



**Bonneville Power Administration
Bureau of Reclamation
U.S. Army Corps of Engineers**

Support Grows for FCRPS Biological Opinion

On Oct. 24, 2008, the Department of Justice filed a cross motion for summary judgment and opposition to plaintiffs' motion for summary judgment in the lawsuit on NOAA Fisheries' 2008 biological opinion for the Federal Columbia River Power System. Three Northwest states and six tribes filed motions and briefs supporting the federal government and the 2008 BiOp. This is a substantial change from the 2004 BiOp, when two states and one tribe supported the federal government in the remand.

Here are some excerpts of what the parties in the litigation are saying in their filings with the court. The complete filings are posted at www.salmonrecovery.gov.

Warm Springs, Yakama and Umatilla Tribes:

“We finally have a practical and comprehensive federal salmon plan. It is a plan with actions. It may not be perfect, but it’s a plan based on best available science.”

“We have never had this sort of opportunity to act for the salmon, and these tribes believe we must seize the moment.”

“We respectfully ask that this Court direct the energy devoted to salmon restoration and recovery away from an endless remand planning and courtroom cycle some seem so determined to perpetuate, and to the streams and rivers where the *salmon managers*, significantly including the tribes, can go to work for salmon restoration.”

Colville Tribe:

“Plaintiffs’ litigation has led to major improvements in the management of the hydropower system and federal commitments of hundreds of millions of dollars for habitat restoration and hatchery reforms. The litigation, however, has reached a point of diminishing returns. Plaintiffs’ arguments have become hyper-technical as the major flaws evident in previous BiOps have been remedied.”

“Although the alleged flaws in the BiOp have grown smaller, the relief plaintiffs seek grows more extreme and the requested involvement of the Court in the day-to-day management of the FCRPS grows deeper.”

“The Action Agencies have worked hard to collaborate with affected states and tribes and have backed up this collaboration with enforceable agreements. It is time to end this litigation and give the BiOp and the Columbia River Fish Accords a chance to work.”

Kootenai Tribe of Idaho and Confederated Salish-Kootenai Tribes:

“Protection of Columbia River anadromous fish must be a Basin-wide effort, and the 2008 FCRPS BiOp embodies such a fish-first, collaborative Basin-wide approach.”

“As a result of the new paradigm, plaintiffs’ inevitable challenge to the 2008 FCRPS BiOp and the action agencies’ RODS finds itself enjoying substantially less support than in the last round of FCRPS litigation. And so it should.”

“The Kootenai Tribe of Idaho and the Confederated Salish and Kootenai Tribes urge the Court to uphold the 2008 FCRPS BiOp in its entirety, and to conclude that conduct of the action agencies in conformance with that BiOp fully satisfies the ESA’s requirements.”

States of Montana, Idaho and Washington:

“The 2008 biological opinion is legally valid and biologically sound. It has produced a comprehensive approach to developing and analyzing FCRPS operations, working through the unprecedented remand collaboration effort with the Columbia Basin’s states and tribes.”

“The participants in the collaborative remand found, after much discussion and analysis, that measures pertaining to spill and flow in this biological opinion are based upon the best available scientific information.”

“More spill, without regard to the location, the timing, the length, and the rate, is not going to benefit all ESUs, may not benefit any, and may harm some. Contrary to this straightforward proposition, [plaintiffs] continue to advocate a ‘one size fits all’ theory, which rests on the proposition that more spill is always better.”

“The States are confident that [the National Marine Fisheries Service] has approached the 2008 biological opinion with a firm commitment to apply the Endangered Species Act and its implementing regulations in a faithful manner and with the best available data and science. The States believe it is now time to unite behind this biological opinion and work collectively and collaboratively to ensure that it succeeds.”

The following are reactions to the litigation and recent court filings:

Washington Governor Chris Gregoire:

“Through the extensive regional collaboration that has taken place over the last three years, we have a good plan to move forward. It is time to unite behind this biological opinion and work collectively and collaboratively to ensure that it succeeds.”

FCRPS Federal Executives:

“After two years of regional collaboration on a plan for Columbia and Snake River salmon and steelhead, it is clear we have found common ground. This is no longer just a federal plan, it is now more of a regional plan explicitly supported by three states and six tribes.”

Columbia River Intertribal Fish Commission Chair N. Kathryn Brigham:

“The new era of salmon recovery developed over the past few years is true collaboration. The federal agencies and tribes are working together as partners in on-the-ground management activities that will provide tangible survival benefits for salmon. The upgrading of passage over federal dams, restoring river and estuary habitat and creatively using hatcheries to rebuild runs will produce real and exciting changes for the Columbia's fish populations.”