

Richard E. Condit

Email: rcondit@peer.org

Public Employees for Environmental Responsibility

2000 P Street, NW, Suite 240

Washington, D.C. 20036-6924

Telephone: (202) 265-7337, ext. 231

Facsimile: (202) 265-4192

Dana L. Sullivan, OSB No. 94483

E-mail: dsullivan@mbjlaw.com

MCKANNA BISHOP JOFFE & SULLIVAN LLP

1635 NW Johnson St.

Portland OR 97209

Telephone: (503) 226-6111

Facsimile: (503) 226-6121

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.

**DECLARATION OF
MICHELE DEHART**

Plaintiffs,

vs.

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

Defendants.

I, Michele DeHart, state and declare as follows:

1. My name is Michele DeHart and I am a Fisheries Biologist. I have a Bachelors Degree in fishery biology and have worked on Columbia River fishery issues since 1978. Prior to joining the FPC, I was employed as a biologist for the National Marine Fisheries Service (now NOAA Fisheries) working on Columbia River fish passage issues. My work on mainstem passage issues received a commendation from the NMFS Regional Director and the NOAA solicitors office. Those commendations recognized, “unusual skill in coordination and negotiation, while at the same time developing excellent and effective working relationships with individuals within a broad range of official positions.” The Solicitor’s Office commendation, recognized “organizational skills” as a major factor and “attention to detail in ensuring that the agencies’ positions are defensible, well reasoned and technically sound.” I am currently the Fish Passage Center (FPC) Manager and have been employed in this capacity at the FPC for the past twenty (20) years. I have worked to maintain and apply the skills recognized in the NOAA commendations to my work and to the work of the entire FPC staff.

2. As FPC Manager, I have been responsible for supervising the work of the FPC staff of ten (10) people and overseeing FPC staff and project duties. The FPC was established specifically to serve the state and federal agencies and tribes and I act as the primary liaison in accomplishing this task. The FPC staff is responsible for carrying out tasks as established by the Northwest Power and Conservation Council (NPCC) Regional Fish and Wildlife Program Mainstem Amendments (Program). The Program was amended in 2000 and establishes the tasks and functions of the FPC. Specifically:

The primary purpose of the [FPC] is to provide technical assistance and information to the 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.....In performing this function the [FPC] shall:

- Plan and implement the annual smolt monitoring program;
- Gather, organize, analyze, house and make widely available monitoring and research information related to juvenile and adult passage, and to the implementation of the water management and passage measures that are part of the Councils' program;
- Provide technical information necessary to assist the agencies and tribes in formulating in season flow and spill requests that implement the water management measures in the Councils' program, while also assisting the agencies and tribes in making sure that operating criteria for storage reservoirs are satisfied; and
- In general, provide the technical assistance necessary to coordinate recommendations for storage reservoirs and river operations that to the extent possible, avoid potential conflicts between anadromous and resident fish.

3. The 2000 Program amendments also included the formation of a new FPC

Oversight Board (Oversight Board) comprised of a broad scope of regional representation including the NPCC, Utilities, NOAA fisheries, state, tribal and sport fishing representatives. In addition, the Program requires that the FPC make data and analysis widely available to the public, specifically stating that "No information collected by the [FPC], and no analyses by the [FPC] shall be considered proprietary." The Oversight Board was established in part to respond to issues raised regarding the FPC and to separate innuendo and accusations regarding the FPC work from factual problems with FPC information or analysis.

4. Over the years I have managed the FPC to meet all of the requirements of the Program, providing technical support and information to the fish and wildlife managers and, at the same time, meeting unprecedented criteria for review, transparency and providing

information to the public in a cost effective and efficient manner. A desk audit conducted in October 2005 by an independent firm, Report on Job Functions: Fish Passage Center, Aldrich, Killbride & Tatone LLC prepared by: Geoff Guilfooy and Harriet Saxe concluded:

- In the course of our interviews, it became clear that this is a strong and integrated team where members respect one another for the expertise each carries to the job, feel free to exchange and challenge ideas and approaches, and enjoy knowing they can tap the strengths of their co-workers. Products are commonly group efforts, with several members contributing in terms of input and review.
- Additionally, it became clear that all members of the FPC seek to be fully responsive to expressed needs for technical assistance and information coming from fish and wildlife agencies, tribes and the general public. They are clear on the imperative to make their data and analyses freely and openly available.
- In terms of internal organization, we are impressed that each member of the staff has a well-defined set of job duties with appropriate grade levels assigned. Written performance expectations are in place. The work is organized in a logical fashion and wherever possible, substantial cross-training has occurred.

5. The FPC has responded to all data and analysis requests received and all requests and responses are documented. Over this time, the fish and wildlife managers have relied upon the expertise and abilities of the FPC staff. In managing the FPC, I have strived to meet and respond to the needs of the fish and wildlife agencies, the public and requirements of the Oversight Board, which is the only regional venue available to me to respond to issues raised regarding FPC work product.

6. I first learned of Senator Larry Craig's Committee Report language, in which he stated that BPA was to cut funding for the FPC, when I received a copy of an email from Mark Walker of the NPCC reporting on the language. Prior to Senator Craig's Committee Report language, the BPA had not raised any issues regarding completion of FPC work products or contract requirements. In addition, prior to the insertion of Senator Craig's language regarding

FPC funding in the conference report, neither Senator Craig nor his staff to my knowledge had raised any specific issues regarding FPC work product, information or analysis. To my knowledge, they had not brought any concerns to the Oversight Board or directly to me. However, more than adequate processes and venues exist in which BPA or Senator Craig could have raised any legitimate, substantive issues or concerns.

7. Senator Craig made his Committee Report comments to cut FPC funding shortly after the U.S. District Court's decision to implement summer spill at transportation projects on the Snake River. The FPC was not formally involved as a party on either side of the litigation before the U.S. District Court. Nor am I or any other members of the FPC staff retained as experts in that litigation. However, because the NPCC requires that all FPC information and analysis be published such that it is made readily available to the public, all FPC information and analyses are posted to the FPC website. From the FPC website, our published data, analyses, and memos are available to the public at all times and thus, to Senator Craig and both parties to the litigation. In addition, the FPC, in accordance with the direction from the NPCC Program, answers all inquiries, requests for documents, data, questions from all parties, regardless of their affiliation or purpose. This includes inquiries or requests from the public, all agencies, private consultants and students. All questions and inquiries receive a response. Verbal requests are directed to the web site if possible; requests that cannot be directed to the web site are documented and assigned to staff. The FPC has never denied a request. As long as the FPC has the data and knowledge to respond to a request the request receives a response. In fact, there were a number of occasions when the FPC addressed questions raised by persons or groups that are connected with the NWF litigation.

8. To my knowledge, Senator Craig and BPA's action to eliminate the FPC was unrelated to any substantive concerns regarding a failure by the FPC to meet Program requirements or FPC work product quality. Further, Senator Craig and BPA took this action without any information or analysis being brought to the Oversight Board.

9. Neither I nor any member of the FPC staff was given the opportunity to know or respond to any issues or accusations alleged by Senator Craig or the BPA. Accusations by Senator Craig and his staff that the FPC is a "controversial and one-sided" agency or that we promote "experimental policies" that are based upon "cloudy, inexact assumptions" are completely unfounded. Such comments have irreparably damaged my career and employability in my field and in any Columbia River fish passage issues because they call into question my objectivity and integrity as a scientist and further call into question the quality of the data gathering and analysis that I have overseen. Moreover, Senator Craig's statements in a November 10, 2005 press release that the elimination of the FPC would mean that "[t]he region's salmon recovery programs will be better prepared to make policy decisions based upon accurate, reliable data" and that the science in the field will be "free from bias and agendas" are false. Despite the fact that Senator Craig's statements regarding the FPC and its staff were false, BPA has adopted them and has refused to renew the contract to continue the work of the FPC. These actions taken against me by Senator Craig and the BPA are without any substantive basis and were done without any opportunity for me or other FPC staff to respond to the allegations. Consequently, I will lose my twenty year career and two other members of the FPC staff will be without jobs as of the close of business March 17, 2006.

10. I have become aware in conversations with other individuals in the region that I have been personally targeted by Senator Craig and the BPA and that my being targeted has been discussed in various conversations regarding the FPC and Senator Craig's Committee Report language. I feel that the FPC staff and I have been targeted for elimination because of our unbiased work product, even though we have conducted our work and presented it as directed. I believe that because our work is available to the public, transparent and presented honestly, that Thomas Berggren, Margaret Filardo and I, the FPC staff members with the longest tenure, have specifically been terminated. Because there was no specific or factual basis presented for elimination of my position and due to the innuendo regarding the FPC and "advocacy science," my professional reputation has been severely damaged.


11. It has been suggested to me by people in the region that Senator Craig and the BPA have targeted me personally, in order to preclude my ability to be hired anywhere else in the region. The powerful positions of Senator Craig and the BPA, and their actions against me, have marked me as a lightning rod for additional adverse actions by them. The potential that Senator Craig and the BPA might continue retaliating against me is a powerful deterrent for agencies, tribes, or other employers who may otherwise consider me for employment. This sends a chilling threat to other scientists in the region whose findings are counter to powerful hydropower industry interests.

12. I believe the action to eliminate the FPC will effectively weaken the ability of the state and federal agencies and tribes who have relied on FPC data to address fish passage issues. This is evident by elements of the old FPC work statements, which are not included in the work

statement of the new projects to be implemented by the BPA in place of the FPC, as described in the Pisces data system.

13. A key element that has been removed from the new projects, is the provision of technical assistance to the agencies and tribes and analysis. Over the past two decades, the FPC has provided information and analysis that has addressed many fish passage issues. Over those years, the FPC met all requirements, responded to all comments, concerns, criticisms and requests presented to us. Although the FPC staff and I have met all requirements and successfully carried out our assigned tasks, the degree of our success, efficiency and effectiveness has been the cause of the demise of the FPC as a whole and the end of my career. Our success has enhanced the ability of the fishery agencies and tribes to participate on even ground with major federal agencies like the BPA, regarding fish passage policy and that is the motivation behind the actions of Senator Craig and the BPA to retaliate against me personally and against the FPC as a whole.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13 day of March 2006 at Portland, Oregon.


MICHELE DEHART

X:\Sullivan\Fish Passage Center 50489\Pleadings\DeHart Declaration.wpd