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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

OREGON WILD, an Oregon non-profit
Corporation,

Plaintiff,

v.

MICHAEL C. CONNOR, in his official
capacity as Commissioner of
the Bureau of Reclamation,

Defendant,

Cv. No. 09-185-AA

FIRST SUPPLEMENTAL
COMPLAINT

CLAIM ONE: Operating the Rogue River Project without completing
the ESA's § 7(a)(2) consultation with NMFS for ESA threatened
coho salmon

I. INTRODUCTION

1. This claim consists of a citizens' suit by Oregon Wild
(hereinafter "plaintiff") under section 11 of the Endangered
Species Act ("ESA"), as amended, 16 U.S.C. § 1540 (2008). It
seeks relief from the failure of the Commissioner of the Bureau
of Reclamation (hereinafter "Commissioner" or "Reclamation") to
comply with his duty under ESA § 7(a)(2), 16 U.S.C. § 1536(a)(2),

to complete formal consultation with the National Marine Fisheries Service ("NMFS") as to the effect of the Rogue Project operations, including water diversions from both the Klamath River basin and the Rogue River basin upon ESA listed threatened salmon species.

II. JURISDICTION AND RELATED MATTERS

2. Section 11(g) of the ESA, 16 U.S.C. § 1540(g), provides this Court with subject matter jurisdiction over this suit. Additionally, the general federal question statute, 28 U.S.C. § 1331, provides jurisdiction.

3. This Court may provide declaratory relief under either 16 U.S.C. § 1540(g)(1) or 28 U.S.C. § 2201.

4. This Court may provide injunctive relief via its inherent power as a court of equity, as well as under 16 U.S.C. § 1540(g)(1) and also under 28 U.S.C. § 2202.

5. Venue is proper in this Court under 28 U.S.C. § 1391(e) and Local Rule L.R. 3.4(a) because of the location of defendants' activities in Southern Oregon.

6. More than 60 days before the filing of this claim, Michael C. Connor, the Commissioner of the Bureau of Reclamation, ("Reclamation"); Karl Wirkus, the Area Manager for the Pacific Northwest Region of the Bureau of Reclamation and Mr. John Bryson, Secretary of the United States Department of Commerce received the plaintiff's 60-day Notice of Intent to Sue, dated October 20, 2011, and mailed by certified mail, return receipt requested, that same day.

7. Two of the return receipt cards were received by plaintiff's counsel for the service of the Notices of Intent to Sue from Mr. Bryson and Mr. Wirkus, indicating their receipt of the notice. The return receipt card was lost for Mr. Connor, but the United States Postal Service, through their confirming tracking system determined that a Mr. Alfred Addison signed for the notice on October 28, 2011 for Mr. Connor's copy.

III. PARTIES

8. Plaintiff Oregon Wild has individual members who are located throughout Southern Oregon and Northern California.

9. Plaintiff is a non-profit corporation incorporated under the laws of Oregon and has its principal office in Portland, Oregon. Plaintiff exists to educate the public about, and to protect, the natural resources of Oregon. It is an organizational priority of Plaintiff to protect rare species which exist in Oregon. The coho salmon, is one of such species. Moreover, certain members of Plaintiff have developed recreational, professional, and other interests in these fish. Plaintiff members regularly visit the Rogue River basin, along with travels and visits within the Bear Creek, Emigrant Creek, and Little Butte Creek watersheds.

10. Defendant Michael C. Connor is the Commissioner of the United States Bureau of Reclamation.

IV. GENERAL ALLEGATIONS

11. Plaintiff and its members are injured in fact, adversely affected and aggrieved by the defendants' violations of

the Endangered Species Act. Injury to Plaintiff and its members is ongoing in nature. Plaintiff's and its members' injuries would be redressed by this court granting the relief plaintiff seeks.

12. The Rogue Project contains a number of dams, irrigation canals, laterals and diversions. Reclamation directs operations of these canals, laterals and diversions through various statutory authority and contracts with various water users. These operations include the diverting, storing and delivering of water.

13. Among fish species that exist in areas where water is diverted by the Rogue Project are the ESA listed threatened Coho Salmon (Oncorhynchus kisutch). Specifically, these fish exist throughout tributaries of the Rogue River. Also, these fish exist in the Klamath River downstream of where water is removed by the Rogue Project.

14. On May 6, 1997, the Secretary of Commerce announced the listing of the Southern Oregon/Northern California Coasts (SONCC) Ecological Significant Unit (ESU) of coho salmon as threatened under the Endangered Species Act. On June 18, 1997 the Southern Oregon/Northern California Coasts (SONCC) Ecological Significant Unit (ESU) of coho salmon was included in the ESA list of threatened species. 62 Fed. Reg. 33038-33039. Later the ESA's section 4(d) rule became effective for the Southern Oregon-Northern California ESU coho salmon ("coho salmon" or "salmon").

15. On May 5, 1999, critical habitat was designated for the

Southern Oregon/Northern California Coasts (SONCC) Ecological Significant Unit (ESU) of coho salmon. 64 Fed. Reg. 24049 et sec.

16. In August 2003, Reclamation issued a Biological Assessment entitled "Biological Assessment on Continued Operation and Maintenance of the Rogue River Basin Project and Effects on Essential Fish Habitat under the Magnuson-Stevens Act", No. I-15-04-F-004, hereinafter ("BA").

17. In the 2003 BA, Reclamation determined that the ESA listed salmon or their critical habitat are likely to be adversely affected by the continuing operation of the Rogue Basin Project in the South Fork of Little Butte Creek (BA; pp. 132, 137 & 140).

18. Generally, Reclamation's action degrades summer temperatures, fish passage, and baseline hydrology in the Little Butte Creek and Bear Creek watersheds.

19. The United States Fish and Wildlife Service, ("USFWS"), as early as 1993, and since then, has suggested to Reclamation that it initiate consultation on these inter-basin diversions.

20. In its March 31, 2004 Biological Opinion regarding Operation of and Maintenance for the Rogue River Basin Project, regarding non-anadromous ESA listed fish and other ESA listed species, responding to the BA, the U.S. Fish and Wildlife Service stated: "NOAA Fisheries must address any potential impact of the Proposed Action on listed anadromous fish."

21. Reclamation also determined that the ESA listed salmon

or their critical habitat are likely to be adversely affected by the continuing operation of the Rogue Basin Project in many of the other upper tributaries of the Rogue River, including among others, Emigrant Creek and Bear Creek. 2003 BA; pp. 133-141).

22. Reclamation itself had determined that the ESA listed salmon, specifically "fry, juvenile, and smolt life stages," or "critical habitat" for the salmon are likely to be adversely affected by the continuing operation of the Rogue Basin Project in Bear Creek stream sections upstream of its confluence with Jackson Creek. (BA; pp. 134, & 139).

23. Oregon Wild had most recently filed suit against Reclamation in February of 2009.

24. Out of the 2009 lawsuit came a legal commitment, in the form of a Settlement Agreement, for Reclamation to complete and submit to NMFS its updated Biological Assessment by October 16, 2009.

25. Further, in agreement with NMFS, NMFS agreed to complete its Biological Opinion on the submitted Biological Assessment by March 1, 2010.

26. While Reclamation almost produced its BA on time, the subsequent Biological Opinion has never been issued.

27. NMFS has issued at least two draft jeopardy opinions, but has never committed to finalizing those opinions.

28. Plaintiff, in the Settlement Agreement preserved its right to reopen the case in the event that the deadlines were not met.

29. Reclamation continues much of the same acknowledgment of possible harm by the Project to the ESA listed salmon in its 2009 BA. Further, the diversions under the proposed action would be unchanged from those that were occurring when critical habitat was designated in 1999 and would be no different from those that currently occur. As a result, the quantity of water in the South Fork of Little Butte Creek, Dead Indian Creek, and Antelope Creek would be unchanged from the current condition.

30. Reclamation in its 2009 BA only suggests minimum flows for Emigrant Creek based on the type of water year. But, these flows are inadequate flows determined by NMFS for at least the median and high water year scenarios.

31. Reclamation has conceded:

Take of coho salmon may occur at the Project diversions on Bear Creek, Ashland Creek, and Antelope Creek. Site specific information about possible take is not available at the sites so case-by-case assessment cannot be done. Any take that may occur would be expected to be minor as the sites are or would be screened to meet criteria for fish protection. While the use of the ramping rate protocol to govern some operations of Emigrant Reservoir is expected to improve conditions for coho salmon, some minor take is possible as coho salmon may be stranded to some degree during reservoir shutdown.

2009 BA, p. 172.

32. Reclamation further finds as to ramping rates:

As a result, take may occur in Emigrant Creek when flows are reduced at the at the end of the irrigation season or following flood control releases.

Id. at 168

33. And Reclamation finds:

Even though current and prospective facilities would meet the current passage and protection criteria, the possibility that take of outmigrants, in the form of harm, may occur when they encounter the diversion dams, fish screens and

bypasses, and ladders cannot be discounted.
Id. at 170.

34. "Take" is defined under the Endangered Species Act as an adverse effect. Consequently Reclamation has determined that the proposed action may affect, and is likely to adversely affect (MA/LAA), the SONCC coho salmon. This is because the possibility of minor amounts of take at properly screened diversions cannot be ruled out completely.

35. Potential stranding may occur associated with the fall shutdown of Emigrant Reservoir resulting in a potential take. Short-term construction effects may occur, but Construction activities would be scheduled to occur during the ODFW-established in-water work period to avoid and minimize effects.
Id. at 172-173

36. NMFS noted that Reclamation failed to address minimum survival flows anywhere in the Project but in Emigrant Creek. NMFS May 27, 2011 Draft Biological Opinion, ("Draft Bi. Op."), p. 49. Critical flow, which is associated with the minimum best science available flow, is the flow at which a change in entrapment potential increases and is often identified by visual inspection of flow versus wetted area or wetted perimeter relationships. Id. at 81.

37. The issue is that even the few minimum flow values proposed by Reclamation in its BA are not sufficient, as those are predicted minimums of 3 cfs (Median years) and 6 cfs (High years) for flows downstream of Emigrant Dam. These same low

flows are refuted by NMFS as needing to be 10 cfs (changed from 20 cfs in January, 2012) (Median year) and 12 cfs (changed from 25 cfs in January, 2012) (High Year). Id. at 139.

38. In January, 2012 the NMFS reduced these incidental take flows, which were the best available science at the time, by over fifty percent (50%) for flows related to average and dry years, at the Emigrant Creek and the South Fork of Little Butte Creek measuring sites. While still reduced, the likely median flows remain above any flows that Reclamation proposed in the 2009 BA.

38. Reclamation has determined that the ESA listed salmon, specifically "upstream migrating and spawning fish" or "critical habitat for this life stage" are likely to be adversely affected by the continuing operation of the Rogue Basin Project in mainstem Bear Creek. (2003 BA; pg. 142).

39. Further, NMFS in its latest findings have determined:

After reviewing the status of SONCC coho salmon and its designated critical habitat, the environmental baseline for the action area, the effects of the proposed action, and cumulative effects, NMFS concludes that the proposed action is likely to jeopardize the continued existence of SONCC coho salmon and likely to destroy or adversely modify designated critical habitat(s).
Draft Bi. Op. at 133.

40. NMFS has stated in its draft recovery plan for this species on January 5, 2012 the following: "Upper Rogue River coho salmon population is at a moderate risk of extinction." Coho Recovery Plan on the Upper Rogue Basin, Page 32-9; and,

The greatest factor limiting recovery of coho salmon in the Upper Rogue River is the lack of suitable rearing habitat for juveniles. The processes that create and maintain such

habitat must be restored by restoring flow, increasing habitat complexity within the channel, restoring off-channel rearing areas, and reducing threats to instream habitat. Id. at 32-24 (chapter 32).

41. Reclamation has violated and is violating the consultation provision of the ESA, section 7(a)(2), 16 U.S.C. § 1536(a)(2), which requires federal agencies to evaluate their actions with respect to any listed ESA species in Reclamation's continued operation of various facilities it owns and operates through the Rogue River Basin Project.

42. For the threatened coho salmon existing in the Rogue River Basin, Reclamation has failed to complete formal consultation with the National Marine Fisheries Service under section 7(a)(2) of the ESA, 15 U.S.C. § 1536(a)(2).

CLAIM 2: RECLAMATION VIOLATED AND IS VIOLATING 16 U.S.C. § 1538(a)(1) BY TAKING ESA LISTED THREATENED SONCC SALMON SINCE JANUARY 21, 2012 BY NOT DELIVERING WATER TO THE ROGUE STREAMS WHILE ALLOWING LOWER PRIORITY STORAGE AND DIVERSIONS:

43. Plaintiff reasserts and incorporates by reference paragraphs 1-5, 7-15 and 27.

44. This second claim consists of a citizens' suit by Oregon Wild (hereinafter "plaintiff") under section 11 of the Endangered Species Act ("ESA"), as amended, 16 U.S.C. § 1540 (2008). It seeks relief from the Commissioner's actions which cause the flows in the various occupied waterways and tributaries of the Rogue River (occupied habitat) to not meet the NMFS's minimum best science flows for these designated habitats [fish harm].

45. Reclamation does not have an incidental take statement

for its Rogue River Project operations.

46. Without a Biological Opinion and its related Incidental Take Statement for the Rogue River Project operations, any take of ESA listed coho salmon by Reclamation is unlawful under § 9(a)(1)(B) of the Endangered Species Act. 16 U.S.C. § 1539(a)(1)(B).

47. More than 60 days before the filing of this claim, Michael C. Connor, the Commissioner of the Bureau of Reclamation, ("Reclamation"); Karl Wirkus, the Area Manager for the Pacific Northwest Region of the Bureau of Reclamation and Mr. John Bryson, Secretary of the United States Department of Commerce received the plaintiff's 60-day Notice of Intent to Sue, dated November 16, 2011, and mailed by certified mail, return receipt requested, that same day.

48. The return receipt cards were received by plaintiff's counsel for the service of the Notices of Intent to Sue from all of the noticees listed in paragraph 48, indicating their receipt of the notice.

49. Reclamation, through its operation of the Rogue Project, has almost complete control over the quantity and timing of water flows, storage, reservoir levels, and inter-basin transfers in many parts of the Rogue Basin, including: Emigrant Reservoir, Emigrant Creek, Bear Creek, and the South Fork of Little Butte Creek.

50. The Reclamation's diversion and retention of substantial quantities of water for irrigation has left

inadequate supplies of water for the threatened salmon's survival and winter migration.

51. Inadequate instream water severely diminishes the various streams' ability to provide the requisite spawning and protection for migrating and juvenile SONCC coho salmon.

52. As a result of low flow, mortality rates increase, producing a negative impact on the future numbers of mature SONCC salmon, and the speed of the species' recovery is substantially halted.

53. Water storage systems can affect the listed salmon and their habitat, especially when such systems divert water out of one watershed habitat area and into another watershed or impound water that would otherwise provide essential portions of the instream flows supporting salmon and their critical habitat.

54. SONCC Salmon are found throughout the Rogue River Basin but rely heavily on the South Fork of Little Butte Creek, and depend on other creeks such as Bear Creek and other creeks nearby to achieve the species ultimate recovery.

55. The best science to date calculates minimum flows in various tributaries of the Rogue River to prevent harm to the SONCC Salmon. This science is based on the necessary depth and stream protections of the tributaries, as the Rogue River SONCC salmon migrate up and down these tributaries.

56. NMFS has said the following about these critical flows:

Reclamation's proposed action identifies minimum flows within the action area, but these are limited. These minimum flows (2 to 6 cfs) are identified within the Emigrant Creek reach only. The proposed action did not

specify minimum flow operating constraints for any other reach within the action area. As a result, NMFS draws on information developed by Reclamation for its 2003 BA ... and flow data from the Oregon Department of Water Resources (OWRD 2010) to estimate the Project's effects on stream flows into the future.

Draft Bi. Op. at 49.

57. Because of more precise studies and modeling, these Best Science flows were modified for certain hydrological conditions by the NMFS on January 17, 2012. Other than for Emigrant Creek, none of the high water year Best Science flows were modified.

58. Even the modification of the flows that has occurred are only for the months of February and March. As NMFS stated:

NMFS believes implementation of these flows in Emigrant Creek and South Fork Little Butte Creek from now until March 31 is likely to minimize adverse effects from the project while we complete consultation on the future operations and management. This conclusion is based on the shorterterm nature of the proposal.

NMFS January 17, 2012 letter, p. 1.

59. The remaining Best Science Flows remain unchanged for both Bear Creek and the South Fork of Little Butte Creek.

60. These flows are currently reported as Recommended and Prudent Flows in the Draft Bi. Op.

61. River width plays a factor in setting these flow values; generally flow setting points are just downstream of diversion or storage facilities (except on the South Fork of Little Butte Creek).

62. NMFS says the following about these flow values:

Instream flow adjustments are required to reduce the adverse effects of the proposed action [table no. excluded]. These flow adjustments are intended to provide flows that

better optimized SONCC coho salmon spawning, incubation, and summer and winter rearing habitat. ... In other words, we have incorporated simulated modeled stream flows based on historic operations where they provided adequate habitat.

...
NMFS considered instream flow needs and concludes during the non-irrigation season Reclamation's authority to deliver flow from Emigrant Dam, when combined with downstream flow accretions, should achieve the identified instream flows. ... NMFS thinks this is a reasonable approach recognizing that historical practices reflect the operation of state water law on water withdrawals intended to meet users' needs while avoiding waste of water.
Draft Biological Opinion, May 27, 2011, pg. 136.

63. In discussing the minimum flows requested, NMFS specifically noted one critical area for salmon survival by stating:

[B]ecause the Little Butte Creek watershed is a core population area for SONCC, providing high protection for fish habitat was favored over minimizing efforts on project purposes.
Id. 136.

64. NMFS further states:

NMFS anticipates the implementation of this RPA for the Rogue River Basin Project will result in take in the form of harm and harassment to SONCC coho salmon individuals. ... [A]nd this anticipated harm will occur within the Rogue River portion of the area.
Id. at 166.

65. Reclamation flows in these same salmon bearing tributaries do not meet the current best science flows for the months of January, 2012, (High Water Year); and likely for both February, 2012 and March, 2012 (for both High and Median Water Years, should the Bureau revise the current High Water Year designation).

66. These Best Science flow values are as follows:

Highest Elev. - Lowest Flows (narrowest bed width) Emigrant Creek
Downstream Of Dam (all flows in cfs):

High Water Year

November BASF 25

December BASF 25

January BASF 25 (Revised to 12 on 1/18/12)

February BASF 25 (Revised to 12)

March BASF 25 (Revised to 12)

Bear Creek Downstream of Oak St. Diversion

Median Water Year

High Water Year

Nov. BASF 25

Dec. BASF 35

Jan. BASF 35

Jan. BASF 35

Feb. BASF 30

Feb. BASF 30

Mar. BASF 20

Mar. BASF 25

Bear Creek Downstream of Phoenix Diversion

Median Water Year

High Water Year

Nov. BASF 40

BASF 40

Dec. BASF 55

BASF 55

Jan. BASF 65

BASF 65

Feb. BASF 65

BASF 65

Mar. BASF 65

BASF 65

Id. at 138-139 (emphasis/shading added to show non-compliance).

67. The above reflect NMFS's best available science minimum flows currently.

68. Further, the flows which are dependent on water not being transferred from the Little Butte Creek watershed to ultimately the Emigrant Creek watershed are the flows in the South Fork of Little Butte Creek.

69. The only way to prevent take in the South Fork of Little Butte Creek is to prevent both impoundments and transfers, as described below.

70. The diversions and impoundments that affect flows in the South Fork of Little Butte Creek are as follows:

1. the Dead Indian Creek Diversion Dam;
2. the Conde Creek Diversion Dam;
3. the Conde Creek and Dead Indian Collection Canal;
4. the Upper South Fork Little Butte Creek Diversion Dam;
5. the Upper South Fork Little Butte Creek Collection Canal;
6. the Pole Bridge Creek Diversion Dam;
7. the Daley Creek Diversion Dam;
8. the Daley Creek Collection Canal; and,
9. the Beaver Dam Creek Diversion Dam.

71. Each of these when they are operated, and cause the flow in the South Fork of Little Butte Creek to be less than 85 cfs (the best available science stream flow) at the Gilkey (GILO) monitoring station is an ESA take.

72. Further, at any time between December 31, 2011 and March 1, 2012, any transfer of water out of the South Fork of Little Butte Creek basin through the Deadwood Tunnel or any other conduit which would cause any reduction to flow in the South Fork of Little Butte Creek to be at a rate less than 85 cfs (the best available science stream flow minimum) at the (GILO) monitoring station is a take.

73. This take occurs through harm or harassment of the ESA listed SONCC salmon, and thus is a violation of section 9.

74. As of January 30, 2012 the combined storage in Howard Prairie, Hyatt, and Emigrant reservoirs was 80,198 cu. ft. This value is sufficiently high to keep the water year as a High Water Year.

75. After February 29, 2012 this minimum take avoidance flow will increase to 110 cfs.

76. During and before the serving of Plaintiff's Notice of Intent to Sue, Reclamation had failed consistently to meet any of the minimum Best Science flows for the South Fork of Little Butte Creek at the GILO monitoring station.

77. These Best Science Minimum Flows (in cfs) are:
Median Water Year (Not applicable yet).

Feb. BASF 85 (Revised to 25)
Mar. BASF 110 (Revised to 55)

High Water Year

Nov. BASF 30
Dec. BASF 30
Jan. BASF 85
Feb. BASF 85
Mar. BASF 110

78. On January 9, 2012 the physical structure of the Upper South Fork of Little Butte Creek Diversion and Impoundment was observed.

79. At this diversion structure it was observed that due to the differing elevations of the outflow structures, this structure physically diverts all upstream water flow to the South Fork of Little Butte Creek diversion canal and prevents any flow to the South Fork of Little Butte Creek until such time that the flow into the diversion structure is so great as to allow some spill over flow into the channel of the South Fork of Little Butte Creek.

80. Reclamation has failed to place any structures in this diversion facility to permit the flows to go directly into

the South Fork of Little Butte Creek, thus continuing to divert most of the water away from the South Fork of Little Butte Creek, and from its coho salmon critical habitat.

81. NMFS does not have a formal rule defining "harm" or "harassment," but in the NMFS discussion of what it considers "harm" or "harassment" it restates the harm definition in 50 C.F.R. 17.3. And for "harass", NMFS says it means:

an intentional or negligent action that has the potential to injure an animal or disrupt its normal behaviors to a point where such behaviors are abandoned or significantly altered. Draft Bi. Op., p. 166.

82. As cited in their document:

NMFS has not adopted a regulatory definition of harassment under the ESA. The World English Dictionary defines harass as "to trouble, torment, or confuse by continual persistent attacks, questions, etc." The U.S. Fish and Wildlife Service defines "harass" in its regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. 50 CFR 17.3. The interpretation we adopt in this consultation is consistent with our understanding of the dictionary definition of harass and is consistent with the U.S. Fish and Wildlife interpretation of the term.
Id. at n. 13.

83. Reclamation's failure to deliver water, through impoundment or transfer, in sufficient stream flow quantities in December 2011- March 2012, and beyond, prevents the best available science for SONCC salmon minimum flows.

84. Therefore, the take of listed SONCC salmon is occurring and will continue to occur when flows drop below the best science available flows known to both NMFS and the Bureau

and is a violation of section 9 of the ESA.

85. As of the date of this filing, the high water year, Best Science minimum flows for the Gilkey, ("GILO station"), monitoring station are not being met (25 cfs existing vs. 85 cfs required).

86. Further, the Dead Indian Creek-Conde Creek Diversion continues to divert flows from the South Fork of Little Butte Creek watershed as of the date of this filing.

87. This take, in the form of harm or harassment, is not providing sufficient water resources for the migrating salmon and spawning salmon at critical periods in their life cycles and at locations where best science minimum stream flows are recognized as the best science available to determine stream flows that will not harm or harass the Rogue River SONCC salmon.

88. Throughout the 60 day notice period, Reclamation's continued allowance of storage and transfer of water without first meeting its deliveries to the Rogue River tributaries of minimum flows at any of the following locations, South Fork of Little Butte Creek near Gilkey (GILO station), Bear Creek just downstream of the Phoenix Diversion, Bear Creek just downstream of the Oak Street Diversion, and continues to be a take under section 9 of the Endangered Species Act.

89. Thus Reclamation is violating the ESA section 9 by "harming" or "harassing" salmon through its continued failure to deliver water to the Rogue River tributaries, specifically Little Butte Creek, Emigrant Creek, and Bear Creek in the amounts

required by the best science available.

DEMAND FOR RELIEF

Wherefore, plaintiff prays for relief as follows:

1. The Court declares that the Bureau of Reclamation, has violated section 7(a)(2) of the Endangered Species Act, and have unlawfully failed to complete formal consultation with the National Marine Fisheries Service as to the effects that the operation and maintenance of the Rogue River Basin Project by Reclamation have on the ESA listed SONCC coho salmon;
2. That the Court enjoin the defendant from allowing the storage or diversion of water from either the Klamath River Basin or the Rogue River Basin, until Reclamation completes formal consultation regarding the Rogue River Basin Project Operations.
3. That the Court issue a mandatory injunction ordering the defendant by a date certain to complete formal consultation with the National Marine Fisheries Service on the effects that the diversion of both Rogue and Klamath water and other Rogue River Basin Project operations have on ESA listed SONCC coho salmon species;
4. That the Court issue a mandatory injunction ordering defendant to abide by all minimum best science flows announced by NMFS and to modify all diversion structures so that flows from those structures must

divert water preferentially to the South Fork of Little Butte Creek until such time as the NMFS directed minimum best science available flow can be constantly met at the Gilkey flow station;

5. That the Court issue a mandatory injunction ordering defendant to abide by all minimum best science flows announced by NMFS and to modify all diversion structures so that flows from those structures must be operated to maximize water flow in Bear Creek near Ashland Creek (just downstream of the Phoenix Diversion) until such time as the NMFS minimum best science available flow can be constantly met at that respective Reclamation flow station;
6. That the Court issue a mandatory injunction ordering defendant to abide by all minimum best science flows announced by NMFS and to modify all diversion structures so that flows from those structures must be operated to maximize water flow in Bear Creek near the town of Talent (just downstream of the Oak Street Diversion) until such time as the NMFS minimum best science available flow can be constantly met at that respective Reclamation flow station;
7. As a part of any declaratory judgment, or mandatory injunction issued by the Court, the Court award plaintiff's costs of litigation, including reasonable attorney fees and expert witness fees incurred herein;

and,

8. Such other relief as the Court may deem just and equitable.

Dated this 7th day of February, 2012.

s/ William C. Carpenter Jr.
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