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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL WILDLIFE FEDERATION, et al.,

No. 3:01-cv-00640-SI

Plaintiffs,

and

STATE OF OREGON,

Intervenor-Plaintiff,

v.

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

Defendants,

and

THIRD DECLARATION OF JOSEPH BOGAARD IN
SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT - 1 -

THIRD DECLARATION OF
JOSEPH BOGAARD IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

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NORTHWEST RIVERPARTNERS, INLAND PORTS
AND NAVIGATION GROUP, STATE OF IDAHO,
STATE OF MONTANA, STATE OF WASHINGTON,
KOOTENAI TRIBE OF IDAHO, CONFEDERATED
SALISH AND KOOTENAI TRIBES, and
NORTHWEST POWER AND CONSERVATION
COUNCIL,

Intervenor-Defendants.

I, JOSEPH BOGAARD, hereby state and declare as follows:

1. I am a resident of Vashon Island, Washington, and am currently employed as the Executive Director for Save Our *Wild* Salmon in Seattle, Washington. I have been a member of the Sierra Club since 2007. I previously submitted a declaration in support of plaintiffs' motion for summary judgment in 2009 and 2010, and submit this updated declaration to address subsequent actions by NOAA, the U.S. Army Corps of Engineers, and the Bureau of Reclamation.

2. The Sierra Club is a national nonprofit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club has some 60 chapters in the United States and Canada, including chapters in Washington, Oregon, and Idaho, and a principal place of business in San Francisco, California. Sierra Club has long been involved in the effort to restore salmon and steelhead in the Columbia and Snake River Basins. The Sierra Club's concerns also encompass the health of Puget Sound and the species, like Southern Resident Killer Whales, that inhabit these waters. The Washington State Chapter of the Sierra Club has more than 23,000 members. Sierra Club's particular interest in this case and the issues which the case concerns stem from its efforts dating back to the early 1990s to restore

Snake and Columbia River salmon and its efforts to protect Puget Sound and the people, fish, and wildlife that call it home.

3. I am a member of the Sierra Club for many reasons, but primarily because of its work on behalf of the threatened and endangered salmon and other wildlife in the Northwest. I have dedicated my personal and professional life for nearly 18 years to efforts to restore some semblance of the Columbia River basin's once prolific salmon and steelhead runs and the broader ecosystem that supports them. These fish support not only countless people and wildlife in the Columbia/Snake River basin, but also fishing families and wildlife as far north as Alaska. As only one example, scientists within and outside NOAA Fisheries have recognized that salmon from the Columbia River provide a vital source of food for Puget Sound's endangered orcas at certain times of the year.

4. I and many other Sierra Club members use and enjoy the waters of the Columbia and Snake River basins for recreational and aesthetic purposes, including fishing, boating, and hiking, and have a direct interest in restoration of degraded rivers and habitat within these basins. We also enjoy the benefits of the diverse wildlife habitat and unparalleled recreational opportunities provided in Puget Sound, including our iconic, but critically endangered Southern Resident Killer Whales. Salmon are a keystone species throughout the region and maintaining and restoring healthy, abundant wild populations of these fish is essential to maintaining ecosystem health.

5. In my free time, I enjoy rafting, biking, hiking, camping, and kayaking and travel regularly to the Columbia River basin and to parts of Puget Sound to enjoy these pursuits with my friends and family. Within the Columbia River basin, I have floated, hiked or biked along, or swam in the Yakima River, Icicle Creek, the White River (near Lake Wenatchee), Eagle Creek, the Methow River, and the Hood River. For example, during most springs during the past ten

years, I have floated, hiked, bird-watched, and camped with family and friends along a stretch of the Yakima River. My family and I plan to make this trip again this coming spring. Just the chance to observe salmon and steelhead makes these trips special. I have been fortunate enough to observe migrating juvenile salmon on several of our trips on the Yakima River, have watched migrating adult salmon in Eagle Creek, and have watched migrating adult sockeye salmon in the White River above Lake Wenatchee during at least half a dozen different trips. As a resident of Vashon Island in Puget Sound, I am fortunate to live in a place that Puget Sound's orcas visit with seasonal regularity. As part of an informal network of whale watchers on the island, I have been lucky to see the Southern Residents almost two dozen times over the past twelve years. In late December 2006, for example, I was able to watch more than a dozen whales less than 100 feet offshore from Vashon's Point Robinson Park. With my daughter, I have taken a whale-watching trip in the San Juan Islands and my family and I get our sea kayaks on the water of Puget Sound as often as we can. This fall, we've already observed orcas as the whales often visit central Puget Sound in November and December. We also look forward to at least several days of sea kayaking in the waters around Vashon-Maury Island, Bainbridge Island, Blake Island, and the Puyallup River estuary within the next year.

6. My enjoyment of these activities is directly affected by the health of wild salmon and steelhead populations in the Columbia River basin, so it has been directly impacted by declining salmon and steelhead populations. The fish are both a special part of the fabric of the areas where I recreate, and are a vital food source for the Southern Resident Killer Whales. The continuing depressed state of salmon runs and orcas renders my home waters and the areas I regularly visit less enjoyable to experience. Rafting the Yakima River, for example, is not the same experience without the opportunity to see migrating salmon and steelhead in the wild. Paddling in Puget Sound is not the same experience without the chance that I will be able to

watch our resident killer whales. The continued decline of Columbia and Snake River fish populations and water quality, and the resulting harms to Puget Sound's resident killer whales, undermine the ability to observe and enjoy these remarkable creatures in their native waters and markedly diminish my and other Sierra Club members' ability to use and enjoy these areas for recreation, fishing, boating, scientific study, photography, and other uses and interests.

7. If salmon and steelhead runs improve, I would spend even more time on the rivers and in the waters that these fish frequent and depend upon for their survival. As it stands, however, my recreational and aesthetic experiences on the Snake and Columbia Rivers, their tributaries, and in Puget Sound are degraded and harmed by the lack of salmon and steelhead. The loss of the opportunity even to observe these fish and those species that depend upon them, diminishes and threatens to take away my ability to connect with and enjoy the Northwest's waters. If we do not secure the continued survival and take the needed steps to recover these species, I fear that the region's salmon and steelhead and our unique and critically endangered southern resident killer whale population, along with my enjoyment of these species and their habitat, will disappear.

8. I believe that the largest threat to the continued survival, and the most significant impediment to the recovery of salmon and steelhead and those species—like our orcas—that depend upon them, are the dams that make up the Federal Columbia River Power System ("FCRPS"). Juvenile salmon and steelhead are harmed and are killed as they are sucked through turbines and are exposed to increased predation, low water flows, and high water temperatures. Each of these problems is created by and exacerbated by the operation of the FCRPS dams and related facilities. The dams have turned what was a free-flowing cold river into a series of slack-water pools that are often too hot in the summer, flow too slowly throughout the year, and provide a safe haven for populations of fish predators to explode. These deadly impacts of the

hydrosystem on out-migrating juvenile fish have been a major cause of massive declines in the Columbia basin salmon and steelhead populations and are responsible for much of the fish mortality imposed by humans. The combined impacts of the hydropower system on salmonids (including direct mortality as fish pass through turbines, predation, delayed migration timing, and high water temperatures in reservoirs) are responsible for up to 80-90% of human-inflicted mortality on these fish.

9. Unfortunately, the National Marine Fisheries Service's latest Biological Opinion for the Federal Columbia River Power System (the 2014 BiOp) does not ensure the future survival and recovery of salmon and steelhead runs. The hydrosystem operations required by the 2014 BiOp are essentially the same as those that the federal agencies have been pursuing since 1995, with no mandated flow levels, no new water acquisitions, and a continued reliance on barging and trucking fish around the dams rather than improving in-river habitat conditions. The 2014 BiOp even allows the agencies to cut back on the spill levels that have been in place under Court injunction for the last 9 years. While not providing nearly enough improvement for recovery, these recent spill levels have produced increased adult returns at a time when other West Coast rivers have seen declines. As someone with a deep personal interest and a long-time professional interest in protecting these fish, I had hoped that NOAA's review of the 2008 and 2010 BiOps (and the inadequate mitigation actions in those documents) would finally result in the measures needed to restore these ESA-listed species, but to my and many others' disappointment, the 2014 BiOp that NOAA produced after this review does nothing of the sort.

10. To find that essentially the same set of river operations that have failed to protect the fish in the past will somehow produce different results in the future, the 2014 BiOp, like its predecessors, relies on legal theories to conclude that the harms caused by the dams will not jeopardize the survival and recovery of these stocks. In the 2008 BiOp, NOAA did not

objectively outline what the fish need for survival and recovery and measure hydrosystem operations against it, but rather asked only whether the operation of the dams will result in any amount of population growth. The 2014 BiOp leaves this narrow focus unchanged. The 2008 BiOp also counts on a number of unproven benefits from speculative measures outside the hydrosystem—many of which are outside the control of agencies that operate the hydrosystem, have not yet even been identified or have not yet been through ESA consultation reviews, and in many cases, are not even subject to the control of the federal government. The 2014 BiOp does not add any specificity or provide any certainty that the actions will occur or result in the predicted benefits. NOAA has made it clear that the FCRPS jeopardizes the existence of salmon and steelhead, but without proposing any reliable or effective mitigation measures either within or outside the hydrosystem, the 2014 BiOp does nothing to remedy this problem.

11. NOAA also fails to follow where the best science leads in the 2014 BiOp. There is growing scientific consensus that we need to take a far more aggressive approach simply to mitigate for the impacts of climate change in the Columbia River basin. But all the BiOp promises is further study of the issue, disregarding the impacts of climate change as “long-term” and outside the scope of the BiOp. NOAA also disregards the harmful aspects of continued reliance on outdated hatchery practices until some unspecified future date while relying on the possible benefits in the short-term. In the end, as it has done in the past, NOAA relies on an impenetrable and largely unexplained “qualitative” conclusion that the measures in the RPA included in the 2014 BiOp will avoid jeopardy.

12. Finally, while NOAA has listed Southern Resident Killer Whales as an endangered species, designated critical habitat for the whales, and issued a Recovery Plan, it has now three times missed the opportunity (and failed in its legal obligation) to ensure that operation of the FCRPS dams will allow the whales to survive and recover. The orcas rely on

salmon, particularly large, fatty chinook, as their primary food source. In the Orca Recovery Plan, NOAA found the decline of salmon from the Snake and Columbia Rivers is responsible for a huge portion of the decrease of food available to this endangered population of orcas. New and ever-increasing sightings and actual evidence from prey events shows that the whales rely on salmon from the Columbia and Snake Rivers. The Southern Resident population now stands at about 77 individuals. Scientists both within NOAA and outside the agency have confirmed the correlation between chinook abundance and seasonal availability and killer whale survival. The 2008 BiOp marked the first time that NOAA had the chance to examine the impacts of the FCRPS on the whales. But NOAA's analysis of the impacts of the dams on orcas in the 2008 BiOp looked only at whether the FCRPS depletes the current amount of salmon coming from the Basin. By assuming that current numbers and distribution of fish from the Columbia and Snake Rivers are "enough" for a population of orcas that continues to decline, NOAA asked the wrong questions and violated the law when it agreed with the Action Agencies' assessment that the FCRPS did not adversely affect the whales. Although NOAA had the opportunity to correct this problem for the 2014 BiOp, it merely reported some new available science and reiterated its previous conclusion based on the same analysis.

13. Both the U.S. Army Corps of Engineers and the Bureau of Reclamation helped NOAA to develop the 2008, 2010 and 2014 BiOps and made decisions to again rely on the BiOps to satisfy their duty to comply with the ESA in decisions in February 2014. Rather than propose any different or additional actions that would improve the condition of the species and avoid jeopardy, however, the agencies simply adopted the inadequate measures contained in NOAA's 2014 BiOp. They reached the decision to simply rely on the BiOp without involving the public, or considering new information or alternatives through the National Environmental Policy Act. I and others have been encouraged by the vast amounts of new information and new

alternatives to continued status quo operation of these federal dams and reservoirs, but the agencies didn't disclose or evaluate any alternatives based on this information before they decided to adopt the measures in the 2014 BiOp.

14. NOAA's 2014 BiOp does not avoid jeopardizing the survival of listed salmon, steelhead, or Southern Resident Killer Whales. Because NOAA, the Corps, and the Bureau have failed to comply with the requirements of the Endangered Species Act and the National Environmental Policy Act, there will continue to be fewer salmon and steelhead in our rivers and fewer orcas in Puget Sound. I, and other Sierra Club members, have been, are being, and will continue to be injured by these agencies' failure to comply with the Endangered Species Act and National Environmental Policy Act. I believe that these injuries can be remedied by a court order compelling the federal agencies to follow the law and the science and to issue a biological opinion that protects fish and water quality in accord with the ESA, and to make informed decisions about the future operations of these dams and reservoirs based on consideration of all the information and alternatives under NEPA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 10th day of December, 2014, in Seattle, Washington.



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THIRD DECLARATION OF LIZ HAMILTON IN
SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT - 1 -

THIRD DECLARATION OF LIZ
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NORTHWEST RIVERPARTNERS, INLAND PORTS
AND NAVIGATION GROUP, STATE OF IDAHO,
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KOOTENAI TRIBE OF IDAHO, CONFEDERATED
SALISH AND KOOTENAI TRIBES, and
NORTHWEST POWER AND CONSERVATION
COUNCIL,

Intervenor-Defendants.

1. I, LIZ HAMILTON, hereby state and declare as follows:

2. I am the executive director of the Northwest Sportfishing Industry Association (“NSIA”), a trade organization of nearly 300 sporting goods manufacturers, wholesalers, retailers, marinas, and guides. About 55 percent of the member businesses are located in Oregon, and 45 percent in Washington. NSIA’s principal place of business is Oregon City, Oregon.

3. NSIA is dedicated to restoring and protecting the region’s rivers, lakes, and streams, keeping them healthy and full of fish. NSIA’s mission is to preserve, restore and enhance sport fisheries and the businesses that are dependent on them. Members of NSIA, including me, enjoy both economic and recreational benefits from the Columbia River system, and the health of the Snake River stocks directly affect the members.

4. I have been the executive director of NSIA since its inception, in 1993. My job is to take care of both the important and the urgent issues that affect the members of our organization. Both habitat and hydropower issues are extremely important, and our choice is to get involved now, so the important does not become urgent. However, hydropower issues have been elevated to urgent priority within our organization because of the constraints that have been and continue to be placed on the fisheries.

5. Over the past twenty-one years, NSIA’s primary function has been to act as a lobby group. On behalf of NSIA, I, and other members of NSIA, have lobbied on the following

issues:

- a. Adequate funding for hatcheries and their reforms;
 - b. Adequate funding for both habitat protection and habitat restoration measures and the cost of their implementation; and
 - c. Negotiation of forest practices that affect rivers, watersheds, and fish.
6. In the past, I also served on an agricultural task force that addressed such issues as fish passage and fish screening.
7. I personally fish in the Columbia River below Bonneville, on the Willamette, Santiam, and the Clackamas Rivers and in the ocean off of Buoy 10 at the entrance to the Columbia River. I was able to fish for spring chinook in the Columbia River for the first time in my life March 2001 because the fishery had been closed since 1977. Fishing has been the glue that binds our family together. I fished with my grandfather at the mouth of the Columbia River decades ago when I was a teenager. My husband and I fish together, and it is a part of our culture that we share with my children and our grandchildren. We usually take between four and six fishing vacations every year, and intend to continue our fishing trips in the future as often as possible. For example, just this year we vacationed in Astoria with my father, uncle and our best friends fishing for coho and upriver bright chinook in the Columbia. When my niece visited before her last year of college in Nevada, my husband, father, brother and niece all fished out of Kalama, experiencing the best family fishing day ever. In the short-term, if time permits, we have plans to at least fish for catch and release sturgeon in the Columbia River Gorge. We also hope to be able to fish for spring chinook next spring if the return allows for a short season. Over Thanksgiving, my 4-1/2 year old grandson asked if I would take him salmon fishing next year. We hope to take him out at Kalama Marine Park on the Columbia next September for UpRiver Brights, bound for Hanford Reach. In my opinion, no other activity bonds a family like

fishing, because there are no other distractions, and we have the opportunity to spend quality time to strengthen our relationship as a family. I hope that my children can continue to share our fishing traditions with their children, and it would be devastating to our family if we were no longer able to share in this activity in our own state, forcing the need to travel to Canada or Alaska to pursue our love of fishing, at a much greater expense to our family's tight budget. Fishing is an important "staycation" for families like ours.

8. The Federal Columbia River Power System ("FCRPS") has changed what used to be a free and dynamic river into a stagnant series of pools. The FCRPS imposes formidable barriers to migrating salmon—particularly on juveniles that must struggle to survive the passage through deadly turbines and slow-moving reservoirs full of predators and high water temperatures. Each of these problems is created by and exacerbated by the operation of the FCRPS dams and related facilities. The combination of deadly impacts posed by the FCRPS is responsible for the vast majority of human-caused mortality on salmon and steelhead.

9. NSIA and its members, including me, are very fearful for our economic and recreational future. In 2011, the sportsfishing industry provided 34,500 family-wage jobs, serving over two million adult anglers, and contributed over 3.8 billion dollars in economic benefit to the Washington, Oregon, Idaho region. Even though sportsfishing results in less than one percent of the overall allowable take of wild spring Chinook salmon, the number of abundant hatchery fish that we are allowed to catch is restricted by the health of the wild salmon runs. Because of the serious trouble that many of these stocks continue to face as a result of the dams, we will not see healthy, sustainable, fishable stocks of salmon until the federal agencies implement real changes in the current hydrosystem and its management.

10. Because of the nearly-determinative effect that operation of the dams has on the chances that salmon will survive and recover, NSIA has been engaged in litigation over the

National Marine Fisheries Service’s (“NMFS”) biological opinions (“BiOp”) for the FCRPS since 2000. In addition to successfully challenging the 2000, 2004, and 2008/2010 BiOps, we have fought hard to win and to hold on to improvements for migrating salmon and steelhead through increased spill since 2005. While not providing nearly enough improvement for recovery, these recent spill levels have produced increased adult returns at a time when other West Coast rivers have seen declines. It is safe to say that fisheries protected by the court-ordered spill in the Snake and Columbia are providing a rare measure of security for the businesses of NSIA, and indeed, hope for the future. More recently, we have fought in multiple forums to attain increased levels of spill that the best science shows could improve salmon and steelhead runs tremendously—even to recovery levels for some stocks.

11. I and many others at NSIA had hoped that the 2014 BiOp would help protect and restore the remaining populations of salmon and steelhead in the Columbia River basin, but that has not been the case. Since 1995, there has been no sea-change in dam operations that NMFS has required to address the mortality caused by the hydrosystem. But just like previous BiOps, the 2014 BiOp contains no reliable spill and flow requirements, no new water acquisitions, and a continued reliance on the harmful practices of barging and trucking juvenile fish around dams. The 2014 BiOp even allows the agencies operating the dams to cut back on the spill levels that have been in place under Court injunction for the last 9 years, the one proven effective action. Although the vast majority of science indicates that the practice of barging and trucking fish harms them more than it helps, NMFS has continued to rely on this system of transporting juvenile fish around the dams. This practice has been ongoing for almost 30 years, but has yet to result in returns of adult salmon large enough to recover depleted populations. Worse still, NMFS and the other federal agencies all had before them new scientific evidence, based on 18 years of study, demonstrating that increasing spill levels even further would boost salmon and

steelhead survival to levels at or approaching recovery for many stocks. Yet, rather than build on the success of the past 9 years of spill, the agencies dismissed all of this evidence in favor of keeping more fish in trucks and barges.

12. To find that the same set of river operations that has failed to protect the fish for fifteen years will now produce different results in the future, the 2014 BiOp relied on legal theories to conclude that the harms caused by the dams will not jeopardize the survival and recovery of these stocks. NMFS set an incredibly low bar for “success” by asking only whether the operation of the dams will allow enough fish to survive to result in any amount of population growth. The 2014 BiOp also counts on a number of unproven benefits from speculative measures outside the hydrosystem—many of which are outside the control of agencies that operate the hydrosystem, the majority of which have not yet even been identified, and in many cases, are predicted to result in unjustified and impossibly high survival benefits to fish.

13. NMFS also ignores the best science in the 2014 BiOp and fails to deal with climate change, which is—after the dams—the second biggest threat to salmon in the Columbia and Snake Rivers. While the scientific evidence mounts that we need to take far more aggressive actions to mitigate for the impacts of climate change on salmon, the 2014 BiOp does not propose a single new action to address this threat. Instead, NMFS and the other agencies promise only to study the issue, and otherwise continue to assume that the future will be just like the recent past. NMFS relies on unclear and unexplained “qualitative” conclusions that the measures in the 2014 BiOp’s RPA will avoid jeopardy.

14. I held high hope that the last remand from the Federal District Court would finally steer the federal agencies on the right course, especially in the face of mounting and irrefutable empirical data about the benefits of spill. But the 2014 BiOp that NMFS produced after this review does not correct a single problem with the 2008 and 2010 BiOp. Instead, the 2014 does

not change the jeopardy standard that NMFS set in the 2008 BiOp, and does not add any specificity or provide any certainty that the actions and fish benefits NMFS relied on to meet even its low jeopardy standard would actually accrue. At the same time, the 2014 BiOp makes clear that the fish are doing worse than the agency expected 6 years ago, and that there are a number of factors—like its estimates of bird predation rates—that it got wrong in the 2008 BiOp. But NMFS does not correct these problems and does not offer any new, concrete actions in the 2014 BiOp. NMFS has made it clear that the FCRPS jeopardizes the existence of salmon and steelhead, but without proposing any reliable or effective mitigation measures either within or outside the hydrosystem, the 2014 BiOp does nothing to remedy this problem.

15. Both the U.S. Army Corps of Engineers and the Bureau of Reclamation helped NMFS develop the 2014 BiOp and made decisions to rely on the BiOps to satisfy their duty to comply with the ESA in records of decision dated February 26 and 28, 2014. Rather than propose any different or additional actions that would improve the condition of the species and avoid jeopardy, however, these agencies just adopted the inadequate measures contained in NMFS's 2014 BiOp. The agencies made this decision without the benefit of an analysis, complete with broad public participation, that would consider new and relevant evidence and a full suite of alternative actions and strategies for improving salmon runs as required by the National Environmental Policy Act. That analysis would have required the agencies to fully examine the new science—regarding factors like increased spill levels, climate change, and the Northwest's radically changed energy picture—before making a decision to just continue with the failed approach they have followed since at least 2000.

16. NMFS's 2014 BiOp does not avoid jeopardizing the survival of listed salmon and steelhead. Because NMFS, the Corps, and the Bureau have failed to comply with the requirements of the Endangered Species Act and the National Environmental Policy Act, there

will continue to be fewer salmon and steelhead in our rivers. The 2014 BiOp continues dam operations that harm and depress the health and numbers of salmon and steelhead and therefore negatively affect harvest opportunities. It is frustrating that the federal government continues to place restrictions on citizens to protect wild salmon, but does not place the same or similar restrictions on itself. This is not fair, nor does it make sense. I, and other NSIA members, have been, are being, and will continue to be injured by these agencies' failure to comply with the law. I believe that these injuries can be remedied by a court order compelling the federal agencies to follow the law and the science to fully and fairly analyze the full range of environmental impacts and alternatives to current FCRPS management in accord with the National Environmental Policy Act and to issue a biological opinion that protects fish and water quality in accord with the Endangered Species Act.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 9th day of December, 2014, in Oregon City, Oregon.



LIZ HAMILTON

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THIRD DECLARATION OF WILLIAM J. SEDIVY IN
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THIRD DECLARATION OF
WILLIAM J. SEDIVY IN SUPPORT
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SALISH AND KOOTENAI TRIBES, and
NORTHWEST POWER AND CONSERVATION
COUNCIL,

Intervenor-Defendants.

I, WILLIAM J. SEDIVY, hereby state and declare as follows:

1. I previously submitted a declaration in support of plaintiffs' motion for summary judgment in 2008 and in 2010 and submit this updated declaration to address subsequent actions by NOAA, the U.S. Army Corps of Engineers, and the Bureau of Reclamation.

2. Idaho Rivers United ("IRU") is a nonprofit corporation with its principal place of business in Boise, Idaho. IRU has approximately 3,500 members throughout the State of Idaho. The mission of IRU is to protect and restore the rivers of Idaho and the native fish that call Idaho rivers home, including the native wild salmon and steelhead that spawn in our waters.

3. IRU is a founding member of the Save Our *Wild* Salmon coalition. For the last 18 years, IRU has promoted the coalition's largest and most important campaign—The Columbia and Snake Rivers Restoration Campaign. IRU's Wild Salmon Legacy Campaign is IRU's effort to complement the coalition campaign and sets out to bring Snake River salmon and steelhead populations back to Idaho at sustainably harvestable levels. Restoring salmon and steelhead populations in Idaho is IRU's top organizational goal.

4. IRU pursues its mission and goals by practicing direct advocacy work, working with governmental agencies and through governmental processes, educating the general public about salmon and steelhead populations in Idaho, and educating and enlightening decision makers, community leaders, and politicians. IRU mobilizes grassroots support for salmon and steelhead restoration via its membership.

5. IRU members are anglers, sport fishermen, and whitewater boaters who have a strong desire to protect and preserve the natural ecosystems of Idaho that they float through, fish, and enjoy. Salmon and steelhead are an incredibly important resource for the river ecosystems in Idaho and therefore are the most important aspect of Idaho rivers for many IRU members.

6. I have been the executive director for IRU for the last 15 years. Since 1995, I have been a member and volunteer of IRU. Before becoming executive director for IRU, I was employed as a newspaper editor, and a journalism instructor at Utah State University in Logan, Utah. As executive director for IRU, I am responsible for the overall operation of the organization. I work with the IRU board of directors to develop the organizations' policies. I also supervise a staff of six full time equivalents, individuals and various contractors and volunteers to carry out the organization's policies and goals.

7. Like other IRU members, my family, friends and I rely on Snake River salmon and steelhead and their habitat for recreational, fishing, conservation, and aesthetic benefits. I am an avid whitewater boater and fisherman, and the rivers of Idaho and the diverse fish and wildlife they support are important to me. As a whitewater boater, I float the great rivers of Idaho (such as the Snake River's Hells Canyon reach, the South Fork of the Snake, Middle Fork Salmon, Salmon River, the Lochsa, Selway, Clearwater, the Payette and the Boise River). As time permits, I also work as a licensed whitewater and fishing guide on the Middle Fork of the Salmon and in Hells Canyon of the Snake River. Spending time on the rivers in Idaho are the happiest times my friends and I spend together. As an angler, salmon and steelhead are especially important to my use and enjoyment of these rivers. And as a whitewater boater, river guide, and nature lover, it is extremely important to me to know that there are salmon and steelhead returning to places like the Middle Fork of the Salmon River in Idaho. The opportunity to catch these fish for sport and even the mere chance to see them in their natural

habitat is a rare, but overwhelming source of inspiration and enjoyment. During a trip this past September on the Middle Fork Salmon, I was able to see first-hand a few wild summer chinook spawning on the river's floor. It was a moving experience for both me and my friends, and for others on that trip. Salmon and steelhead are both aesthetically and biologically important to these rivers and without the fish, the river corridors will change forever and for the worse.

8. I spend an average of 40-50 days a year whitewater boating and fishing on the Snake River and its tributaries in Idaho. For example, in 2014 I was fortunate enough to be “on the river” 54 days. I plan to spend just as much time whitewater boating and fishing on the Snake River and its tributaries in the future, as long as wild salmon and steelhead return to these rivers. In the year ahead, for example, I am planning at least one float trip through Hells Canyon on the Snake River, and I'm planning a return trip to the Middle Fork of the Salmon River and the Main Salmon with friends and IRU members next fall. I also have plans to return to the main Salmon River next June to fish for hatchery salmon—if returns allow a fishing season in Idaho—and in the fall to fish for steelhead. I hope to introduce my friends and members of my extended family to the natural joys of the rivers in the future as well. If salmon and steelhead runs improve, I would spend even more time on the rivers. As it stands, however, my recreational and aesthetic experiences on the Snake River and its tributaries are extremely diminished and harmed by the lack of salmon and steelhead. Because of the depressed status of Snake River steelhead, Snake River fall chinook, and Snake River spring/summer chinook salmon, Idaho Department of Fish and Game has been able to authorize only very limited fishing seasons in the past two decades on non-listed fish. While I have taken advantage of those short seasons in the past, and plan to do so if seasons are open in the future, I would certainly spend more time on the river fishing if these runs were recovered to sustainably harvestable levels. In addition to the diminished opportunity to catch these fish, the entire ecosystem where I boat and fish is degraded

and harmed because salmon and steelhead are not properly filling their niche in it.

9. The salmon and steelhead populations and their habitat are also important to the IRU membership. Indeed, IRU members have instructed me, through the board of directors, to make restoration of harvestable salmon and steelhead runs in Idaho my number one priority as the IRU executive director.

10. The dams of the Federal Columbia River Power System (“FCRPS”) have a variety of adverse impacts on salmon. The operations of the dams have turned what used to be a swift, cold river into a series of slackwater reservoirs. Due to the operation of the dams for hydropower and other uses, juvenile salmon and steelhead suffer direct and related mortality as they are forced through turbines and bypass systems (especially in the case of Snake River sockeye) and are exposed to increased predation, high water temperatures, and sometimes dissolved gas levels well beyond established water quality limits and optimal ranges for young salmon. In addition, dams inundate historical spawning and rearing habitat. These deadly impacts on out-migrating juvenile salmon have been a major cause of massive declines in the Columbia basin salmon populations. The combined impacts of the hydropower system on salmonids (including direct mortality as fish pass through turbines, predation, delayed migration timing, and high water temperatures in reservoirs) are responsible for at least 80% of human-inflicted mortality on these fish.

11. Unfortunately, like its four predecessors, the National Marine Fisheries Service’s latest Biological Opinion for the Federal Columbia River Power System (the 2014 Supplemental Biological Opinion) does not ensure the future survival and recovery of salmon and steelhead runs. Since I became an Idaho resident, I have seen how the salmon and steelhead populations are hurt in Idaho rivers. Idaho is blessed with the lion’s share of the best salmon habitat left in the Columbia River basin, yet that habitat continues to go largely unused. I had hoped that the

2014 BiOp would finally provide adequate protection for the listed stocks, but it clearly has not. In truth, the hydrosystem measures required by the 2008 and 2010 BiOps and ratified yet again in the 2014 BiOp are essentially the same as those that the federal agencies have been pursuing for years, with no hard flow requirements, no new water acquisitions, and a continued reliance on barging and trucking fish past the dams rather than improving in-river habitat conditions and keeping fish in the river. In fact, rather than proposing improved river conditions through increased spill levels and improved river flows, the 2014 BiOp actually cuts back on spill levels in place for the past 9 years by court order. While not enough to recover these fish, these spill levels have produced some of the higher adult return rates the region has seen in many years.

12. The 2014 BiOp, like the opinions that preceded it, does not propose durable solutions for restoring our salmon, but instead continues to rely on legal slight of hand to conclude that the harms caused by the dams will not jeopardize the survival and recovery of these stocks. Rather than looking to whether the operation of the dams will leave salmon and steelhead in conditions where they have a good chance of achieving recovery, the 2014 BiOp asks only whether a population of fish is growing compared to its already-depressed state. Doing better than we did yesterday could be seen as progress, but considering the state of these fish, it is not going to ensure their long-term survival and recovery. After completing another remand from the Court, during which the federal agencies ignored this issue, the 2014 BiOp adopted the same standard. Because of this flawed analysis, the 2014 BiOp continues to ignore the hydrosystem as the main mortality problem for listed stocks, and instead relies on unproven benefits from speculative measures outside the hydrosystem—many of which are outside the control of agencies that operate the hydrosystem, have not yet even been identified or have not yet been through ESA consultation reviews, are years behind in implementation, and in many cases, are not even subject to the control of the federal government. Nor are there any concrete

contingencies if the predicted results fail to materialize. NMFS has made it clear that the hydrosystem jeopardizes the existence of salmon and steelhead, but without proposing any reliable or effective mitigation measures either within or outside the hydrosystem, NMFS has once again done nothing to remedy that.

13. NMFS's 2014 BiOp also fails to meaningfully tackle the science. For example, NMFS largely ignores the consequences of the ever-growing body of evidence that documents the present and future impacts of climate change in the Columbia basin. In the face of evidence that a far more aggressive approach is needed now in order to simply mitigate the deepening impacts of climate change, NMFS has promised only further monitoring and study. It also put off consideration of the harmful aspects of continued reliance on outdated hatchery practices for a future date while relying on the possible benefits in the short-term. NMFS fails to explain why many of the yardsticks it uses to measure salmon survival actually support its conclusions—conclusions that rely largely on optimistic assumptions and “qualitative” factors that are never identified or discussed.

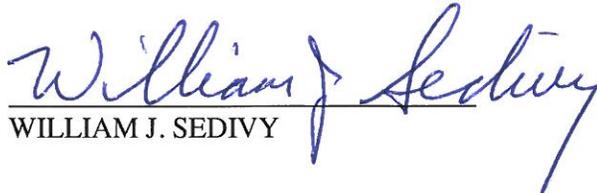
14. Both the U.S. Army Corps of Engineers and the Bureau of Reclamation participated in all phases of the development of the 2008, 2010, and 2014 BiOps but made decisions to rely on the BiOps to satisfy their duty to comply with the ESA in formal decisions dated February 26 and 28, 2014. These agencies' decisions to rely on the 2014 BiOp and implement only those measures examined in the BiOp represents a missed opportunity to have taken greater steps that might lessen the harm caused to the ESA-listed salmon and steelhead. It was also a missed opportunity to consider the vast amount of new information and better alternatives to implementing the BiOp's RPA as required by the National Environmental Policy Act (NEPA). Rather than taking a fresh look at all of the options and new opportunities for protecting salmon from the effects of the FCRPS, the Army Corps and the Bureau of

Reclamation continue to base their decisions on outdated assumptions and analyses.

15. My experiences on the Snake River and its tributaries are extremely diminished and harmed by the lack of healthy salmon and steelhead populations. By allowing the FCRPS to continue operating at a deficit level that fails to ensure the survival, let alone the recovery, of listed salmon and steelhead species to harvestable levels, the 2014 BiOp further diminishes my, and other IRU members' recreational, fishing, scientific, and aesthetic use and enjoyment of the salmon and steelhead on the rivers of Idaho. Because the National Marine Fisheries Service, the Bureau of Reclamation, and the Army Corps of Engineers have failed to comply with the requirements of the Endangered Species Act and the National Environmental Policy Act in the 2014 BiOp (and in the Corps' and Bureau's resulting decision to rely upon this biological opinion), there will continue to be less salmon and steelhead in our rivers. I, and other IRU members, have been, are being, and will continue to be injured by these agencies' failures to comply with the law.

16. I believe that these injuries can be remedied by a court order that compels the federal agencies to comply with their obligations under the Endangered Species Act and the National Environmental Policy Act. I believe that if NMFS, the Corps, and the Bureau are ordered to comply with the law, and compelled to put forward a biological opinion and an environmental analysis under NEPA that are scientifically and legally credible, more of these remarkable fish would return to Idaho's rivers, refreshing the ecosystem and making it possible for me to continue and increase my enjoyment of boating, fishing, and other activities on the Snake River and its tributaries. As it stands, I believe that the 2014 BiOp, and the Corps' and Bureau's decision to rely on it, will do just the opposite.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 10th day of December 2014, in Boise, Idaho.


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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL WILDLIFE FEDERATION, et al.,

No. 3:01-cv-00640-SI

Plaintiffs,

and

STATE OF OREGON,

Intervenor-Plaintiff,

THIRD DECLARATION OF
WILLIAM R. REDMAN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

v.

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

Defendants,

and

THIRD DECLARATION OF WILLIAM R. REDMAN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT - 1 -

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NORTHWEST RIVERPARTNERS, INLAND PORTS
AND NAVIGATION GROUP, STATE OF IDAHO,
STATE OF MONTANA, STATE OF WASHINGTON,
KOOTENAI TRIBE OF IDAHO, CONFEDERATED
SALISH AND KOOTENAI TRIBES, and
NORTHWEST POWER AND CONSERVATION
COUNCIL,

Intervenor-Defendants.

I, WILLIAM R. REDMAN, hereby state and declare as follows:

1. I have been a member of the International Federation of Fly Fishers (“IFFF”) for 48 years. Until February 2010 I was the Chair of the Steelhead Committee of IFFF. I previously submitted a declaration in support of plaintiffs’ motion for summary judgment in 2008 and in 2010, and submit this updated declaration to address subsequent actions by NOAA, the U.S. Army Corps of Engineers, and the Bureau of Reclamation.

2. IFFF is an international organization with approximately 13,425 members, mostly in the U.S., dedicated to promoting fly fishing as a recreational use of aquatic resources and to preserving, protecting, and restoring aquatic resources, including water, fauna, and riparian lands. IFFF has its principal place of business in Livingston, Montana, and regional councils or clubs in Washington, Oregon, Idaho, Montana, California, and British Columbia.

3. The Steelhead Committee has the responsibility in IFFF for conservation of wild steelhead and Pacific salmon. It uses as the foundation of its advocacy the most broadly and deeply based and most current peer-reviewed scientific studies available. Three times per year, the Committee publishes *The Osprey*, which is widely respected among scientists, government agency personnel, and advocates for these fish. The Steelhead Committee also exerts its influence by reviewing and providing testimony and evidence on government agency programs, proposed ESA listings, state and federal legislation, and other activities affecting these salmonids.

4. Along with other IFFF members, I am a lover of fish and rivers. Indeed, rivers are where I, and many IFFF members, derive some of our greatest pleasures. Fly fishing has been a lifelong passion for me. The recreational and stress-relieving values I gain from fishing rivers for steelhead, salmon and trout are immeasurable. I have been fishing the Snake and Columbia Rivers and many of their tributaries containing anadromous salmonids since 1964. I intend to continue fishing these streams as long as I am physically able to. Above Bonneville Dam, I have fly fished for steelhead in the Deschutes, John Day, Klickitat, Tucannon, Clearwater, Snake above Lower Granite Pool, Grande Ronde, Columbia in Hanford Reach, Wenatchee, Entiat, and Methow Rivers; some of the most renowned fly fishing streams in the world. I have caught and released steelhead in six of the eleven and chinook salmon in one. I especially know and love the Grande Ronde River and its steelhead, and in October 2014 I fished several days on the Grande Ronde, 50 years after my first trip there, as I do every year. This is a trip that I will make again next year, and plan to continue making so long as at least some fish return. Sadly, the contrast between the 1960's, before the last four of the eight dams between the Grande Ronde and saltwater were completed, and today is stark. In the 1960's, most of the steelhead were wild, they came in dependably every year, and fresh fish kept coming in and spreading through the River from mid-September into November. Now, most of the fish are hatchery clones planted or stocked to compensate for the tremendous losses caused by the hydrosystem. A higher percentage of them are docile. The average size is a little smaller. When they come, they come like lemmings, all at once and all to the same stretch of river. The steelhead runs on the Grande Ronde are now wildly inconsistent from one year to the next and the wild steelhead are ESA listed as threatened, as are all of the Snake River basin steelhead, all primarily as a result of the operation of the hydrosystem. Unfortunately, the Grande Ronde is not the worst of it. Now I only occasionally fish the Wenatchee and Methow Rivers, because the

wild steelhead in the Upper Columbia and its tributaries are scarce, they are listed under the ESA as threatened, and fishing for them is only sporadically allowed. Later in October 2014, I fished Oregon's John Day River, which has only two dams between its mouth and salt water. The John Day has a self sustaining run of wild steelhead with no hatchery stocking of steelhead in many years if ever. It is no coincidence that the John Day wild steelhead run is the best in the Columbia system; the absence of hatchery fish is an important factor.

5. The health of the Snake and Columbia Rivers and their tributaries is especially crucial to the future of quality fly fishing in the Northwest and interior West regions. Fly fishers, including myself, come to these streams with the hope of catching (and releasing) the world-famous steelhead and salmon that migrate to them. Significantly, the number of fish that reach these reaches of river is largely dependent on how many fish are able to successfully navigate the main stems, *i.e.*, the Columbia and Snake Rivers. An anadromous fish journeys from its rearing grounds out to sea and back again to its birthplace to spawn, several hundred miles up river from the sea. When most of the fish are unable to pass the obstacles on the main river during their migration from and to the spawning grounds, they never reach these marvelous streams, and there are no fish for sport fishers to pursue.

6. The FCRPS, which consists of the operation of dams along the Snake and Columbia Rivers, is responsible for at least 80 percent of the human-caused fish kill that occurs each year. For some runs, like Snake River fall chinook, the dams can kill—"legally" under NMFS's BiOps—up to 87% of the out-migrating juvenile fish. Dammed rivers create deadly conditions for fish, including physical barriers, hundreds of miles of staircased still water reservoirs, increased water temperatures, high dissolved nitrogen levels, and increased predation. The 2014 BiOp, like those before it, fails to focus on the root cause of mortality. Instead, this decision relies mostly on conservation techniques that have nothing to do with improving

conditions for fish in the mainstems. In fact, the 2014 BiOp actually cuts back on some of the modest improvements that IFFF and others have fought hard to secure through Court action since 2005 by reducing spill that helps juvenile salmon migrate past the dams and has helped produce some better returns the past few years. It provides no real consideration of bolstering this success by increasing spill levels or taking any other, more aggressive actions that would improve salmon and steelhead survival through this deadly gauntlet.

7. The Service continues to rely on unrealistic and unjustified expectations that federal agencies, private entities, state governments, and others will provide enough habitat improvements that the salmon and steelhead will avoid extinction. NMFS offers nothing that assures me this is possible from either a biological or management perspective, let alone any solid evidence that it is certain to save these fish. Making matters worse, NMFS again has manufactured a way to make the problems caused by dams seem smaller than they truly are. Instead of analyzing whether continued operation of these FCRPS dams will allow salmon and steelhead to recover, NMFS in its 2014 BiOp pronounces these stocks healthy so long as a population is doing better today than it was yesterday. While some population growth is an obvious starting place for fish populations on a slide toward extinction, it is not a sufficient measure of whether we have reached a point where their survival and recovery are no longer at risk. The effect of NMFS's methods is to underestimate the harm caused by the dams and the improvements needed to get the fish out of trouble. Though I was initially optimistic that NMFS's review of the 2008 and 2010 BiOps would address these problems, the 2014 BiOp that resulted from this review merely adopts (and attempts to justify) the agency's previous methods and conclusions.

8. Even beyond this analysis, NMFS's 2014 BiOp undershoots the mark by ignoring and manipulating the science. For me and other IFFF members who have devoted significant

resources to efforts to curb the harmful effects of hatcheries, it is particularly frustrating that NMFS's 2014 BiOp ignores the long-term harmful effects of hatchery practices, yet relies on them for short-term benefits. In addition, the science clearly shows that we are already feeling the effects of climate change in this region, but NMFS fails to analyze or propose any new or additional measures to help fish cope with this increasing threat. NMFS's misuse or decision to ignore independent science in its analysis is most apparent in its unexplained qualitative conclusions that the measures in the BiOps will preserve salmon and steelhead populations. I have been involved in efforts to protect Columbia and Snake River fish since about 1968 and deeply involved since 1995, and I cannot discern any basis for NMFS's decision that operating the dams much as they have been operated for the past 19 years for yet another four or more years will suddenly turn things around.

9. In addition, the U.S. Army Corps of Engineers and the Bureau of Reclamation have announced that they will implement only those measures required by the 2014 BiOp to satisfy their obligations to comply with the Endangered Species Act. The decisions to rely on this inadequate analysis and the actions it recommends will unfortunately ensure that further reduced fish populations will face the same problems once again in ten years. The decisions to adopt the measures in the BiOp was also reached without the broad, open-minded, and public consideration of the effects of these dams on salmon and steelhead and alternatives to continued status quo operations that is required by the National Environmental Policy Act. The Corps and the Bureau instead relied on data and assumptions made ten or more years ago and did not take the unbiased new look at the vast amount of new scientific and economic information and the alternatives that arise from that information.

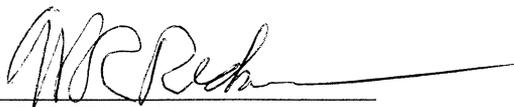
10. Fly fishing opportunities on the Columbia, Snake, and their tributaries, have been and will continue to be severely impaired if the National Marine Fisheries Service, the Army

Corps of Engineers, and Bureau of Reclamation continue to mismanage the river system. Unfortunately, the 2014 BiOp for the FCRPS, and the agencies' related decisions to rely on it, show no likelihood of significant change in the mainstems. The federal agencies have once again failed to institute any appreciable changes to a management scheme that has proven to be disastrous to the native salmon and steelhead runs.

11. NMFS, the Corps, and the Bureau, in violation of the Endangered Species Act and the National Environmental Policy Act, are complacently allowing the further demise of important salmon and steelhead runs. Again, and to my great disappointment, the 2014 BiOp (and the Corps' and Bureau's decisions to adopt it) will not curtail this downward trend. This failure to institute fish-friendly improvements impedes my ability to pursue the activity I have devoted a large part of my life to preserving and enhancing—the sport of fly fishing.

12. In this region where rivers once spilled over with fish, wild steelhead and salmon runs remain on the verge of extinction. Despite this grim reality, I am confident that bold and scientifically-based management techniques will result in revived fish populations. Thus, if NMFS, the Corps, and the Bureau were forced to comply with the Endangered Species Act and the National Environmental Policy Act, and produce a credible BiOp and an open-minded environmental analysis, fish would have a fighting chance in the Columbia and Snake Rivers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 9th day of December 2014, at Mercer Island, Washington.


WILLIAM R. REDMAN