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Hon. Penny Pritzler
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William W. Stelle, Jr.
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7600 Sand Point Way Northeast
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Kim Kratz
State Director
National Marine Fisheries Service
Oregon State Habitat Office
1201 NE Lloyd Blvd Suite 1100
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December 19, 2013

Re: Notice of Intent to Sue for Violations of Section 7 of the Endangered Species Act Relating to the Timberline Ski Area Mountain Bike Trails and Skills Park Decision Notice and Finding of No Significant Impact

Dear Secretary Pritzler, Mr. Stelle, and Ms. Kratz,

I am writing this letter on behalf of BARK, Friends of Mount Hood (“FOMH”), Northwest Environmental Defense Center (“NEDC”), and the Sierra Club (collectively the “Conservation Groups”) with respect to the Letter of Concurrence (“LOC”) issued by the National Marine Fisheries Service (“NMFS”) on June 13, 2011.¹ The Conservation Groups intend to file suit under the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.* in the District of Oregon **30 days** from the date of this letter. The suit will allege that NMFS violated the requirements of the Endangered Species Act (“ESA”), 16 U.S.C. § 1521 *et seq.* when it concurred with the U.S. Forest Service (“Forest Service”) that issuing a Decision Notice and Finding of No Significant Impact authorizing the amendment of RLK and Company’s (“RLK”) Special Use Permit (“SUP”) to include the Timberline Ski Area Mountain Bike Trails and Skills Park (“Bike Park” or “Project”) is Not Likely to Adversely Affect Lower Columbia River (“LCR” Steelhead).

¹ Letter from William W. Steele, Jr., Regional Administrator, National Marine Fisheries Service, to Chris Worth, Forest Supervisor, Mt. Hood National Forest, Re: Endangered Species Act Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Timberline Downhill Bike Park, Still Creek, Sand Canyon and Glade Sub-Watersheds (HUCs1708000010201, 170800010202), Mt. Hood National Forest, Clackamas County, Oregon (June 13, 2011) (“Letter of Concurrence”).

Attached to this letter is the jurisdictionally required 60-day Notice Letter that was received by the Forest Service on Nov. 15, 2013. It sets forth claims alleging violations of the ESA Section 7, 16 U.S.C. § 1536. Because claims against NMFS related to its ESA Section 7 obligations are brought under the APA, no such 60-day jurisdictional requirement applies. *See Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1124–25 (9th Cir. 1997); *Sw. Ctr. for Biological Diversity v. U.S. Forest Service*, Nos. CV 97-666 TUC JMR & CIV 97-2562-PHX-SMM2001, U.S. Dist. LEXIS 25027, at 60–61 (D. Ariz. Mar. 30, 2001).

The purpose of this letter is to provide courtesy notice of the pending lawsuit, and to provide NMFS the opportunity to resolve this issue prior to litigation. We request that NMFS immediately withdraw the Letter of Concurrence and notify the Forest Service that it will be in violation of the ESA if it does not revoke the DN, FONSI, and amendment to the SUP prior to engaging in formal consultation. Otherwise, the Conservation Groups will file suit **30 days** from the date of this notice.

If you would like to discuss the significant ESA violations described herein and seek a mutually acceptable solution to them, please feel free to contact the undersigned. I look forward to hearing from NMFS and resolving this issue in the best interests of the LCR Steelhead.

Sincerely,



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Attachment