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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO CONSERVATION LEAGUE, *Plaintiff*, v. SCOTT PRUITT, in his official capacity as Administrator of the U.S. Environmental Protection Agency; and U.S. ENVIRONMENTAL PROTECTION AGENCY, *Defendants*.	Case No. 1:17-cv-472 **COMPLAINT**

NATURE OF THE ACTION

1. Plaintiff Idaho Conservation League (ICL) brings this action against EPA Administrator Scott Pruitt and the U.S. Environmental Protection Agency (collectively EPA) for failing to respond within a reasonable time to ICL's March 9, 2015, Petition asking EPA to disapprove and revise the Snake River–Hells Canyon Total Maximum Daily Load ("Hells Canyon TMDL") under EPA's Clean Water Act authority. This action arises under and alleges violations of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551–706, specifically sections 553(e), 555(b) and (e), and 706(1).

2. The Hells Canyon reach of the Snake River is polluted with excessive nutrients. The reach consists of three reservoirs created by Idaho Power's Hells Canyon Complex dams (Brownlee, Oxbow, and Hells Canyon) as well as the free-flowing Snake River below the reservoirs through Hells Canyon to the Salmon River confluence.

3. Nutrient pollution is one of America's most widespread environmental problems and is caused by excessive nitrogen and phosphorus. Because Hells Canyon is polluted with nutrients, Idaho and Oregon prepared, and EPA approved, the Hells Canyon TMDL in 2004. The TMDL is a Clean Water Act pollution budget that is intended to limit the amount of nutrient pollution entering Hells Canyon to low enough levels so nutrient water quality standards will be met. In an effort to achieve this goal, the TMDL sets a "target" concentration of nutrients in the river. The target is 0.07 mg/L of total Phosphorus and applies during only the months of May through September.

4. Since 2003, new information including a 2011 study by the United States Geological Survey (USGS) show the TMDL target is inadequate and a lower and/or year-round total Phosphorus target is needed. Without a new target, Hells Canyon will continue to violate nutrient water quality standards, experience harmful algal blooms, and otherwise adversely impact aquatic life, recreation, and human health. This has proven true in recent years. For example, in 2016 and 2017, the Idaho Department of Environmental Quality (IDEQ) issued health advisories and closed down areas in Hells Canyon to use due to harmful algal blooms.

5. In addition to causing harmful algal blooms, nutrient pollution plays an important role in mercury pollution problems that plague Hells Canyon. Mercury is a highly toxic metal that bio-accumulates in living organisms, including fish. Mercury concentrations in fish in Hells Canyon have been found to be up to 5 times higher than fish further upstream. Idaho has issued

human health advisories warning people not to eat fish caught in Hells Canyon. High nutrient levels create conditions that facilitate the conversion of inorganic mercury in Hells Canyon to organic methylmercury. Compared to inorganic mercury, organic methymercury is much more harmful, and can be more easily absorbed by fish and passed up the food chain.

6. Nutrient pollution and related methylmercury pollution also adversely impact efforts to restore salmon and steelhead species that historically inhabited the Hells Canyon. Today, salmon and steelhead only inhabit the free flowing reaches of Hells Canyon below the Idaho Power's Hells Canyon Complex dams. These salmon and steelhead are harmed by nutrient and mercury pollution, adding to their risk of extinction. Furthermore, NOAA Fisheries has determined that reintroducing salmon and steelhead above the dams would help the species persist; however NOAA Fisheries has found water quality above the dams to be too degraded to support these fish at present.

7. Based on these and other concerns, in March 2015—over two-and-a-half years ago—ICL submitted its Petition requesting that EPA review, disapprove, and revise the Hells Canyon TMDL under the agency's Clean Water Act authority, 33 U.S.C. § 1313(d). However, to date, EPA has failed to respond to ICL's Petition.

8. EPA has unlawfully refused to act or unreasonably delayed in acting on ICL's Petition under the APA, 5 U.S.C. § 706(1), and thus ICL brings this action to compel EPA to respond to its Petition. ICL seeks judicial relief compelling Defendants to act promptly upon ICL's Petition and begin the process of revising the Hells Canyon TMDL to provide full protection against phosphorus pollution loadings throughout the year.

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court under 18 U.S.C. § 1331 because the cause of action arises from federal law (the Administrative Procedure Act and Clean Water Act) and under 28 U.S.C. § 1346 (United States Defendant). The relief requested herein is proper under 28 U.S.C. §§ 2201 (declaratory judgment) and 2202 (injunctive relief) and 5 U.S.C. § 706(1) (APA).

10. An actual, justiciable controversy exists between Plaintiff and Defendants, and ICL properly challenges Defendants' unlawful refusal and/or unreasonable delay to act upon ICL's Petition under the APA, 5 U.S.C. §§ 551(13) & 706(1).

11. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, a significant portion of the lands and resources in question are in this district, Defendant's Idaho Operations Office is located in this district, and Plaintiff ICL resides in this district.

PARTIES

12. Plaintiff IDAHO CONSERVATION LEAGUE (ICL) is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. ICL's mission is to protect clean water, clean air, healthy families, and Idaho's unique quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development.

13. ICL has standing to bring this action. As Idaho's largest state-based conservation organization, ICL represents around 30,000 supporters, many of whom have a deep personal

interest in protecting and restoring water quality and fisheries throughout Idaho, including the Snake River through Hells Canyon.

14. ICL has staff, members, and supporters who live, recreate, and work in and around the Snake River, including the Hells Canyon reach. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in Hells Canyon. They use the area for fishing, hiking, photographing, boating, and observing wildlife, among other uses. They are harmed by excessive nutrient pollution.

15. The environmental, health, aesthetic, recreational, organizational, and economic interests of ICL and its staff, members, and supporters have been, are being, and will be adversely affected by Defendants' failure to respond to ICL's Petition. Excessive nutrient pollution degrades water quality by causing algal blooms and by facilitating the conversion of mercury to methylmercury which impair fish and other aquatic life and degrade recreation experiences, among other impacts, in Hells Canyon and the downstream Snake River. As a result, ICL supporters refrain from fishing, swimming, hiking, photographing, boating, observing wildlife, and other activities in Hells Canyon and downstream and/or enjoy these activities less.

16. Furthermore, Defendants' failure to respond to ICL's Petition injures ICL by diverting and depleting its time, resources, and effort, and by preventing ICL from advocating solutions to nutrient pollution problems in Hells Canyon and impairing ICL's organizational mission.

17. These injuries to ICL are traceable to Defendants' conduct and would be redressed by the relief ICL seeks in this action. Congress and EPA have determined that TMDLs are an effective tool for achieving water quality standards. As set forth in ICL's Petition, new information shows that the Hells Canyon TMDL is inadequate, because it does not set a stringent

enough nutrient target to achieve water quality standards. Without responding to ICL's petition, the inadequate Hells Canyon TMDL remains in place, and ICL, the public, and others do not know whether, when, or how Defendants will proceed to address the problem.

18. Defendant SCOTT PRUITT is sued in his official capacity as Administrator of the U.S. Environmental Protection Agency. As Administrator, Mr. Pruitt is in the highest position at the agency, where has the authority and responsibility to implement the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, among other federal environmental statutes. As Administrator, Mr. Pruitt must respond to a petition within a reasonable time.

19. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY is an agency of the United States charged with implementing and ensuring compliance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, among other federal environmental statutes. As a federal agency, EPA must respond to a petition within a reasonable time. EPA has an Idaho Operations Office in Boise, Idaho.

LEGAL BACKGROUND

The Clean Water Act and Total Maximum Daily Loads (TMDLs)

20. In 1972, Congress passed the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through the reduction and eventual elimination of the discharge of pollutants. 33 U.S.C. § 1251(a). To meet these goals, Section 303(c) of the Clean Water Act requires the establishment of water quality standards.

21. Water quality standards are promulgated by the states, subject to EPA review, and establish the desired condition of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(a). Water quality standards under the CWA must include three elements: (1) one or more designated "uses" of that waterway; (2) water quality "criteria" specifying the

amount of various pollutants that may be present in those waters and still protect the designated uses; and (3) an anti-degradation policy with implementation methods to protect all existing uses. *Id.* at 1313(c)(2) and (d)(4)(B); 40 C.F.R. 131.10(B).

22. Under section 303(d) of the Clean Water Act, states are responsible for developing TMDLs, subject to EPA review, for waters not expected to meet water quality standards with technology-based controls. 33 U.S.C § 1313(d)(1)(A). States develop TMDLs to meet water quality standards, allowing for seasonal variation and a margin of safety. *Id.* at 1313(d)(1)(C). A key component of the TMDL is the loading capacity, which is the quantity of a pollutant that a waterbody can receive without violating water quality standards. The basis of the loading capacity is a target, which is a measurable quality of water condition.

23. Once developed, a state must submit the TMDL to EPA for review and approval. 33 U.S.C. § 1313(d)(2). EPA must then approve or disapprove the TMDL no later than thirty (30) days after the date of submission. *Id.* If EPA disapproves a state-submitted TMDL, then EPA must prepare an substitute TMDL. *Id.*

24. As EPA, the State of Idaho, and the State of Oregon all recognize, a TMDL is to be reviewed regularly, and a TMDL must be revised when new information shows that the TMDL will not achieve compliance with water quality standards.

The Administrative Procedure Act

25. The APA requires that federal agencies promptly conclude matters presented to them, including petitions submitted by interested persons seeking relief from the agency. *See* 5 U.S.C. § 555(b) & (e). Specifically, the APA requires that "[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding," and such "notice shall be accompanied

by a brief statement of the grounds for denial," unless the denial is self-explanatory or affirmed a prior denial. *Id.* § 555(e).

26. The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." *Id.* § 702. The EPA defines "agency action" subject to judicial review as including both denial of a petition for relief and an agency's "failure to act." *Id.* § 551(13). EPA is a federal agency whose actions are subject to review under the APA. *See id.* § 551(1).

27. The APA's judicial review provisions direct the courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". *Id.* § 706(2)(A). The APA specifically empowers reviewing courts to "compel agency action unlawfully withheld or unreasonably delayed". *Id.* § 706(1).

28. To determine whether an agency's failure to respond to a petition for relief is unlawfully withheld or unreasonably delayed under APA Section 706(1), courts generally look to factors first described in *Telecommunications Research & Action Ctr. v. F.C.C.*, 750 F.2d 70 (D.C. Cir. 1984) (the "*TRAC* factors"). *See also Independence Min. Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997) (applying *TRAC* factors to evaluate whether agency "unlawfully withheld or unreasonably delayed" action within the meaning of APA section 706(1)).

29. The *TRAC* factors are: "(1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4)

the court should consider the effect of expediting delayed action on agency activities of higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed." 750 F.2d at 80 (internal quotations and citations omitted).

RELEVANT FACTS

The Hells Canyon Reach of the Snake River

30. The Snake River is largest tributary to the Columbia River and the tenth longest river system in the United States, extending over one thousand miles from its headwaters in Yellowstone National Park in Wyoming, across Idaho, to its confluence with the Columbia River in Washington. Over its length, the river falls nearly 7,000 feet in elevation as it passes through rich farmland and some of the deepest canyons in North America.

31. The Snake River watershed is located mostly in Idaho but also includes parts of Wyoming, Utah, Nevada, Oregon, and Washington. The Snake River flows for nearly 760 miles in Idaho, and about 87 percent of all land in Idaho drains into the Snake River. In Idaho, the Snake River flows west across the Snake River Plain in southern Idaho and then flows north through Hells Canyon along the Idaho-Oregon border.

32. The Hells Canyon reach of the Snake River follows the Idaho-Oregon border, stretching from Adrian, Oregon, at river mile 409 downstream to river mile 188, just above the confluence with the Salmon River. This reach includes the three Hells Canyon Complex reservoirs (Brownlee, Oxbow, and Hells Canyon reservoirs). The three reservoirs span about 90 miles. This reach also includes over 70 miles of the Snake River upstream of the reservoir complex, and nearly 60 miles of the free-flowing Snake River downstream of the reservoir

complex. The downstream segment is designated under the Wild and Scenic Rivers Act and flows through the Hells Canyon Wilderness and the Hells Canyon National Recreation Area.

Nutrient Pollution in Hells Canyon

33. Due to excessive algae growth, the Hells Canyon reach of the Snake River is listed by the states of Idaho and Oregon as water quality "impaired" under Section 303(d) of the CWA. The reach is impaired from river mile 409 through 272.5. Impaired segments include the upstream Snake River segment (river miles 409 to 335), the Brownlee Reservoir segment (river miles 335 to 285), and the Oxbow Reservoir segment (river miles 285 to 272.5).

34. Excessive algae growth is caused by nutrient pollution. Nutrient pollution is one of America's most widespread environmental problems and is caused by excess nitrogen and phosphorus. Although nutrients naturally occur in the environment, high levels of nutrients in the Snake River Basin can be attributed to anthropogenic sources such as urban and rural runoff, agricultural runoff, in-stream and near-stream erosion, and sewage and septic waste.

35. Excessive algae growth can cause a variety of environmental and human health problems. Algal blooms block sunlight, resulting in the destruction of submerged aquatic vegetation, which is a critically important food source for many organisms. Dissolved oxygen is important for fish and other aquatic life, but algal blooms eventually die off and consume dissolved oxygen. Algal blooms can cause taste and odor problems in drinking water. Algal blooms can also be unattractive to swimmers, boaters, and other recreationists and in excessive amounts threaten their health, safety and well-being.

36. Nutrient pollution can cause or contribute to the excessive growth of cyanobacteria, or blue-green algae, and cause a harmful algal bloom (HAB). Not all blooms are toxic, but when HABs occur, they present a serious health risk to humans, pets, livestock, and

wildlife. Humans and animals can be exposed to the HAB toxins from ingestion, skin contact, or inhalation. Health effects to humans and animals range from skin irritation and stomach upset to neurotoxic effects and, at high levels, possible death.

37. High nutrient levels in Hells Canyon also contribute to "mercury methylation", which is the process by which inorganic mercury is transformed into more dangerous organic methylmercury. Mercury (Hg) released to the atmosphere by coal-fired power plants, mining, incinerators, and other sources is transported through the atmosphere and deposited in water bodies. Atmospheric deposition provides mercury to water bodies primarily as inorganic mercury. Inorganic mercury can be removed from waters by being buried, lost to the atmosphere, or transported through outflow. Inorganic mercury can also undergo rapid transformations, driven by bacteria, where it is converted to methylmercury.

38. Nutrient pollution, primarily from agriculture, flows into Brownlee Reservoir. Plankton feed off of the nutrients, die, sink to the bottom of the reservoir, and are decomposed by bacteria. The bacteria use up available oxygen in the deeper parts of the stagnant reservoir, creating anoxic conditions that covert mercury to methylmercury.

39. Methylmercury is much more toxic than inorganic mercury. Methylmercury easily moves into lower levels of the food web, and it efficiently biomagnifies to a high level through food webs. In Hells Canyon, fish absorb methymercury as they feed on other aquatic organisms. As larger fish eat smaller ones, concentrations of the pollutant increase in the bigger fish.

40. The most common route of mercury exposure in humans is eating fish and shellfish contaminated by methymercury. As methylmercury accumulates in human tissue, metabolic and neurological damages may result. Humans of all ages are susceptible to chronic

mercury poisoning. Pregnant women and children are especially susceptible to mercury poisoning.

41. According to the USGS, recent data collected from Hells Canyon reservoirs shows methylmercury concentrations, and the percentage of mercury in the form of methylmercury in the bottom sediments and deep parts of the water column, are "substantially elevated" compared to other natural waters and reservoirs in Idaho. In one study, USGS sampled 198 smallmouth bass collected throughout Hells Canyon and found that 96% of fish had such high levels of mercury in their tissue as to exceed Oregon's standards for protecting humans from toxics in fish. Over 30% of these fish exceeded Idaho's less-stringent standard.

The 2004 Hells Canyon TMDL

42. In 2003, the Idaho Department of Environmental Quality (IDEQ) and Oregon Department of Environmental Quality (ODEQ) jointly developed TMDLs for nutrients, dissolved oxygen, sediment, and temperature for the Hells Canyon reach of the Snake River. IDEQ and ODEQ first issued a TMDL on July 15, 2003, and submitted the revised Hells Canyon TMDL to EPA on June 19, 2004. EPA approved the Hells Canyon TMDL by letter dated September 9, 2004.

43. In an effort to bring the reach into compliance with nutrient water quality standards, the Hells Canyon TMDL sets an in-river target of 0.07 mg/L total phosphorus from May through September, with no target the rest of the year. The TMDL provides the following rational for setting this target:

> The fact that algae blooms are generally a summer occurrence, and that summer growth appears to be most directly related to the designated use support concerns discussed previously, is an indication that seasonal targets would be appropriate if sufficient reductions could occur during the critical period of algae growth to result in improved water quality and support of designated beneficial uses.

The TMDL calculates that attainment of the seasonal target will result in a 70 percent reduction of algal biomass and finds this sufficient to meet the nutrient water quality standard in the impaired river segment.

44. To meet this nutrient target, the Hells Canyon TMDL assigns waste load allocations to most point source pollution dischargers and to Idaho Power. The TMDL also calls for nonpoint source discharges to meet the 0.07 mg/L target. According to the TMDL, a 62 percent reduction in anthropogenic phosphorus loading would be required to meet the target. The TMDL also assigns load allocations to the tributaries of the Hells Canyon reach of the Snake River, which include the inflowing Snake River as well as the Boise, Payette, Malheur, Owyhee, and Weiser Rivers. The TMDL requires each of these tributaries to meet the 0.07 mg/L phosphorus target at its confluence with Hells Canyon. The Hells Canyon TMDL does not assign phosphorous load allocations to point and nonpoint sources located in these inflowing tributaries; instead, the Hells Canyon TMDL provides that tributary source allocations will be established in the TMDLs created for the inflowing tributaries.

45. The Hells Canyon TMDL is a "phased" TMDL. It was developed using information available at the time but was intended to be revised in the future as new information becomes available. The TMDL specifically provides: "This TMDL requires additional data to be collected to determine if the load reductions required by the TMDL lead to attainment of water quality standards."

46. Gathering information and revising the TMDL is a central part of achieving the water quality goals set forth in the TMDL. The stated "overall goal" of the Hells Canyon TMDL is "to improve water quality" in the Hells Canyon reach "by reducing pollution loadings from all

appropriate sources to meet water quality standards and restore full support of designated beneficial uses" within the reach. To meet this goal, the stated "key objectives" of the TMDL include: "To ensure that additional data and information can and will be incorporated into the SR-HC TMDL effort as time goes on … [and to] ensure that the improved understanding of the SR-HC system (as provided by additional data) can be incorporated into the TMDL effort through the phased implementation and iterative process of the SR-HC TMDL in such a way that targets and load allocations can be revised (if appropriate) to better meet the needs of the designated beneficial uses of the system."

47. The Hells Canyon TMDL further explains that the phased approach would provide better assurances that water quality standards would be obtained because it included additional monitoring, data collection, and periodic review and assessment. The TMDL states:

> [The] fundamental elements of the phased approach are: (1) a process for modifying TMDL objectives, targets and load allocations when water quality standards change; (2) long-term, scientifically justified, water quality-based goals; . . . (5) monitoring to periodically review and determine progress in attaining TMDL objectives; and (6) periodic review and modification of these goals, cost-benefit analysis, and progress in achieving them through a clearly articulated and scheduled phased approach.

The TMDL also provides that ODEQ and IDEQ would consider reopening the TMDL upon new information indicating that "the TMDL or its associated targets and/or surrogates should be modified."

48. IDEQ and ODEQ created an Implementation Plan for the Hells Canyon TMDL. The Implementation Plan provides that IDEQ and ODEQ intend to review the TMDL at least every five years. The Implementation Plan also explains that revisions to specific implementation plans may be undertaken to more effectively target activities to accomplish the TMDLs goals, but that "[r]evisions to the TMDL itself imply the need to revisit the basis for

water quality impairment, the basic relationship associated with the maximum available loading capacity, and the load allocation to point and nonpoint sources."

49. In the TMDL, IDEQ and ODEQ recognized the significant effort that would be required under the phased approach: "Implementing these objectives . . . will require a significant effort over the course of many years during which TMDL objectives, assumptions, analysis, progress, and particularly costs and benefits must be periodically reevaluated."

New Information Shows the Hells Canyon TMDL Is Inadequate and Nutrient Water Quality Standards Will Not Be Achieved

50. When IDEQ and ODEQ chose to set a seasonal phosphorus target, they assumed that algal blooms are generally a summer occurrence in the Hells Canyon reach and that nutrients pass through the reach. But new information shows that neither of these assumptions are true and that the Hells Canyon reach of the Snake River remains impaired for nutrients despite implementation of the TMDL.

51. A 2011 USGS water quality report found surprisingly high concentrations of chlorophyll-*a*, both in the Boise and Snake Rivers, in winter and early spring, especially at the confluence of these two rivers. Chlorophyll-*a* is a surrogate measure of algae growth, and orthophosphate is the key driver behind chlorophyll-*a* concentrations. The total phosphorus concentration of the Snake River increased by over fifty percent downriver of its confluence with the Boise River. In addition, the report acknowledged that while algae growth is most prominent in the late spring and summer, algae grows in winter, early spring, and fall when phosphorous is released from sediments. On the Snake River, the report observed algal blooms as early as March.

52. EPA has acknowledged the significance of this new information and recognized

the need for year-round phosphorus limits. For example, in EPA's Response to Comments for NPDES Permit ID-0020443, EPA concluded that effluent limitations for phosphorus in the Hells Canyon reach were needed year-round. EPA explained the year-round water quality problems associated with phosphorus, including algae growth in winter, early spring and fall, and the re-cycle of phosphorus from sediment in the water column that occurs when phosphorus binds to particulate matter and settles at the bottom.

53. Additionally, on December 14, 2012, EPA added Snake River miles 280.5 to 404 in the Hells Canyon reach to Oregon's 303(d) list for exceeding the state's 0.015 mg/l nutrient criteria for chlorophyll-*a* at USGS station 28727 near Adrian, Oregon during fall, winter, and spring.

ICL's Petition And EPA's Failure to Respond

54. Despite this new information showing the Hells Canyon TMDL target is inadequate, neither IDEQ, ODEQ, nor EPA have reviewed or revised the TMDL to lower the phosphorus target and/or make the target apply year-round. EPA's failure to review, disapprove, and revise the Hells Canyon TMDL places aquatic life at risk, interferes with recreation, and is inconsistent with Congressional intent and statutory requirements.

55. Based on these concerns, ICL petitioned EPA on March 9, 2015, to revise the Hells Canyon TMDL under the agency's authorities in Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). ICL asked EPA to respond within 120 days.

56. By letter dated April 27, 2015, EPA Region 10 Administrator Dennis McLerran stated that EPA was reviewing ICL's Petition and would later provide a more detailed response.

57. In late 2016, ICL contacted EPA inquiring of the status of its review the Petition. EPA counsel acknowledged that EPA had not been working on the Petition but said it intended

to start doing so. In March 2017, EPA counsel stated that EPA had started reviewing the Hells Canyon TMDL and Snake River tributary TMDLs in the Hells Canyon reach, but gave no indication if and when it would respond to ICL's Petition.

58. As of the filing of this Complaint, EPA has not formally responded to (i.e., granted or denied) ICL's Petition.

59. EPA has no justified explanation for its failure to respond to ICL's Petition.

60. The Hells Canyon TMDL is now around 13 years old. As shown above, EPA, Oregon, and Idaho recognize that a TMDL must be revised when new information shows that the TMDL will not achieve compliance with water quality standards, as is the case here. The Hells Canyon TMDL itself, as adopted by Idaho and Oregon and approved by EPA, calls for and depends on five-year review and revision to ensure nutrient water quality standards will be met. However, the states have not undertaken a five-year review or revised the TMDL.

61. Until EPA takes action, the ongoing implementation of the TMDL will result in only limited progress, and the Hells Canyon reach of the Snake River will remain impaired for nutrients and continue to suffer from harmful algal blooms and high rates of mercury methylation.

CLAIM FOR RELIEF

62. ICL realleges and incorporates by reference all preceding paragraphs.

63. ICL submitted its Petition to EPA in March 2015, thus triggering EPA's duty under the APA to issue a response granting or denying ICL's Petition within a reasonable time. *See* 5 U.S.C. § 555(b) & (e). EPA has not responded to the Petition, now more than two and a half years later.

64. EPA's refusal or failure to respond to the Petition is a failure to conclude the

issues presented in the Petition within a reasonable time and constitutes agency action unlawfully withheld or unreasonably delayed under 5 U.S.C. § 706(1), which is harming Plaintiffs' interests and those of its staff, members, and supporters, and the public at large.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ICL respectfully requests that the Court grant the following relief:

A. Declare that EPA's refusal or failure to act on ICL's Petition constitutes agency action unlawfully withheld or unreasonably delayed in violation of the APA, 5 U.S.C. § 706(1);

B. Order EPA to respond promptly to Plaintiff's Petition, within thirty (30) days of the date of this Court's order (or such other time as the Court deems appropriate);

C. Award ICL its reasonable fees, costs, and expenses, including attorney fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

D. Grant ICL such other relief as the Court may deem just and proper.

DATED this 16th day of November, 2017.

Respectfully Submitted,

/s/ *Bryan Hurlbutt*
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Attorneys for Plaintiff Idaho Conservation League

JS 44 (Rev. 06/17)

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

IDAHO CONSERVATION LEAUGE

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Bryan Hurlbutt (ISB # 8501); Laurence ("Laird") J. Lucas (ISB # 4733)
ADVOCATES FOR THE WEST
~~P.O. Box 1612 / Boise, ID 83701 / 208.342.7024 x206~~

DEFENDANTS
SCOTT PRUITT, in his official capacity as Administrator of the U.S. Environmental Protection Agency; and U.S. ENVIRONMENTAL PROTECTION AGENCY

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)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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)*:
Administrative Procedure Act, 5 U.S.C. §§ 551–706

Brief description of cause:
Unreasonable delay responding to petition.

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 11/16/17 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

UNITED STATES DISTRICT COURT

for the

District of Idaho

IDAHO CONSERVATION LEAGUE *Plaintiff(s)*	)	
v.	)	Civil Action No.
SCOTT PRUITT, in his official capacity as Administrator of the U.S. Environmental Protection Agency; and U.S. ENVIRONMENTAL PROTECTION AGENCY *Defendant(s)*	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 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:

Bryan Hurlbutt
Advocates for the West
P.O. Box 1612
Boise, ID 83701

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: 11/16/17

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

District of Idaho

IDAHO CONSERVATION LEAGUE *Plaintiff(s)*	)	
v.	)	Civil Action No.
SCOTT PRUITT, in his official capacity as Administrator of the U.S. Environmental Protection Agency; and U.S. ENVIRONMENTAL PROTECTION AGENCY *Defendant(s)*	)	

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CLERK OF COURT

Date: 11/16/17

Signature of Clerk or Deputy Clerk