

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

KELLY A. JOHNSON
Acting Assistant Attorney General

SETH M. BARSKY, Assistant Section Chief
RUTH ANN LOWERY, Trial Attorney
ruth.lowery@usdoj.gov
Wildlife & Marine Resources Section
Benjamin Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
(202) 305-0217 (ph)
(202) 305-0275 (fx)

FRED R. DISHEROON, Special Litigation Counsel
fred.disheroon@usdoj.gov
U.S. Department of Justice
Environment & Natural Resources Division
Benjamin Franklin Station, P.O. Box 7397
Washington, D.C. 20044-7397
(202) 616-9649 (ph)
(202) 616-9667 (fx)
Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION;
IDAHO WILDLIFE FEDERATION;
WASHINGTON WILDLIFE FEDERATION;
SIERRA CLUB; TROUT UNLIMITED;
PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS;
INSTITUTE FOR FISHERIES RESOURCES;
IDAHO RIVERS UNITED; IDAHO
STEELHEAD AND SALMON UNITED;
NORTHWEST SPORT FISHING INDUSTRY
ASSOCIATION; SALMON FOR ALL;
COLUMBIA RIVERKEEPER; NORTHWEST
ENERGY COALITION; and FEDERATION
OF FLY FISHERS,

Plaintiffs,

and

STATE OF OREGON,

Intervenor-Plaintiff,

CV 01-640-RE (Lead Case)

CV 05-23-RE (Consolidated Cases)

**FEDERAL DEFENDANTS'
NOTICE OF APPEAL FROM
GRANT OF PRELIMINARY
INJUNCTION**

PRELIMINARY INJUNCTION
APPEAL

v.

NATIONAL MARINE FISHERIES SERVICE;
U.S. ARMY CORPS OF ENGINEERS; U.S.
BUREAU OF RECLAMATION,

Defendants,

and

STATE OF IDAHO; NORTHWEST
IRRIGATION UTILITIES; PUBLIC POWER
COUNCIL; WASHINGTON FARM BUREAU
FEDERATION; FRANKLIN COUNTY
FARM BUREAU FEDERATION; GRANT
COUNTY FARM BUREAU FEDERATION;
NORTHWEST REQUIREMENT UTILITIES;
PACIFIC NORTHWEST GENERATING
COOPERATIVES; INDUSTRIAL
CUSTOMERS OF NORTHWEST UTILITIES;
ALCOA, INC; BPA CUSTOMER GROUP and
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS,

Intervenor-Defendants.

COLUMBIA SNAKE RIVER IRRIGATORS
ASSOCIATION and EASTERN OREGON
IRRIGATORS ASSOCIATION,

Plaintiffs,

v.

CARLOS M. GUTIERREZ, in his official
capacity as Secretary of Commerce; NOAA
FISHERIES; and D. ROBERT LOHN, in his
official capacity as Regional Director of NOAA
Fisheries,

Defendants.

Notice is hereby given that the NATIONAL MARINE FISHERIES SERVICE (also known as NOAA FISHERIES), the UNITED STATES ARMY CORPS OF ENGINEERS, and the UNITED STATES BUREAU OF RECLAMATION, Federal Defendants herein, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Court's June 10, 2005, minute order issuing

a preliminary injunction in this action (Docket No. 1014) (Docket entry shown at **Attachment A**), and the June 10, 2005, Opinion and Order entering a preliminary injunction (Docket No. 1015) (**Attachment B** hereto).

As required by Federal Rule of Appellate Procedure 3-4, a Civil Appeals Docketing Statement for the Ninth Circuit will be delivered in physical form to the district court.

Respectfully submitted this 15th of June, 2005.

KELLY A. JOHNSON
Acting Assistant Attorney General

SETH M. BARSKY
Assistant Section Chief

FRED R. DISHEROON
Special Litigation Counsel
U.S. Department of Justice
Environment & Natural Resources Division
Benjamin Franklin Station, P.O. Box 7397
Washington, D.C. 20044-7397
(202) 616-9649 (ph)
(202) 616-9667 (fx)

s/ Ruth Ann Lowery
RUTH ANN LOWERY, Trial Attorney
Wildlife & Marine Resources Section
Benjamin Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
(202) 305-0217 (ph)
(202) 305-0275 (fx)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on June 15, 2005, the foregoing “Federal Defendants’ Notice of Appeal” will be filed with the Court’s electronic court filing system, which will generate automatic service upon those subscribed to receive it. The following will be served by first-class mail and either facsimile or electronic mail, depending on the information available:

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
(541)-737-3590 (fax)
hortonho@onid.orst.edu

Walter H. Evans, III
Schwabe Williamson & Wyatt, PC
1600-1900 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204
wevans@schwabe.com

James W. Givens
1026 F Street
P.O. Box 875
Lewiston, ID 83051
(208) 746-6640 (fax)

Ruth Ann Lowery