

John W. Ogan, OSB# 065940

jwo@karnopp.com

KARNOPP PETERSEN LLP

360 SW Bond Street, Suite 400

Bend, Oregon 97702

TEL: (541) 382-3011; FAX: (541) 383-3073

Of Attorneys for the Confederated Tribes of the Warm Springs Reservation of Oregon

Brent H. Hall, OSB# 992762

Office of Legal Counsel

Confederated Tribes of the Umatilla Indian Reservation

46411 Timine Way

Pendleton, Oregon 97801;

Telephone: (541) 429-7407; Fax: (541) 429-7407

Attorneys for the Confederated Tribes of the Umatilla Indian Reservation

Patrick D. Spurgin WSBA# 22316

411 N 2nd Street

Yakima, Washington 98901-2336

Telephone: (509) 248-4282; Fax: (509) 575-5661

Attorney for the Yakama Nation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL WILDLIFE FEDERATION, *et al.*,

Plaintiffs,

and

STATE OF OREGON,

Intervenor-Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE, *et al.*,

Defendants,

and

NORTHWEST RIVERPARTNERS, *et al.*,

Intervenor-Defendants

Case No. 3:01-CV-00640-SI

**JOINT REPLY OF AMICI
WARM SPRINGS AND
UMATILLA TRIBES AND
YAKAMA NATION TO
PLAINTIFFS' AND
DEFENDANTS' BRIEFS RE
REMAND SCHEDULE**

In its May 4, 2016 Opinion and Order the Court determined that the Action Agencies had violated the National Environmental Policy Act (NEPA). As we read that Opinion and Order, as well as that Order issued denying Defendant-Intervenor Columbia-Snake River Irrigators Association Rule 60 Motion (Dkt. 2073), the programmatic EIS that the Court requires will eclipse any analysis ever conducted in the Columbia Basin in terms of depth, breadth and factual rigor, taking into account the complexity and scope of the FCRPS, and the need for a fresh look at environmental conditions and impacts from a NEPA perspective. As we read the briefing of the Federal Defendants we believe that they understand the Court's charge to be as demanding as we do. Based on the Joint Response of Plaintiffs and aligned parties, we believe they also understand the demands of NEPA, although their discussion of alternatives [at p.15] presupposes the outcome of the scoping process.

The NEPA analysis that must be completed is a monumental undertaking. The Court's demand for a full and comprehensive analysis of questions and options for the future operation of the FCRPS, if done with public inclusiveness and transparency, will yield part of the foundation for many public and social *decisions* for the Columbia River. That foundation offers the potential for repose after 25 years of FCRPS related litigation, if done correctly. The Treaty Tribes respectfully submit that if the Federal Defendants believe that the NEPA analysis that may provide the foundation for durable decisions about the future of the FCRPS will require five years to complete (as set out in the Ponganis and Lee declarations), the Court should establish a schedule that provides an opportunity for success. We support a five year NEPA schedule.

The Treaty Tribes further respectfully submit that it is not *really* the Action Agencies that will make decisions about the future of the FCRPS. Whether the Columbia River will undergo additional transformation to something more akin to what the Treaty signers might recognize is a decision to be made by the greater society. We understand that the U.S. Army Corps of Engineers, the Bonneville Power Administration, and the Bureau of Reclamation have the

statutory and apparent authority to decide the fate of FCRPS configuration and operations. But we submit that the decisions about the future of the FCRPS will truly be made by the sovereign tribal nations of the Columbia Basin along with the citizens of Oregon, Washington, Idaho, and Montana. The NEPA process will be a crucial venue for this public discussion, and a vehicle to deliver the information required for an informed decision by the sovereigns of the Pacific Northwest. This should not be a hurried discussion, lacking adequate time for deliberation and robust public involvement. This NEPA process, while conducted by the three federal agencies, is more for the Tribes, state citizens, and their congressional representatives than it is for the agencies.

The Tribes respectfully submit that if the federal agencies believe, based on their experience, that they require about two more years than urged by the Plaintiffs in order to complete the NEPA process in a way that provides adequate consultation and coordination with Tribes and the citizens of the Pacific Northwest to develop and discuss the options, trade-offs, and facts that they will need in order to make durable and consequential decisions about the future of the FCRPS, this Court should grant that small amount of additional time. To do otherwise may lead to failure, or at least script a rationale or excuse for an inadequate NEPA process before it even starts.

Again, while this Court's Opinion and Order may be read on its face as a demand for NEPA compliance, we read it as a demand for a full analysis and disclosure of a broad set of operational issues that should inform a public decision about the FCRPS. We believe that woven

[this space left intentionally blank]

throughout the Opinion and Order is the theme of a quest for ultimate repose. The Treaty Tribes urge the Court to adopt a schedule that offers the greatest opportunity to find just that.

DATED this 1st day of July, 2016.

KARNOPP PETERSEN LLP

s/ John W. Ogan

John W. Ogan, OSB# 065940

jwo@karnopp.com

TEL: (541) 382-3011

FAX: (541) 383-3073

Of Attorneys for Amicus Confederated Tribes of the Warm Springs Reservation of Oregon

CTUIR DEPARTMENT OF JUSTICE

s/ Brent H. Hall

Brent H. Hall, OSB#992762

brenthall@ctuir.com

TEL: (541) 276-3165

FAX: (541) 276-3095

Of Attorneys for Amicus Confederated Tribes of the Umatilla Indian Reservation

LAW OFFICE OF PATRICK SPURGIN

s/ Patrick Spurgin

Patrick Spurgin, WSB #22316

pds@spurginlawoffice.com

TEL: (509) 248-4282

FAX: (509) 575-5661

Of Attorneys for Amicus Yakama Nation

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2016, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Oregon via the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

First Class U.S. Mail and CM/ECF system to:

Howard F. Horton, Ph.D.
Professor Emeritus of Fisheries
Oregon State University
Department of Fisheries and Wildlife
104 Nash Hall
Corvallis, Oregon 97331-3803

First Class U.S. Mail to:

Rudy Peone, Chairman
Spokane Tribe of Indians
P.O. Box 100
6195 Ford-Wellpinit Road
Wellpinit, WA 99040

DATED this 1st day of July, 2016.

KARNOPP PETERSEN LLP

s/ John W. Ogan

John W. Ogan, OSB# 065940
jwo@karnopp.com

CERTIFICATE OF SERVICE