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*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

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NATIONAL WILDLIFE FEDERATION, *et al.*

Plaintiffs,

v.

NATIONAL MARINE FISHERIES  
SERVICE, *et al.*

Defendants.

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Civil No. 01-640-RE

**FEDERAL DEFENDANTS'  
MOTION FOR EXTENSION  
OF TIME TO COMPLETE  
FINAL BIOLOGICAL  
OPINION**

Federal Defendants respectfully request a 45 day extension of time to complete the final

biological opinion for the Federal Columbia River Power System (“FCRPS”).<sup>1</sup> The States of Washington, Montana, Idaho, and Oregon, as well as the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Warm Springs Reservation, and Kootenai Tribe of Idaho, have indicated that they do not oppose this extension. The Yakama, Umatilla, and Nez Perce Tribes, as well as the BPA Customer Group, have provided conditional non-oppositions.<sup>2</sup> Plaintiffs, National Wildlife Federation et al., indicated that they would wait to take a position after the motion is filed. The remaining parties do not oppose this extension or have not responded.

At the status conference on December 12, 2007, Federal Defendants requested March 18, 2008, as the completion date for the final FCRPS biological opinion. NWF v. NMFS, 01-CV-640-RE, December 12, 2007, Hrg. Trans. at 132. This request was predicated on an assumption as to the volume and content of the anticipated public comments. Id. at 27-28. At the same status hearing and at the State of Oregon’s urging, the Court set a new deadline for public comments as of January 4, 2008. Id. at 130. On January 4, 2008, the National Marine Fisheries Service (“NMFS”) received detailed and specific comments from 47 entities totaling over a thousand pages (excluding the roughly 18,000 form letters). See Declaration of Bruce Suzumoto ¶ 4. Since this submission, NMFS has been diligently analyzing these comments and

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<sup>1</sup> This request for an extension of time applies equally to the final biological opinion for the Upper Snake.

<sup>2</sup> The Yakama, Umatilla, and Nez Perce Tribes have indicated that they do not oppose this extension of time dependant on 2008 operations. As Plaintiffs’ letter to the Court indicated, Federal Defendants intend to implement 2008 operations substantially similar to those in 2007 and expect to finalize their plans for 2008 operations by the end of the month. BPA Customer Group indicated that they do not oppose this extension provided that the U.S. v. Oregon biological opinion is issued on the same day.

formulating appropriate responses. Id. ¶ 5

Although there is no statutory or regulatory authority requiring NMFS to address these comments, NMFS has chosen to do so. In addition, while the nature and content of these comments is not surprising, the breadth and volume exceeded NMFS' expectation. Id. ¶ 4. In order to carefully consider and responsibly address these comments, NMFS believes that it requires an extension of time to issue the final biological opinion. Id. ¶ 5. Based on previous experiences (including the production of the draft biological opinion), and considering a two week production window, NMFS requires a 45 day extension to issue the final biological opinion. Id. Therefore, Federal Defendants respectfully request a new completion date of May 2, 2008.

Respectfully submitted, January 22, 2007.

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## CERTIFICATE OF SERVICE

Pursuant to Local Rule Civil 100.13(c), and F.R. Civ. P. 5(d), I certify that on January 22, 2008, the foregoing will be electronically filed with the Court's electronic court filing system, which will generate automatic service upon on all Parties enrolled to receive such notice. The following will be manually served by overnight mail:

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