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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE,	)	No. 1:18-cv-403
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
DAVID GROESCHL, Acting Director of	)	
the Idaho Department of Lands; and	)	
JOHN TIPPETS, Director of the Idaho	)	
Department of Environmental Quality	)	
	)	
Defendants.	)	
	)	

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**NATURE OF THE ACTION**

1. The Idaho Conservation League (ICL) brings this citizen enforcement suit against Defendants for their ongoing violations of the federal Clean Water Act (CWA) by discharging pollutants from the Triumph Mine to the East Fork of the Big Wood River (East Fork) without a required National Pollutant Discharge Elimination System (NPDES) permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

2. The Idaho Department of Lands (IDL) and the Idaho Department of Environmental Quality (DEQ) own and manage the Triumph Mine, an abandoned mine site adjacent to the East Fork and adjacent to the community of Triumph in Blaine County, Idaho.

IDL and DEQ collect and combine water flowing from a mine adit (called the “Lower Triumph Portal”) and from a pond perched on a mine tailings waste pile (called the “Permanent Pond”). IDL and DEQ convey the combined water—which is contaminated with arsenic, cadmium, zinc, manganese, sediment, and other pollutants—through a pipe and channel system which discharges polluted surface and groundwater to the East Fork.

3. ICL seeks declaratory and injunctive relief prohibiting Defendants from discharging pollutants without obtaining and complying with an NPDES permit, as well as an award of litigation costs, including ICL’s attorney and expert witness fees.

### **JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court under the Clean Water Act, 33 U.S.C. § 1365(a), which vests the district courts with jurisdiction over citizen enforcement actions, such as this case.

5. Defendants have violated and continue to violate the CWA by discharging pollutants without an NPDES permit. The requested relief is proper under the CWA, 33 U.S.C. 1365(a).

6. Venue is proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because Defendants’ unlawful point source discharges are located in Idaho and thus are within this district.

7. As required by the CWA, 33 U.S.C. § 1365(b)(1)(A), ICL provided Defendants with notice of its intent to sue more than sixty (60) days before filing this Complaint. At the same time, ICL notified the Administrator of the United States Environmental Protection Agency (EPA), the EPA Region 10 Administrator, and DEQ of its intent to sue. Neither EPA nor DEQ have commenced a diligent prosecution to redress Defendants’ CWA violations.

**PARTIES**

8. Plaintiff IDAHO CONSERVATION LEAGUE is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho, and regional offices in Ketchum and Sandpoint. 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.

9. As Idaho's largest state-based conservation organization, ICL represents over 30,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality and fisheries throughout the rivers and streams of Idaho, including in the East Fork Big Wood River and in the Big Wood River watershed.

10. ICL has staff, members, and supporters who live, recreate, and/or work in and around the East Fork Big Wood River and in other locations in the Big Wood River watershed adversely impacted by IDL's and DEQ's unlawful pollution discharges. ICL staff, members, and supporters frequently visit, recreate, and engage in activities on and around these areas.

11. For example, ICL has members who regularly visit the East Fork to pursue recreational activities, including fishing, wildlife and fish viewing, collecting foods (berries, mushrooms, plants, and other non-commercial forest products), exploring, wading, swimming, picnicking, and other activities. ICL members also value and appreciate the natural aesthetics of the East Fork and its tributaries for cultural, religious, and personal reasons. ICL members have a strong interest in protecting fish and other aquatic species in Idaho, including species present in the East Fork and the Big Wood.

12. Pollution discharges from the Triumph Mine site degrade water quality and, thereby, harm fish and other aquatic life and diminish the aesthetic quality of the water body, among other adverse impacts.

13. ICL and its staff, members, and supporters have suffered and continue to suffer injury-in-fact on account of IDL's and DEQ's CWA violations as alleged herein. The injury-in-fact is traceable to IDL's and DEQ's conduct and would be redressed by the relief ICL seeks.

14. ICL also suffers injury-in-fact because it has devoted time, energy, and money to protecting water quality and fisheries, advocating for mine reclamation, and monitoring the East Fork. ICL submitted comments on agency studies and plans for the Triumph Mine. Over the last year-and-a-half, ICL closely monitored discharges from the Triumph Mine site, and has sent staff and contractors to visit the area, observe and document illegal discharges, and evaluate water quality impacts. ICL staff have also spent time gathering and reviewing information from state and federal agencies relating to the Triumph Mine and illegal discharges. On numerous occasions, ICL staff have attended meetings and participated in calls with staff from IDL, DEQ, and other agencies to discuss pollution discharges from the Triumph Mine.

15. Defendant DAVID GROESCHL is sued in his official capacity as Acting Director of the Idaho Department of Lands. As Acting Director, Mr. Groeschl is in the highest position at the agency, where he has authority and responsibility to oversee the agency's budget and employees and to ensure IDL's compliance with laws and regulations, including the CWA.

16. Defendant JOHN TIPPETS is sued in his official capacity as Director of the Idaho Department of Environmental Quality. As Director, Mr. Tippets is in the highest position at the agency, where he has authority and responsibility to oversee the agency's budget and employees and to ensure DEQ's compliance with laws and regulations, including the CWA.

**APPLICABLE LEGAL REQUIREMENTS**

17. Congress adopted the Clean Water Act with the objective “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. § 1251(a).

18. The CWA prohibits the “discharge of any pollutant by any person” to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §§ 1311(a), 1342(a).

19. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

20. The CWA defines “point source” as a “discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

21. The CWA defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

22. The CWA defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

23. The citizen suit provision of the CWA authorizes “any citizen” to “commence a civil action on his own behalf” in federal district court against any person who is alleged to be in violation of “an effluent standard or limitation” of the Act. 33 U.S.C. § 1365(a).

## **BACKGROUND FACTS**

### **The East Fork of the Big Wood River**

24. The East Fork of the Big Wood River is a navigable water located in south-central Idaho and is a tributary to the Big Wood River.

25. The East Fork flows generally east to west from its headwaters in the Pioneer Mountains in the Sawtooth National Forest to its mouth where it joins the Big Wood south of Ketchum and north of Hailey, Idaho. Along the way, the East Fork flows adjacent to the community of Triumph. Downstream of Triumph, the East Fork flows adjacent to the Triumph Mine site and then past homes and neighborhoods before joining the Big Wood.

26. The East Fork provides important habitat to fish and wildlife. The East Fork watershed is a popular area for recreation. Additionally, many homes located in the East Fork watershed obtain drinking water from underground wells.

### **The Triumph Mine Site**

27. The Triumph Mine site is located in Blaine County, Idaho. The Triumph Mine produced ore containing lead, zinc, and silver from 1882 to 1957.

28. In 1988, DEQ assessed the mine site and found elevated levels of arsenic, manganese, and zinc in surface water in drainage ditches at the mine and in the East Fork. EPA performed site inspections and assessments in 1991, 1992, and 1993.

29. In 1993, EPA proposed adding the Triumph Mine site to the national Superfund list. EPA's Superfund program is responsible for cleaning up some of the nation's most contaminated land.

30. After local residents and the County opposed adding the site to the Superfund list, EPA and DEQ entered into a memorandum of agreement (MOA) giving DEQ remediation responsibility for the site.

31. At the time of the MOA, Asarco Mining Company and IDL owned the land at the site. After some remediation activities began, Asarco filed for bankruptcy and later reached an agreement to pay DEQ \$1.675 million for remediation Asarco was responsible for, including discharge of water from the Lower Triumph Portal. IDL retained responsibility for surface water contamination and arsenic dust pollution associated with the tailings pile and Permanent Pond.

32. DEQ and IDL have since engaged in some remediation, pollution prevention, and other activities at the Triumph Mine site. However, the mine remains contaminated, and polluted water continues to flow from the site to the East Fork.

### **Unpermitted Pollution Discharges From the Triumph Mine**

33. DEQ manages water flowing from the Lower Triumph Tunnel located on the hillside above the East Fork valley. Water polluted with metals and other pollutants flows out of the Lower Triumph Tunnel at a typical rate of approximately 6 to 7 gallons per minute every day. This water is piped into a surge pond and then enters another pipe that runs downhill toward the East Fork valley.

34. IDL manages water flowing from the mine waste tailings pile located adjacent to the East Fork. The Permanent Pond is perched on the tailings pile. IDL believes upwelling ground water appears to be the primary source of water entering the pond. IDL has not fully quantified flows from the pond, but IDL believes flows may be greater than 50 gallons per minute during spring. This water is polluted with metals and other pollutants. This water is piped downhill.

35. The two pipes conveying polluted water from the Lower Triumph Tunnel and from the Permanent Pond connect at a junction. The combined adit and pond water flows through a single pipe toward the East Fork. The combined water is discharged to a channel that

connects to the East Fork.

36. On nearly every day since IDL and DEQ set up the pipe and channel system, the agencies discharged water, including metals and other pollutants, from the pipe to the channel.

37. On days with high enough levels of water in the channel, water flows approximately 500 feet down the channel and discharges directly to East Fork.

38. ICL has observed surface water discharges from the channel to the East Fork during spring and/or early summer in 2017 and 2018, including on June 21, 2017, and on March 21, March 23, March 27, April 5, April 16, and April 30 in 2018.

39. On days with lower levels of water in the channel, polluted water flows out of the pipe into the channel, where it pools in the uppermost portion of the channel. On days with medium levels of water in the channel, water flows beyond the uppermost pool, further down the channel, and into additional pools, including a pool located close to the channel's connection to the East Fork.

40. Upon information and belief, polluted adit and pond water, after it is conveyed from the pipe to the channel, seeps underground and flows via groundwater into the East Fork on every day, or nearly every day of the year.

41. In 2017 and 2018, ICL took water quality samples at different locations in the channel, including on days of high and medium water levels. The samples show elevated levels of arsenic in locations near the pipe in the uppermost channel pool and near the East Fork in the lowest channel pool. On one of these days, ICL sampled for additional pollutants and found elevated levels of arsenic, cadmium, manganese, iron, and zinc in the water conveyed from the pipe to the channel.

42. The surface and underground discharges from IDL's and DEQ's pipe and channel

system are ongoing. The pipe continues to discharge pollutants from Lower Triumph Tunnel and the Permanent Pond every day, or nearly every day of the year, and will continue to do so.

43. The discharges of pollutants from IDL's and DEQ's pipe and channel system described herein were made, and will continue to be made from discernible, confined, and/or discrete conveyances.

44. Defendants have never obtained an NPDES permit for the discharges described herein. This violates the CWA.

45. Defendants' violations of the CWA are serious. They degrade the quality of the East Fork and harm the people, fish, and wildlife that rely on it.

46. Defendants have received notice of the action they must take—obtaining an NPDES permit or ceasing the discharges—to comply with the CWA.

**CLAIM FOR RELIEF**  
**Clean Water Act Violations**

47. Plaintiff ICL realleges and incorporates by reference all preceding paragraphs.

48. Defendants DAVID GROESCHL and JOHN TIPPETS have violated and continue to violate section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), by discharging pollutants, including arsenic, cadmium, manganese, iron, zinc, and other pollutants from the Lower Triumph Tunnel and the Permanent Pond at the Triumph Mine site through IDL's and DEQ's pipe and channel system to the East Fork Big Wood River without an NPDES permit. These violations are violations of an "effluent standard or limitation" as defined by section 505(f) of the CWA, 33 U.S.C. § 1365(f).

49. The East Fork is a navigable water subject to CWA jurisdiction.

50. Defendants discharged arsenic, cadmium, manganese, iron, zinc, sediment, and other pollutants from the pipe and channel system—which constitutes a point sources—via a

direct surface water connection to the East Fork in 2017 on June 21 and in 2018 on March 21, March 23, March 27, April 5, April 16, and April 30. Upon information and belief, these discharges also occurred on every day in 2017 and 2018 up to and including today when water levels in the pipe and channel system were sufficiently high to cause water in the channel to flow via the surface to the East Fork. These direct surface water discharges are ongoing and will recur on future days when water levels are sufficiently high.

51. Upon information and belief, on every day or nearly every day in 2017 and 2018 to the present, Defendants discharged arsenic, cadmium, manganese, iron, zinc, sediment, and other pollutants from the pipe and channel system—which constitutes a point source—into the channel, which seeped underground and flowed into the East Fork. These discharges, via groundwater, are ongoing and will recur on or near every day Defendants' discharge water from the pipe into the channel.

52. Defendants did not have, and do not currently have, an NPDES permit authorizing any of these past and ongoing pollution discharges.

#### **PRAYER FOR RELIEF**

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

A. Declare, hold, and adjudge that Defendants have violated and continue to violate Section 301 of the Clean Water Act by discharging pollutants from the pipe and channel system at the Triumph Mine site to navigable waters without an NPDES permit.

B. Enjoin Defendants from further discharging pollutants to the East Fork and any other water of the United States except as expressly authorized by the CWA and the limitations and conditions of an applicable NPDES Permit.

C. Order interim pollution monitoring and mitigation measures until Defendants comply with the CWA.

D. Order Defendants to take actions to remediate environmental harm caused by its unlawful discharges.

E. Award Plaintiff its reasonable litigation costs and expenses, including attorney and expert fees, incurred in bringing this action.

F. Award such other relief as the Court may deem just and proper.

DATED this 14<sup>th</sup> day of September, 2018. Respectfully Submitted,

*/s/ Bryan Hurlbutt*  
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