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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL WILDLIFE FEDERATION, et al.,

Plaintiffs,

v.

**NATIONAL MARINE FISHERIES SERVICE,
et al.,**

Defendants.

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

**DECLARATION OF
DAVID J. PONGANIS
DIRECTOR OF PROGRAMS
NORTHWESTERN DIVISION
U.S ARMY CORPS OF
ENGINEERS**

In Support of Federal Defendants'
Brief Regarding Proposed Timing
for a Reasonable NEPA Process

I, David J. Ponganis, declare and state as follows: I, David J. Ponganis, declare and state as follows:

Qualifications

1. I have been employed with the U.S. Army Corps of Engineers (Corps) since 1980. At the present time, I serve as the Director of Programs in the Northwestern Division. In this position, I have oversight of five District offices in the Columbia River Basin, the Missouri River Basin, Puget Sound and the Pacific Northwest coast. Among other functions, the Northwestern Division is responsible for strategic direction and management oversight of Northwestern Division program activities related to Columbia River basin fish and wildlife resources affected by the operation of the Corps' multiple-use projects in the Federal Columbia River Power System (FCRPS). The Corps' Portland, Seattle, and Walla Walla districts are tasked with implementation of many of the activities associated with the FCRPS.
2. In the past, I have served as the Chief of Planning, Environmental Resources, Fish Policy and Support Division in the Program Directorate of the Northwestern Division and as Endangered Species Act (ESA) program specialist and Water Quality Program Manager also within the Northwestern Division. I have a B.A. in Environmental Planning from the University of California, Santa Cruz, California and a M.S. in Civil Engineering, Infrastructure Planning and Management from Stanford University, Palo Alto, California.
3. Over the course of my career, I have overseen and directly participated in the planning and development of numerous National Environmental Policy Act (NEPA) documents for individual water resource projects, as well as large system operations in the Missouri and Columbia River basins. Based on these experiences, I am familiar with the Corps' regulations and procedures for the preparation, internal review, and processing of NEPA

documents. Since 1992, I have participated in ESA § 7 consultations on the operation of Corps' projects in the Columbia River, and all major Environmental Impact Statements (EIS) prepared by the Corps under NEPA related to the FCRPS. Based on this experience, I have extensive knowledge of the configuration and operation of the FCRPS, and modifications of the projects to provide safe fish passage.

4. For the Columbia River basin, I oversaw the preparation of the 1992 *Columbia River Salmon Flow Measures Options Analysis/EIS*, the *Supplemental EIS/1993 Interim Columbia and Snake Rivers Flow Improvement Measures for Salmon*, and the *Upper Columbia Alternative Flood Control and Fish Operations EIS* (VARQ EIS), and I participated in the development of the *Columbia River System Operation Review Final Environmental Impact Statement* (SOR EIS) and the *Lower Snake River Juvenile Salmon Migration Feasibility Study and Final Environmental Impact Statement* (LSR Study). For the Missouri River Basin, I participated in the preparation of the 2004 *Missouri River Master Water Control Manual Review and Updated Final EIS* and I am currently overseeing the *Missouri River Recovery Management Plan and DEIS* and the *Lower Yellowstone Intake Diversion Dam Fish Passage Project, Montana* (DEIS) processes.
5. I have reviewed the Court's May 4, 2016 decision and have directly consulted with my staff and that of the other FCRPS Action Agencies: Bonneville Power Administration (BPA) and the Bureau of Reclamation (BOR), as well as NOAA Fisheries, on steps necessary to comply with the Court's Order (Order) regarding NEPA compliance. The FCRPS Action Agencies have carefully reviewed and considered the Order regarding NEPA and accordingly have developed a schedule for future NEPA environmental review and compliance efforts for the operation and maintenance of the FCRPS. In this declaration, I will address: (1) the Action

Agencies' proposed schedule for completing a comprehensive NEPA process in accordance with the Order; (2) prior NEPA analyses performed by the Action Agencies and how those processes have informed the proposed schedule; and (3) how the Action Agencies envision NEPA interacting with the ESA.

Proposed Schedule and Approach to NEPA Compliance

6. The Court's May 4, 2016 Order provided guidance to the Action Agencies regarding several aspects of their NEPA compliance. The Court emphasized taking a "hard look" at all reasonable alternatives, which may include actions for which the Action Agencies do not currently have authorization or funding. In addition, the Court emphasized the importance of meaningful public participation, including ensuring that the Action Agencies provide the public with opportunities to provide the agencies with their input and that the public is adequately informed consistent with the purposes of NEPA.
7. The FCRPS Action Agencies intend to prepare a new EIS under NEPA analyzing the environmental effects of the operations and maintenance of the FCRPS, which includes fourteen federal multiple purpose dams and reservoirs on the Columbia and Snake rivers (and tributaries), twelve of which are operated and maintained by the Corps and two of which are operated and maintained by BOR. BPA is responsible for marketing and transmitting the power generated by these dams. Operation of the reservoir storage pursuant to the Columbia River Treaty is coordinated between the U.S. Entity (BPA Administrator and the Corps' Northwestern Division Commander) and the Canadian Entity (B.C. Hydro).
8. Based on the Agencies' collective experience and expertise in completing comprehensive NEPA analyses, the Action Agencies have determined it will take a minimum of five years in order to analyze a projected range of alternatives and associated environmental effects,

provide an adequate opportunity for meaningful public involvement, and complete a NEPA analysis that satisfies federal laws and regulations and is consistent with the guidance in the Court's May 4, 2016 Order.

9. The five year timeline can be roughly broken down into the following major milestones that are part of the EIS process: (1) filing the Notice of Intent and completion of scoping; (2) issuing a public draft EIS; (3) issuing a final EIS, including responses to comments on the draft EIS; and (4) issuing records of decision (RODs). Meeting each of these milestones requires several steps, which I address below.
10. The Action Agencies will take approximately one year for the scoping process. Under the Council on Environmental Quality's (CEQ) regulations implementing NEPA and the Corps regulations, the Action Agencies are required to "invite the participation of affected federal, state, and local agencies, any affected Indian tribe . . . and any other interested persons." 40 C.F.R. § 1501.7(a)(1); 33 CFR 230.12. The scoping process will be initiated by publication in the Federal Register of a Notice of Intent (NOI) to prepare an EIS and public notice widely distributed in the region, inviting public participation. We intend to conduct a scoping process that ensures meaningful public involvement. Once the NOI is issued, the Action Agencies will solicit written public comment and hold scoping meetings throughout the region and seek oral comments to allow the public, other government agencies and sovereigns to provide input as to the appropriate actions and scope of issues to be addressed and to identify the affected resources which should be analyzed. The Action Agencies will assess all public, tribal, and federal and state agency input, formulate alternatives to be analyzed, and identify the appropriate analyses necessary to evaluate impacts to the resources identified during scoping.

11. Throughout the NEPA process, the FCRPS Action Agencies will continue to meet their responsibilities to federally recognized Tribes pursuant to their tribal consultation policies under Executive Order 13175 *Tribal Consultation and Coordination with Indian Tribal Governments*; as well as meet Treaty and statutory obligations. The Action Agencies will also seek tribal expertise and input.
12. Following the closing of the scoping period and analysis of public scoping comments, the next step will be the development and issuance of a draft EIS for public review and comment. While this process will commence during scoping, the Action Agencies believe that conducting the requisite analyses and preparing a draft EIS will take approximately two and a half years from the time scoping is completed. Preparation of the draft EIS will be the lengthiest portion of the process, given the scope of the alternatives and analyses that the document will need to contain, as described below.
13. The draft EIS will need to evaluate a reasonable range of alternatives based on the FCRPS Action Agencies' expertise in operating the FCRPS, the proposed purpose and need, and informed by the scoping process described above. As a starting point,—the Action Agencies intend to analyze an array of alternatives for different system operations, including operations for all 14 multi-purpose projects and additional structural configurations that have the potential to improve fish passage, including breaching one or more of the federal dams that currently include fish passage. This range of alternatives may be expanded as a result of public comment on the scope of issues to be addressed and the range of alternatives to be examined. A robust analysis of how these alternatives will affect resources in the system in light of changing climate conditions will also be conducted. Each alternative will include a discussion of the ability to meet congressionally authorized purposes and the effects that

particular alternative is expected to have on ESA-listed species and other resources including other potentially impacted fish and wildlife.

14. Non-operational measures such as habitat actions in the tributaries and estuary, predation management actions, conservation and safety net hatcheries to offset or minimize environmental impacts may also be evaluated in the event that the Action Agencies determine that such measures would serve as potential mitigation measures.
15. In contrast to a biological opinion produced for ESA purposes, an EIS must address the potential impacts to a wide variety of resources in addition to threatened and endangered species. While scoping will help identify the specific resources that will be evaluated in the new EIS, the FCRPS Action Agencies expect that a similarly broad scope of resources addressed in the SOR EIS and LSR Study will be evaluated. For instance, the SOR EIS and LSR Study addressed potential impacts to a wide range of resources including water quality, air quality, anadromous fish, resident fish and wildlife, and cultural resources. Economic and social impacts of the various alternatives on flood control, navigation, power, irrigation, municipal and industrial water supply, and recreation were also evaluated and included in these EISs.
16. As part of the evaluation of the potential impacts to the relevant resources, the Action Agencies will utilize a host of analytical tools including hydrological models of the system and will solicit the expertise of the Tribes and four northwest states, cooperating agencies, and others, including other federal agencies, in conducting the evaluation of the proposed action and alternatives.
17. Consistent with the CEQ regulations, the Action Agencies must then file a copy of the draft EIS with the U.S. Environmental Protection Agency (“EPA”), which will publish a Notice of

Availability (“NOA”) in the Federal Register and issue the draft EIS. 40 C.F.R. §§ 1506.9 & 1506.10. With the issuance of the draft EIS, the FCRPS Action Agencies will again seek public input, consistent with the CEQ regulations. 40 C.F.R. § 1503.1(a). In addition to providing the public with an opportunity to review and comment on the draft EIS (a minimum of 45 days), the Action Agencies also anticipate holding public meetings throughout the region during the public comment period. Based on the Action Agencies experience with similarly complex NEPA processes, we anticipate requests for an extended review and comment period.

18. In order to reach the next milestone, the issuance of a final EIS, the FCRPS Action Agencies will first need to assess and consider the comments received, and then prepare responses to those comments. Based on our past experiences preparing NEPA documents related to the FCRPS (see paragraphs 21-25 below), we expect to receive an enormous number of public comments on the draft EIS. The Action Agencies project that it will take approximately one year to address comments on the draft EIS, and incorporate modifications into the final EIS as a result of this input; which in my experience is the minimum amount of time that is reasonable for this task. During this time, additional alternatives may be identified and a supplemental draft EIS may need to be prepared for public review and comment.

19. Finally, before the issuance of a ROD, the Action Agencies will need to file the final EIS again with EPA. 40 C.F.R. §§ 1506.9 & 1506.10. The EPA will then publish a NOA in the Federal Register for the final EIS, and the Action Agencies must, under CEQ regulations, wait a minimum of 30 days before issuing a decision on the EIS. Based on prior EISs in the basin, the Action Agencies anticipate there will again be numerous comments on the final EIS that will need to be considered and addressed. It is estimated that records of decision

will be issued by the Action Agencies approximately six months following EPA's issuance of the NOA.

20. The Action Agencies' projected schedule is based on a set of assumptions, primary among these are the NEPA procedural requirements for scoping, analyses and developing of a draft EIS, review and comment on the draft EIS, release of a final EIS and issuance of a ROD. Additionally, this proposed schedule anticipates the substantial public interest in the operation of the FCRPS, the breadth of issues, and the large geographic scope of the Columbia River basin that have the potential to expand the scope of analysis beyond that assumed to develop the schedule. In addition, the FCRPS Action Agencies may need to make modifications to the proposed action and alternatives to address changes in system operations that may arise as a result of discussions between the United States and Canada on the Columbia River Treaty if available during this process.

Discussion of Previous NEPA Analysis Used to Inform the Proposed Schedule

21. The Action Agencies have utilized their collective experience and expertise in completing NEPA analyses in the past to develop the proposed schedule for NEPA compliance. Specifically, my staff reviewed two NEPA documents that have particular relevance to the NEPA analysis at issue here: the SOR EIS, a comprehensive analysis of the effects of several Columbia River system operation strategies, and the LSR Study, an evaluation of alternatives addressing survival of juvenile anadromous fish through the lower Snake River Projects, including the breaching of lower Snake River dams.
22. The SOR Final EIS was completed over the course of six and a half years (1990-1997) as a joint project by the Corps, BPA, and BOR, along with three other federal cooperating agencies. The Action Agencies developed the draft EIS over four years, utilizing modeling,

expert working groups, and public input. The SOR Final EIS analyzed several system operating strategies that were each individual plans for operating the fourteen federal projects in the Columbia River system in a way that considers competing uses of the river, in addition to alternative ways to meet regional power coordination requirements and to allocate the Canadian share of power under the Canadian Entitlement Allocation Agreements. The SOR EIS contained 27 volumes with over 5800 pages of analysis. The Action Agencies spent a total of \$25 million to develop the SOR (values are not adjusted for inflation).

23. The Action Agencies conducted extensive public involvement over the course of developing the SOR, including over forty public meetings and roundtables held throughout the Columbia River Basin. The Action Agencies also coordinated with over fifty local, state, and federal agencies and fourteen federally-recognized tribes. The Action Agencies reviewed thousands of individual comments during the public process and extended the comment periods several times at the request of tribes, governors of states in the region, and other interested parties. After publishing the NOI in 1990, the Action Agencies signed records of decision in February 1997.

24. The LSR Study was conducted by the Corps, with BOR and BPA as cooperating agencies, over seven years (1995-2002). The study analyzed four alternatives to study possible improvements to passage for the four lower Snake River ESA-listed salmon and steelhead evolutionarily significant units (ESU): (1) no action or existing condition; (2) maximum transport of juvenile salmon; (3) system improvements that could be accomplished without a drawdown; and (4) breaching all four lower Snake River dams. The LSR Study totaled over 5,000 pages of analysis with an overall cost of \$22 million (values are not adjusted for inflation).

25. The Agencies provided extensive periods for public involvement due to the heightened regional interest in the Study, including a scoping period of two years during which 26 public meetings took place, with 1,400 participants in public round tables and another 1,140 people participating in several community forums sponsored by the Agencies. During the five month draft EIS comment period, the Agencies held fifteen formal meetings in which 9,000 people participated. The Agencies received 1,746 oral and taped comments during those meetings, in addition to 230,000 written comments - 12,000 of which were unique.

Comparison of Two Examples to Proposed NEPA Analysis

26. The above examples of the time, funding, and breadth of public involvement necessary to complete a comprehensive NEPA analysis of system operations and an EIS where dam breaching was included as an alternative were instructive in determining the timeline necessary to complete the proposed NEPA analysis. Each of the examples have important differences in scope than the proposed NEPA analysis. For instance, the proposed NEPA analysis will necessarily be more complex than that in the SOR because it will evaluate the effects of the operation and maintenance of the FCRPS projects on all currently listed ESA species (at the time of the SOR EIS, there were 4 listed ESUs for salmon and steelhead, whereas today there are 13); a more complex range of issues, including breaching dams; and current climate change information and analysis. It may also look at mitigation measures, as appropriate, such as habitat actions in the tributaries and estuary, predation management actions, and conservation and safety net hatcheries to offset or minimize environmental impacts. The LSR Study was solely focused on the 140 miles of the lower Snake River and four Snake River ESUs, while this NEPA analysis will also address the full 1,214 miles of the Columbia River and 259,000 square miles of the Columbia River basin and all currently

listed ESA species and other potentially impacted fish and wildlife species throughout the basin.

27. Although the schedule to conduct the proposed NEPA analysis will require significant agency resources and funding, the Action Agencies are committed to completing the process in the proposed five year timeframe. The Action Agencies have some modeling tools available and we will incorporate available data that is up-to-date to the extent possible. Additionally, we have an existing framework for working cooperatively with the Tribes, states and other federal agencies. We also have a good understanding of what affected resources should be addressed, but will engage the region in a public scoping process to confirm this understanding. Collectively, the FCRPS Action Agencies have given thoughtful consideration to what the scope will be and made a reasonable estimate of the time it will take to go through the process and, based on our collective experience, and subject to congressional appropriations, the proposed five year timeframe represents a realistic schedule to complete this comprehensive NEPA process and comply with the Order and all applicable laws and regulations.

Coordination of the NEPA review and ESA Consultation Processes

28. In my experience in overseeing and participating in Corps' actions where a NEPA document is prepared in conjunction with an ESA consultation, coordinating the sequencing of the NEPA and ESA processes is necessary in order to benefit from the analysis done under both statutes. As the Court noted, the NEPA process can bring to light alternative actions through public input and subsequent analysis. The draft and final EISs can benefit from NOAA Fisheries, U.S. Fish and Wildlife Service, and others, including the cooperating agencies,' input and expertise. This then allows the public an opportunity to review and comment on

the actions and their effects on listed species and critical habitat, in conjunction with other resource impacts. By coordinating the NEPA process with the ESA consultation, the expert agencies may base their consultations on more comprehensive products and analysis. As a result, the Action Agencies will be considering whether and how these processes might be coordinated in order to capitalize on the broader process and procedures contained in NEPA. Currently, the Action Agencies have focused only on developing a plan for NEPA compliance and have not determined how best to integrate the ESA process with the NEPA process. In the end, the Action Agencies will need to have biological opinions from both NOAA Fisheries and U.S. Fish and Wildlife Service on the proposed action before a ROD is signed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 2, 2016, in Omaha, Nebraska.



David J. Ponganis
Director of Programs, Northwestern Division
U.S. Army Corps of Engineers