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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**THE HUMANE SOCIETY OF THE
UNITED STATES, WILD FISH
CONSERVANCY, BETHANIE
O'DRISCOLL, ANDREA KOZIL,**

Plaintiffs,

vs.

**CARLOS M. GUTIERREZ, Secretary
of Commerce, JAMES W.
BALSIGER, Acting Director, National
Marine Fisheries Services, JAMES
LECKY, Director, Office of Protected
Resources, National Marine Fisheries
Service,**

Defendants.

and

**OREGON DEPARTMENT OF FISH
AND WILDLIFE and
WASHINGTON STATE
DEPARTMENT OF FISH AND
WILDLIFE,**

Intervenor-Defendants,

No. 08-0357-MO

BRIEF OF *AMICI CURIAE* COLUMBIA
PACIFIC ANGLERS, VANCOUVER
WILDLIFE LEAGUE, OREGON
ANGLERS, WESTPORT
CHARTERBOAT ASSOCIATION,
ILWACO CHARTER ASSOCIATION,
PUGET SOUND ANGLERS,
WASHINGTON TROLLERS
ASSOCIATION, THE ASSOCIATION OF
NORTHWEST STEELHEADERS, AND
COLUMBIA RIVER FISHERMEN'S
PROTECTIVE UNION ("LOCAL
INTERESTS")

Amici Curiae Columbia Pacific Anglers, Vancouver Wildlife League, Oregon Anglers, Westport Charterboat Association, Ilwaco Charter Association, Puget Sound Anglers, Washington Trollers Association, The Association of Northwest Steelheaders, and Columbia River Fishermen’s Protective Union (hereinafter jointly “Local Interests”) submit the following to the Court for its consideration in connection with plaintiffs’ Motion for a Preliminary Injunction. *Amici Curiae* have focused this brief (and Declarations in support of Rev. Irene Martin, Jack Marincovich, Steve Watrous, “Butch” Smith, Doug Fricke, Phil Donovan, and Larry Swanson) on the issue of the “balance of hardships” and the “public interest.” *Amici Curiae* respectfully submit that when all interests are considered, the balance of the hardships tilts strongly in favor of native runs of fish which have been declared as “endangered” or “threatened” under the Endangered Species Act, and the local communities which depend upon those salmon, rather than the non-native California Seal Lions (“CSL”), whose very recent arrival at Bonneville Dam and resulting harm has been well documented by the agencies involved. The Local Interests believe that the legal issues have been well addressed but that additional information about “balance of the hardships” and the “public interest” may aid the Court in the proper consideration of the matters now before it.

1. The Issue Is Not One of Nature, But of Unnatural Predation Caused by Human Activities and Structures.

The CSL predation at Bonneville Dam is not an example of “natural” selection, nor an example of nature at work. Human activities and man-made structures have caused this problem, so human intervention is warranted.

The burgeoning and aggressive CSL population at Bonneville Dam (a very recent phenomenon seen only since 2002) has used the human alteration of the ecosystem in order to unnaturally prey upon the salmon. The damming of the Columbia River and the unnatural forcing of migrating salmon to use a very narrow fish ladder for passage—

rather than the entire width of the river—has created an artificial “salmon trap.” If the river was in its natural state, without the human-built structures of the Bonneville Dam and fish ladder system, this problem would not exist.

Human activity has caused the balance of nature to be shifted in favor of the CSL over the salmon, so human intervention is reasonable to restore the balance. Past human alteration of the Columbia River system (by an extensive network of hydroelectric dams and irrigation systems) has caused a decline in the number of salmon, thus the need for human protection. Past human activities should not prevent current human activity, authorized by Congress and justified by careful agency analysis, from addressing the recent phenomenon of increasing CSL predation at Bonneville Dam built in 1938, which is 139 miles from the sea. As a matter of simple logic, a primary justification for action is that the CSL are unnaturally using man-made structures to take advantage of another species in an unnatural way. When this occurs, humans may and should act.

2. CSL Populations Are Increasing Overall and Perhaps at Carrying Capacity; CSL Activity at Bonneville Is Increasing.

The CSL population has increased steadily since the adoption of the Marine Mammal Protection Act (“MMPA”) in the early 1970s. Scientists have concluded that the lethal take requested will in no way have any substantial impact on the overall CSL population; plaintiffs’ motion does not even address, much less dispute, this important consideration in the “balance of the hardships.” The CSL population is healthy and perhaps at its carrying capacity according to biologists; no party disagrees with that fact.

Plaintiffs argue incorrectly that CSL predation and presence at Bonneville Dam is not increasing. In fact, both are increasing. Table 1, page 5 of Exhibit “A” to the Abrams Affidavit [Docket No. 24], establishes that the total number of days pinnipeds are present at the Dam has increased from 59 days in 2002 to 117 days in 2006 (from