

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF OREGON  
3 PORTLAND DIVISION

4 **Climate Change Truth Research**  
5 **Inc. DBA Salmon Protection**  
6 **Device.**  
7 **dave@salmonprotectiondevice.com**

**Case**  
**COMPLAINT FOR**  
**DECLARATORY**  
**JUDGEMENT,**  
**INJUNCTIVE RELIEF,**  
**AND DAMAGES**

8  
9 **v.**  
10 **Amy van Saun, as President**  
11 **NORTHWEST ENVIRONMENTAL**  
12 **DEFENSE CENTER,**  
13 **Betsy Gaines Quammen as**  
14 **president of WILDEARTH**  
15 **GUARDIANS, and Mark**  
16 **Sherwood as Executive Director**  
17 **NATIVE FISH SOCIETY,**  
18

**JURY TRIAL REQUESTED**

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19  
20 **Attorneys for Defendants**  
21 **Kaitlyn Poirier**  
22 **United States Department of Justice**  
23 **Environment & Natural Resources Division**  
24 **Ben Franklin Station**  
25 **P.O. Box 7611**  
26 **Washington, DC 20044**  
27 **Michael R. Eitel**  
28 **United States Department of Justice**  
29 **Environment & Natural Resources Division**  
30 **Ben Franklin Station**  
31 **999 18th Street, South Terrace, Suite 302**  
32 **Denver, CO 80202**

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34 **Attorneys for defendants.**  
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## TABLE OF AUTHORITIES

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WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.

<https://www.hsph.harvard.edu/news/features/the-supreme-court-curbed-epas-power-to-regulate-carbon-emissions-from-power-plants-what-comes-next/>

Article 11 of the US constitution.

Artl.S8.C3.7.1.

## INTRODUCTION

Cause of Action.

Artl.S8.C3.7.1 Overview of Dormant Commerce Clause

1. The Dormant Commerce Clause involves not federal power to act but the restrictions on state power that are inherent in the Commerce Clause. There is no actual “Dormant Commerce Clause” found in the Constitution. Rather, the restrictions on state action have been inferred by the Supreme Court from the Commerce Clause.
2. You will recall that in *Gibbons v. Ogden*, 9 Wheat. 1 (1824), the issue involved a state-granted monopoly that conflicted with a federal licensing law for the operation of steamboats. Ogden’s New York monopoly, according to the Court would render the federal law impotent in New York, and therefore the Supremacy Clause required the Court to enforce the federal law.
3. Article 11 of the US constitution provided the federal government and states can’t have tort actions filed against them. This does not apply to this tort action because the defendants are individuals.
4. Title.-This Act may be cited as the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001”.

## Background

The Willamette Project is a large network of 13 dams and related facilities on various tributaries in the Upper Willamette River basin. The Willamette Project was constructed beginning in the 1940s to provide flood control, municipal and agricultural water supply, and hydroelectric power to the Willamette Valley. The dams most relevant to this case are located in the Middle Fork Willamette River, McKenzie River, South Santiam River, and North Santiam River subbasins. Dexter, Lookout Point, Hills Creek, and Fall Creek Dams are in the Middle Fork Willamette River subbasin; Cougar and Blue River Dams are in the McKenzie River subbasin; Green Peter and Foster Dams are in the South Santiam River subbasin; and Detroit and Big Cliff Dams are in the North Santiam River subbasin.

All these dams are very old, but that is irrelevant. The fish ladders don't work because silt buildup behind the dam is now above the fish ladder intake.

This is also a violation of Oregon law ORS 496.705 Damage suits for unlawful killing of wildlife. The wrong action on Green Peter Dam caused thousands of fish to die.

## Relief Sought

1. Vacate the erroneous ruling in 18-cv-00437-HZ which was based on incomplete and misguided scientific analysis
2. Pay dredging costs behind Green Peter and the other dams affected by 18-cv-00437-HZ This cost is estimated to be around \$30 million per dam.

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January 5<sup>th</sup> 2024.

### **Executive Summary**

Contrary to recent legal rulings, science, properly understood, strongly suggests that manmade dams are not in fact causing depletion of Salmon populations on the Columbia River and its tributaries. A closer look at the recent judicial decision to remove the Columbia River Dam is a tragic example of misinterpretation of scientific data. The issue deserves a second look, with a much greater diversity of public and scientific testimony before draconian measures are implemented.

A ruling regarding the Green Peter Dam is now leading toward similar tragic results. In recent years' casual observers had noted an increase in turbidity in the upstream reservoir. Turbidity is the opaque, cloudy appearance due to suspended dirt particles, which constitutes the key test of water quality. Again, a team of pseudo-scientists convinced a local federal judge, based on incomplete science, that the only way to reduce the turbidity was to dramatically reduce the water level and allow the reservoir to refill with clean water from upstream or rain.

Only three problems with that solution. First, the dramatic lowering in water level, reduced the oxygen content to the point that most of the fish in the reservoir died off. Second, the water level was too low to generate electricity for the nearby town of White Salmon and others. Third, the lower water level caused the mud banks of the reservoir to slough off resulting in more turbidity. The obvious, but overlooked solution was a fairly routine dredging operation to remove accumulated silt at the upstream base of the dam.

The manuscript used was published in a predatory journal with a woke chief editor who operates on a scientific belief system instead of an open mind scientific system.

Chapter 15 in the High School Textbook published March 2024. CRM emails went to National Science Teachers association, Beaverton School District Teachers and Oregon Education email weekly for it.

Predatory Journals are a Fabrication.

1

2 The American Meteorological Society (AMS), Plus One Journal and the  
3 Nature Climate Change (NCC) Journals started the predatory journals list  
4 website to distract from what the AMS and Plus One and the NCC are  
5 doing. These AMS, Plusone and NCC journals charge thousands of dollars  
6 to publish manuscripts based on jaundiced science, and then perform  
7 prejudiced peer reviews. Their chief editors operate on a “belief” system  
8 based on political narratives and not the climate science issues.

9

10 For example, if a manuscript doesn't match their belief system, then it won't  
11 go to peer review. These journals also have a very high publishing rate.  
12 They almost always publish everything the chief editor allows to be peer  
13 reviewed. Also, their impact factors (the benchmark for journal  
14 effectiveness) are typically lower than the so-called predatory journals.

15

16 Predictably, the predatory journals list maligns many good journals, like the  
17 respected International Journal of Chemical Engineering. These journals  
18 generally charge lower rates in the range of \$300 to \$500 to publish a  
19 manuscript. Furthermore, they usually have higher impact factor scores  
20 than the AMS, Plus One or NCC journals. The Predatory Journals chief  
21 editors, like myself, function with an open-minded, scientific review system.  
22 That's what actual scientists do and teach their students to do as well.

23

24

25 In short, bad analysis and application can ruin otherwise good science.  
26 Almost always the problem is due either to a downstream predator or  
27 mismanagement of upstream habitat. In the case of the Columbia River  
28 Dam it's recognizing that Sea Lions account for 50% to 70% of the  
29 problem. In the case of the Green Peter Dam 70% to 90% of the issue is  
30 upstream habitat improvement.

31

32 The Federal Judge's ruling in 18-cv-00437-HZ on the Green Peter River is  
33 based on incomplete or misleading science. The published manuscript the  
34 judge relied on correctly identified the issue, but the proposed solution was  
35 faulty and is making the issue much worse.

36

## 1 **Article**

2 One simple alternative is the construction of 5 Salmon Protection Devices  
3 to keep the Sea Lions from ambushing the Salmon as they enter the  
4 downstream fish ladder entrances. This is now under consideration by the  
5 Oregon Department of Fish and Wildlife. Initial feedback from Andy  
6 Spyrka, Private Forest Accord Grant Coordinator of the Oregon Dept. of  
7 Fish & Wildlife indicates that the Commission is quite interested in the  
8 proposal.

9 The Corp of Engineers is likewise enthused. Sally Bird-Gauvin, Program  
10 Manager, US Army Corps of Engineers Portland District is currently  
11 reviewing the Section 408 regulation check. She indicates that the project  
12 could be approved in as little as a few months.

13 Trey Fraley, Regulatory Project Manager, U.S. Army Corps of Engineers,  
14 Portland District in Portland, is willing to facilitate a project Joint Permit  
15 Application. He also revealed that the Corp sets aside November to  
16 January each year for this type of project.

17 These are encouraging signs that funding may be available as soon as  
18 March so we will get the drawing Ceded up, bill of materials, and then build  
19 the 30 foot by 10 foot by 20-foot structures made of 316 stainless steel with  
20 6000sf of room for the Salmon to get to safety.

21 The federal Judge's Ruling in 18-cv-00437-HZ is based on faulty and  
22 incomplete science. Images below are from Green Peter Reservoir where  
23 fish are dying due to low water and lack of oxygen. A judge ordered the  
24 Corp to do a fish study with OSU, which will probably be based on the  
25 same illogical reasoning.

26 The City of Sweet Home is suing the Corp. The fish ladder at Green Peter  
27 Dam has been "shut down for quite a while," said a Dam Operations  
28 person. He said "it was too expensive. He also said that they know what  
29 the Federal Judge did is wrong. He also said "the depth of the water is  
30 currently 925 feet and that the fish are alive and the dam is generating  
31 electricity again. Two weeks ago it was down to 800 feet and the fish were  
32 dying because of not enough oxygen with low water level and we couldn't  
33 generate electricity". The low water level is because the silt behind the dam  
34 is so high. He also said the Corp is "netting fish from the upstream side to

1 take them to the lower stream side.” Many fish are dying by being crushed  
2 in the nets. The water level point is at the middle of the dam where it’s  
3 deepest. The images from January 4<sup>th</sup> 2024 are below. Figures 1 to 3  
4 clearly show that the water is very dark because the sides of the canyon  
5 are exposed to rain which is washing more dirt into the water making it  
6 worse, not better.



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8 Figure 1 water height gauge on upstream side of Green Peter Dam.





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2 Figure 2 Perspective from upstream side of Green Peter Dam on how low the water is.



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4 Figure 3 More perspective from upstream side of Green Peter Dam on how low the water is.

COMPLAINT



1 Dave White will be contacting OSU to try to get the preliminary results of  
2 the study. However, it is not essential.

3 Dave White talked with Ivan Arismendi of Oregon State university with his  
4 Sister Susan and Ivan on Speakerphone 541-737-2639. Ivan is part of the  
5 original team with a published manuscript about the dam reservoirs. He  
6 said the findings in the manuscript are that turbidity in the fish ladder water  
7 was killing the fish. To fix this they recommended drawing down the water  
8 and thereby releasing the turbidity. However, Ivan agreed with me when I  
9 noted that the turbidity issue is due to the buildup of sediment on the  
10 upstream side of the dam. When water slows the sediment drops out. We  
11 need to dredge behind each dam to reduce the sediment buildup. The fish  
12 ladders will run with clean fresh water and dredging probably won't be  
13 required for at least another 50 years. Far better to remove the sediment  
14 than the dam.

15

16 Most residence of Linn County have dark brown colored water coming out  
17 of their faucets now. Also the Willamette river in Portland is dark brown  
18 colored. Many fish will die because of the high turbidity in the river.

19 The fish ladder on the upstream side of Green Peter dam is at a level of  
20 around 525 feet. With the water lowering to 800 feet the fish were dying.  
21 Therefore, the silt level is somewhere between 525 feet and just below 800  
22 feet.

23 The dredging amount will be around 11 million cubic yards.

## 24 **Conclusion**

25 To improve all salmon and other fish runs, the fish ladders need to be  
26 improved and the sediment build-up behind the dams (from almost 100  
27 years) needs to be dredged up and out. Exhibit one is a quote to dredge  
28 behind Green Peter Dam. The other two dams will cost almost the same. A  
29 Section 408 and Joint Permit Application are underway.

30 Exhibit one.

31 A quote will go here when I get it.

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**THIRD CLAIM FOR RELIEF**

**INJUNCTION**

Vacate the ruling in 18-cv-00437-HZ Which is based on incomplete science.



Respectfully Dated: 01/22/2024  
David White President of Climate Change Truth Inc.  
dba Salmon Protection Device