly.

3. The Pomeroy Dam and its associated water diversion system on the Illinois River is causing “take” of Southern Oregon Coast Coho, which are listed as threatened under the ESA, in violation of Sections 4(d) and 9 of the ESA. 16 U.S.C. § 1533(d) & 1538(a)(1)(B). The Dam is causing take of Southern Oregon Coast Coho by among other things: blocking or impeding adult salmon migration and access to spawning and rearing habitat; harming or killing adult salmon in their efforts to traverse the Dam to migrate or spawn; causing conditions that raise temperatures in the stream to levels that stress and/or injure, and/or kill Southern Oregon Coast Coho; causing conditions that pool and slow down the river upstream of the Dam that increase predation of juvenile Southern Oregon Coast Coho; and unscreened and/or inadequate screening of water diversions from the Dam, causing salmon to be stranded and be injured or die in irrigation canals and ditches.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g).

5. As required by 16 U.S.C. § 1540(g)(2)(A)(i), plaintiff WaterWatch of Oregon provided the Defendants with notice of the violations described in this complaint by letter dated January 11, 2022 (with an amended carbon copy list of recipients on January 12, 2022). Plaintiff sent both notices to Defendants by regular first class and by certified U.S. mail, return receipt requested. Plaintiff also provided a copy of each notice to the Secretary of Commerce, to the National Oceanic and Atmospheric Association, and to the Oregon Department of Fish and

COMPLAINT FOR DECLARATORY AND

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Wildlife. Plaintiff also provided a copy of the notice to the U.S. Attorney's Office and the Department of Homeland Security. More than 60 days have passed since Defendants received both the original and amended notice and no Defendant has responded to the notice.

6. Venue in this District and Division is proper under 16 U.S.C. § 1540(g)(3)(A), 28 U.S.C. § 1391, and Local Rule 3-2(a)(3), because the Illinois River and Pomeroy Dam are located in Josephine County, Oregon.

PARTIES

7. WaterWatch of Oregon ("WaterWatch") is a non-profit conservation organization dedicated, since 1985, to the protection and restoration of streamflows in Oregon's rivers and streams in order to sustain native fish, wildlife, and aquatic ecosystems as well as the people and communities who depend on healthy rivers. WaterWatch is incorporated and has its headquarters in the State of Oregon. WaterWatch has worked for over 35 years in river basins around the State of Oregon to restore salmon and stream flows, including work to remove significant fish passage barriers such as dams. A number of those dams have been in the Rogue River and tributaries of the Rogue River. WaterWatch has been instrumental in dam removal and flow improvement throughout the State, using voluntary agreements, education, and where necessary, litigation in order to protect rivers, their tributaries, and fish. WaterWatch funds at least one staff member almost full time and funds other staff members part time, to work on matters related to dams and other fish passage barriers in the State of Oregon. Dam and barrier removal is an integral part of WaterWatch's overall work as an organization.

8. The Illinois River is a federally designated wild and scenic river and is, in turn, a major tributary to the wild and scenic Rogue River. The Illinois and Rogue are both important salmon rivers. There are 100 miles of high-quality spawning and rearing habitat above the

Pomeroy Dam. Southern Oregon Coast Coho, listed as threatened under the ESA, are present in the Illinois River.

9. WaterWatch has approximately 1,000 members in Oregon. WaterWatch members participate in recreational activities such as hiking, backpacking, fishing, wildlife-viewing, and river and lake boating and kayaking throughout Oregon, including in and along the Illinois and Rogue Rivers. More specifically, WaterWatch members fish and boat in the Rogue River and some of its tributaries. Members fish for all types of salmon as well as steelhead. Fishing has been and is negatively affected by threats to salmon including to Southern Oregon Coast Coho, especially since the Southern Oregon Coast Coho have been listed as threatened. WaterWatch has standing based upon injuries to its members' interests caused by the Pomeroy Dam's impacts on salmon.

10. Defendants Jacqueline Doherty, Mary Andrade, Janine Pfohl, and William Pfohl (collectively the "Individual Defendants") are individual residents of the State of Oregon with an address of 900 West Side Road, Kerby, Oregon, and they are owners and operators of the Pomeroy Dam and some, or all, are principals of Defendant Q Bar X Ranch.

11. Q Bar X Ranch is the business entity owner of Pomeroy Dam and/or operated by the Individual Defendants. Q Bar X Ranch is licensed and registered under the laws of the State of Oregon with a principal place of business address of 900 West Side Road, Kerby, Oregon and an authorized representative mailing address of P.O. Box 3210, Kerby, Oregon.

BACKGROUND

12. Southern Oregon Coast Coho Salmon are listed as a threatened species under the Endangered Species Act. 50 C.F.R. § 223.102. Southern Oregon Coast Coho were first proposed for listing in July of 1995, 60 Fed. Reg. 38,011 (July 25, 1995), and first listed as

threatened in May of 1997. 62 Fed. Reg. 24,588 (May 6, 1997). The listing was reaffirmed in June of 2005. 70 Fed. Reg. 37,160 (June 28, 2005).

13. Southern Oregon Coast Coho populations have overall declined precipitously over the past several decades. Habitat degradation, including blocked or decreased access to habitat and blocked or decreased ability to migrate to and from spawning grounds in tributary streams due to man-made or man-caused obstacles, has been a major factor in the decline. In proposing to list Southern Oregon Coast Coho as threatened under the ESA, the National Marine Fisheries Services (“NMFS”) found that dams and the effects associated with dams such as sedimentation, loss of habitat connectivity, impairment of juvenile and adult migration, injury during migration, impairment of juvenile rearing, and increased stream temperatures were all factors contributing to the decline and supporting the listing of Southern Oregon Coast Coho as threatened.

14. In its 2014 Final Recovery Plan for Southern Oregon Coast Coho, NMFS identifies barriers such as dams as having a highly negative impact on Southern Oregon Coast Coho recovery.

15. The Illinois River is a federally-designated wild and scenic river and a tributary to the also federally-designated wild and scenic Rogue River. Most of the Illinois River lies in National Forests, including its headwaters above the Pomeroy Dam. The Illinois River is a popular fishing and recreation river and an important river of Southern Oregon Coast Coho.

16. Areas of the Illinois River above the Pomeroy Dam and its reservoir are prime salmon habitat, with up to 100 miles of high-quality spawning and rearing habitat above the Dam.

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