



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

Phone: 503-326-8370
Fax: 503-326-8379

June 11, 2007

Coby Howell
United States Attorney
600 United States Courthouse
1000 S.W. Third Avenue
Portland, OR 97204

Re: National Wildlife Federation, et al. v. National Marine Fisheries Service, No. 01-640-RE (D. Or.), May 23, 2007 Opinion and Order

Dear Mr. Howell:

This letter is in response to your June 1, 2007 letter seeking clarification of the court's May 23, 2007 Opinion and Order (doc. 1347).

I issued that Opinion and Order to confirm that the fish-protection measures set out in the 2007 Operations Agreement take priority over power-marketing concerns. Federal Defendants must continue to operate the Federal Columbia River Power System (FCRPS) in a manner consistent with the 2007 Operations Agreement. To the extent hydro-power operations are not specified in that agreement, Federal Defendants shall operate the FCRPS consistent with the 2004 Biological Opinion and/or other operative documents necessary to implement that Biological Opinion. My intention was to clarify and reiterate Federal Defendants' existing obligations. I did not intend to modify Federal Defendants' obligations regarding turbine efficiency, spill, or any other aspect of FCRPS operations.

The May 23, 2007 Opinion and Order was also intended to reaffirm Federal Defendants'

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continuing obligation to provide the court with monthly status reports documenting routine spill "variances." The Order does not require Federal Defendants' to report each and every minor variance "contemplated" by the controlling FCRPS operating documents. It does require Federal Defendants to report unauthorized violations of fish-protection measures—that is, situations in which Federal Defendants place power needs before the needs of listed species—"as soon as practicable." If specific and routine variations are "contemplated," or authorized by the controlling FCRPS operating documents, they do not constitute violations of fish-protection measures, and need not be reported.

I appreciate Federal Defendants' candor in communicating their concerns to the court, and their diligent efforts to clarify their obligations under this court's orders.

Very truly yours,


James A. Redden
United States District Judge

JAR:js

cc: Counsel of Record