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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

WATERWATCH OF OREGON, PACIFIC)	Case No.
COAST FEDERATION OF FISHERMEN'S)	
ASSOCIATIONS, INSTITUTE FOR)	
FISHERIES RESOURCES, and)	COMPLAINT FOR
STEAMBOATERS,)	DECLARATORY AND
)	INJUNCTIVE RELIEF
Plaintiffs,)	
)	
v.)	
)	
WINCHESTER WATER CONTROL)	
DISTRICT,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND

INTRODUCTION

1. This citizen suit, brought under the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), seeks to enjoin the Winchester Water Control District, to compel the District to provide adequate fish passage at the Winchester Dam on the North Umpqua River in Oregon.
2. Winchester Dam is owned and controlled by the Winchester Water Control District.
3. The Winchester Dam on the North Umpqua River is causing “take” of Oregon Coast coho salmon (“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) and 1538(a)(1)(B). The Dam is causing take of Coast coho by among other things: blocking adult salmon migration and access to spawning habitat; harming or killing adult salmon in their efforts to traverse the dam to migrate or spawn; harming or killing juvenile salmon by blocking safe out-migration from spawning and rearing areas; harming or killing adult salmon by the state of disrepair of the fish ladder and dam itself such that salmon are physically battered; and disrepair of the fish ladder including the use of materials on the ladder that include compounds toxic to salmon.

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), plaintiffs, WaterWatch of Oregon, Pacific Coast Federation of Fishermen’s Associations, Institute for Fisheries Resources, and Steamboaters, provided the defendant with notice of the violations described in this complaint by letter dated April 6, 2020 and with an amended notice letter on July 13, 2020. Plaintiffs sent both notices to the defendant by regular first class and certified U.S. mail, return receipt requested, and by electronic mail to the District’s counsel, Mr. Dominic Carrollo. Plaintiffs also

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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 Wildlife. More than 60 days have passed since defendant received both the original and amended notice and defendant has not responded substantively to either 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 North Umpqua River and Winchester Dam are located in Douglas 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. 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. The North Umpqua River is an important salmon and steelhead river with 160 miles of high quality spawning habitat above the Winchester Dam, and of particular concern to WaterWatch are Coast coho salmon, listed as threatened under the ESA, and the impacts on Coast coho from habitat alteration, degradation, and barriers such as dams. WaterWatch has approximately 1,000 members in Oregon.

8. WaterWatch members participate in recreational activities such as hiking, backpacking, fishing, wildlife-viewing, and river and lake boating and kayaking throughout

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Oregon, including in and along the Umpqua River. WaterWatch has standing based upon injuries to its members' interests caused by the Winchester Dam.

9. Plaintiff Pacific Coast Federation of Fishermen's Associations ("PCFFA") is a coastwide trade organization of commercial fishing families that works to protect salmon and salmon habitat from pollution and migration barriers and to promote restoration where salmon habitat and health are degraded. PCFFA's principal place of business is in San Francisco, California, and an active Northwest Regional Office is also located in Eugene, Oregon. PCFFA is the largest organization of commercial fishing families on the west coast. It consists of a federation of 17 smaller commercial fishermen's vessel owners' associations, trade associations, port associations, and marketing associations with membership throughout Washington, Oregon, and California. PCFFA also has "at-large" members who are unaffiliated with any particular fishermen's association but have become individual members of PCFFA. Collectively, PCFFA represents nearly 1,000 west coast commercial fishing family business operations. Many of PCFFA's members derive all or part of their income from the harvesting of salmon in or near Oregon waters or salmon that originate in Oregon waters such as the North Umpqua River.

10. Salmon originating from the North Umpqua River migrate, once they reach the ocean as juveniles, far south well into northern California waters and far north well into Washington waters, and throughout Oregon waters, where they are available as adults that intermingle in multiple ocean commercial fisheries in all three states. And while there is no longer any directed commercial fishery on ESA-listed Coast coho, the abundance of Coast coho can and does restrict the ability of our industry to harvest other, far more abundant salmon species such as fall-run Chinook, under principles of "weak stock management" which govern all intermingling salmon fisheries on the west coast. Under "weak stock management," which is

required by both federal law and the scientific laws of sound conservation biology, it is the conservation needs of the *weakest* of several intermingling salmon stocks at sea that create the “quota cap” or legal limit on how many other fish of otherwise abundant stocks can be harvested. Since Coast coho are now so weakened in abundance that they have had to become ESA-listed, the low Coast coho abundances at sea act as a severe restriction *on all other ocean salmon fisheries*, often prematurely closing down these other fisheries in order to conserve weak stock Coastal coho. Fewer Coastal coho surviving the impacts of Winchester Dam only exacerbate these already stringent allocation and ocean harvest restriction problems fishing families face up and down the coastline.

11. PCFFA has standing through its port associations and individual members of those associations whose interests are harmed and whose livelihoods are adversely affected by the Winchester dam’s negative effects on salmon.

12. Institute for Fisheries Resources (“IFR”) is a California non-profit organization that works to protect and restore salmon populations and the human economies that depend on them by establishing alliances among fishing men and women, with government agencies, and with concerned citizens. IFR advocates for reforms to protect salmon health and habitat throughout the U.S. West Coast and has successfully advocated for dam removals, improved pesticide controls, and enhanced marine and watershed conservation regulations throughout the West Coast in order to protect inland salmon spawning and rearing habitat. IFR’s principle place of business is in San Francisco, California, and IFR also maintains an active Northwest Regional Office in Eugene, Oregon. Most of IFR’s at least 850 financial contributors are commercial fishermen. IFR and PCFFA have common Board members, general membership, and staff;

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