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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE DISTRICT OF IDAHO
 12 CENTRAL DIVISION

13 SNAKE RIVER WATERKEEPER,

14 Plaintiff,

NO.

15 v.

COMPLAINT

16 IDAHO DEPARTMENT OF
 17 CORRECTION; JOSH TEWALT, its
 18 Director; JEFF ZMUDA, its Deputy
 19 Director; CHAD PAGE, its Chief of
 20 Prisons; and DR. DAVID MCCLUSKY;
 21 DODDS HAYDEN, and DR. KAREN
 22 NEILL, its Board Members,

Defendants.

22 Plaintiff Snake River Waterkeeper, by and through its counsel, hereby alleges:

23 **I. INTRODUCTION**

24 1. This is a civil suit brought under the citizen suit enforcement provisions of the
 25 Federal Water Pollution Control Act, 33 U.S.C. § 1365 (the “Clean Water Act” or “CWA”) against
 26

1 Defendant Idaho Department of Correction and its individually named officers and board members
2 (collectively herein, “IDOC” or “Defendants”) for past and continuing violations of Section 301(a)
3 of the Clean Water Act and the terms and provisions of IDOC’s National Pollutant Discharge
4 Elimination System (“NPDES”) Permit No. ID0025887, issued for the Northern Idaho Correctional
5 Institution located at 236 Radar Road in Cottonwood.
6

7 2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any
8 pollutant into waters of the United States from a “point source,” unless the discharge complies with
9 various enumerated sections of the CWA. Among other things, Section 301(a) prohibits discharges
10 not authorized by, or in violation of, the terms of a valid National Pollutant Discharge Elimination
11 System (“NPDES”) permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).
12

13 3. NPDES Permit No. ID0025887 (the “Permit”) authorizes IDOC to discharge
14 pollutants to waters of the United States and sets out terms and conditions with which IDOC must
15 comply.
16

17 4. IDOC’s violations result from its discharges of pollutants into an unnamed creek and
18 downstream receiving waters including Lawyer Creek (which is within the boundary of the Nez
19 Perce Indian Reservation), the Clearwater River, and the Snake River in excess and/or violation of
20 the terms conditions set forth in the Permit, as well as Defendants’ failure to comply with the
21 monitoring and reporting requirements set forth in the Permit.
22

23 5. Among the terms and conditions set forth in the Permit are effluent limitations for a
24 variety of pollutants.
25

26 6. IDOC has exceeded the effluent limitations in the Permit at least 160 times since
January 1, 2018.

1 7. IDOC has failed to file annual reports and other monitoring and reporting required
2 by the Permit.

3 8. Plaintiff seeks declaratory and injunctive relief, civil penalties, litigation costs, and
4 other relief that may be ordered by the Court to bring IDOC into compliance with the Permit and
5 the Clean Water Act, and thereby protect public waters in Idaho.
6

7 **II. JURISDICTION AND VENUE**

8 9. This Court has subject matter jurisdiction over the parties and subject matter
9 jurisdiction of this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C.
10 § 1365(a)(1) and 28 U.S.C. § 1331 (an action for declaratory and injunctive relief arising under the
11 Constitution and laws of the United States).

12 10. Plaintiff has complied with the statutory notice requirements under Section 505(a)(1)
13 of the CWA, 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2.
14

15 11. On March 9, 2020, Snake River Waterkeeper provided IDOC and the individually-
16 named defendants with notice of its intention to file suit for violations of the Clean Water Act at the
17 Northern Idaho Correctional Institution by sending a 60-day notice letter (“Notice Letter”) via
18 certified mail pursuant to 33 U.S.C. § 1365(a)(1) and 40 C.F.R. § 135.2(a)(2).

19 12. A copy of the Notice Letter was sent to the Administrator of the United States
20 Environmental Protection Agency (“EPA”), the Administrator of EPA Region 10, and the Director
21 of the Idaho Department of Environmental Quality pursuant to the CWA, 33 U.S.C. § 1365(b)(1)(A)
22 and 40 C.F.R. § 135.2(a)(2).
23

24 13. A true and correct copy of Plaintiff’s Notice Letter is attached as Exhibit A to this
25 Compliant and is incorporated here by reference.
26

1 14. More than sixty days have passed since the Notice Letter was served on Defendants
2 and the state and federal agencies.

3 15. Neither the EPA nor the State of Idaho has commenced or is diligently prosecuting
4 a court action to redress the violations alleged in this complaint. 33 U.S.C. § 1365(b)(1)(B).
5

6 16. Venue is proper in the District of Idaho pursuant to Section 505(c)(1) of the Clean
7 Water Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial
8 district.

9 **III. PARTIES**

10 17. Plaintiff Snake River Waterkeeper (“SRW”) is a not-for-profit organization which
11 aims to provide fishable, swimmable and drinkable local waterways through public ownership and
12 citizen stewardship. SRW conducts surveillance of the Snake River Basin (“River”) and reaches out
13 to river users who share its commitment to a river that is swimmable, fishable, and properly
14 regulated. SRW serves as the eyes, ears, and public voice of the River. SRW’s office is located at
15 2123 N. 16th Street, Boise, Idaho 83702.
16

17 18. Defendant IDOC owns and, with its individually-named co-defendants, operates the
18 Northern Idaho Correctional Institution (“Facility”). The Facility is located at 236 Radar Road in
19 Cottonwood, Idaho.

20 19. Defendant Josh Tewalt is IDOC’s Director.

21 20. Defendant Jeff Zmuda is IDOC’s Deputy Director.

22 21. Defendant Chad Page is IDOC’s Chief of Prisons.

23 22. Defendants Dr. David McClusky, Dodds Hayden, and Dr. Karen Neill are IDOC’s
24 Board Members.
25
26

1 23. IDOC's Facility discharges to unnamed creek and downstream receiving waters
2 including Lawyer Creek (which is within the boundary of the Nez Perce Indian Reservation), and
3 the Clearwater River, a tributary to the Snake River. SRW's members in the Snake River Basin area
4 use and enjoy the areas impacted by the Facility. SRW's members use and enjoyment of waterbodies
5 impacted by the Facility has been, are being, and will continue to be adversely affected by the
6 Defendants' failure to comply with the Clean Water Act and the Permit. Violations of the CWA
7 affect not only Cottonwood and surrounding areas but also damage the ecological integrity of the
8 entire Clearwater River Basin. The Basin provides drinking water, recreational opportunities in
9 fishing and whitewater rafting, kayaking, and canoeing. Additionally, the Basin is of great cultural
10 significance to the Native American Tribes who have historically and currently inhabit the area. The
11 discharge of pollutants by IDOC impairs each of the previously stated uses of the Basin by SRW's
12 members. SRW has no adequate remedy at law.

13
14
15 24. Defendants' violations of the Permit negatively affect SRW's members' use of the
16 Basin because effluent and unknown discharges into the River and its tributaries negatively impacts
17 aquatic species and contributes to a reasonable fear of pollution. This reasonable fear reduces SRW
18 members' ability to enjoy the Basin for a variety of recreational and other activities.

19
20 25. Defendants' failure to adhere to the terms of the Permit also harms the organizational
21 interests of SRW. The protection and improvement of the environment and water quality of
22 waterbodies in the Snake River Basin are important parts of SRW's goals and mission. A critical
23 component of these goals is ensuring compliance with federal laws, such as the Clean Water Act.
24 When IDOC violates its Permit, it adversely affects water quality and the organizational interests of
25 SRW. When state agencies ignore requirements of federal law, it sets a dangerous precedent that
26

1 discharges do not have to meet the requirements of the Clean Water Act, resulting in negative
2 environmental damage to the River, its tributaries, and the State of Idaho.

3 26. For the reasons described above, SRW has suffered and continues to suffer injury-
4 in-fact on account of IDOC's failure to comply with the Clean Water Act as alleged herein. SRW's
5 injury-in-fact is fairly traceable to the IDOC's conduct and would be redressed by the relief SRW
6 seeks in this action.
7

8 IV. FACTS

9 27. Sections S1.A and S4.A of the Permit explicitly established influent/effluent
10 limitations, design criteria, and other requirements governing the operation of the Facility.

11 28. From the period from January 2018 to the date of the filing of the Notice Letter,
12 Defendants violated the requirements of the Permit more than 160 times, including design criteria
13 exceedance violations of total suspended solids ("TSS") and Biochemical Oxygen Demand
14 ("BOD"), and permit scheduling violations. The Notice Letter attached hereto as Exhibit A and
15 incorporated by reference includes charts of these violations.
16

17 29. Additional Permit violations have occurred since the filing of the Notice Letter and
18 are expected to continue until relief is granted by the Court.

19 30. Section S3.A of the Permit requires IDOC to submit monthly Discharge Monitoring
20 Reports ("DMRs") by the fifteenth day of each month that summarize, report, and submit monitoring
21 data obtained during each monitoring period.
22

23 31. During the five years prior to this letter, IDOC has failed to complete regulated
24 Facility activities as required by the NPDES permit. The Notice Letter attached hereto as Exhibit A
25 and incorporated by reference includes charts of these violations.
26

1 32. The significant and continual violations described above demonstrate that IDOC is
2 not properly operating and maintaining the Facility and demonstrate repeated and ongoing violations
3 of the Permit and the Clean Water Act.

4 33. Plaintiff has a reasonable belief that these violations will continue unless relief is
5 granted by the Court.
6

7 **V. CLAIM FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **VIOLATION OF CLEAN WATER ACT LIMITS ON DISCHARGING POLLUTION:
10 THE PAST AND CONTINUING DISCHARGE OF POLLUTANTS HAS VIOLATED
11 THE TERMS AND CONDITIONS OF IDOC'S NPDES PERMIT AND THUS SECTION
301(A) OF THE CLEAN WATER ACT.**

12 34. Each and every allegation set forth above is incorporated herein by reference.

13 35. Section 301(a) of the Clean Water Act requires compliance with all terms and
14 conditions included in an NPDES pollution permit issued pursuant to Section 402 of the Act, 33
15 U.S.C. § 1311(a).
16

17 36. The Permit has explicit limits for biochemical oxygen demand, total suspended
18 solids, fecal coliform bacteria, pH, ammonia, and other requirements.

19 37. Defendants violated the requirements of the Permit more than 160 times, including
20 design criteria exceedance violations of total suspended solids ("TSS") and Biochemical Oxygen
21 Demand ("BOD"), and permit scheduling violations.

22 38. Each exceedance of an effluent limitation is a separate and distinct violation of the
23 Permit and the Clean Water Act.
24
25
26

1 39. Plaintiff has a good faith belief that Defendant is in continuing violation of the Permit
2 and will continue to violate the limitations for total suspended solids, biological oxygen demand,
3 numeric effluent violations of flow, ammonia, pH and/or other Permit terms and conditions.

4 40. Further, IDOC has failed to timely submit DMRs to the EPA as required by the
5 NPDES permit.
6

7 41. Every day that the Defendant has failed to comply with the requirements of the
8 Permit constitutes separate and distinct violations of the terms of the Permit and, therefore, a separate
9 and distinct violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

10 42. By committing the acts and omissions alleged above, Defendant is subject to an
11 assessment of civil penalties for all violations of the Permit and the Clean Water Act occurring
12 within the past five years pursuant to the Act, Sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and
13 1365.
14

15 43. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C.
16 § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm
17 Plaintiff and the citizens of the State of Washington, for which harm they have no plain, speedy or
18 adequate remedy at law.

19 **VI. RELIEF REQUESTED**

20 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:
21

22 1. An order declaring that Defendant has violated and continues to be in violation of
23 Clean Water Act, Section 301(a), 33 U.S.C. § 1311(a), for discharging pollutants in violation of
24 NPDES Permit No. ID0025887;

25 2. An order enjoining Defendant from violating the substantive and procedural
26 requirements of NPDES Permit No. ID0025887;

