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May 11, 2016

The Honorable Jo-Ellen Darcy
Office of the Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington DC 20310-0108

Re: May 4, 2016 Federal Court Decision on FCRPS Does Everything but Mandate the Corps to Breach the Snake River Dams to Comply with the ESA and NEPA

Dear Assistant Secretary Darcy:

Since September 2013 we have written you and/or provided testimony and documents to the HQUSACE nine times, have provided dozens of emails to your staff, and met with you, which we appreciated very much. We write once again to urge you to take immediate action to breach the four lower Snake River dams. We are now compelled to say "immediate," since the costs of maintaining and rehabilitating the dams are continuing to escalate, the listed wild salmon and the Southern Resident orca whales are on the verge of extinction, and delay will exacerbate each of these problems. We previously have provided you documents detailing the economic waste of maintaining these dams, the biological urgency for the threatened and endangered species, and technical and policy reports over the last 32 months.

If you were waiting for the federal court's decision in NWF, et al. v. NMFS, et al., Case No. 3:01-cv-00640-SI ("Decision"), you are probably well aware, it was rendered May 4, 2016. This decision is the strongest rebuke yet of the federal government's operation of the Columbia River hydrosystem. The entire thrust of the opinion is to persuade the executive branch of the government to breach the lower Snake River dams as a major fix to the salmon-killing hydropower system it has created. See Decision at 19-20, noting that it is the court's job to make sure that federal agencies comply with the law, while it is up to the executive branch of the federal government to fix the problems it has created. (Breaching the Snake River dams is exactly the fix we recommended to you, but we provided you with more cost, economic, technical and policy data than was available to Judge Simon.)

Ruling that the federal government continues its 20 years plus of breaking the law by operating the Snake and Columbia River dams, among others, the court concluded that the government's latest fish recovery plan (2014 Biological Opinion or BiOp) violates both the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). The Court was scathing about the government's willingness to waste billions of dollars to take ineffective

habitat, hatchery and harvest actions, when the real problem is the Snake River dams. Excerpts from the decision are telling.

The Federal Columbia River Power System remains a system that “cries out” for a new approach and for new thinking if wild Pacific salmon and steelhead, which have been in these waters since well before the arrival of homo sapiens, are to have any reasonable chance of surviving their encounter with modern man. Decision, at 19.

For more than 20 years, NOAA Fisheries, the Corps, and BOR have ignored the admonishments of the Court to consider more aggressive changes to the FCRPS to save the imperiled listed species. ***The agencies instead continued to focus on essentially the same approach to saving the listed species—minimizing hydro mitigation efforts and maximizing habitat restoration. Despite billions of dollars spent on these efforts, the listed species continue to be in a perilous state.*** *Id.*, at 145.

[T]he 2014 BiOp’s no jeopardy conclusion is arbitrary and capricious because it applies an improper jeopardy standard, fails properly to consider impacts to recovery and from climate change, and relies on actions that are not reasonably certain to occur or have uncertain benefit. *Id.*, at 147.

The entire opinion points in one direction—that breaching the four lower Snake River dams likely will both save billions of dollars in taxpayer money and prevent Snake River salmon extinction. In striking down the federal government’s plan for salmon recovery in the Snake River/Columbia River Basin, the court repeatedly pointed out that Snake River dam breaching is the most certain means to recovering wild salmon and putting an end to wasting taxpayer and ratepayer money.

- ***The option of breaching, bypassing, or even removing a dam may be considered more financially prudent and environmentally effective than spending hundreds of millions of dollars more on uncertain habitat restoration and other alternative actions.*** *Id.*, at 18.
- ***More than 20 years ago, Judge Marsh admonished that the Federal Columbia River Power System “cries out for a major overhaul.”*** Judge Redden, both formally in opinions and informally in letters to the parties, urged the relevant consulting and action agencies to consider breaching one or more of the four dams on the Lower Snake River. For more than 20 years, however, the federal agencies have ignored these admonishments and have continued to focus essentially on the same approach to saving the listed species—hydro-mitigation efforts that minimize the effect on hydropower generation operations with a predominant focus on habitat restoration. These efforts have already cost billions of dollars, yet they are failing. Many populations of the listed species continue to be in a perilous state. *Id.*, at 18-19.
- Although the court is not predetermining any specific aspect of what ***a compliant NEPA analysis would look like in this case, it may well require consideration of the***

reasonable alternative of breaching, bypassing, or removing one or more of the four Lower Snake River dams. This is an action that NOAA Fisheries and the action agencies have done their utmost to avoid considering for decades. Decision, at 136.

- In the case of the 2014 BiOp RPA, allowing the program to move forward without a comprehensive EIS allows for certain actions to be taken that “swing[] the balance” in favor of other actions that might have been disfavored had all actions been considered together. *Id.* For example, ***the option of breaching, bypassing, or removing one or more of the Snake River dams may be considered more financially prudent and environmentally effective versus spending additional hundreds of millions of dollars on uncertain habitat restoration.*** *Id.*, at 139.

This is the fifth time the federal agencies have failed to produce a fish recovery plan that complies with federal law. This is inexcusable. Not only has at least \$13 billion been wasted on fish recovery measures, millions of dollars more have been wasted on the BiOp/litigation industry that the dams have spawned, not counting the attorneys’ fees and costs that taxpayers are forced to pay the winning plaintiffs each time the federal agencies lose.

What is more appalling is that there is no effective remedy to force the Northwest region federal agencies to comply with the law. Despite the Court’s strong language, the decision continues a stalemate in the Northwest region. This is because the Court is unwilling to vacate any BiOp on the FCRPS without either taking over the hydrosystem, as Judge Redden threatened to do in 2009, or running the risk of shutting it down entirely. (Judge Simon, Decision, at 148.)

Moreover, the decision likely could not make NOAA, BPA, The Corps’ NW Division and the Walla Wall District happier. While they officially say they are "disappointed" in the decision, it and the previous remands have kept government researchers and study teams fully employed for years, and will do so for another three to five years, unless leadership steps in. This is not a competition to drive salmon to extinction to benefit hydropower, although the Northwest region plays it like it is. The salmon, and the critically endangered salmon-dependent Southern Resident orcas are losing, as are taxpayers who are forced to pay for the government to engage in this seemingly endless battle. It is time for headquarters in D.C. to take the lead and stop the unacceptable charade in which the Northwest region’s federal agencies have engaged for decades.

As discussed in the previous documents we have transmitted, breaching the four lower Snake River dams would result in optimal salmon recovery and save billions of dollars. It could also strengthen the hydropower system, because money saved from breaching these four dams could be used to maintain the larger FCRPS dams and powerhouses, which have a well known and ponderous backlog of deferred maintenance. Habitat restoration efforts, in the absence increased returns through the lower Snake hydro system, are pointless. Once the dams are breached, many formerly ineffective habitat restoration efforts likely will become effective. In

The Honorable Jo-Ellen Darcy

May 11, 2016

Page 4 of 6

addition, the FCRPS has a well known backlog of deferred maintenance. Money saved from breaching the Snake River dams can be used to maintain the more reliable FFCRPS powerhouses and dams which

The federal agencies can breach the dams now. There is a working EIS in place, the 2002 Lower Snake River Feasibility Report/EIS (FR/EIS). While the Court correctly held that the (FR/EIS) is "too narrow" to cover the entire FCRPS, it is not too narrow to cover breaching the four lower Snake River dams. The FR/EIS was prepared to plan for fish passage and survival, and to mitigate the environmental impacts of the four dams. Dam breaching is the fourth reasonable alternative set forth in the FR/EIS, and the only alternative that has not been tried. It is precisely "*the reasonable alternative of breaching, bypassing, or removing one or more of the four Lower Snake River dams,*" on which the Court implored the federal government to act. See Decision at 136. It is also the hydro-mitigation measure that maximizes the focus on salmon recovery, rather than hydropower generation. See *id*, at 18-19. Moreover, using the FR/EIS as the NEPA document covering Snake River dam breaching promotes the national environmental policy of considering all reasonable alternatives to mitigate environmental impacts, as well as the broader goals of restoring ecosystems, preventing extinction of threatened and endangered species, and improving water quality in the nation's rivers and streams.

We have attached a document that summarizes material from earlier documents provided to your office explaining the use of the 2002 EIS and possible BPA funding mechanisms. The summary was provided to CEQ, OMB and your staff on 3 May 2016.

While we can imagine that you and your staff may have some angst about taking executive action to immediately breach using the FR/EIS and the BPA funding mechanisms we have explored for you, the Court directed the executive agencies to comply with the laws and the environmental impacts of the hydrosystem. See Decision, at 20. The Court emphasized the urgency of these actions and, as pointed out above, observed that breaching "*is an action that NOAA Fisheries and the action agencies have done their utmost to avoid considering for decades.*" The FR/EIS and the BPA funding mechanism are likely the best tools you have to make a breach happen now. This will be a legacy for you and the President that will be at least as significant to you as the Everglades restoration was for your predecessors. For many years, too much has been recorded and written about the plight of salmon, orca, lamprey, among others, and the wasted billions of dollars on inefficient salmon recovery measures, to be ignored. With the recent court decision, the media, the public and the historians are now expecting the federal agencies to lead, and not shun their responsibility. By asserting leadership over dam breaching, headquarters can make it happen.

Time is of the essence. Drawdown must begin in early June to save the Snake River sockeye from mass die offs. CEQ, the Corps and NOAA headquarters must take the lead and move dam breaching forward now. The dams will be breached at some point, whether sooner or later is the issue. Turbines, lock and bypass hardware are rapidly degrading at unaffordable costs.

The Honorable Jo-Ellen Darcy

May 11, 2016

Page 5 of 6

The question is will Snake River salmon and Southern Resident orca whales still be around? Will the Obama administration's legacy be that it saved salmon, orca and taxpayer money, and protected the public interest, or will it be that special interests that benefit from the hydropower system continue to hold an ecosystem hostage and waste billions of dollars in taxpayer money? The press coverage of the court's decision shows that the public is paying attention.¹

Accordingly, we request that you proceed with drawdown at Lower Granite Dam no later than the second week of June, 2016, followed by breaching Lower Granite dam through channel bypass beginning December 1, 2016. If you are not able to do this, we request a meeting in the near future to discuss when drawdown can begin. Please don't hesitate to contact us, if you need further information.

We look forward to your prompt response. Thank you for your consideration of this urgent continuing request.

Sincerely,

James Waddell

James Waddell, P. E.

Sharon Grace

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¹ See for example, Seattle Times, Lynda V. Mapes, 5/4/16, *Judge: Salmon recovery requires big dam changes on Snake River*, <http://www.seattletimes.com/seattle-news/environment/lower-snake-river-dam-removal-back-on-table/>; Reuters, 5/5/16, *Federal court rejects U.S. plan for restoring embattled Northwest salmon*, <http://uk.reuters.com/article/us-usa-court-salmon-idUKKCN0XW0AK>; AP wire story, May 4, 2016, *Judge: Plan for Restoring Northwest Salmon Runs Not Enough*, , <http://abcnews.go.com/US/wireStory/judge-plan-restoring-northwest-salmon-runs-38888573>; Lewiston Mountain Tribune, May 5, 2016, *Federal Judge Has Had Enough Fin-Dragging*, http://lmtribune.com/northwest/federal-judge-has-had-enough-fin-dragging/article_72f6cb13-f35a-554d-9896-e70596d4c8b4.html; KUOW.org, 5/4/16, *Judge Rejects Feds' Latest Plan To Help Salmon Survive Columbia River Dams*, <http://kuow.org/post/judge-rejects-feds-latest-plan-help-salmon-survive-columbia-river-dams>; Ecotrust, *Turning a New Page on Columbia River Salmon Recovery*, <http://www.ecotrust.org/next-chapter-for-columbia-salmon-recovery/>.

The Honorable Jo-Ellen Darcy
May 11, 2016
Page 6 of 6