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16 UNITED STATES DISTRICT COURT  
17 WESTERN DISTRICT OF WASHINGTON  
18 AT SEATTLE

19 CITIZENS FOR A HEALTHY BAY, and )  
20 PUGET SOUNDKEEPER ALLIANCE, )

21 Plaintiffs, )

22 v. )

23 ELECTRON HYDRO, LLC, )

24 Defendant. )  
25 \_\_\_\_\_ )

Case No. 2:21-cv-319

COMPLAINT

26 **I. INTRODUCTION.**

27 1. Plaintiffs Citizens for a Healthy Bay (“CHB”) and Puget Soundkeeper Alliance  
28 (“PSA”) (collectively, “the Conservation Groups”) bring this lawsuit under Section 505 of the  
29 Clean Water Act, 33 U.S.C. § 1365. Defendant Electron Hydro, LLC (“Electron” or  
“Defendant”) owns and operates a hydroelectric dam on the Puyallup River in Washington State.

1 The Conservation Groups allege Electron is in ongoing violation of the Clean Water Act because  
2 it is conducting activities and discharging pollutants and dredged or fill material to waters of the  
3 United States in violation of the terms and conditions of a certification made under Section 401  
4 of the Clean Water Act, 33 U.S.C. § 1341 (“401 Certification”), and because it violating Section  
5 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), by discharging heat, other pollutants, and  
6 dredged or fill material to the Puyallup River without authorization of the required permits. The  
7 Conservation Groups seek declaratory and injunctive relief, the imposition of civil penalties, and  
8 an award of costs, including attorneys’ and expert witness fees, for Electron’s repeated and  
9 ongoing violations of the Clean Water Act (“CWA” or “Act”).  
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11

## 12 II. JURISDICTION AND VENUE.

13 2. This Court has jurisdiction pursuant to 33 U.S.C. § 1365 (CWA citizen suit  
14 provision) and 28 U.S.C. § 1331 (federal question). Defendant is in ongoing violation of an  
15 “effluent standard or limitation” as defined by Section 505 of the Act, 33 U.S.C. § 1365. The  
16 requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and 33 U.S.C. § 1365.  
17

18 3. The Conservation Groups satisfied the jurisdictional requirements for bringing  
19 this lawsuit. Under Section 505(b)(1)(A) of the Act, 33 U.S.C. § 1365(b)(1)(A), by certified  
20 letter dated and postmarked October 28, 2020, the Conservation Groups notified Defendant and  
21 its registered agent of Defendant’s alleged violations of the Act and of the Conservation Group’s  
22 intent to sue for those violations (“Notice Letter”). The Conservation Groups also notified the  
23 Administrator of the U.S. Environmental Protection Agency (“EPA”), the Administrator of EPA  
24 Region 10, and the Director of the Washington State Department of Ecology (“Ecology”) of its  
25 intent to sue Defendant by mailing a copy of the Notice Letter to those officials on October 28,  
26 2020. A copy of the Notice Letter is attached to this complaint as Exhibit 1.  
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1 4. More than sixty days have passed since the Conservation Groups mailed the  
2 Notice Letter and the violations complained of are continuing or reasonably likely to continue to  
3 occur. Neither the EPA nor Ecology has commenced any action constituting diligent prosecution  
4 to redress the violations alleged herein. Defendant is in ongoing violation of the CWA.  
5

6 5. Venue is appropriate in this District under Section 505(c)(1) of the Act, 33 U.S.C.  
7 § 1365(c)(1), because the source of the violations complained of is located in this District, in  
8 Pierce County, Washington.

9 6. A copy of this Complaint will be served on the Attorney General of the United  
10 States, the Administrator of the EPA, and the Administrator of EPA Region 10, as required by 33  
11 U.S.C. § 1365(c)(3) and 40 C.F.R. § 135.4.  
12

13 **III. PARTIES.**

14 7. Citizens for a Healthy Bay has standing for the relief sought herein. CHB brings  
15 this complaint on behalf of itself and its member(s). CHB is a non-profit corporation organized  
16 under Section 501(c)(3) of the Internal Revenue Code and registered in the State of Washington.  
17 CHB's principal place of business is in Tacoma, Washington. CHB is dedicated to protecting and  
18 preserving the natural environmental in western Washington State, including protecting the  
19 Puyallup River, Puget Sound, their tributaries, and the aquatic species that use and rely on those  
20 waters for habitat and sustenance.  
21

22 8. CHB has representational standing to bring this action. CHB is a membership  
23 organization with members who are injured by Electron's violations of the CWA. CHB has at  
24 least one member who lives, works, recreates, observes, or enjoys surface waters, fish, or  
25 wildlife, within the watersheds impacted by Electron's dam and activities, including the Puyallup  
26 River, Commencement Bay and South Puget Sound. One or more of CHB's members are  
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1 reasonably concerned about the effects pollutant discharges from Electron's facility are having  
2 on the water quality and aquatic species and wildlife that they observe, study, use, or enjoy.  
3 CHB's members are also concerned about the effects of discharges from Electron's facility on  
4 human health.

5  
6 9. Puget Soundkeeper Alliance has standing for the relief sought herein. PSA brings  
7 this complaint on behalf of itself and its member(s). PSA is a non-profit corporation organized  
8 under Section 501(c)(3) of the Internal Revenue Code and the laws of the State of Washington.  
9 PSA's principal place of business is in Seattle, Washington. PSA is dedicated to protecting and  
10 enhancing the waters of Puget Sound for the health and restoration of aquatic ecosystems and the  
11 communities that depend on them. PSA has for years been actively engaged in a variety of  
12 educational and advocacy efforts to improve water quality and to address sources of water  
13 quality degradation in the waters of western Washington, including the Puyallup River,  
14 Commencement Bay, and Puget Sound. PSA has taken legal action against more than 170  
15 alleged CWA violators; engaged over 18,000 volunteers in cleanups, outreach events, and  
16 advocacy; and removed more than 145,000 pounds of marine debris from the waterways around  
17 Puget Sound. PSA's work covers not only the marine waters of Puget Sound, but also its  
18 freshwater tributaries including the Puyallup River.  
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21  
22 10. PSA has representational standing to bring this action. PSA is a membership  
23 organization with members who are injured by Electron's violations of the CWA. PSA has at  
24 least one member who lives, works, recreates, observes, or enjoys surface waters, fish, or  
25 wildlife, within the watersheds impacted by Electron's Facility and activities, including the  
26 Puyallup River, Commencement Bay and South Puget Sound. One or more of PSA's members  
27 are reasonably concerned about the effects pollutant discharges from Electron's facility are  
28  
29

1 having on the water quality and aquatic species and wildlife that they observe, study, use, or  
2 enjoy. PSA's members are also concerned about the effects of discharges from Electron's facility  
3 on human health.

4           11. The environmental, recreational, scientific, economic, aesthetic, cultural, spiritual,  
5 and/or health interests of the Conservation Groups and its members have been, are being, and will  
6 be adversely affected by Electron's discharges of pollutants and violations of the CWA.  
7 Discharges from Electron's facility, and violations of the CWA at Electron's facility, adversely  
8 impact the Conservation Groups' and their members' aesthetic, recreational, scientific, spiritual,  
9 and other interests in the Puyallup River, Commencement Bay, and Puget Sound by impairing or  
10 threatening to impair those waters and the species that rely on those waters. The Conservation  
11 Groups' members' uses of the impacted watersheds are thereby adversely affected and also  
12 suppressed. These injuries are fairly traceable to Electron's dam and activities and the relief sought  
13 in this lawsuit can redress these injuries to the Conservation Groups' and their members'  
14 interests.

15           12. The Conservation Groups also have organizational standing to bring this action.  
16 Both Conservation Groups have been actively engaged in a variety of educational and advocacy  
17 efforts to improve water quality and to address sources of water quality degradation in the waters  
18 of western Washington, including the Puyallup River, Commencement Bay and South Puget  
19 Sound. As alleged herein and in the Notice Letter, Electron has discharged various materials and  
20 taken actions without first obtaining the required permits or authorizations. Those permits and  
21 authorizations likely would have required important monitoring, record keeping, inspection, and  
22 reporting requirements. As a result, the Conservation Groups have been deprived of information  
23 necessary to properly serve its members by providing information and taking appropriate action  
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