

1 Christopher Winter, WSB# 30890
2 Crag Law Center
3 917 SW Oak St.
4 Suite 417
5 Portland, OR 97205
6 Tel: (503) 525-2725
7 Fax: (503) 296-5454
8 Email: chris@crag.org

9 Michael Patrick Williams, WSB# 37063
10 Center for Environmental Law and Policy
11 4000 Aurora Ave N. Suite 222
12 Seattle, WA 98103-7853
13 Tel: (206) 772-6388
14 Fax: (206) 547-5065
15 Email: pwilliams@celp.org

11 **UNITED STATES DISTRICT COURT**
12 **WESTERN DISTRICT OF WASHINGTON**

13 **CENTER FOR ENVIRONMENTAL**
14 **LAW AND POLICY**, a Washington
15 non-profit corporation and
16 **COLUMBIA RIVERKEEPER**, a
Washington non-profit corporation

17 Plaintiffs,

18 v.

19 **UNITED STATES BUREAU OF**
20 **RECLAMATION**, an agency of the
21 Department of Interior, and **ROBERT**
22 **W. JOHNSON**, in his official capacity
23 as Commissioner of the Bureau of
Reclamation

Defendant.

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5
U.S.C. § 706, and National
Environmental Policy Act, 42 U.S.C. §
4321 *et seq.*)

24 **I. Introduction**

25 1. This is a civil action for declaratory and injunctive relief under the
26 Administrative Procedure Act (APA), 5 U.S.C. §§ 551-76. The claims arise from defendants'

1 violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370d, and
2 the Council on Environmental Quality's regulations (CEQ) implementing NEPA, 40 C.F.R. §§
3 1500-1508. This action is brought under the right of review provision of the APA, 5 U.S.C. §
4 702.

5 2. This case involves the Bureau of Reclamation's (the Bureau) action to secure
6 water rights to withdraw water from and drawdown Lake Roosevelt behind the Grand Coulee
7 Dam on the Columbia River (the Lake Roosevelt Drawdown Project). The Bureau has failed
8 to consider the environmental consequences of this action in violation of NEPA. The Bureau
9 has not prepared and released to the public either an Environmental Assessment (EA) or an
10 Environmental Impact Statement (EIS) considering and disclosing the potential environmental
11 impacts of the Project.

12 3. Plaintiffs seek a declaratory judgment and injunctive relief to remedy the
13 violations complained of herein. Plaintiffs also seek an award of costs, including attorney and
14 expert witness fees. *See* Equal Access to Justice Act, 28 U.S.C. § 2412(d).

15 II. Jurisdiction and Venue

16 4. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 2201
17 (declaratory relief), and 2202 (injunctive relief). Plaintiffs challenge final agency actions as
18 defined by the APA, 5 U.S.C. § 551(13), pursuant to the Act's judicial review provisions, 5
19 U.S.C. §§ 701-706.

20 5. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e), as the plaintiffs
21 reside in this district. Intra-district venue is appropriate in Seattle as plaintiff CELP's office is
22 located in Seattle.

23 III. Parties

24 6. Plaintiff Center for Environmental Law and Policy (CELP) is a membership-
25 based 501(c)(3) nonprofit organization incorporated in Washington State, with offices in
26 Seattle and Spokane, Washington. CELP is dedicated to preserving and protecting the water

1 resources of western Washington and the Columbia River Basin. CELP achieves these goals
2 through education, litigation, and advocacy. CELP's interest in the Columbia River and its
3 tributaries dates back to the foundation of the organization more than a decade ago.

4 7. Columbia Riverkeeper is a 501(c)(3) non-profit, tax exempt, public interest
5 conservation organization incorporated in Washington with headquarters in Hood River,
6 Oregon. Columbia Riverkeeper's mission is to restore and protect the water quality of the
7 Columbia River and all life connected to it, from the headwaters to the Pacific Ocean.
8 Columbia Riverkeeper works to accomplish its mission through diverse activities including
9 monitoring and commenting on the activities of federal, state and local agencies charged with
10 responsibility over the Columbia basin. Additionally, Columbia Riverkeeper coordinates
11 education research projects and presentations from the Columbia's headwaters to the Pacific
12 Ocean. Columbia Riverkeeper and its members actively participate in governmental decision
13 making processes that impact the Columbia River and species that depend on the river for
14 survival.

15 8. Plaintiffs' members live and/or work near Lake Roosevelt. Some of plaintiffs'
16 members recreate, on a continuing and ongoing basis, in Lake Roosevelt and on the banks of
17 Lake Roosevelt. Plaintiffs' members use and enjoy species and habitat within Lake Roosevelt
18 and the Columbia River for aesthetic, scientific, education, spiritual and recreational purposes.
19 These uses include, but are not limited to, hiking, swimming, boating, wildlife observation,
20 photography, and general aesthetic enjoyment. Plaintiffs' members intend to continue such
21 uses on an ongoing basis in the future.

22 9. Plaintiffs and their members have been and continue to be actively involved in
23 efforts to protect and restore the Columbia River from toxic pollution. These efforts include
24 protecting humans and wildlife from exposure to legacy toxic pollutants. Plaintiffs have
25 pursued numerous avenues to reduce the threats of toxic pollution in the Columbia River and at
26 Lake Roosevelt. Plaintiffs and their members have written articles discussing the ecological

1 importance of and threats to the Columbia River and Lake Roosevelt, commented on various
2 federal and state agency actions that affect the Columbia River and Lake Roosevelt, and when
3 necessary, pursued litigation. For many decades, toxic metals from facilities upstream of Lake
4 Roosevelt flowed into the lake. The toxic metals settled on the banks and lake bottom. The
5 proposed release of water from the lake will lower the water elevation. In turn, Lake
6 Roosevelt's contaminated banks will be exposed to the sun and wind. Such exposure creates a
7 health hazards for plaintiffs' members who recreate on and in Lake Roosevelt.

8 10. Plaintiffs and their members have been, are being, and will continue to be
9 harmed by the Bureau of Reclamation's actions in initiating and advancing the Lake Roosevelt
10 Drawdown Project without following NEPA's procedural requirements. The Bureau's failure
11 to follow procedural requirements increases the risk of actual, threatened, or imminent
12 environmental harm. This increased risk of harm directly affects plaintiffs' and their members'
13 interest in the recreational, aesthetic, and environmental values of the Columbia River and
14 Lake Roosevelt. These risks include exposure to toxic contaminants as a result of lower lake
15 levels.

16 11. The above-described recreational, scientific, aesthetic, educational,
17 conservation, economic and other interests of plaintiffs and their respective members have
18 been, are being, and unless the relief prayed for herein is granted, will continue to be adversely
19 affected and irreparably injured by the Bureau's actions in initiating and advancing the Lake
20 Roosevelt Drawdown Project and applying for water rights to carry out the Project.

21 12. The injuries described above are actual, concrete injuries suffered by plaintiffs
22 and their members. These injuries are caused by the actions and omissions of the Bureau
23 described herein and would be redressed by the relief sought.

24 13. Defendant Bureau of Reclamation is an agency of the United States Department
25 of the Interior. The Bureau is the lead agency for NEPA purposes for the Lake Roosevelt
26 Drawdown Project, described herein.

1 14. Defendant Robert W. Johnson is the Commissioner of the Bureau of
2 Reclamation. Robert W. Johnson is sued in his official capacity. In that capacity he is
3 ultimately responsible for the Bureau's compliance with NEPA.

4 IV. Facts

5 The Columbia Basin Project

6 15. The Grand Coulee Dam Project was originally authorized by Congress on
7 August 30, 1935 (49 Stat. 1028). The Act allowed for the start of construction of the Grand
8 Coulee Dam on the Columbia River.

9 16. In 1943 Congress passed the Columbia Basin Project Act, 16 U.S.C. §§ 835 *et*
10 *seq.*, reauthorizing the Grand Coulee Dam Project and authorizing the project subject to the
11 Reclamation Act of 1939. The passage of the 1943 Act as well as the Columbia Basin Project
12 Act and Reclamation Act provide governance and authority for the construction, operation, and
13 maintenance of the project.

14 17. The Columbia Basin Project serves multiple purposes including hydropower
15 generation, irrigation delivery, and recreation on Franklin D. Roosevelt Lake and elsewhere in
16 the Project.

17 18. The original irrigation plan for the Columbia Basin Project included 1.1 million
18 acres in central-eastern Washington, however, only 671,000 acres have been brought under
19 irrigation. The remaining acreage has not been developed because economic analyses have
20 concluded that the costs of further development are greater than the benefits and environmental
21 analyses have never been completed.

22 19. Water rights for the Bureau's projects must be issued by the states in which
23 projects are located. The primary water right for the Columbia Basin Project is authorized by
24 Washington State Reservoir Certificate No. 11793 with a priority date of May 16, 1938. The
25 right allows the Bureau to store 6.4 million acre-feet annually in Lake Roosevelt. The
26 authorized place of use is lands within the boundaries of the Columbia Basin Project.

1 **The Lake Roosevelt Drawdown Project**

2 20. The Lake Roosevelt Drawdown Project proposes new withdrawals and
3 diversions of water from behind the Grand Coulee Dam for irrigation, municipal and instream
4 uses.

5 21. In December 2004, the State of Washington, Bureau of Reclamation, and the
6 three Columbia Basin Project irrigation districts - the East Columbia Basin Irrigation District,
7 the Quincy-Columbia Irrigation District, and the South Columbia Basin Irrigation District -
8 signed a Memorandum of Understanding (MOU) that committed the Bureau to commence
9 development of several water supply projects within the Columbia Basin Project. All water
10 supplied to these projects is to come from water stored behind Grand Coulee Dam and
11 controlled by the Bureau.

12 22. Water supply projects contemplated in the MOU include the "Lake Roosevelt
13 Drawdown." The Lake Roosevelt Drawdown Project would tap into the storage water
14 authorized under the Bureau's Reservoir Certificate No. 11793 to supply water to irrigators in
15 the Odessa Subarea. The Lake Roosevelt Drawdown Project would also supply water to
16 downstream industrial and municipal uses, for entities and lands that fall outside of the
17 Columbia Basin Project.

18 23. The Odessa Subarea comprises, in part, a portion of the lands within the
19 authorized boundaries of the Columbia Basin Project, but which do not receive Project water.

20 24. Sections 14-16 of the MOU detail how the parties (Washington, the Bureau, and
21 the irrigation districts) plan to work together to bring 30,000 acre-feet of water from Lake
22 Roosevelt to the Odessa Subarea. Section 14 states the Bureau will file a water right
23 application with the State of Washington for a right to divert water from the federal storage
24 rights in Lake Roosevelt to serve the Odessa Subarea. The 30,000 acre-feet will irrigate
25 10,000 acres of farmland that is currently irrigated with groundwater. While this land is within
26 the Columbia Basin Project, it has not yet received Columbia Basin Project water.

1 25. MOU Sections 12 and 13 detail how the parties will enter into a water service
2 contract to make 37,500 acre-feet available from the federal storage rights behind Grand
3 Coulee Dam for non-Project uses. Of the 37,500 acre-feet, 25,000 acre-feet is to be allocated
4 to municipal and industrial use. The remaining 12,500 acre-feet is to be left in-stream.
5 Release of this water also requires a water right permit from Washington State.

6 26. On August 19, 2005 the Bureau submitted a water right application to Ecology,
7 and it was assigned application number S3-30486. The Bureau later withdrew the application,
8 and submitted an amended application on May 22, 2008 and again on May 30, 2008. This
9 application requests authorization from the state of Washington to allow the Bureau to divert
10 45,000 acre-feet of water from its Lake Roosevelt storage right. Of this quantity, 30,000 acre-
11 feet would be diverted for use in the Odessa Subarea and the remaining 15,000 acre-feet would
12 be released downstream for instream flow augmentation purposes.

13 27. On May 22, 2008 the Bureau submitted an application to Ecology and it was
14 assigned application number S3-30556. The Bureau amended the application on May 30,
15 2008. This application requests authorization from the state of Washington to allow the
16 Bureau to divert 37,500 acre-feet of water from its Lake Roosevelt storage right. Of this
17 quantity, 25,000 acre-feet would be diverted for downstream industrial and municipal uses and
18 the remaining 12,500 acre-feet would be released downstream for instream flow augmentation
19 purposes.

20 28. Therefore, the proposed total water to be withdrawn under the two scenarios
21 discussed above is 82,500 acre-feet. The commitment of water for out-of-stream uses totals
22 55,000 acre-feet of water per year.

23 29. On September 25, 2008, Ecology released the Reports of Examination (ROE)
24 approving permits S3-30486 and S3-30556.

25 30. To date, the Bureau has not conducted any environmental analysis pursuant the
26 National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Council of

1 Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. § 1500-1517 for the
2 MOU, the water right applications or any other aspect of the Lake Roosevelt Drawdown
3 Project.

4 **CLAIM FOR RELIEF**

5 **The Bureau's Failure to Prepare an Environmental Assessment or Environmental**
6 **Impact Statement as Required by NEPA is Arbitrary, Capricious, and Not in Accordance**
7 **with Law under the Administrative Procedure Act**

8 31. Plaintiffs incorporate by reference all preceding paragraphs.

9 32. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and the
10 Council on Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. § 1500-1517,
11 require that an agency prepare an Environmental Impact Statement (EIS) for every major
12 federal action significantly affecting the environment. 42 U.S.C. § 4332(2)(C). The EIS must
13 include an analysis of any adverse environmental impacts that cannot be avoided should the
14 project be implemented, alternatives to the proposed action, and any irreversible and
15 irretrievable commitment of resources which would be involved if implemented. *Id.*

16 33. If there is uncertainty over whether an EIS should be prepared, CEQ regulations
17 mandate preparation of an Environmental Assessment (EA) to determine if an EIS is
18 necessary. 40 C.F.R. § 1501.4. An EA must provide sufficient evidence and analysis for
19 determining whether to prepare an EIS or a finding of no significant impact. 40 C.F.R. §
20 1508.9.

21 34. NEPA's implementing regulations further dictate that until an agency has
22 complied with NEPA and issued a record of decision, no action concerning the proposal can be
23 taken that will have an adverse environmental impact or limit the choice of reasonable
24 alternatives. 40 C.F.R. § 1561(a). NEPA's disclosure requirements are to insure that the
25 agency has carefully and fully contemplated the environmental effects of its actions, and to
26 insure that the public has sufficient information to challenge the agency.

1 35. An agency is required to evaluate, consider and disclose to the public the direct,
2 indirect and cumulative effects of its actions in an EIS, or when appropriate, and EA. 42
3 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.8.

4 36. This review and disclosure must include cumulative impacts resulting from all
5 past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

6 37. NEPA also requires that an agency evaluate and disclose impacts from all
7 “similar” or “cumulative” actions. 40 C.F.R. § 1508.25(a).

8 38. NEPA mandates that as part of this analysis, a federal agency must consider
9 alternatives to a proposed action and identify mitigation measures to reduce the effects of the
10 proposed action. 40 C.F.R. § 1502.14(f).

11 39. The Bureau is a federal agency subject to NEPA. Carrying out the Lake
12 Roosevelt Drawdown Project by entering into the MOU with Washington State and the
13 Columbia Basin Project irrigation districts and applying for water rights to drawdown Lake
14 Roosevelt, withdraw water from Lake Roosevelt and deliver it to irrigation, municipal,
15 industrial and instream flow uses is a major federal action that may significantly affect the
16 human environment.

17 40. Defendants have failed to prepare an EIS, or an EA, to asses and disclose the
18 environmental impacts of the Lake Roosevelt Drawdown Project , in violation of NEPA. 42
19 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1501.3, 1501.4.

20 41. Defendants have failed to develop or consider alternatives to the Lake
21 Roosevelt Drawdown Project, in violation of NEPA. 42 U.S.C. § 4332(2)(C); *see also* 42
22 U.S.C. § 4332(2)(E).

23 42. Defendants have failed to evaluate, consider and disclose to the public, the site-
24 specific direct, indirect and cumulative effects of the Lake Roosevelt Drawdown Project,
25 violation of NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.27(b)(7).

26

1 43. Defendants' failure to comply with NEPA for the Lake Roosevelt Drawdown
2 Project constitutes arbitrary and capricious agency action, is an abuse of discretion, and is
3 contrary to law and to procedures required by law. 5 U.S.C. § 702(2)(A), (D).

4 **RELIEF REQUESTED**

5 WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

6 A. Declare that defendants' action of entering into the MOU and/or applying for
7 water rights S3-30486 and S3-30556 without preparing either an EA or EIS is contrary to
8 NEPA.

9 B. Issue a temporary restraining order, preliminary injunction and/or permanent
10 injunction preventing the defendants from taking any action related to Washington State water
11 right permits S3-30486 and S3-30556 and the Lake Roosevelt Drawdown Project until such
12 time as it can demonstrate compliance with NEPA.

13 C. Award plaintiffs their reasonable costs, litigation expenses, and attorney's fees
14 associated with this litigation pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412;
15 and

16 D. Any further relief the Court deems proper and just.

17 DATED this 1st day of December, 2008.

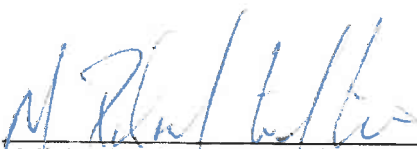
18 Respectfully submitted by:

19 

20 _____
21 Christopher Winter, WSB# 30890
22 Crag Law Center
23 917 SW Oak St.
24 Suite 417
25 Portland, OR 97205
26 Tel: (503) 525-2725
Fax: (503) 296-5454
Email: chris@crag.org

Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



Michael Patrick Williams, WSB# 37063
Center for Environmental Law and Policy
4000 Aurora Ave N. Suite 222
Seattle, WA 98103-7853
Tel: (206) 547-5047
Fax: (206) 547-5065
Email: pwilliams@celp.org

*Attorney for Plaintiff Center for Environmental Law
and Policy*