

1 UNITED STATES COURT OF APPEALS

2
3 FOR THE NINTH CIRCUIT

4
5 **Docket 24-5275**

6 **Case 1:24-cv-01291-MC**

7 **Case 3:24-cv-00755-JR**

8 **David White, Pro Se**

9 18965 NW Illahe St,

10 **Portland OR.**

11 dave@salmonprotectiondevice.com

MOTION NOT FRIVOLOUS

12
13 **vs.**

14
15 **Defendant 1. (D1)**

16 **Dave Coffman, as geoscientist**

17 dcoffman@res.us

18 **Resource Environmental Solutions, (RES)**

19 **Corporate Headquarters – Houston**

20 **6575 West Loop South, Suite 300**

21 **Bellaire, TX 77401**

22 **713.520.5400 x6134**

23 **Defendant 2. (D2)**

24 **Mark Bransom in his capacity as Chief Executive Officer of**

25 **Klamath River Dam Renewal Corp. (KRRC)**

26 info@klamathrenewal.org

27 **Defendant 3 (D3)**

28 **Klamath River Renewal Corporation**

29 **2001 Addison Street, Suite 317**

30 **Berkeley, CA 94704**

31 **Phone: 510-560-5079**

32
33

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34 **(D3)**

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1) 18 USC 3 accessory after the fact.

2) 16 USCA § 1532(19); see also Goble, D. D.; George, S. M.; Mazaika, K.;

3) Scott, J. M. & Karl, J. (1999) "Local and national protection of
endangered species: An assessment," *Environmental Science & Policy*, 2,
pp. 43-59.

4) 18 U.S. Code § 41 - Hunting, fishing, trapping; disturbance or injury on
wildlife refuges.

5) The Endangered Species Act of 1973,

<https://www.fws.gov/laws/endangered-species-act/section-11>

6) 18 U.S.C. § 1001 False Statements, Concealment.

7) 29 CFR § 1606.8 (1) – Harassment Has the purpose or effect of creating
an intimidating, hostile or offensive working environment.

8) 28 U.S. Code § 4101 The term "defamation" means any action or other

1
2 proceeding for defamation, libel, slander, or similar claim alleging that
3
4 forms of speech are false, have caused damage to reputation or
5
6 emotional distress, have presented any person in a false light, or have
7
8 resulted in criticism, dishonor, or condemnation of any person.

9
10 9) 33 U.S.C. §1251 et seq. (1972) Clean water act Section 404.

11
12 10) 29 CFR § 1606.8 (1).

13
14 11) 28 U.S. Code § 4101.

15
16 12) 22–451 June 28th, 2024 Loper Bright Enterprises v. Raimondo and
17
18 Relentless, Inc. v. Department of Commerce.

19
20 https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

21
22 13) 29 CFR § 1606.8 (1).

23
24 14) 28 U.S. Code § 4101.

25
26 15) Judges Code of Conduct, Canons 2 and 3;
27 [https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)
28 [judges](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)

29
30 16) Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002): Pagtalunan
31
32 was Pro Se and made numerous mistakes in filing his complaint resulting
33
34 in the case being dismissed. However, upon appeal, the higher Court
35
36 ruled that the lower Court was in error because they did not give allowance
37
38 for Pagtalunan’s lack of legal training.
39

BACKGROUND

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6
7 This appeal is not frivolous. Plaintiff filed case 3:24-cv-00755-JR against
8
9 the Defendants for severely damaging the environment in the Klamath
10
11 Basin. Defendants' legal counsel filed pleadings which were untruthful and
12
13 misleading use of case law and federal law. The final decision of the judge
14
15 was not based on the merits of the case facts. Rather, it was based
16
17 only on Defendants; filing which is disqualified as illegal by 12) 15) and 16)
18
19 above.

20
21 Plaintiff is advised by a team of 3 professionals, also volunteering, pro se.

22
23 One is a 40-year retired, Federal Attorney, expert in the application of
24
25 Federal and Case law, environmental law in particular. Another is an
26
27 investigative journalist, providing legal research and serving as Legal Editor
28
29 for all Court Documents.

30
31 Because of the urgent threat to human and animal life, we also then
32
33 proceeded to file a Class Action Complaint against the Federal Energy
34
35 Regulatory Commissioners, in their personal capacity. Case 1:24-CV-1301-
36
37 MC where Appellant uploaded a memorandum of points taken from the
38

1 2018 FERC document, which was the baseline document for the
2
3 Defendants' license, exposing 21 mitigation-related errors. FERC
4
5 ignored our Complaint, losing by default, but the Trial Court Judge
6
7 dismissed it, contrary to Federal Law. It now appears as appeal docket
8
9 24-5811 where we are asking the Appeals Court to rule the 2018 baseline
10
11 document null and void and remove this federal Judge from office for
12
13 violations of 7) 8) 12) 15) and 16) above.

14
15 Also, Defendants legal counsel *was* served the Appeal legally.

16
17 Now with only 10 days remaining for a default win, this Order is made on
18
19 September 25, 2024. Please dismiss this Order and proceed on the normal
20
21 30-day timeline.

22 23 **Conclusion**

24
25 Your honor, this case is far from being frivolous; it is a life and death matter
26
27 that requires your immediate attention. It is KRRC Defendants who have
28
29 used frivolous and false, red herring arguments to divert attention from their
30
31 utter failure to mitigate the environmental disaster they created 120 River
32
33 Miles downstream from the former Iron Gate Dam. Chemical testing of the
34
35 silt behind the dams by the Department of Interior in 2011 revealed levels
36
37 of Mercury 6 and Arsenic a minimum of 40 times the EPA safe level.
38

1 Public testimony warned of this, one doctor in particular who lost his wife by
2
3 arsenic poisoning and claimed to be flooded with patients suffering the
4
5 same symptoms. Defendants ignored these preliminary findings, contrary
6
7 to the Scientific Method.

8
9 Rather than being first dredged and heat-scrubbed on-site, Defendants
10
11 released the sludge/silt all at one time in January 2024. This highly toxic
12
13 silt now covers both sides of the Riverbank to the Pacific Ocean. By
14
15 contrast, defendants performed a sham test claiming no poison
16
17 whatsoever. They have now attempted to cover up their crime by simply
18
19 planting grass – grass that will be eaten by unsuspecting deer & elk,
20
21 eventually to be consumed along with contaminated fish by humans. As a
22
23 life-long Chemical Engineer, with expertise in hydrology and advanced
24
25 statistics, I am telling you unequivocally that both sides of the Klamath
26
27 River bank need to be scraped and heat-scrubbed to mitigate this assault
28
29 on both human and wildlife in the Klamath Basin. That's why we need the
30
31 Court's help to release the \$30 million dollars, which is being denied by
32
33 well-meaning, but scientifically naïve, lower court judges.

34
35
36
37 Rulings requested

- 38
39 1. This case is not frivolous.
40

- 1 2. An emergency Injunction is requested to turn over Defendants'
2
3 license to salmonprotectiondevice.com with all remaining funds so
4 an experienced team of qualified scientists can begin immediate
5
6 mitigation of the environmental mess created by Defendants. The
7 lethal threat to the environment and to human life in the Klamath
8
9 Basin demands immediate action, which we first requested in early
10
11 May, 2024, almost five months ago that could have saved the
12
13 dam. Instead, the town of Klamath is now vulnerable to being
14
15 decimated by flooding, as it was in the Columbus Day Storm of
16
17 1964, just before the Iron Gate Dam was installed.
- 18
19 3. The public record filed above meets the requirement of Rule
20
21 201(b)(2) of the Federal Rules of Evidence. Therefore, Plaintiff
22
23 respectfully requests that the Appeals Court grant this request for
24
25 an injunction to immediately put a stop to the environmental
26
27 damage and deadly threat to human and wildlife created by
28
29 Defendants' criminal negligence.
- 30
31 4. Additionally, Plaintiff has clearly demonstrated that this Court does
32
33 in fact have jurisdiction over this case because FERC is *not* a
34
35 defendant, contrary to the false claims of Defendants made to
36
37 distract the Court from the vital issues at stake! Simple logic and

1
2 rules of evidence, not to mention the litigants named in the
3
4 Complaint Caption, lead to this obvious conclusion.

5
6 5. Appellant moves the Appeals court to award Appellant the \$30
7
8 million which was sought in the Complaint.

9
10 6. Remove Judge Russo and Judge Nelson for using illegal
11 administrative law to over-rule clear Federal law. They violated
12 items 12) 15) and 16) above.

13
14 6. Adjudicate defendants to the FBI for prosecution of killing fish and
15
16 wildlife and willful violation of the Federal Clean water act.

17
18
19
20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on September 25, 2024, a true and correct copy of the
22 above document was electronically filed with the Clerk of the Court using
23 CM/ECF. A copy of the document will be served upon interested parties via
24 the Notices of Electronic Filing that are generated by CM/ECF. Additionally,
25 a courtesy copy is being provided as follows:

26
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5

6 Via hand delivery7 Via U.S. Mail, 1st Class,

8 Postage Prepaid

9 Via Overnight Delivery10 Via Facsimile11 Via Email12 Via CM/ECF notification

13 to the extent registered DATED: September 25th, 2024.

14 By: David White

15

16



17

18 David C. White Pro Se. September 25th, 2024.

19