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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PENDLETON DIVISION**

**COLUMBIA RIVERKEEPER,**

Plaintiff,

v.

**UNITED STATES ARMY CORPS OF  
ENGINEERS; and LIEUTENANT  
GENERAL SCOTT A. SPELLMON,** in his  
official capacity as the Commanding General  
and Chief of Engineers of the United States  
Army Corps of Engineers,

Defendants.

Case No. 2:21-cv-01777

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**(Pursuant to Clean Water Act,  
33 U.S.C. § 1365(a)(1))**

## I. INTRODUCTION.

1. The Columbia River is one of the West’s great river systems. This river supports rich fishing traditions, provides water for communities and agriculture, supports recreation opportunities, and powers hydroelectric dams. The Columbia River is also severely degraded by pollution. Toxic pollution threatens the health of people that eat resident fish and jeopardizes the public’s right to eat fish caught locally. Rising water temperatures also threaten the health of salmon and other aquatic life that rely on cool water for survival, as demonstrated in 2015 when water reached temperatures warm enough to kill thousands of migrating sockeye salmon headed to the mid-Columbia and lower Snake Rivers. Scientists estimate that more than 277,000 sockeye, about 55 percent of the total run returning from the ocean to spawn, died in the Columbia and Snake Rivers due to warm water temperatures.

2. Congress passed the Clean Water Act (“CWA”) in 1972 in an effort to prevent such occurrences and to otherwise “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Central to achieving these objectives is the CWA’s prohibition on any discharges of pollutants to waters of the United States unless authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. *See id.* § 1311(a). Such permits restrict any pollution discharges to, *inter alia*, ensure they do not cause or contribute to violations of water quality standards in the receiving waters. *See id.* § 1311(b)(1)(C); 40 C.F.R. § 122.44(d).

3. The United States Army Corps of Engineers, however, has continued to discharge pollutants, including heated cooling water and oils and greases, from the John Day Dam and the

McNary Dam (collectively, “Dams”)<sup>1</sup> to the Columbia River without obtaining NPDES permits in violation of the CWA since its passage in 1972.

4. Columbia Riverkeeper filed a CWA citizen suit against the United States Army Corps of Engineers for these illegal discharges in 2013. That litigation was resolved with a settlement agreement in 2014 in which the United States Army Corps of Engineers agreed to apply for the necessary permits and take other actions to reduce its water quality impacts, and Columbia Riverkeeper agreed to refrain from further litigation related to these illegal discharges for seven years to allow time for the permitting process. Remarkably, that seven-year period concluded on August 14, 2021, with the Dams continuing to discharge pollutants to the Columbia River without NPDES permits in violation of the CWA. With this action, Columbia Riverkeeper seeks to finally bring the Dams into compliance with the CWA.

5. Columbia Riverkeeper brings this civil action for declaratory and injunctive relief to compel defendants the United States Army Corps of Engineers and Lieutenant General Scott A. Spellmon, in his official capacity as the Commanding General and Chief of Engineers of the United States Army Corps of Engineers (collectively, “Corps”), to comply with sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by discontinuing unpermitted discharges of pollutants from the Dams to the Columbia River unless and until the Corps obtains NPDES permits authorizing the discharges.

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<sup>1</sup> The terms “Dam” and “Dams” as used herein includes the Dam(s) and all associated structures and facilities, including turbines, powerhouses, transformers, spillways, navigation lock systems, fish passage facilities, and cranes.

6. This action is a citizen suit brought under section 505 of the CWA as amended, 33 U.S.C. § 1365.

7. The Corps owns and operates the hydroelectric Dams on the Columbia River that discharge pollutants, including oils, greases, other lubricants, and cooling water and the heat associated therewith. These discharges are not authorized by NPDES permits, and therefore violate section 301(a) of the CWA, 33 U.S.C. § 1311(a).

8. Columbia Riverkeeper seeks a declaratory judgment, injunctive relief, and the award of costs, including attorneys' and expert witnesses' fees.

## II. JURISDICTION AND VENUE.

9. The Court has subject matter jurisdiction over Columbia Riverkeeper's claims 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). Section 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), authorizes 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).

10. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), waives the Corps' sovereign immunity for Columbia Riverkeeper's claims.

11. 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, Columbia Riverkeeper notified the Corps of its CWA violations and of Columbia Riverkeeper's intent to sue by letter dated August 31, 2021 ("Notice Letter"). A copy of the Notice Letter is attached to this complaint as Exhibit 1. 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), Columbia Riverkeeper 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

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EPA, the Attorney General of the United States, and the Director of the Oregon Department of Environmental Quality (“DEQ”).

12. At the time of filing this complaint, more than sixty days have passed since the Notice Letter and the copies thereof were issued as described in the preceding paragraph.

13. Neither the EPA nor DEQ has commenced any action constituting diligent prosecution to redress these violations.

14. The violations complained of in the Notice Letter are continuing or are reasonably likely to continue to occur. The Corps is in violation of the CWA.

15. The sources of the violations complained of are located in Sherman County and Umatilla County, Oregon, within the District of Oregon, and venue is therefore appropriate in the District of Oregon under section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1).<sup>2</sup>

### III. PARTIES.

16. Plaintiff Columbia Riverkeeper is suing on behalf of itself and its members. Columbia Riverkeeper is a 501(c)(3) non-profit corporation registered in the State of Oregon. Columbia Riverkeeper’s mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Columbia Riverkeeper operates scientific, educational, and legal programs aimed at protecting water quality, air quality, and habitat in the Columbia River Basin.

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<sup>2</sup> The John Day Dam and the McNary Dam also discharge pollutants to waters within Klickitat County, Washington, and Benton County, Washington, respectively. Those discharges are not the subject of this complaint, but are the subject of a separate complaint being filed by Columbia Riverkeeper in the District Court for the Eastern District of Washington.

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