

PRESS RELEASE

WILD FISH CONSERVANCY and CENTER FOR ENVIRONMENTAL LAW & POLICY

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Clean Water Act “Certification” for National Fish Hatchery Appealed

Wild Fish Conservancy (WFC) and the Center for Environmental Law & Policy (CELP) have appealed the issuance of a Clean Water Act “certification” granted by the Washington Department of Ecology to the Leavenworth National Fish Hatchery. The appeal was filed today with the state’s Pollution Control Hearings Board, which will hear the case. The certification, required under the federal Clean Water Act, grants permission to the Hatchery to operate as it has done in the past, blocking fish passage to Endangered Species Act-protected bull trout, steelhead, and native spring Chinook salmon, and diverting water from Icicle Creek into a diversion canal without a valid water right. The Hatchery is operated by the U.S. Fish and Wildlife Service and raises non-native spring Chinook salmon for harvest.

Anyone who discharges into a navigable water and needs a federal permit for any aspect of their activity must apply to Ecology for the certification under Section 401 of the Clean Water Act, in order to ensure that state water quality laws and regulations are adhered to. In this case, the Hatchery needs a new wastewater discharge permit from the U.S. Environmental Protection Agency. WFC brought a successful suit against the Hatchery in 2005 because the Hatchery’s permit expired in 1979 and had not been renewed even though the permit was only for five years. The EPA issued a draft permit in 2006. The Hatchery has been blocking native fish and diverting water into its canal for the last seventy years, drastically affecting the ecology of Icicle Creek, one of Washington’s largest Wilderness rivers.

“Ecology could have helped restore Icicle Creek but instead they fumbled the ball,” said Kurt Beardslee, Executive Director of Wild Fish Conservancy. “They ignored the studies that the Fish and Wildlife Service has done that say bull trout need to get past the Hatchery at the exact time of year they are deliberately blocking them. Instead they call for yet more studies but never indicate what weight they are going to give them against the Hatchery’s desire to block fish.”

Rachael Paschal Osborn, Executive Director of the Center for Environmental Law & Policy, a conservation group that works to restore instream flows, said Ecology has failed to properly apply the state’s water code in this certification. “Ecology should not allow the Hatchery to divert water into their canal in order to then withdraw it through wells. They are setting a dangerous precedent if they allow someone holding only a groundwater right to diminish surface flows by a diversion into a ditch.”

Wild Fish Conservancy and CELP are represented by Smith and Lowney, PLLC, of Seattle. Attorney Brian Knutsen of the firm said “Ecology acknowledges that the Hatchery has, and is going to continue to violate water quality standards. But they then allow a vague ‘adaptive management’ team to convene and simply talk about what operational changes the Hatchery might consider. There is no firm deadline for the Hatchery to actually meet water quality standards and other, related laws.”

“Ecology knows the proper way to write these certifications,” said Beardslee. “Governor Gregoire, when she was Attorney General, argued and won a case before the U.S. Supreme Court defending Ecology’s use of a certification to protect instream flows and wild fish. It’s disappointing that now they are allowing the Hatchery to continue to harm wild fish when it is not necessary.”

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