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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

**MICHELE DEHART, THOMAS  
BERGGREN, JEROME MCCANN,  
MARGARET FILARDO, DAVID  
BENNER and HENRY FRANZONI,**

Civil No.

**COMPLAINT**

Plaintiffs,

*(Bivens action for violation of Plaintiffs'  
First and Fifth Amendment Rights; 42  
U.S.C. § 1985(2))*

vs.

**BONNEVILLE POWER  
ADMINISTRATION, and STEPHEN  
WRIGHT, Administrator, Bonneville  
Power Administration (in his individual  
capacity),**

DEMAND FOR A JURY TRIAL

Defendants.

## **I. Introduction**

1. This case concerns overt retaliation perpetrated by a federal agency and individual federal officials against the Plaintiffs, who were all employed at the Fish Passage Center (“FPC” or “Center”) in Portland, Oregon. Plaintiffs have been the victims of a conspiracy designed to prevent them from gathering, assessing, analyzing, publishing, or otherwise communicating important information concerning the impacts of dam operations and water flow on fish in the Columbia and Snake River Systems. The information that has been the subject of the Plaintiffs’ work is relied upon by Tribal and State Governments, this Court, and members of the public who live or recreate on or near the Columbia and Snake River Systems.

## **II. Jurisdiction**

2. This case arises under the United States Constitution and federal statute. Jurisdiction of this Court is established pursuant to 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction to review the actions of the Defendant Bonneville Power Administration (BPA) pursuant to Administrative Procedures Act, 5 U.S.C. § 702. Finally, the right to sue federal officials in their individual capacities for violations of rights granted by the United States Constitution has been established by the U.S. Supreme Court. *See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

## **III. Venue**

3. Venue lies in this United States District Court under 28 U.S.C. § 1391(b) and (c) by virtue of the fact that both Defendants reside and/or operate in this judicial district, and the conduct complained of herein occurred and/or resulted in injury to the Plaintiffs in this judicial district.

#### IV. Parties

##### A. Plaintiffs

4. Michele DeHart is Manager of the FPC and has worked there since 1984. Prior to being promoted to Manager, Ms. DeHart worked at the FPC as a staff biologist. Ms. DeHart is currently a resident of Oregon.

5. Thomas Berggren is a Biometrician and has worked at the FPC for twenty years. Mr. Berggren has contributed to the efficiency and reliability of the Center data by analyzing smolt-to-adult survival rates for marked salmonids and has worked with data generated in Smolt Monitoring Program and Comparative Survival Study. He is a resident of Oregon.

6. Margaret J. Filardo has been a Biologist/Analyst at the FPC for nineteen years. She supervises three staff positions and acts as FPC manager in Michele DeHart's absence. She has been involved in many analyses of adult and juvenile salmonids over the years. Ms. Filardo is a resident of Oregon.

7. David Benner is the FPC Natural Resource Data Analyst/Hydrologist. He has worked at the FPC for over four years and has a Master's degree from Oregon State University, and a Bachelor's degree from University of Oregon. Mr. Benner is a resident of Oregon.

8. Jerome McCann is a resident of Oregon. Mr. McCann has a Master's Degree in Fishery Science from Colorado State University. He worked as a research fish biologist for the U.S. Fish and Wildlife Service (USFWS), at the Columbia River Research Laboratory, in Cook, Washington for 2 ½ years. Subsequently, Mr. McCann began working for the FPC as a Fishery Biologist/Data Analyst. He has worked at the FPC in this capacity since 1995.

9. Henry Franzoni is resident of Oregon. Mr. Franzoni is a Data System Administrator Manager at the FPC and has been employed at the FPC in this capacity for the past nine years.

**B. Defendants**

10. The Bonneville Power Administration (BPA) is a sub-agency of the United States Department of Energy (DOE). BPA is an agency of the federal government.

11. Stephen J. Wright is the Administrator and Chief Executive Officer of BPA. Mr. Wright is sued in his individual capacity.

**VI. Facts Supporting All Claims**

**A. Background**

12. In the Northwest Power Act, Congress required that the Pacific Northwest Electric Power Planning and Conservation Council (“the Council”) promptly develop and adopt a program to protect, mitigate, and enhance fish and wildlife (“the Fish and Wildlife Program”). 16 U.S.C. § 839b(h)(1)(A). The Act further requires the Council to develop and adopt the Fish and Wildlife Program on the basis of recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers. 16 U.S.C. § 839b(h)(2)-839b(h)(5). Congress also mandated that the Administrator of BPA shall use BPA funds to protect, mitigate, and enhance fish and wildlife “in a manner consistent with . . .the program adopted by the Council under this subsection . . . .” 16 U.S.C. § 839b(h)(10)(A).

13. In 2000, the Council adopted the Columbia River Basin Fish and Wildlife Program (“2000 Program”). In 2003, the Council adopted the Mainstem Amendments to the

Columbia River Basin Fish and Wildlife Program (“2003 Mainstem Amendments”). These documents comprise the Council’s Fish and Wildlife Program.

14. The 2003 Mainstem Amendments expressly call “for the continued operation of the Fish Passage Center” [at 27]. The primary purpose of the FPC “is to provide technical assistance and information to fish and wildlife agencies and tribes in particular, and the public in general, on matters related to juvenile and adult salmon and steelhead passage through the mainstem hydrosystem.” [at 27]. The 2003 Mainstem Amendments require that the “Center shall continue to provide an empirical database of fish passage information for use by the region . . . .” [at 28]

15. The 2003 Mainstem Amendments require that “the Center shall” conduct smolt monitoring; gather, analyze and make available monitoring and research information related to fish passage; provide technical information necessary to assist the agencies and tribes in formulating in-season flow and spill requests; and generally provide technical assistance to coordinate recommendations for storage and river operations to avoid potential conflicts between anadromous and resident fish. [at 27-28]

16. The 2003 Mainstem Amendments require that “[o]peration of the Center shall include funds for a manager and for technical and clerical support in order to perform its state functions.” [at 28]

17. In August 2005, the Council recommended that BPA fund the FPC as usual, in the amount of approximately 1.3 million dollars for Fiscal Year 2006.

18. In November 2005, Congress adopted the Energy and Water Development Appropriations Bill for Fiscal Year 2006. Pub. Law 109-103. Specific to the BPA, Congress

states:

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for official reception and representation expenses in an amount not to exceed \$1,500. During fiscal year 2006, no new direct loan obligations may be made.

H.R. 2419-30; PL 109-103. The Appropriations Act does not reference funding for the Fish Passage Center.

19. In a Conference Report, the committee of conference states:

The Bonneville Power Administration may make no new obligations in support of the Fish Passage Center. The conferees call upon Bonneville Power Administration and the Northwest Power and Conservation Council to ensure that an orderly transfer of the Fish Passage Center functions (warehouse smolt monitoring data, routine data analysis and reporting and coordination of the smolt monitoring program) occurs within 120 days of enactment of this legislation.

H.R. 109-275. The Conference Report language specific to BPA and the Center appears nowhere in the adopted Appropriations Act. See PL 109-103.

20. The Conference Report language was inserted at the insistence of BPA Administrator Wright, United States Senator Larry Craig, and hydropower industry employees, representatives, or supporters.

21. In a public statement discussing the Conference Report language, Senator Craig attempted to justify the abrupt non-renewal of the FPC contract by attacking the integrity of the Plaintiffs and their work at the Center. Senator Craig questioned the "FPC's reliability" stating: "Data cloaked in advocacy create confusion. False science leads people to false choices."

*Congressional Record* – Senate, November 14, 2005, p. S12744.

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**B. Facts Specific to Plaintiffs' Claims**

22. On June 10, 2005, this Court granted an injunction which required the BPA to provide spill in the Columbia River Basin Dam System to "...avoid irreparable harm to juvenile fall Chinook and other listed species." *National Wildlife Federation, et. al v. National Marine Fisheries Service*, 2005 U.S. Dist. LEXIS 16352, \*17 (D. Or. June 10, 2005).

23. In providing the injunctive relief requested by the *NWF* Plaintiffs, the Court relied, in significant part, upon FPC data that had been entered into evidence by the *NWF* Plaintiffs and Amici, stating "[a]mple evidence in the record...indicates that operation of the DAMS causes a substantial level of mortality to migrating juvenile salmon and steelhead." *National Wildlife Federation, et. al v. National Marine Fisheries Service*, 2005 U.S. Dist. LEXIS 16352, \*14 (D. Or. June 10, 2005).

24. Specifically, declarations and attachments submitted as evidence in *National Wildlife Federation* contain data or analyses provided by the Plaintiffs, regarding the passage of juvenile salmon at the Columbia River Dam System, including the relationship of water flow and juvenile salmon survival, comments made by the Plaintiffs that there was a need to evaluate higher levels of spill for summer migrants in the Snake River, and concern that reports of increased survival may not be accurate.

25. For example, in the *National Wildlife Federation* litigation, the declarations of experts Robert Heinith, Gretchen Oosterhout, Thomas K. Lorz, and Frederick E. Olney relied significantly upon data and analyses generated and published by the Plaintiffs.

26. The Plaintiffs' analyses and public statements indicating that more spill and/or other protections were needed to insure the survival of certain threatened or endangered fish

species was viewed negatively by the Defendants, segments of the hydropower industry that rely upon water flow in the Columbia and Snake River Systems, U.S. Senator Larry Craig, and various employees and supporters of the hydropower industry.

27. In late June 2005, Sid Smith, a Spokesperson for Senator Craig, was quoted in the *Washington Post* and *Seattle Times* as stating that the FPC was a “controversial and one-sided” agency in its approach to salmon recovery.

28. In a November 10, 2005 Press Release, Senator Craig announced “Idaho’s water should not be flushed away on experimental policies and cloudy, inexact assumptions...I have a duty to make sure that the science and data BPA-and consequently, the public-pays for are the very best, free from bias and agenda’s...The region’s salmon recovery programs will soon be better prepared to make policy decisions based on accurate, reliable data... Cheap electricity has helped make Idaho and the Northwest economy into what it is today.”

29. In a November 30, 2005 news article appearing in the *Washington Post*, Senator Craig is quoted from his November 10 press release stating: “Idaho’s water should not be flushed away on experimental policies based on cloudy, inexact assumptions.”

30. In response to the Plaintiffs’ published data, analyses, assessments and/or statements regarding the need for more spill and/or other protections for fish living in the Columbia and Snake River systems, and this Court’s reliance thereon, the Defendants, hydropower industry employees or representatives, hydropower industry supporters, and Senator Larry Craig and members of his staff planned and initiated actions to retaliate against the Plaintiffs and prevent the further development and publication of information viewed as contrary to the goals of the Defendants and the hydropower industry.



31. On December 29, 2005, in a subsequent decision in the *NWF* litigation addressing a motion for further injunctive relief, the Court stated that “[t]he most recent information on the benefits of summer spill came from the [FPC’s] count of fish that survived the 2005 summer migration, which involved court-ordered spill. The [FPC’s] count showed that more spill improved the survival rate of salmon passing the dams compared to previous years. The [FPC’s] expertise at gathering such useful data must be replicated for the spring 2006 and beyond. Only with such data can the relative benefits of spill and/or transportation be determined.” *National Wildlife Federation, et. al v. National Marine Fisheries Service*, 2005 U.S. Dist. LEXIS 16352, \*25 (D. Or. December 29, 2005).

32. Further, this Court acknowledged a concern regarding the proposed demise of the FPC. Speaking for the Court, Judge James Redden stated: “I have expressed my concern over the demise of the [FPC]. I have been assured that the BPA is seeking a new group of scientists to perform the same function. The group must have the expertise and reliability that the [FPC] has provided for so many years.” *Id.*

33. The Court’s concern is shared by many other government officials. For example, on July 15, 2005, Washington Governor Christine O. Gregoire wrote “The [FPC] was designed to play a constructive role in the often-heated discussions over management of the Columbia River by providing useful data and analysis on salmon recovery. As the debate has intensified, so have views over the Center’s role and the manner in which it fulfills its function. Nonetheless, it performs a vital role that no other regional participant does...” (Letter from Governor Christine O. Gregoire to Senator Patty Murray, dated July 15, 2005).

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34. On July 20, 2005, eight members of Congress wrote in support of the Plaintiffs' work: "Without the Fish Passage Center, the myriad of federal, state and tribal agencies responsible for Pacific salmon recovery efforts would have to make decisions without valuable information provided by the Center on what works, and does not work, to recover salmon...the FPC provides...unique services...[and] as elected officials, we consult the work of the FPC when making policy decisions." (Letter from Representatives Adam Smith, Earl Blumenauer, Jim McDermott, Darlene Hooley, Jay Inslee, David Wu, Brian Barid and Risk Larsen dated July 20, 2005 to the Subcommittee on Energy & Water Committee on Appropriations).

35. In a letter dated October 10, 2005, the Columbia River Inter-Tribal Fish Commission stated "Every time an investigation of the FPC has been undertaken it has passed with flying colors as have its scientific analyses. Undaunted, the hydro power industry insisted on the establishment of the Fish Passage Center Oversight Board and the Council gave the Oversight Committee carte blanche to examine the operations and analysis of the FPC. In the five years since the Oversight Board was established, the industry has not logged a single complaint. This is information that you are aware of and should be relayed to Congress, the region's governors and the media." (Letter from the Columbia River Inter-Tribal Fish Commission to the Northwest Power and Conservation Council, dated October 10, 2005).

36. Moreover, the day-to-day performance of the Plaintiffs has been exemplary. As the manager of the FPC, Plaintiff Michele DeHart is evaluated by an outside agency. In the last written evaluation Plaintiff DeHart received, dated May 24, 2005, she was given an overall rating of "outstanding." This means that Plaintiff DeHart's work "[e]xceed[ed] standards for all critical

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and most non-critical performance elements.” Plaintiff DeHart’s evaluation for the 2003 – 2004 contract period was also “outstanding.”

37. Similarly, over the past several years, each of the other Plaintiffs have received excellent performance evaluations for their work at the FPC.

## **VII. Plaintiffs’ Claims**

### **FIRST CLAIM FOR RELIEF**

#### **Defendant BPA Violated the Plaintiffs’ First Amendment Rights**

38. Plaintiffs re-allege and restate paragraphs 1 - 37 herein.

39. The Plaintiffs prepared and published data and analyses regarding the impacts of dams on the Columbia and Snake River Systems on various fish species, including species that are threatened or endangered as defined by state laws and/or the Federal Endangered Species Act. The information communicated by Plaintiffs involved a matter of public concern.

40. The Plaintiffs associated and communicated with officials and citizens of Tribal governments and State governments in order to provide information, data, and timely analyses of issues relating to the protection of fish species in the Columbia and Snake River Systems. Defendants perceived Plaintiffs’ associations and communications as being contrary to the hydroelectric power generating interests supported by the Defendants, U. S. Senator Larry Craig and his staff.

41. In retaliation for the Plaintiffs’ publication of data and information regarding the impacts of hydroelectric facilities and equipment upon various fish species and association and communication with Tribal and State government officials, Defendant BPA: (a) refused to renew the annual contract/grant that has supported the work of the FPC and its employees for

approximately 20 years; (b) demoted and/or transferred several Plaintiffs to positions with little or no opportunity to communicate data and analyses to Tribal and State officials or members of the public; and (c) specifically took action to insure that the employment of Plaintiffs Michele DeHart, Margaret Filardo and Thomas Berggren would be terminated. Plaintiffs DeHart, Filardo and Berggren received notice that their positions would be terminated effective March 19, 2006.

42. The harassment and retaliation experienced by the Plaintiffs has been imposed by Defendant BPA in violation of Plaintiffs' First Amendment rights to associate with Tribal and State government officials, persons and organizations presently litigating issues involving the protection of fish and the release of water in the Columbia and Snake River Systems, and members of the general public.

43. In addition, Defendants' actions have violated Plaintiffs' First Amendment rights because their retaliatory actions are intended to severely chill or otherwise eliminate the Plaintiffs' ability to speak on matters of public concern, participate as witnesses in court, or prepare and publish information and analyses that may be used in court or in other public fora.

44. As a direct and proximate result of Defendant BPA's conduct as alleged herein, the Plaintiffs and the public are irreparably harmed and otherwise injured by the Defendants' blatant violation of their First Amendment rights. The Defendants' retaliatory actions have a chilling effect on the Plaintiffs and other fisheries scientists and managers in the region.

45. Pursuant to 42 U.S.C. §1988 and the Equal Access to Justice Act, plaintiffs are entitled to an award of reasonable attorney's fees, expert fees and costs incurred herein.

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**SECOND CLAIM FOR RELIEF**  
**Defendant Wright Violated the Plaintiffs' First Amendment Rights**

46. Plaintiffs re-allege and restate paragraphs 1 - 45 herein.

47. Defendant Wright implemented and/or approved the actions being taken against the Plaintiffs, including the termination of the FPC program. Defendant Wright took these actions not to serve any legitimate administrative purpose or to improve the quality of information or analyses provided regarding fish passage in the Columbia and Snake River Systems, but instead with the intent to eliminate the Plaintiffs' ability to associate and communicate with Tribal and State government officials and persons or organizations involved in litigation concerning fish mortality and passage in the Columbia and Snake River Systems.

48. Defendant Wright knew or should have known that, to date, the Plaintiffs had carried out their duties in the FPC program in a commendable fashion; providing timely and accurate information to members of the public, including information that was utilized and relied upon by this Court.

49. Defendant Wright acted in conspiracy with Senator Larry Craig and his staff, as well as other members or supporters of hydroelectric industry, to prevent the Plaintiffs from associating and communicating with persons and organizations who supported conservation of water resources and protection of fish in the Columbia and Snake River Systems. In furtherance of this conspiracy, Defendant Wright used his power and position as BPA Administrator and Chief Executive Officer to retaliate against the Plaintiffs and prevent them from communicating on matters of public importance in violation of their First Amendment rights. Defendant Wright's actions have resulted in the elimination of the FPC.

50. Defendant Wright's actions have chilled Plaintiffs' speech and associational interests and have caused other scientists who receive funding, directly or indirectly, from BPA to hesitate to come forward with candid information concerning fish passage and related problems in the Columbia and Snake River Systems.

51. As a direct and proximate result of Defendant Wright's retaliatory actions, Plaintiffs have suffered and will continue to suffer economic damages, including but not limited to past and future lost wages, benefits, and out-of-pocket expenses, in an amount to be determined at trial, plus prejudgment interest thereon.

52. As a direct and proximate result of Defendant Wright's retaliatory actions, Plaintiffs have suffered and continue to suffer anxiety, humiliation, depression, emotional distress, damage to their professional reputations, and diminished earning capacity for which each is entitled to an award of compensatory damages in an amount to be determined at trial.

53. Defendant Wright's conduct as described herein was intentional, willful, malicious and reckless. Each Plaintiff is entitled to an award of punitive damages against Wright in his individual capacity.

54. Pursuant to 42 U.S.C. §1988 and the Equal Access to Justice Act, plaintiffs are entitled to an award of reasonable attorney's fees, expert fees and costs incurred herein.

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**THIRD CLAIM FOR RELIEF**  
**Defendant BPA Violated the Plaintiffs' Fifth Amendment Rights to Due Process**

55. Plaintiffs re-allege and restate paragraphs 1 - 54 herein.

56. Plaintiffs have a property interest in continued employment as specifically identified beneficiaries to the contracts issued and funded by Defendant BPA over the last twenty

years. Plaintiffs also had a legitimate expectation of continued employment at the FPC because the existence of their positions is mandated by the 2003 Mainstem Amendments and, as of August 2005, the Council recommended that BPA fund the FPC as usual.

57. In addition, Plaintiffs have a liberty interest in maintaining and preserving their professional reputations. Plaintiffs' liberty interests have been severely damaged as a result of the Defendants' reliance on unsupported allegations unfairly criticizing Plaintiffs' work.

58. Defendant BPA took the actions against the Plaintiffs described herein based upon misinformation, unsupported allegations, and/or innuendo generated by Senator Craig and other hydropower industry supporters concerning the motivations of the Plaintiffs and the quality of their work. Defendant BPA's actions against the Plaintiffs are unsupported by any properly developed administrative record and have not been substantiated by oversight mechanisms that were put in place to review the work of the Plaintiffs.

59. The allegations made against the Plaintiffs asserting, for example, that their work and actions were biased, controversial and one-sided, inaccurate, unreliable, or based upon an agenda have unfairly stigmatized them and damaged their reputations. These unfounded allegations were adopted and/or relied upon by Defendant BPA in deciding to take action against the Plaintiffs.

60. Defendant BPA provided no process whatsoever to allow the Plaintiffs to contest or challenge the allegations made against them or the elimination of their positions. Defendant BPA's failure to provide any means for the Plaintiffs to substantively challenge the allegations against them or the elimination of their positions violated the Plaintiffs' rights to Due Process as provided by the Fifth Amendment.

61. As a direct and proximate result of Defendant BPA's conduct as alleged herein, the Plaintiffs and the public are irreparably harmed and otherwise injured by the Defendants' blatant violation of their Fifth Amendment rights.

62. Pursuant to 42 U.S.C. §1988 and the Equal Access to Justice Act, Plaintiffs are entitled to an award of reasonable attorney's fees, expert fees and costs incurred herein.

#### **FOURTH CLAIM FOR RELIEF**

##### **Defendant Wright Violated the Plaintiffs' Fifth Amendment Rights to Due Process**

63. Plaintiffs re-allege and restate paragraphs 1 - 62 herein.

64. Defendant Wright knew or should have known that the allegations regarding the FPC raised by Senator Larry Craig and his staff and members or supporters of the hydroelectric industry were inaccurate and/or misleading. Defendant Wright acted on the inaccurate and/or misleading claims about the Plaintiffs work in directing or approving the elimination of the FPC.

65. Defendant Wright personally adopted and republished the unfounded allegations made against the Plaintiffs by Senator Craig and other hydropower industry supporters. In a January 5, 2006 letter to the Chairwoman of the Nez Perce Tribe, Defendant Wright justified the elimination of the FPC based upon the "blurred ... lines between objective, neutral, independent science and policy advocacy."

66. Defendant Wright knew that the Plaintiffs had consistently performed their jobs at an "outstanding" or high level of achievement. Despite the record of the Plaintiffs' achievements, Defendant Wright refused to provide the Plaintiffs with any process within which to challenge the allegations made against them in order to defend their jobs and clear their reputations. Defendant Wright's failure to provide any means for the Plaintiffs to substantively



challenge the allegations against them violated the Plaintiffs' rights to Due Process as provided by the Fifth Amendment.

67. As a direct and proximate result of Defendant Wright's actions as alleged herein, Plaintiffs have suffered and will continue to suffer future economic damages, including but not limited to lost wages, benefits, and out-of-pocket expenses, in an amount to be determined at trial, plus prejudgment interest thereon.

68. As a direct and proximate result of Defendant Wright's actions as alleged herein, Plaintiffs have suffered and continue to suffer anxiety, humiliation, depression, emotional distress, damage to their professional reputations, and diminished earning capacity for which each is entitled to an award of compensatory damages in an amount to be determined at trial.

69. Defendant Wright's conduct as described herein was intentional, willful, malicious and reckless. Each Plaintiff is entitled to an award of punitive damages against Wright in his individual capacity.

70. Pursuant to 42 U.S.C. §1988 and the Equal Access to Justice Act, Plaintiffs are entitled to an award of reasonable attorney's fees, expert fees and costs incurred herein.

**FIFTH CLAIM FOR RELIEF**  
**Defendant Wright Violated the Plaintiffs' Rights to Participate and/or Testify in**  
**Proceedings Before This Court**

71. Plaintiffs re-allege and restate paragraphs 1 - 70 herein.

72. Plaintiffs published and communicated information that was used in testimony before this Court. This Court relied upon the information and communications provided by the Plaintiffs in *National Wildlife Federation et al. v. National Marine Fisheries Service, et al.*, CV 01-640-RE (D. Or. June 10, 2005).

73. Although the Plaintiffs did not personally appear in court, their information and analyses were submitted through parties and witnesses that appeared before the Court. Parties to the *NWF* litigation and observers, such as Senator Craig, were well aware of the significant role the Plaintiffs' *de facto* testimony played in the Court's decisions. Moreover, the parties and observers to the *NWF* litigation are aware that the significance of the Plaintiffs' information and analyses made them potential witnesses.

74. Absent the Defendants' retaliation against the Plaintiffs, the parties to the *NWF* litigation and the Court would have continued to have the benefit of the information and analyses published and communicated by the Plaintiffs.

75. Defendant Wright acted in conspiracy with Senator Larry Craig and his staff, as well as other members or supporters of hydroelectric industry, to prevent the Plaintiffs from testifying before this Court, associating and communicating with persons and organizations who are before this Court as witnesses or parties, and from providing information that can be used by witnesses, parties, or the Court. Defendant Wright's actions violate Plaintiffs First Amendment right to speak on matters of concern to the Court and violate 42 U.S.C. § 1985(2).

76. As a result of Defendant Wright's participation in the conspiracy to prevent the Plaintiffs from testifying or otherwise speaking on matters of concern to the Court, the Plaintiffs have suffered and will continue to suffer severe stress and anxiety, damage to their reputations, loss of employment, and other injuries or losses.

77. Defendant Wright's conduct as described herein was intentional, willful, malicious and reckless. Each Plaintiff is entitled to an award of punitive damages against Wright in his individual capacity.

78. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to an award of reasonable attorney's fees, expert fees and costs incurred herein.

### **VII. Relief Requested**

WHEREFORE, Plaintiffs request that the following relief be granted:

1. A declaration that the Defendants violated the Plaintiffs' rights under the U.S. Constitution, First Amendment.
2. A declaration that the Defendants violated the Plaintiffs' rights under the U.S. Constitution, Fifth Amendment.
3. A declaration that the Defendants violated the Plaintiffs' rights under 42 U.S.C. § 1985(2).
4. Issuance of an injunction ordering the reinstatement of the FPC and reinstating the Plaintiffs to the positions they occupied at the FPC.
5. An award to Plaintiffs of economic, compensatory and punitive damages in the amounts appropriate to the proof adduced at trial.
6. An award of Plaintiffs' reasonable attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988, the Equal Access to Justice Act, and any other applicable statute or rule of law; and
7. Such other relief as the Court or Jury may deem just or appropriate.

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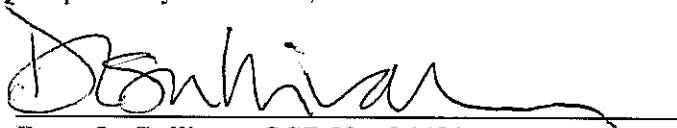
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**VIII. Jury Demand**

Plaintiffs request a trial by jury on all issues that may be so tried.

DATED this 15<sup>th</sup> day of March, 2006.

Respectfully submitted,



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**\* Application for *Pro Hac Vice* admission pending**

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