



# Northwest Resource Information Center

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**On January 14, 2016, Northwest Resource Information Center, Eagle, Idaho, filed suit in the Ninth Circuit Court of Appeals challenging the Northwest Power and Conservation Council's 2014 Fish and Wildlife Program. NRIC is represented by Earth Justice.**

The Council's 2014 Program was formally adopted in March 2015. The NRIC suit basically argues:

- a) The 2014 Program illegally perpetuates the Council's 35 year-long refusal to fulfill its duty to develop a program to restore Snake River salmon decimated by the Federal Columbia River Power System;
- b) The Council abdicated its duty by defaulting to an Endangered Species Act Biological Opinion which has been serially rejected by the federal court, and which is intended to prevent extinction, not produce the full restoration required by the Northwest Power Act that created the Council;
- c) The Council's Program was improperly influenced by Bonneville Power Administration paying hundreds of millions of ratepayer dollars to states and tribes to secure their support for the fiction that the BiOp "satisfies" the much greater salmon restoration requirement of the Northwest Power Act.

## Background

The Army Corps of Engineers ignored the law requiring that the four dams on the lower Snake River in southeastern Washington (completed 1960-1975) be designed to safely pass salmon produced in the vast pristine headwaters of the Snake River Basin. Disaster happened. This was the "urgent priority" that drove Congress to embed strong salmon restoration measures in what is commonly called the Northwest Power Act of 1980.

The Act required the Council to within 60 days request agencies and tribes to submit recommendations, give them 90 days to submit, and using existing information, within one year produce a plan to restore salmon and fisheries devastated by the Federal Columbia River Power System while maintaining an adequate, efficient, economical and reliable power supply.

The Council refused to do its job. Consequently, ten years later Snake River salmon had been driven onto the List of Endangered Species.

In 1994 NRIC filed suit against the Council for refusing to do its job. The Ninth Circuit held that the Council had improperly capitulated to economic interests and failed in its duty; it ordered the Council back to the drawing board. The Council feinted as if it would comply with the court order, then returned to business as usual. The plight of Snake River salmon worsened.

Operating without political oversight or a public watchdog, the Council eventually dropped all pretense of discharging its independent duty under the Power Act. In its 2009 Program the Council changed its job description to that of a regional facilitator, and turned the fate of Snake River salmon over to the federal agencies responsible for driving them onto the List of Endangered Species. The ESA BiOp became the Council's program for the federal hydrosystem.

The Council acknowledges that the BiOp measures aren't intended to fulfill the salmon restoration mandate of the Act (indeed, the BiOp can't even pass legal muster to avoid *jeopardy of extinction*). No matter, Council members collaborated with Bonneville Power Administration to use roughly a billion dollars in federal funds via Columbia Basin Fish Accords to "encourage" states and tribes to support the fiction. The Council rejected NRIC's request that its members tainted by the payoffs recuse themselves from voting on what became the 2014 Program. It rejected NRIC's request that the Council inform the public that the fix was in prior to the public comment period on the draft Program.

Thirty five years after the salmon restoration provisions of the Power Act became law, after spending billions of ratepayer and taxpayer dollars, and with Snake River salmon on the List of Endangered Species, the Council in its 2014 Program still refused *to even identify* what changes in the hydrosystem are necessary to achieve the Snake River salmon restoration intent of the Act.

The 2014 Fish and Wildlife Program and the Council's regional power plan (now being amended), which includes the Program, are based on the continued virtual destruction of Snake River salmon.

### Consequences

The Council's persistent refusal to do its job has produced an ongoing ecological, economic and social disaster of epic proportions throughout the migratory range of Snake River salmon extending 700 miles inland and thousands of miles along the Pacific Coast. It is very difficult not to notice that it's all happening in plain sight; many have made the necessary effort.

The ecological damage ranges the gamut from depriving ESA-listed bull trout and a multitude of other freshwater organisms of critical marine-derived nutrients 700 miles inland, to impoverishing ESA-listed killer whales by denying them a critical food resource. ESA-listed sea lions and nesting cormorants preying on inconsequential numbers of ESA-listed salmon are killed in a grotesque "salmon protection" public relations scam while Bonneville and the Corps of Engineers slaughter ESA-listed Snake River salmon by the millions at the four dysfunctional lower Snake River dams with the Council's blessing and support.

Hundreds of millions of ratepayers' dollars have been deliberately wasted on no- to low-priority "salmon habitat enhancement projects" to create a smokescreen for the scofflaw Snake River salmon killing behavior of Bonneville, Corps and NOAA Fisheries.

The Council's regional energy plan/portfolio, based in large part on the virtual destruction of Snake River salmon, produces what is arguably the most ecologically and socially destructive and economically costly energy supply in the Nation.

All this ecological, economic and social damage comes at a cost of hundreds of millions of public dollars for Council salaries and expenses and a purported total cost of \$13.75 billion in federal funds to date.

Meanwhile, the market, nudged by the Northwest Power Act, since 1978 has produced savings of almost 5,800 average megawatts which now represents the second largest resource in the Northwest after hydropower. The Council says the region can meet nearly all its power demand over the next 20 years with energy efficiency and voluntary reductions in use during peak demand. By 2035, energy efficiency will be nearly the size of the hydrosystem. Several coal-fired power plants will be retired in the foreseeable future. Regional electrical rates, already among the lowest in the Nation, are projected to go down in the future.

Snake River salmon, however, are on the List of Endangered Species, and the Council in its 2014 Fish and Wildlife Program intends to keep them there.