

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

4 Case 3:24-cv-00755-JR

5 David White, Pro Se  
6 18965 NW Illahe St,  
7 Portland OR.

8 [dave@salmonprotectiondevice.com](mailto:dave@salmonprotectiondevice.com)

9 PLAINTIFF’S RESPONSE  
10 TO DISMISS MOTION  
11 United States Magistrate  
12 Judge Jolie A. Russo

13 vs.

14 Defendant 1. (D1)  
15 Dave Coffman, as geoscientist  
16 [dcoffman@res.us](mailto:dcoffman@res.us)  
17 Resource Environmental Solutions,  
18 Corporate Headquarters – Houston  
19 6575 West Loop South, Suite 300  
20 Bellaire, TX 77401  
21 713.520.5400 x6134

22 Defendant 2. (D2)  
23 Mark Bransom in his capacity as Chief Executive Officer of  
24 Klamath River Dam Renewal Corp.  
25 [info@klamathrenewal.org](mailto:info@klamathrenewal.org)

26 Defendant 3 (D3)  
27 Klamath River Renewal Corporation  
28 2001 Addison Street, Suite 317  
29 Berkeley, CA 94704  
30 Phone: 510-560-5079

31  
32 Legal Counsel for D2 and Klamath River Renewal Corporation (KRRRC),  
33 (D3)

34 **Julia E. Markley**, Bar No. 000791  
35 [JMarkley@perkinscoie.com](mailto:JMarkley@perkinscoie.com)  
36 1.503.704.7554

37 **Megan Kathleen Houlihan**, OSB No. 161273

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 2 **PERKINS COIE LLP**  
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 16 Water and Power Law Group PC  
 17 2140 Shattuck Avenue  
 18 Suite 801  
 19 Berkeley, CA 94704  
 20 Telephone: 510.296.5589  
 21 *Attorneys for Defendants Mark Bransom and*  
 22 *Klamath River Renewal Corporation*

23

24

### **Table of Authorities**

- 25 1)18 USC 3 accessory after the fact.
- 26 2) 16 USCA § 1532(19); see also Goble, D. D.; George, S. M.; Mazaika, K.;
- 27 3) Scott, J. M. & Karl, J. (1999) "Local and national protection of  
 28 endangered species: An assessment," *Environmental Science & Policy*, 2,  
 29 pp. 43-59.
- 30 4) 18 U.S. Code § 41 - Hunting, fishing, trapping; disturbance or injury on  
 31 wildlife refuges.
- 32 5) The Endangered Species Act of 1973,

33

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

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

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

10) Defendants "Motion to Dismiss" shall not be granted FRCP 12( b) (6) because the Plaintiff's complaint is legally sufficient, factual, and the allegations are true as stated in Federal law.

Additionally, The FRCP rules on time do not apply. "Motion to dismiss" for insufficiently stating a cause of action does not hold water,

1 because Plaintiff's brief clearly shows the violation of the FRCP 404,(  
2  
3 Clean water act) which resulted in the death of numerous endangered  
4  
5 species.  
6  
7  
8

9 **Background:**

10  
11 The schedule Briefing request of Defendants is total nonsense as  
12  
13 described in ECF 27 Response to Joint Motion to Set Briefing Schedule  
14  
15 filed at 1:36 PM PDT and filed on 5/22/2024  
16  
17 ECF 24 Response in Opposition to Joint Motion to Set Briefing Schedule  
18  
19 filed at 10:35 AM PDT and filed on 5/22/2024. Also, in ECF42 which is the  
20  
21 amended version which relates back to ECF 24 date and time by Rule  
22  
23 15.

24  
25 ECF 18 must be denied by Article 3 constitutional law.  
26

27 ECF 37 and 38 must also be denied. Plaintiff will file a Pleading against  
28

29 these. ECF 18, 37 and 38 amount to 18 U.S.C. § 1001, 29 CFR § 1606.8  
30

31 (1), 28 U.S. Code § 4101.  
32

1 ECF 31 MEMORANDUM OF POINTS (FERC document) 5:07 PM PDT  
2  
3 and filed on 5/24/2024 this amended Pleading relates back to ECF 26  
4  
5 Original MEMORANDUM OF POINTS filed at 1:28 PM PDT and filed on  
6  
7 5/22/2024

8  
9 In the 2018 FEDERAL ENERGY REGULATORY COMMISSION (FERC)  
10  
11 document Item (f) said Defendants must do mitigation of local  
12  
13 stakeholder's concerns prior to taking out 1 dam. The local stakeholders  
14  
15 concerns are items 24 to 30 in the 2018 FERC document.  
16

17 May 2<sup>nd</sup> 2024 Chemistry test.

18 [https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-  
19 5055&optimized=false](https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-5055&optimized=false)

20  
21 Defendants chose 10 samples from river mile (RM) 234 (above J.C. Boyle  
22  
23 Dam) downstream to RM 110 (Happy Camp). This is 124 river miles,  
24  
25 certainly not a statistical value. Also in their document there exists no  
26  
27 indication of how the samples were taken. As an example, a sample taken  
28  
29 from the middle of the river which has been continually washed will yield  
30  
31 much cleaner results than a silt laden shore location 2 feet in from the

1  
2 river's edge. The latter would be more representative of the concentrations  
3  
4 blowing in the wind from the dried silt.

5  
6 [https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-](https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-5054&optimized=false)  
7 [5054&optimized=false](https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-5054&optimized=false)

8  
9 Plaintiff spoke with Matt Robert of Camas LLC who said all he knows is the  
10  
11 samples were taken with “standard protocol”.

12  
13 February, 2024 KRRC report page 9 table 3 in 20240531-5300. This shows  
14  
15 1 million five hundred forty-six thousand metric tons below Iron Gate dam  
16  
17 from the release of sediment on January 23, 2024. The United States  
18  
19 Environmental Protection Agency is considering this location for a  
20  
21 superfund cleanup.

22  
23 Klamath River near Klamath, CA (USGS 11530500) 1/1/2024 – 2/29/2024

24  
25 1,546,786  
26

1 Also, the required section 404 permit (paragraph, page 15) was not applied

2  
3 for or received in:

4 [https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-](https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-5054&optimized=false)  
5 [5054&optimized=false](https://elibrary.ferc.gov/eLibrary/docfamily?accessionnumber=20240603-5054&optimized=false)

6 181 FERC ¶ 61,122

7 UNITED STATES OF AMERICA

8 FEDERAL ENERGY REGULATORY COMMISSION

9  
10 Before Commissioners: Richard Glick, Chairman;

11 James P. Danly, Allison Clements,

12 Mark C. Christie, and Willie L. Phillips.

13  
PacifiCorp

Project Nos. 2082-063  
14803-001

Klamath River Renewal Corporation  
State of Oregon  
State of California

14  
15 ORDER MODIFYING AND APPROVING SURRENDER OF LICENSE AND  
16 REMOVAL OF PROJECT FACILITIES

17  
18  
19 **Page 15 Section 3. The Corps' Section 404 Permit**

20  
21 Section 404 of the CWA requires authorization from the Secretary of the

22  
23 Army, acting through the Corps, for the discharge of dredged or fill

1  
2 material into all waters of the United States, including wetlands. The  
3  
4 Renewal Corporation has applied to the Corps for a permit that would  
5  
6 authorize the placement of approximately 212,000 cubic yards of  
7  
8 permanent or temporary fill material within 20 acres of jurisdictional waters  
9  
10 in the Klamath River. The Renewal Corporation's section 404 permit  
11  
12 application remains under the Corps' consideration. Pursuant to Ordering  
13  
14 Paragraph (K), land-disturbing activities subject to the Corps' jurisdiction  
15  
16 under CWA **section 404 may not begin until the Corps has issued a**  
17  
18 **permit authorizing such activities.**

19  
20 This "The Renewal Corporation's section 404 permit application remains  
21  
22 under the Corps' consideration) is 18 U.S.C. § 1001 False Statements,  
23  
24 Concealment.  
25



1 No such section 404 permit application has been filed with the Army Corps  
2  
3 of Engineers. This is a well-documented case fact with proof below.

4  
5 Email from CESPAN-RG-Info <[CESPAN-RG-Info@usace.army.mil](mailto:CESPAN-RG-Info@usace.army.mil)>

6  
7 Dear Mr. White,

8  
9 You may view Pending and Final Individual Permits issued by this Office  
10  
11 using our USACE Jurisdictional Determinations and Permit Decisions Web  
12  
13 viewer (<https://permits.ops.usace.army.mil/orm-public>). The project you're  
14  
15 looking is likely the green dot northeast of Yreka. We recommend  
16  
17 reaching out to the Klamath River Renewal Corporation regarding any  
18  
19 permits issued to them.

20  
21 If you would like to request copies of our records related to specific permit  
22  
23 actions, you are welcome to do so through our FOIA process. Unlike other  
24  
25 agencies, FOIA requests are made directly to the District and usually have  
26  
27 a quick turnaround. To access instructions, please visit the San Francisco  
28  
29 District's FOIA webpage at

1  
2 <https://www.spn.usace.army.mil/Library/Freedom-of-Information-Act/>. The  
3  
4 webpage provides instructions and examples to walk you through the FOIA  
5  
6 process. The three key items to include in your electronic FOIA request  
7  
8 would be:

9  
10 1) a subject line reading "Freedom of Information Act Request;"  
11  
12 2) a description of the records providing sufficient detail to allow the FOIA  
13  
14 office to locate them with a reasonable amount of effort; and 3) a statement  
15  
16 that you are willing to pay the applicable fees. The request should be sent  
17  
18 to San Francisco District's FOIA Coordinator, Cassidy Holmes.  
19

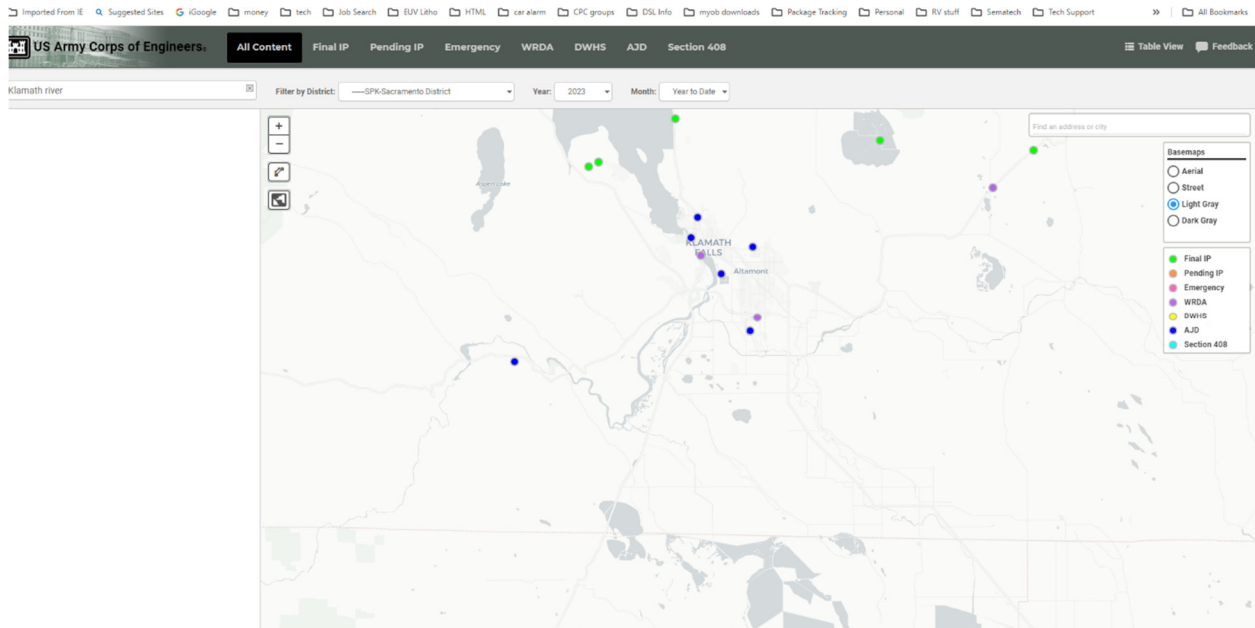
20 USACE, San Francisco District  
21 450 Golden Gate Ave., 4th Flr.  
22 San Francisco, California 94102-3404  
23 415-503-6813  
24

25 Plaintiff, following Court protocol sent D23LC a Discovery email about an  
26  
27 Army Corps of Engineers section 404 permit! No response to date from  
28  
29 Defendants through D23LC about this.

30  
31 In short, Defendants don't have a Section 404 or 408 Permit from army  
32  
33 Corp of Engineers!  
34

1 <https://permits.ops.usace.army.mil/orm-public>

2  
3 **Even searching all Districts and all years there exists no Section 404**  
4 **permit or pending application for Klamath River Dam Removal.**  
5  
6



7  
8  
9  
10 By contrast, Plaintiff has submitted a Section 404 application to put five  
11  
12 salmon protection devices on the Bonneville Dam's fish ladders which will  
13  
14 restore the Columbia River salmon runs within seven years. Our funding  
15  
16 from OWEB and NOAA fisheries is under review.

salmon protection  Filter by District: - All Districts - Year: 2024 Month: Year to Date

BACK TO SEARCH RESULTS

Request ID	408-NWP-2024-0005
Request Name	0276-FY24-Salmon Protection Device
Status	Waiting for Feedback
Civil Works Projects	BONNEVILLE LOCK AND DAM-LAKE BONNEVILLE
Review Category	Single-Phase Review
Reg Permit Id	
Initial Submission Date	01/03/2024
Last Submission Date	

The map displays a river system with several towns labeled: Camas, Washougal, and Bridal Veil. Numerous colored markers (red, yellow, green, blue, purple) are scattered along the river, indicating project locations. A black location pin is visible on the right side of the map.

1

2

3 This section 404 was applied for on 1/3/2024 and has not yet been

4

5 approved. Defendants haven't even filed an application!

6

7

8 Email and Microsoft Teams consulting with FERC Danielle Mechling.

9

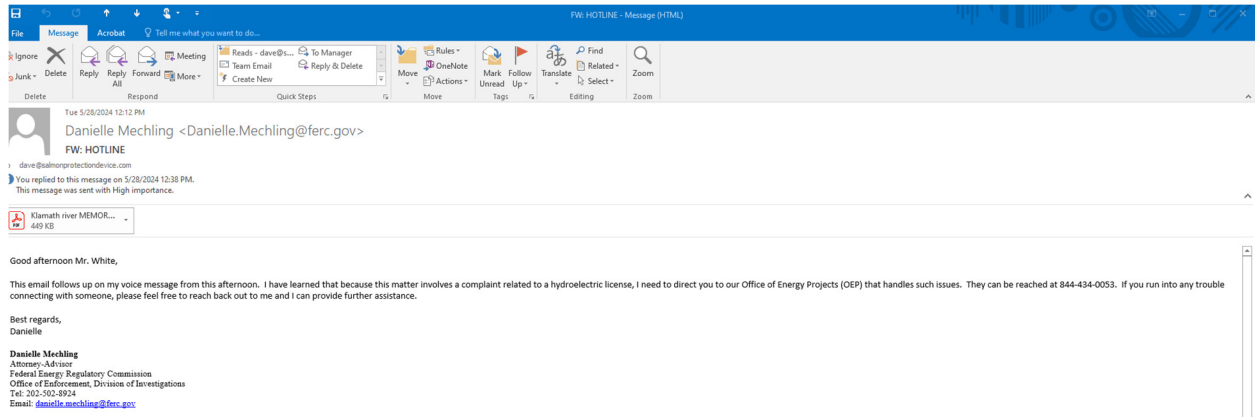
10 The dockets themselves (Docket Nos. P-14803 and P-2082) can be viewed

11

12 at eLibrary | General search (ferc.gov) by entering the docket number and

13

14 filtering by the date.



1  
2 Good afternoon Mr. White,  
3  
4 This email follows up on my voice message from this afternoon. I have  
5  
6 learned that because this matter involves a complaint related to a  
7  
8 hydroelectric license, I need to direct you to our Office of Energy Projects (  
9  
10 OEP) that handles such issues. They can be reached at 844-434-0053. If  
11  
12 you run into any trouble connecting with someone, please feel free to reach  
13  
14 back out to me and I can provide further assistance.

15  
16 Best regards,

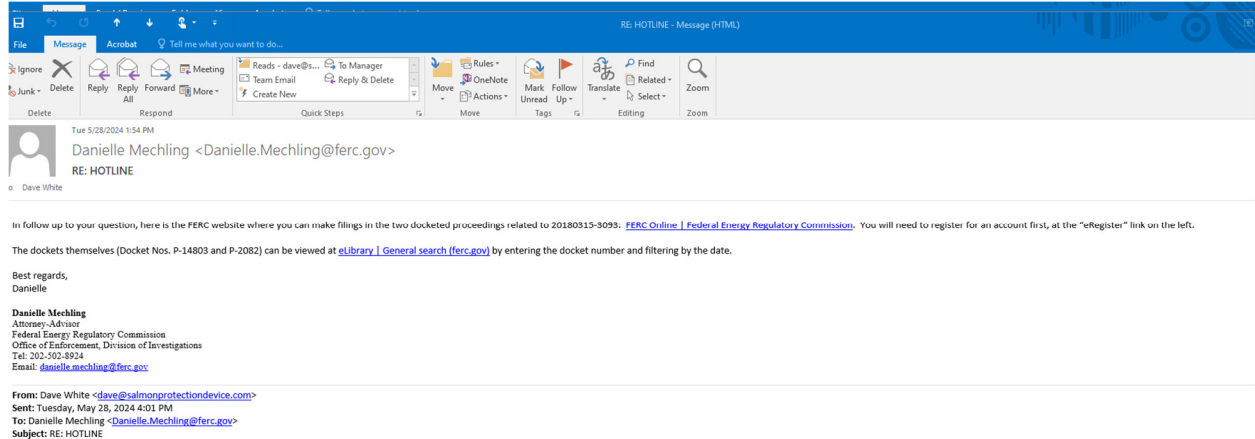
17 Danielle

18  
19 Danielle Mechling

20 Attorney-Advisor

1 Federal Energy Regulatory Commission  
 2 Office of Enforcement, Division of Investigations  
 3 Tel: 202-502-8924  
 4 Email: [danielle.mechling@ferc.gov](mailto:danielle.mechling@ferc.gov)

5



6

7

8 In follow up to your question, here is the FERC website where you can

9

10 make filings in the two docketed proceedings related to 20180315-3093:

11

12 FERC Online | Federal Energy Regulatory Commission. You will need to

13

14 register for an account first, at the "eRegister" link on the left.

15

16 The dockets themselves (Docket Nos. P-14803 and P-2082) can be viewed

17

18 at eLibrary | General search (ferc.gov) by entering the docket number and

19

1 filtering by the date.

2

3 Best regards,

4 Danielle

5

6 Danielle Mechling

7 Attorney-Advisor

8 Federal Energy Regulatory Commission

9 Office of Enforcement, Division of Investigations

10 Tel: 202-502-8924

11 Email: [danielle.mechling@ferc.gov](mailto:danielle.mechling@ferc.gov)

12

13

14

15

### **Executive Summary**

16

17 Case 3:24 –CV-00755-JR is legally correct and includes a request for an

18

19 injunction to stop defendants' illegal activity of removing the Klamath River

20

21 dams. Not only did Defendants not file the 404 request, they deceived the

22

23 public by claiming that they did. This is a crime in progress, which

24

25 demands the Court's immediate response. The law is unequivocal – The

1 Court must provide injunctive relief immediately to prevent further criminal  
2  
3 action and ensure that justice is served. Plaintiff has now factually  
4  
5 demonstrated that defendants have no permission or authorization to  
6  
7 remove any dam on the Klamath River, based on two valid federal laws. In  
8  
9 effect, they are committing vandalism on a massive scale in broad daylight,  
10  
11 resulting in irreparable harm to the environment, wildlife, and private  
12  
13 property.

14  
15 1. No adequate mitigation has been accomplished and therefore over  
16  
17 2000 fish and a herd of elk were killed without permits. Defendant  
18  
19 confessed to this crime in the OPB article submitted with the original  
20  
21 complaint. Far worse, sludge water released from the Iron Gate Dam in  
22  
23 January killed all aquatic life in the 60 miles from the dam to the Pacific  
24  
25 Ocean and destroyed all estuaries. If the Iron Gate dam is removed this  
26  
27 damage will recur on an annual basis and be irreparable. Also, arsenic and  
28  
29 Chromium 6 blowing in the atmosphere has endangered the entire region.  
30



1 The May, 2024 chemistry test by defendants is bogus, with no description  
2  
3 of methodology.

4  
5 2. No Army Corps of Engineers Section 404 permit was applied for by  
6  
7 Defendants, contrary to their untruthful statement that it had been  
8  
9 submitted and approved. This is deliberate falsification. This was another  
10  
11 requirement in 2021 final FERC document which relates back to the 2018  
12  
13 FERC document according to FERC Attorney.

### 14 15 **EPA complaint filed.**

16 1. [Report Environmental Violations](#)

17  
18 2. Report Environmental Violations - Submitted

19 Your report has been successfully sent. Your confirmation is below.

## 20 **Report Environmental Violations -** 21 **Submitted**

22 Thank you for submitting information on a possible environmental violation. The  
23 information will be reviewed by EPA enforcement personnel.

24 This notice will be the only response you will receive regarding your submission. Due to the  
25 sensitive manner in which enforcement information must be managed by EPA, we cannot  
26 provide status reports or updates regarding any submission we receive through the Report  
27 Environmental Violations form.

28 [Back to Report Environmental Violations page](#)

## 29 **Report Confirmation**

Received	Jun 5, 2024 at 11:26pm EDT
----------	----------------------------

Your Name	Dave White
Your Email	dave@salmonprotectiondevice.com
Your Phone Number	5036087611
Suspected Violator's Name *	Klamath River Renewal Corp
Suspected Violation Location (Address) *	18965 NW Illahe St
Suspected Violation City *	Portland
Suspected Violation State *	California
Suspected Violation ZIP Code *	unk
Responsible Party	Company
Is the suspected violation still occurring?	No
Date of Incident	Jun 5, 2024
Characterized incident as:	
Intention *	Intentional
Violation Method *	Release
Affected Subject(s)	Water
Violation Description *	<a href="https://www.siskiyou.news/2024/03/09/anyone-remember-the-1964-klamath-river-flood/">https://www.siskiyou.news/2024/03/09/anyone-remember-the-1964-klamath-river-flood/</a> .,There is no debate that the release of about 5-million metric yards of sediment from Iron Gate Dam on January 23, 2024 virtually killed all aquatic lifeforms in the Klamath River all the way to the coast. ,Defendant 2. (D2),Mark Bransom in his capacity as Chief Executive Officer of Klamath River Dam

	Renewal Corp. ,info@klamathrenewal.org,Defendant 3 (D3),Klamath River Renewal Corporation,2001 Addison Street, Suite 317,Berkeley, CA 94704,Phone: 510-560-5079
File(s) Uploaded	No files uploaded.

1  
2  
3 It is of vital importance to remind the Court that Plaintiff is not suing FERC  
4  
5 for the many egregious errors in the FERC document. Rather, Plaintiff is  
6  
7 suing KRRC for approving such a flawed document followed by their  
8  
9 amateur, botched attempts to comply with the overall mitigation goals of the  
10  
11 document. These include failure to provide fencing and killing thousands of  
12  
13 fish during the absurd drawdown procedure and January release of the  
14  
15 resulting sludge water to destroy all aquatic life forms downstream.  
16

### 17 **End of Executive Summary**

18  
19 Conclusion:

20  
21 "Motion to Dismiss" must not be granted FRCP 12(b) (6) because the  
22  
23 Plaintiff's complaint is legally sufficient, factual, and the allegations of  
24  
25 irreparable harm that cannot be remedied by monetary means are true as  
26  
27 stated in Federal law. The only just satisfaction is an immediate stop work

1 order.

2

3 Additionally, The FRCP rules on time do not apply. "Motion to dismiss" for

4

5 insufficiently stating a cause of action is groundless, because Plaintiff's

6

7 brief clearly shows the violation of the FRCP 404, (Clean water act, 33

8

9 U.S.C. §1251 et seq. (1972)) which resulted in the death of numerous

10

11 endangered species and destruction of their natural habitat. Defendants

12

13 confessed to killing these endangered species in a Press Conference.

14

15 Two valid and compelling reasons have been provided as to why the

16

17 Preliminary Injunction in ECF five must be granted by the Court if justice is

18

19 to be served.

20

21 Many well documented issues as to why Defendants have zero permission

22

23 to remove any Klamath River Dams.

24 1. No required (by FERC) mitigation was done by Defendants prior to  
25 removing any dam.

26 2. Section 404 permit from The Army Corp of Engineers was required  
27 by FERC and not obtained by Defendants.

1 3. The utter failure of mitigation permitting an Exxon-Valdez level  
2  
3 environmental catastrophe already to occur, now being investigated  
4  
5 by the EPA.

6  
7 4. The deceptive cover-up of defendant's failure to apply for Army Corp  
8  
9 of Engineers Section 404 permission.

10  
11 How can the Court possibly continue to allow this travesty of justice to  
12  
13 unfold before our very eyes in broad daylight?

14  
15 Plaintiff is in the process of applying for a section 404 permit to expedite  
16  
17 the transfer with permission to repair the two dams, which normally takes  
18  
19 about 6 months. Plaintiff has assembled a team of expert scientists,  
20  
21 engineers and attorneys who are standing by to take over this fiasco.

22  
23 Also, if enough money remains, to repair the two remaining dams and  
24  
25 install a fish ladder on Iron Gate Dam. Therefore, along with the injunction  
26  
27 all the funds for this failed and illegal project including trust accounts shall  
28  
29 be transferred to the non-profit Salmon Protection Device for remediation  
30  
31 and repair.

32  
33 Defendant's pleadings are nonsense and abuse of the law. The merits of  
34

1 the case are so crystal-clear it is compelling to let the injunction for  
2  
3 declaratory relief proceed unhindered. Defendants have no legal right to  
4  
5 perpetrate this vandalism.

6  
7 We have demonstrated that overwhelming case merits are in Plaintiffs  
8  
9 favor. Therefore, the Honorable Federal Judges Nelson and Russo have no  
10  
11 legal standing to deny ECF five (Preliminary Injunction) any longer. By  
12  
13 proceeding expeditiously, the Court will pave the way for the Federal  
14  
15 Bureau of Investigation (FBI) at request of the Federal Prosecutor in  
16  
17 Portland, and the Environmental Protection Agency (EPA) to complete their  
18  
19 investigation of this crime in progress.

20  
21 Thank You

22 David C. White Pro Se. 6/09/2024

23  
24  
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on June 9, 2024, a true and correct copy of the above  
27 document was electronically filed with the Clerk of the Court using  
28 CM/ECF. A copy of the document will be served upon interested parties via  
29 the Notices of Electronic Filing that are generated by CM/ECF. Additionally,  
30 a courtesy copy is being provided as follows:

31  
32 Attorneys for Defendants Dave Coffman, Mark Bransom and  
33 Klamath River Renewal Corp.  
34 Julia E. Markley, OSB No. 000791

1 JMarkley@perkinscoie.com  
2 Megan K. Houlihan, OSB No. 161273  
3 MHoulihan@perkinscoie.com  
4 1120 N.W. Couch Street, Tenth Floor  
5 Portland, Oregon 97209-4128  
6 Telephone: +1.503.727.2000

7

8  Via hand delivery

9  Via U.S. Mail, 1st Class,

10 Postage Prepaid

11  Via Overnight Delivery

12  Via Facsimile

13  Via Email

14  Via CM/ECF notification

15 to the extent registered DATED: June 9, 2024.

16 By: David White

17