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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
LORRI LEE, REGIONAL
DIRECTOR, BUREAU OF
RECLAMATION, PACIFIC
NORTHWEST REGION**

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

I, Lorri Lee, declare and state as follows:

1. I am the Regional Director of the Pacific Northwest Region of the United States Bureau of Reclamation, a federal agency within the United States Department of the Interior charged with operating numerous water projects across the West, including Grand Coulee and Hungry Horse dams. I have held this position since January 2012. Prior to that, I served as the Regional Director of the Lower Colorado Region of the Bureau of Reclamation. I have been an employee of the Bureau of Reclamation for thirty-three years. As Regional Director, I oversee all of Reclamation's efforts within the region, including compliance with the National Environmental Policy Act ("NEPA").

2. As part of developing a plan to prepare an environmental impact statement ("EIS") pursuant to the Court's May 4, 2016, order, I and my staff investigated the time and resources necessary to prepare other EISs recently issued by Reclamation and the Department of the Interior. Of the EISs we reviewed, the two EIS processes that we believe are most informative on establishing a timeframe for the FCRPS NEPA process at issue here are the *Coordinated Long-Term Operation of the Central Valley Project and State Water Project* ("CVP EIS") and the *Klamath Facilities Removal Environmental Impact Statement/ Environmental Impact Report* ("Klamath EIS"). However, because the FCRPS is much larger in every possible respect than the systems considered in these examples, preparation of these prior EISs does not represent as substantial of an effort as preparing the kind of EIS the Court has ordered Reclamation and the Army Corps of Engineers to complete in conjunction with the Bonneville Power Administration. As a result, the new FCRPS EIS will require more time and resources than did either of these examples.

3. Reclamation prepared the CVP EIS to analyze the effects of modifying CVP system operations in central and northern California, including the effects of adopting two biological opinions and reasonable and prudent alternatives, in a way that (1) is similar to historical operations, (2) is consistent with federal Reclamation law and state water rights, and (3) avoids jeopardy to listed species and destruction or adverse modification of designated critical habitat. For purposes of comparing CVP operations to the operation of the FCRPS, the entire CVP has a total water storage capacity of approximately 11 million acre-feet and hydropower generating capacity of approximately 2,000 megawatts. Grand Coulee Dam, just one of the fourteen FCRPS projects, has a total storage capacity of approximately 9.4 million acre-feet and a hydropower generating capacity of almost 7,000 megawatts. The CVP EIS required approximately four years to complete.

4. The CVP NEPA process commenced with publication of a notice of intent on March 28, 2012 and ended almost four years later with a record of decision on December 23, 2015. Following publication of the notice, Reclamation provided sixty days for interested parties to comment on the issues to be considered in the EIS. During that comment period, Reclamation held five public meetings across the Central Valley, which 256 people attended. For those meetings, Reclamation prepared agendas, fact sheets, and comment cards.

5. Reclamation was the lead agency developing the EIS and invited multiple federal and non-federal entities to become cooperating agencies in the NEPA process. Interior Department regulations state that Interior bureaus, such as Reclamation, “must invite eligible governmental entities to participate as cooperating agencies,” 43 C.F.R. § 46.225(b), “must consider any request by any eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency,” *id.* § 46.225(c), and “should work

with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments,” § 46.225(d).

6. Reclamation also undertook government-to-government consultation by sending letters soliciting input from dozens of federally recognized tribes. Only two of those tribes responded with input, and Reclamation met in person with them in 2012 and 2013 to ensure their sovereign interests were considered in the process, including potential impacts to Indian Trust Assets.

7. Reclamation received comments during scoping from sixty-four entities and individuals. Those comments addressed the definition and range of alternatives to be considered in the EIS. Reclamation used those comments to identify twenty-three action concepts, seventeen of which Reclamation compiled into five action alternatives for evaluation.

8. In July of 2015, three years after commencement of the NEPA process, Reclamation released a draft EIS for review and comment. The draft EIS examined five alternatives based on varying levels of water withdrawals and different mitigation actions, including a no action alternative.

9. To inform the public of the draft, Reclamation published newspaper notices and issued press releases. Reclamation held four public meetings to present and receive comments on the draft. To support those meetings, Reclamation prepared display boards, fact sheets, and presentations. Reclamation hired a court reporter to attend each public meeting and record comments. Reclamation received 860 comments on the draft, and spent two months responding to and incorporating the comments into the EIS analyses. In Reclamation’s typical practice, two months is an extraordinarily short amount of time to consider and respond to public comments on a draft EIS of this size and complexity.

10. On November 23, 2015, Reclamation published the final environmental impact statement. Reclamation progressed from a draft EIS to a final EIS in just four months because of a looming court deadline to complete the NEPA process, which had previously been extended on several occasions.

11. After considering comments received and following the necessary 30-day waiting period following publication of the final EIS, Reclamation signed its record of decision. Thus, the EIS process required almost four years to complete. This abbreviated schedule was made possible for such a complex EIS by the existence of pre-NEPA modelling efforts and extremely diligent and unusually efficient coordination to meet an extraordinarily short timeline to progress from a draft EIS to a final EIS, as discussed above.

12. The CVP EIS and supporting analyses totaled almost 16,000 pages. Drafting the EIS required the efforts of thirty-seven Reclamation employees and multiple private contractors, and cost Reclamation approximately \$22 million. Of the Reclamation employees working on the CVP EIS, on average, from five to seven worked full-time on the effort, while the remainder spent approximately one-fourth of their time working on the EIS.

13. Preparation of a new, system-wide FCRPS EIS will require more time and resources than did preparation of the CVP EIS for the following reasons.

a. First, the CVP EIS did not analyze the environmental effects of breaching major infrastructure, such as dams, as anticipated in the FCRPS EIS. Indeed, a key purpose of the action analyzed in the CVP EIS was to continue operations in a manner similar to historical operations. By contrast, the FCRPS will likely analyze breaching of major infrastructure, which will require extremely complicated engineering studies and modeling to analyze the likely environmental effects of the action. The analysis of such

significant actions will also implicate the tensions among the various values associated with the FCRPS, including power generation, irrigation, navigation, and aquatic species and invite competing perspectives on those concerns.

b. Second, the FCRPS EIS will require the coordination and detailed consultation of many more affected sovereigns than did the CVP EIS. The latter impacted one state and required government-to-government consultation with two federally recognized tribes, while the former affects at least four states and more than a dozen federally recognized tribes. Reclamation has trust, executive order, and secretarial order obligations to the tribes, whose treaty rights may be implicated in the NEPA process. *See, e.g.*, Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000) (providing for government-to-government relations between agencies and tribes); Interior Sec’y Order No. 3317 § 4(a) (Dec. 1, 2011) (requiring “[g]overnment-to-government consultation ... in a meaningful way early in the process”); Reclamation Manual Policy 499 § 5(B) (July 24, 2014) (requiring “meaningful and proactive consultation”). While Reclamation sent letters to dozens of tribes in the CVP NEPA process, only two requested formal consultation. Here, however, based on our past experiences and the relevant tribes’ intense interest in Columbia and Lower Snake river resources, we expect that government-to-government consultation, including multiple in-person meetings, will be necessary for most, if not all, of the potentially affected tribes. As a result, fulfilling those obligations and ensuring the early and meaningful participation of all of the affected sovereigns will necessarily take more time than did the sovereign consultation process for the CVP EIS.

c. Third, the CVP EIS required the coordination of two system operating entities, Reclamation and the State of California, while the FCRPS EIS will require the input and coordination of three separate federal entities involved in coordination of operations—Reclamation, the Corps, and Bonneville Power Administration. The addition of a third entity will require more time to ensure agreement on the content of the EIS and that each agency's NEPA requirements are satisfied. Moreover, additional federal, state, and tribal entities may wish to serve as cooperating agencies, which will require yet additional time to allow for their coordinated input in the process.

d. Fourth, the affected environment to be analyzed in the FCRPS encompasses a larger geographic area than the area analyzed in the CVP EIS (approximately 77,000 square miles versus approximately 259,000 square miles).

e. And, finally, the FCRPS EIS will likely consider operational and configuration alternatives throughout the system, while the CVP EIS focused primarily on one component of that system, water withdrawals. None of the CVP EIS alternatives considered significant changes to CVP hydropower generation. In contrast, the FCRPS EIS is anticipated to consider different operations and configurations to serve multiple authorized purposes, as well as dam breaching, which must be considered on a system-wide basis.

14. The Department of the Interior, with the support of the Bureau of Reclamation, developed the Klamath EIS to analyze the environmental impacts of removing four PacifiCorp dams on the Klamath River in southern Oregon and northern California. To establish a baseline for comparison, the total storage capacity of the four Klamath dams is less than 100,000 acre-feet and the total hydropower generating capacity of the four dams is 163 megawatts. By contrast,

Hungry Horse Dam, just one of the fourteen FCRPS dams, is capable of impounding approximately 3.5 million acre-feet of water and has a generating capacity of 428 megawatts. Preparing the Klamath EIS required approximately three years.

15. The Klamath NEPA process commenced with publication of a notice of intent to prepare an EIS in 2010. Three years later the Department published a final EIS. However, the process is still ongoing because the agency has not yet signed a record of decision.

16. The Department began the NEPA process with a notice of intent published on June 14, 2010. The Department accepted scoping comments for a period of thirty days following the notice. To inform the public of the commencement of the process, the Department issued press releases, mailed postcards to over 5,000 individuals on Reclamation's Klamath Project mailing list, and advertised in newspapers. The Department held seven public scoping meetings during the final eight days of the comment period and received 484 comments. Those comments led the agency to formulate an initial list of eighteen alternatives, which the Department screened to a final list of five action alternatives.

17. Pursuant to Department regulations, the Department also invited multiple federal and non-federal entities to serve as cooperating agencies. To discuss possible participation as cooperators with other entities, the Department held twenty-three meetings with outside entities. The Department then held nine meetings among the cooperating agencies during 2010-2011. To coordinate with non-governmental organizations, the Department held eight stakeholder briefings and technical workshops.

18. The Department additionally participated in government-to-government consultation with the six federally recognized Indian Tribes in the project area. Those consultations involved numerous meetings addressing multiple topics, including, but not limited

to, potentially affected Indian Trust Assets, Endangered Species Act concerns, and the analyses in the EIS. Notably, however, many of the tribes had already participated in the negotiation of the underlying Klamath Hydroelectric Settlement Agreement, which arose from separate regulatory proceedings and provided the basis for analyzing dam removal in the Klamath EIS.

19. On September 22, 2011, the Department released a draft environmental impact statement. The draft analyzed five alternatives, including the no action alternative. The alternatives included removing all four dams and associated facilities, removing just the four dams, leaving the dams in place but adding fish passage structures, and removing two dams and adding fish passage to the other two. The Department published newspaper notices and issued press releases informing the public of the availability of the draft. The Department held six public meetings on the draft over a ten-day period. During the 100-day comment period on the draft, the Department received more than 4,000 comments. The Department required thirteen months to respond to those comments.

20. On April 4, 2013, the Department released the final environmental impact statement. The final EIS and supporting analyses totaled more than 7,500 pages. Preparing the EIS cost the Department approximately \$8 million and required the efforts of nearly one hundred individuals organized into teams focused on engineering, water quality, fisheries, tribal concerns, economics, and environmental compliance, among others. Of those employees, five worked full-time on the EIS, while the remainder worked on the EIS part-time. Between twenty and thirty of the employees who worked on the EIS part-time had the EIS process as a primary responsibility. Preparing the EIS required approximately three years.

21. Preparation of the FCRPS NEPA analysis will require significantly more time and resources than did the Klamath EIS for the following reasons, among others.

a. First, the Klamath EIS evaluated the impacts of different dam removal and fish passage actions under the Klamath Hydroelectric Settlement Agreement, which is significantly narrower than the FCRPS EIS, which will likely analyze alternative means of operating the FCRPS in compliance with the ESA to avoid jeopardizing listed species and destroying or adversely modifying critical habitat.

b. Second, the Klamath EIS analyzed only four dams, with a primary focus on dam removal and fish passage, while the FCRPS EIS will analyze fourteen dams, focusing on multiple operational objectives. Each dam has unique characteristics that will require individual analysis in the EIS. The EIS will likely analyze not only different operational configurations of the dams, but, also, breaching of one or more of dams. Because each of the FCRPS dams is magnitudes larger than any of the Klamath dams, analyzing breaching of any FCRPS facilities will require considerably more effort than did analyzing removal of the Klamath dams. The larger facility size will require analysis of the environmental effects associated with a greater workforce for the effort, potential disposal of an increased quantity of dam materials, and the impacts associated with a substantial buildup of sediment, among other considerations.

c. Third, only one federal agency led the Klamath EIS, while three different federal agencies, each with differing statutory missions, project authorizations, and leadership will co-lead the preparation of the FCRPS EIS. Coordinating input from the three lead agencies will require additional time to ensure the EIS meets each agency's NEPA requirements.

d. Fourth, the Klamath EIS evaluated a much smaller geographic area as the affected environment (approximately 15,000 square miles) than likely will the FCRPS EIS (approximately 259,000 square miles).

e. Fifth, the FCRPS EIS will require the agencies to consult with more than twice as many Indian Tribes located across a much larger geographic area. The FCRPS EIS will also affect at least four states, whereas the Klamath EIS impacted two. Ensuring that tribal and state sovereigns have meaningful input in the process will require more time than the sovereign coordination process in the Klamath EIS.

22. Based on these examples, the guidance the Court provided in its decision, and Reclamation's experience in preparing complex NEPA analyses, a minimum of five years will be necessary to complete a reasonable FCRPS NEPA process. That process will include four key milestones: (1) scoping; (2) issuing a public draft EIS; (3) responding to comments and issuing a final EIS; and (4) issuing a record of decision.

a. Scoping: The scoping process will take one year to complete. The agencies will initiate that process with a notice of intent that will be published in the Federal Register. Publishing the notice of intent will require the three agencies to collaboratively identify the appropriate contents of the notice, draft the notice, and ensure that it meets each agency's unique NEPA requirements. Once the notice is drafted, Reclamation must coordinate with its register liaison in Washington, D.C., to facilitate publication. Among other things, the notice will identify a comment period to allow interested parties to provide input on the scope of the analysis and key issues to be analyzed. The agencies will issue press releases, publish newspaper advertisements, and hold public meetings to solicit input. The scoping process for the CVP EIS required ten

months to complete, while the Klamath EIS required three months for scoping. The truncated scoping for the Klamath EIS was possible only because of the narrow focus of the alternatives on dam removal and fish passage. Based on the more analogous example of the CVP, one year is a reasonable amount of time to complete scoping for the FCRPS EIS, given the greater size of the system and broader range of operational alternatives to be considered.

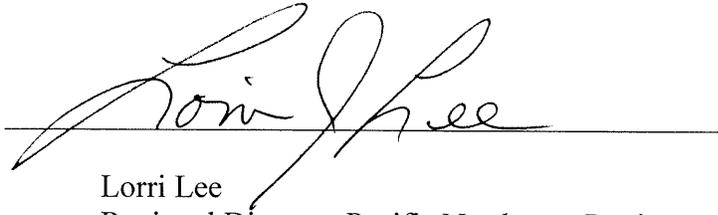
b. Draft EIS: It will take an additional two and one half years to draft the EIS. This amount of time is required to ensure that the draft EIS considers a reasonable range of alternatives for system operations; evaluates structural configurations to improve fish passage, including breaching one or more dams; analyzes climate change implications for each alternative; and evaluates the ability of each alternative to comply with federal laws, including, but not limited to, the Endangered Species Act, Clean Water Act, and Resource Conservation and Recovery Act, and project authorizations. This is a broader analysis than would be found in a biological opinion because NEPA requires agencies to take a hard look at effects on all resources (e.g., socioeconomics), not just listed species. Although the agencies will rely on already developed models and methodologies and current analysis as much as possible, drafting the EIS will require development of new modeling and gathering expansive data sets for different resources. The CVP draft EIS was released two years after scoping, while the Klamath draft EIS was issued one year after scoping. Given the many previously identified differences between those analyses and the FCRPS analysis, two and one half years from scoping is a reasonable, if albeit aggressive, goal for the FCRPS draft EIS release.

c. Final EIS: One year after publication of the draft EIS is the minimum amount of time that will be required to publish a final EIS. This time is needed to respond to all of the comments on the draft, of which there likely will be many, and to update analyses and incorporate new information provided in comments. The CVP final EIS was issued one and one half years after the draft EIS, while the final Klamath EIS was issued four months after the draft. Based on these examples, as well as the distinctions between the systems analyzed in these examples and the FCRPS, one year between draft and final EISs represents a very aggressive, but achievable schedule.

d. Record of Decision: After issuing the final EIS, another six months will be needed to issue records of decision on the EIS. During that period, the agencies will likely accept additional public input on how to proceed in light of the EIS analyses. The agencies also will have to prepare and execute reasoned decisions based on the very expansive and complicated analyses presented in the EIS.

23. This five-year timeline for preparing an EIS for the FCRPS is based primarily on the assumption that the process will follow a standard course for drafting the analyses and the associated timelines for public involvement, as well as an understanding that the agencies need to finish the process as quickly as possible. However, the controversial topics to be addressed in the EIS and the intense interests therein, could require expansion of the analysis beyond what is contemplated here, even though the agencies have tried to account for those possibilities in this proposed compliance schedule.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 31, 2016, in Boise, Idaho.

A handwritten signature in cursive script, appearing to read "Lorri Lee", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

Lorri Lee
Regional Director, Pacific Northwest Region
Bureau of Reclamation