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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, *et al.*

Plaintiffs,

v.

NATIONAL MARINE FISHERIES

SERVICE, *et al.*

Defendants.

Civil No. 01-640-RE

**FEDERAL DEFENDANTS'
MOTION FOR EXTENSION OF
TIME TO ISSUE A NEW
BIOLOGICAL OPINION**

**FED. DEFS' MOTION FOR EXTENSION
OF TIME TO ISSUE A NEW BIOLOGICAL
OPINION**

On April 21, 2006, this Court issued a minute order requiring the Federal Defendants to issue a new Biological Opinion, on or before February 7, 2007. Dkt. 1258. The Federal Defendants hereby ask the Court to extend the date for completing the new Biological Opinion to July 31, 2007.

As this Court is aware, the Federal Defendants have been working on the new Biological Opinion through a collaborative process with the other sovereigns. While the goal of that process, as ordered by the Court, is (1) to develop items to be included in the proposed action and (2) to clarify policy issues and reach agreement, or narrow the areas of disagreement, on scientific and technical information, the sovereigns have embarked on a more expansive approach, employing the conceptual framework, that has explored a broad array of science and other issues in the hope that a comprehensive solution can be obtained. Using the information from this process, the Action Agencies are now completing a proposed action and/or reasonable and prudent alternative (“PA/RPA”) for further discussion with the sovereigns. The Action Agencies are also now preparing a biological assessment (“BA”). The components of that BA will be discussed with the sovereigns in the collaborative process. In addition, Bureau of Reclamation is developing the information regarding the effects of the operation of its projects on the Upper Snake River that will have to be integrated into the analyses in order to achieve a comprehensive analysis.

While both the Federal Defendants and the collaborating sovereigns are working diligently, there are many issues to be addressed and, thus, it is difficult to predict with accuracy when a biological opinion can be issued. Although the process is not entirely sequential, the Action Agencies’ ability to complete a BA depends on the progress made in the collaboration

and on the Bureau of Reclamation's progress in developing the information regarding its operations on the Upper Snake. In turn, NMFS' ability to complete the new Biological Opinion depends on when the BA is completed. Moreover, we expect that a draft of the Biological Opinion will be shared with the regional fish and wildlife managers and Plaintiffs for comment and that those comments will have to be considered responses prepared.

Thus, our request for an extension until July 31, 2007, is a good faith estimate on the amount of time that it will take to complete the tasks. That estimate has been discussed with the Policy Working Group. Although, as with many issues, there is not complete consensus on how much time will be required, there is a general sense that July 31 is an appropriate target date. We are using that date for our current planning, but there are a number of "moving pieces," many of which are not in our control which could mean that more work, and time is needed for completion.¹ Federal Defendants will make every effort to complete the new biological opinion by the July 31 date. If, however, it becomes apparent that the date cannot be met we will come back to the Court to discuss additional time.

Counsel for Federal Defendants circulated a draft of this motion to the parties and asked for their position on the motion. The Nez Perce, Yakama, Warm Springs, Kootenai and Colville Tribes, States of Idaho, Washington and Oregon, BPA Customer Group, Clarkston Golf and Country Club, Inland Ports/Navigation Group and Northwest Power and Conservation Council

¹ The two most obvious examples are the time needed to try to forge agreement among the sovereigns and the time it may take the Plaintiffs to prepare comments and the agencies to review and respond to those comments. In addition, any request for an injunction regarding 2007 operations also could add time to the remand.

do not object to the motion.² Plaintiffs and the State of Montana do not object to an extension of time to complete the new biological opinion until July 31, 2007, but each will file a response next week.

Dated: December 8, 2006

Respectfully Submitted,

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² Defendants have not heard from counsel for the Spokane Tribe of Indians. We were told that Mr. Funke is in trial out-of-town.

CERTIFICATE OF SERVICE

Pursuant to Local Rule Civil 100.13(c) and Fed. R. Civ. P. 5(d), I certify that on December 8, 2006, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon all Parties enrolled to receive such notice. The following will be manually served by first class U.S. mail, as noted:

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