



Chambers of
JAMES A. REDDEN
United States District Judge

United States District Court

District of Oregon

1527 United States Courthouse
1000 S.W. Third Avenue
Portland, Oregon 97204-2902

FILED 09 FEB 25 13:52 USDC-ORP

Phone: 503-326-8370

Fax: 503-326-8379

February 25, 2009

To: Counsel of Record, Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., CV 01-640 RE
Re: March 6, 2009 Oral Argument

Dear Counsel,

I want to remind you that we will meet in the Ceremonial Courtroom on the 16th floor of the Federal Courthouse for oral argument on March 6, 2009. To help provide context for the issues we will be discussing, Federal Defendants have agreed to present a map of the Federal Columbia River Power System, demonstrating the pertinent federal and non-federal hydroelectric, irrigation, and water storage projects. It also identifies the major tributaries and habitat areas. It will be projected on the screen and any of the parties may refer to it during argument, if helpful.

I have two additional questions for discussion at oral argument:

(1) In September 2007, the National Marine Fisheries Service ("NMFS") Director of Science and Research concluded that the Proposed Estuary Action plan was inadequate, in part because "the expected benefits [are] overestimated." NMFS concluded that "roughly three times" as many projects would have to be implemented to achieve the stated survival improvements during the ten year implementation period. Is the Proposed Estuary Action Plan based on the best available science? Did Federal Defendants disregard their own scientists' criticisms regarding the estuary plan?

Counsel of Record, CV 01-640-RE
February 25, 2009
Page 2

(2) The recently enacted Recovery and Reinvestment Act of 2009 (“Recovery Act”), provides \$3.25 billion “[f]or the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act” (emphasis added). The Pacific Northwest Electric Power Planning and Conservation Act provides, “[t]he Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator . . . to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River” 16 U.S.C. § 839b(10)(A) (emphasis added). Can the Bonneville Power Administration commit to any additional funding for hydro, estuary, and/or tributary habitat mitigation?

I realize that we already have several important and complex issues to discuss at oral argument, covering a great deal of information. Bear in mind, however, that the parties filed thousands of pages of briefs and supporting declarations—and that does not include the thousands of pages in the Biological Opinion and the Administrative Record. I have attempted to distill all of this information into a handful of questions that I believe present the most significant concerns for this Biological Opinion. Oral argument will begin promptly at 9:30 a.m. We will recess for an hour at noon, and twenty minutes at 3:00 p.m. If we are unable to address all of the issues before 5:00 p.m., we will continue oral argument to a later date.

Very Truly Yours,



James A. Redden

United States District Judge

JAR:js