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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-CV-640-RE

**FEDERAL DEFENDANTS'  
NOTICE OF 2010 SPRING  
OPERATIONS**

Federal Defendants hereby provide notice of the 2010 Spring Fish Operation Plan

(“FOP”) for the Federal Columbia River Power System (“FCRPS”). The attached FOP details the agencies’ intended operations for the 2010 spring adult and juvenile migrations. *See* 2010 Spring FOP (Fed. Defs.’ Ex. 1). The agencies are also currently preparing a summer fish operation plan that will set forth summer spill and related operations for 2010. Federal Defendants will provide a notice with the summer FOP to the Court when it is complete.

The operations set forth in the spring FOP have been reviewed with the sovereigns in the Regional Implementation Oversight Group (“RIOG”). Consistent with those discussions, the operations set forth in the spring FOP are largely a continuation of the same operations that occurred in the spring of 2009. This continuation of operations (or “roll-over”) has been modified only for essential research to accommodate the installation or adjustment of fish passage features, similar to previous operational year changes. Provided that we have an average to above-average water year ( $\geq 65$  kcfs), spring operations will be, in all material respects, the same as last year. Unfortunately, however, it appears this will be a below-average water year.

In light of the unfavorable weather conditions, the agencies have been reviewing a recent report by the Northwest Fisheries Science Center (“Science Center”) that compiled data and analyzed the effects of transport on juvenile Chinook salmon and steelhead from 1998-2008. *See* January 2010; Analyses of Juvenile Chinook Salmon and Steelhead Transport from Lower Granite and Little Goose Dams, 1998-2008 (Fed. Defs.’ Ex 2). The Science Center’s analysis suggests that in a low flow year ( $\leq 65$  kcfs), relative to maximum transport operations, a continuation of spill operations would result in substantial losses of wild adult Snake River steelhead and spring/summer Chinook. Because the issue of transport has generated controversy with the Plaintiffs in the past and because there is the potential for such a significant detrimental

effect to steelhead and spring/summer Chinook adult returns, the agencies have chosen to seek independent science review from the Independent Scientific Advisory Board (“ISAB”) of a low-flow, maximum transport operation. *See* February 25, 2010 Request for ISAB Review (Fed. Defs.’ Ex. 3 and Ex. 4).

The ISAB anticipates it will provide a recommendation on NOAA’s proposed low-flow, maximum transport operation by early April. After issuance of the ISAB’s recommendation, this guidance will be discussed in the RIOG with the other sovereigns, and the agencies will make their operational decision in mid to late-April. All of this is expected to be complete well before a potential low flow, maximum transport operation would begin at Lower Granite dam. FOP at 7-8. Federal Defendants will inform the Court of any developments and provide a report on this operational decision in late April.

Consistent with past practices and in the interests of focusing on the Court’s three-month limited, voluntary remand order, the Federal Defendants have attached a proposed order for 2010 spring operations, which is largely identical to the spring operational order that was entered by the Court in 2009. *See* Proposed Order (Fed. Defs.’ Ex. 5).<sup>1</sup> Although not required under Local Rules, Federal Defendants circulated this notice, the proposed order, and a final spring FOP on March 23, 2010, to the litigation parties to seek their positions. The States of Washington, Idaho, and Montana, as well as the Warm Springs, Yakama, Umatilla, Colville, Spokane, Kootenai Tribe of Idaho, and Salish-Kootenai Tribes, and the Inland Ports and Navigation Group and Northwest River Partners do not oppose entry of this proposed order. The NWF plaintiffs,

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<sup>1</sup> The slight modifications account for the new three-month limited, voluntary remand. *See* Order for 2009 Spring Operations ¶ 5 (Docket No. 1694).

State of Oregon, and Nez Perce Tribe provided the following response: “The State of Oregon, Nez Perce Tribe, and NWF plaintiffs oppose entry of the proposed order as drafted because of certain provisions in the underlying Spring 2010 Fish Operations Plan regarding whether to continue spring spill at the levels provided since 2006 pursuant to Court order. These parties will file a short memorandum setting forth the grounds for their opposition and an alternative proposed order on or before Friday, April 7, 2010.”

If the Plaintiffs choose to file an opposition memorandum, Federal Defendants respectfully request the opportunity to respond to such filing and will do so no later than April 14, 2010.

Respectfully submitted: March 31, 2010.

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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 March 31, 2010, 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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