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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.

No. 3:01-cv-00640-SI

DECLARATION OF KEVIN L.
LEWIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN
INJUNCTION

I, Kevin L. Lewis, hereby declare as follows:

1. 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. IRU is one of the plaintiff organizations in this case.

2. IRU is also a founding member of the Save Our Wild Salmon coalition. For the last 20 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.

3. 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. And when necessary, IRU will also seek to enforce compliance with the environmental laws in court. IRU mobilizes grassroots support for salmon and steelhead restoration via its membership.

4. 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’s rivers for many IRU members.

5. William Sedivy, the former executive director of IRU, submitted a declaration in support of plaintiffs' motion for summary judgment in December 2014. Mr. Sedivy has since retired and I have been serving as IRU's executive director since June 2016. I submit this declaration in further support of plaintiffs' motion for an injunction to secure additional spill to aid salmon survival during the court-ordered remand and to ensure that the court-ordered Environmental Impact Statement, under the National Environmental Policy Act, includes a full and unbiased examination of all alternatives, including removing one or more of the dams on the lower Snake River.

6. 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 organization's 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. Prior to my role as executive director, I was the conservation director for IRU for 11½ years. Since 2004, I have been a member and volunteer of IRU. Before becoming conservation director for IRU, I was self-employed as a small business owner in northern California. As conservation director for IRU, I was responsible for the implementation of the organization's conservation program. I work with the IRU board of directors and our executive director to develop the organization's conservation priorities. I also supervise IRU's conservation staff and various contractors and volunteers to carry out the organization's conservation policies and goals.

8. Like other IRU members, my friends and I rely on Snake River salmon and steelhead and their habitat for recreational, fishing, conservation, and aesthetic benefits. As a native Northwesterner, salmon and steelhead have been a part of my family for generations. My

grandfather was born on the northern California coast in 1895. His early existence depended, in part, on subsistence fishing for salmon and steelhead. In his mid and later life, he was consumed with offshore salmon fishing where his catch was preserved in his backyard smokehouse for consumption during the long winters. I have many fond memories of my grandfather's salmon stories while sharing meals of fresh or smoked salmon. Personally, I am an avid whitewater boater and photographer, 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). Spending time on the rivers in Idaho affords me some of the happiest times my friends and I spend together. As an Idahoan, salmon and steelhead are especially important to my use and enjoyment of these rivers. And as a whitewater boater, photographer, and nature lover, it is extremely important to me to know 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 for me. Occasionally, I have been lucky enough to see first-hand a few wild summer Chinook spawning in their natural habitat in the Middle Fork Salmon and its tributary streams and the main stem of the Salmon River. It was a moving experience for both me and my friends. Salmon and steelhead are both aesthetically and biologically important to me and these rivers, and without the fish, the river corridors will change forever and for the worse. Just knowing that salmon and steelhead are there and fulfilling their vital role in this web is an essential part of these experiences for me; their continued low numbers makes it impossible for me to fully enjoy these experiences or the landscape in which I pursue them.

9. I spend an average of 40-50 days a year whitewater boating and photographing on the Snake River and its tributaries in Idaho. I plan to spend just as much time whitewater boating and photographing 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 this October. This spring and summer I will spend at least 20 days on the Lochsa, Clearwater, Payette and Boise Rivers – all tributaries of the Snake River. I make frequent photography excursions throughout the year to the Snake River and its many tributary streams, starting with trips to the Bruneau, Clearwater and lower Snake earlier this spring. As the summer progresses, I will make photo excursions to the Salmon, Snake and Lochsa Rivers then revisit many of my previous locations for fall colors and icy winter images. I hope to introduce my friends and members of my extended family to the natural joys of the rivers in the future, as well.

10. 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. The entire ecosystem where I boat, photograph and recreate is degraded and harmed by the greatly diminished levels or even absence of salmon and steelhead from their historic habitat.

11. These 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's executive director.

12. The dams of the Federal Columbia River Power System (FCRPS) have a variety of adverse impacts on salmon. 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, migration delays, and high water temperatures in the reservoirs. 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 up to 80% of human-inflicted mortality to Snake River salmon and steelhead.

13. Since I became an Idaho resident, I have seen how the salmon and steelhead populations are hurt in Idaho's 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 Biological Opinion (BiOp) would finally provide adequate protection for the listed stocks, but it clearly has not. In truth, the hydrosystem measures allowed by 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, no additional spill in spring or summer, 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 afforded the agencies the flexibility to cut back on spill levels in place for the past 11 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.

14. While the Court has found the 2014 BiOp violates the law, the action agencies continue to operate the FCRPS unchanged. The current operation of the FCRPS dams under the 2014 BiOp perpetuates and/or causes tremendous harm to salmon and steelhead. Those harms affect me personally and professionally. On a personal level, through my work and my time in Idaho's wild places, I have gained a great affinity and deep respect for the salmon and steelhead that fight their way to and from the Pacific to the mountain streams of Idaho. Knowing that these remarkable fish are still being killed by the dams and reservoirs in the FCRPS causes injury to me personally. When I see prime salmon habitat without salmon in central Idaho, I am saddened and angry because I know we could restore the fish if we could only break the death grip of the status quo. I have discussed the causes of salmon declines with both friends and family and spend as much time tracking salmon runs out of personal concern as I do for the requirements of my job. As just one example, I was saddened, anxious, and outraged as the disastrous consequences of the summer of 2015 unfolded and it became clear that we lost more than 98% of Idaho's endangered sockeye salmon and more than 250,000 other fish. It makes me equally sad and angry to realize that the federal dam agencies are not doing everything they can to help the progeny of the salmon that survived that summer (and subsequent generations) by creating the best conditions currently possible (with the dams in place) by increasing spill. As the Court determined in its ruling in this case, the 2014 biological opinion fails to define or acknowledge the full extent of the FCRPS's harms to salmon and steelhead and fails to develop or require a set of measures that will ensure the fish will survive and recover. The current operation of the dams under that illegal opinion cannot ensure the survival or recovery of the fish and are vastly unresponsive to their biological needs. In fact, these operations do just the opposite.

15. I believe that the agencies should be making every effort, and taking every step they can, to protect these fish in both the short and the long-term. Even under the current configuration and constraints of the FCRPS, the Corps and its sister agencies could do far more to protect these fish, including by spilling more water to help young salmon migrate downstream in the spring, but they have refused to do so. I am aware of the analysis of the Comparative Survival Study demonstrating that spill can decrease the number of salmon currently harmed and killed while passing the dams, even under current water quality standards and other constraints. While interim additional spill by itself will not improve populations to the point of recovery, it will alleviate some of the harm caused by current management. Just because this single-interim measure will not solve the entire problem, however, is not a reason to ignore it. An action that reduces Idaho salmon mortality will lead to increases in fish returning to Idaho's rivers and help set us up for a faster overall recovery. The agencies' failure to do what is possible to increase fish survival ensures that fish will continue to exist at low levels and be exposed to a high risk for extinction. It should go without saying, but this continued harm to salmon directly harms my interests in these fish. Fewer salmon mean fewer opportunities to see them, and because healthy salmon and steelhead populations are essential to my ability to completely enjoy the wonders of Idaho's rivers, fewer salmon directly harm my enjoyment of these activities.

16. In the longer term, I am both personally and professionally invested in ensuring that Snake River salmon are recovered. Maintaining these dams perpetuates and likely lengthens all of the current harms to the fish and to me and other IRU members who rely on wild Snake River salmon and steelhead for recreational, aesthetic, and scientific use and enjoyment. These harms are not merely abstract or hypothetical. For far too long, the Corps has operated and invested in the Snake River dams based on an assumption that they will remain as currently

configured for the long-term. As the Corps has pointed out in its declarations in this case, it has spent close to \$900 million dollars in just the past decade investing in these projects. In both my professional and personal capacities, I and IRU have long advocated for the Corps to stop making investments in these dams. For example, when the Corps proposed to continue spending tens of millions of dollars to dredge the navigation channel in the Snake River, IRU dedicated resources to studies to demonstrate the economic and environmental folly of those investments. See <https://www.idahorivers.org/s/LSD-2015-Jones-LSD-transportation-study>.

17. I had hoped that this Court's order that the Corps consider removal of one or more of the dams on the lower Snake River as part of the NEPA process would change the Corps' business-as-usual approach to investing in these dams. Every dollar invested in these projects is spent based on an assumption that they will exist and operate long enough to justify that expenditure. But the Corps is supposed to be considering the removal of these same projects as part of the NEPA process.

18. I believe that the Corps' continued investment of additional millions of dollars in these long-term capital projects cannot help but bias the Corps' consideration of a dam removal alternative in the on-going NEPA process. The Corps' failure to complete an objective and unbiased assessment of alternatives will continue the harms to salmon and steelhead – and to people like me who rely on these fish and are harmed by their continued marginal status and threatened extinction – caused by the existence and continued operation of these dams, such as high water temperatures, low flows, habitat for predators in the reservoirs, and passage and migratory delays. Continuing the current configuration and operation of the FCRPS without the badly needed major overhaul will extend these harms well past the end of the NEPA process. The longer these fish remain at low levels and are threatened with extinction, the longer my use

and enjoyment of the fish and the habitats they should be filling will last. Depressed fish runs caused by the dams means no or shorter fishing seasons, fewer opportunities to observe and photograph fish in their native habitats, and continued impact to my enjoyment of an ecosystem that cannot properly function without abundant numbers of salmon and steelhead returning each year to spawn.

19. As I described above, perpetuating these harms to fish directly harms me personally. They also harm IRU as an organization. Since the start of the current NEPA process in September 2016, IRU has invested significant staff time and resources in informing its members about this process and to ensure that dam removal is given full and fair consideration as an alternative. IRU staff, including me, has participated in the action agencies' "public meetings," drafted comments, put out grassroots alerts, and organized and conducted public outreach events that were held in conjunction with the action agencies' "public meetings." We will do the same in the coming months and years to advocate for salmon in the NEPA process, including at the DEIS stage, through additional public meetings and comment periods. These resources are all wasted if the Corps conducts a biased NEPA process influenced by its continued investments in the long-term operation of these projects and prejudices what should be an objective consideration of dam removal.

20. I am aware that several of the parties have suggested that the bias or prejudice to the Corps' consideration of alternatives should be remedied by later challenging a defective EIS. When one considers that it has been almost three decades since Snake River salmon were first protected by the Endangered Species Act; more than 40 years since it has been abundantly clear that Idaho's salmon cannot exist or recover with the Snake River dams in place; and more than 20 years since the agencies have operated the FCRPS in compliance with the ESA, the

perpetuation of the harms caused by these violations is not easily dismissed. Rather, the suggestion that I and IRU can simply return to the court again if the agencies continue their failure to comply with the law – as seems much too likely from their continued investment in business-as-usual – strikes me as extremely cynical. Another court victory by itself is unlikely to recover the fish that I and IRU members depend upon – only a change on the river will do that. We have that opportunity now; the Corps must not be allowed to squander it.

21. My experiences on the Snake River and its tributaries are extremely diminished and harmed by the lack of healthy salmon and steelhead populations. FCRPS operations that continue the current deficit situation harms listed salmon and steelhead species and 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. Without taking available and reasonable steps to protect fish during the remand through additional spill and through ensuring that the Corps' consideration of alternatives through the NEPA process is not prejudiced by further long-term capital investments in the Snake River dams, there will continue to be less salmon and steelhead in our rivers and I and other IRU members will continue to be harmed.

22. I believe that these harms can be alleviated in part by a court order that compels the federal agencies to spill additional water during the spring migration and to stop some of the further major capital expenditures the Corps has planned. I believe that such an order would help ensure that more of these remarkable fish would return to Idaho's rivers in both the short and long-term, 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.

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 28 day of February 2017, in Boise, Idaho.



KEVIN L. LEWIS