

KARIN J. IMMERGUT, OSB #96314  
United States Attorney  
STEPHEN J. ODELL, OSB #90353  
Assistant United States Attorney  
District of Oregon  
600 United States Courthouse  
1000 S.W. Third Avenue  
Portland, OR 97204-2902  
(503) 727-1000

MATTHEW J. MCKEOWN  
Acting Assistant Attorney General  
SETH M. BARSKY, Assistant Section Chief  
ROBERT L. GULLEY, Trial Attorney  
COBY HOWELL, Trial Attorney  
Wildlife & Marine Resources Section  
Benjamin Franklin Station, P.O. Box 7369  
Washington, DC 20044-7369  
(202) 305-0500 (ph)  
(202) 305-0275 (fx)

*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'  
RESPONSE TO THE COURT'S  
APRIL 26, 2007 ORDER**

The Court has asked Federal Defendants to respond to allegations involving the Bonneville Power Administration (“BPA”) and 2007 Federal Columbia River Power System (“FCRPS”) operations. An anonymous telephone call placed to the Court at 4:33 a.m. on

April 10, 2007, alleged that BPA intentionally violated biological fish restrictions on April 3, 2007, and sought a system emergency to conceal the operational variance. Federal Defendants provide the attached Declaration of Stephen R. Oliver (“Oliver Decl.”) and complete transcripts of the relevant telephone calls that were placed that night among BPA staff, which explain in detail the operational variance that occurred on the morning of April 3, 2007. See Oliver Decl. ¶ 35; see also BPA Attachment A.

As these documents and transcripts demonstrate, BPA encountered a number of unforeseen circumstances on April 3, 2007. Oliver Decl. ¶¶ 8-16. No spill was curtailed at these projects as the Lower Columbia River dams did not begin their spill operations for another seven days as provided under the 2007 Agreement. Id. ¶¶ 3, 28. BPA did, however, operate Bonneville, the Dalles, and McNary dams outside of 1% turbine efficiency for a number of hours in order to meet power demands. Id. ¶¶ 6, 21-22. Because very few smolts were present at these projects at this time of the year, the biological impact of this operation was minimal. Id. ¶¶ 24-29. Finally, BPA reported this incident to the salmon managers on the morning of April 3, 2007, and fully briefed the Technical Management Team (“TMT”) on the morning of April 4, 2007. Representatives in attendance at the TMT meeting included the States of Oregon, Montana, Idaho, CRITFC, and the Nez Perce Tribe. Id. ¶¶ 30-33.

An unrelated equipment failure occurred later that morning on April 3, 2007, at Little Goose dam. As explained in the Declaration of Cynthia A. Henriksen (“Henriksen Decl.”) and the attached exhibits, this failure involved one of the gauges for measuring the elevation of the reservoir in the forebay of Little Goose dam. See Henriksen Decl. ¶¶ 12-13; see also Corps Attachments 1-4. At approximately 10:30 a.m., the U.S. Army Corps of Engineers (“Corps”)

powerhouse control room operator noticed that the gauge was not properly working and that the reservoir elevation had fallen below minimum operating pool (“MOP”). Henriksen Decl. ¶¶ 12-13. In order to restore the reservoir to the proper elevation, adjustments were made including reducing power generation and spill discharge. *Id.* ¶¶ 13-15. The reduction of project discharge at Little Goose dam created a “trickle down” effect on reservoir levels at Lower Monumental and Ice Harbor projects, which required these dams to reduce power generation and spill discharge as well. *Id.* ¶¶ 16-20. As in 2006, spill variances such as this would have been reported in the May 9, 2007 spill implementation status report.<sup>1</sup> Federal Defendants, however, bring this to the Court’s attention now because of the proximity in time to the other incident discussed above.

RESPECTFULLY SUBMITTED,

MATTHEW J. MCKEOWN  
Acting Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

SETH M. BARSKY  
Assistant Section Chief  
ROBERT L. GULLEY  
Senior Trial Attorney

/s/ Coby Howell  
COBY HOWELL  
Trial Attorney  
Wildlife & Marine Resources Section

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<sup>1</sup> Federal Defendants will file their second spill implementation status report on May 9, 2007. Unlike the first 2007 status report, the second status report will include monitoring data from each project from the beginning of spill operations on April 3, 2007 through April 30, 2007. It is possible that this report may include other spill variances similar to those that occurred in 2006.

Benjamin Franklin Station, P.O. Box 7369  
Washington, DC 20044-7369  
(202) 305-0500 (ph)  
(202) 305-0275 (fx)

*Attorneys for Defendants*

## CERTIFICATE OF SERVICE

Pursuant to Local Rule Civil 100.13(c), and F.R. Civ. P. 5(d), I certify that on May 1, 2007, 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:

Dr. Howard F. Horton, Ph.D.  
U.S. Court Technical Advisor  
Professor Emeritus of Fisheries  
Department of Fisheries and Wildlife  
104 Nash Hall  
Corvallis, Oregon, 97331-3803  
FAX: (541)-737-3590  
(hortonho@onid.orst.edu)

Walter H. Evans, III  
Schwabe Williamson Wyatt, P.C.  
1211 S.W. Fifth Ave  
1600-1800 Pacwest Center  
Portland, OR 97204  
([wevans@schwabe.com](mailto:wevans@schwabe.com))

James W. Givens  
1026 F Street  
P.O. Box 875  
Lewiston, ID 83051

/s/ Coby Howell