

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Docket No. 12-70338

IDAHO CONSERVATION LEAGUE,
Petitioner

v.

BONNEVILLE POWER ADMINISTRATION,
Respondent

Petition for Review
Under the Northwest Power Act

DECLARATION OF SUSAN DRUMHELLER

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Attorney for Petitioner

I, SUSAN DRUMHELLER, hereby declare as follows:

1. My name is Susan Drumheller, and I am a resident of Sagle, Idaho, where I have lived for 12 years. I am personally aware of the matters set forth below, and if called as a witness I would and could truthfully testify thereto.

Personal Background

2. I am employed with the Idaho Conservation League (ICL) as the North Idaho Associate in our Sandpoint Field Office. I have been employed by the ICL for seven years and I am also a member of ICL. As a member of ICL, I rely on ICL to protect our water quality, wildlife, the habitat that is important to their survival and my quality of life.

3. I am an avid outdoors person. I spend much of my free time enjoying Idaho's outdoors either on foot, on skis, on a bike or on the water. There is no greater pleasure for me than to encounter wildlife while I am enjoying Idaho's natural assets. It is largely because of my interest in protecting Idaho's outdoors and quality of life that I became interested in working for ICL.

4. As an employee of ICL, I have traveled throughout North Idaho to use the rivers, lakes, forests and mountains for my recreational, spiritual, aesthetic and professional purposes. I regularly visit North Idaho's outdoors

to document conditions, advocate, and educate the public regarding the health of our natural resources.

Overview of ICL and My Work for ICL Related to Albeni Falls Dam

5. ICL is a state-based conservation organization that has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation for Idaho's extraordinary quality of life—since 1973. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, ICL represents over 9,500 members, almost all of whom reside in the State of Idaho. All of ICL's members have a deep personal interest in protecting human health and the environment.

6. ICL also has a long history of working on issues related to Lake Pend Oreille, Pack River, Clark Fork River, and Pend Oreille River. For example, in my official capacity representing ICL, I actively participated in the Bonner County Aquatic Invasive Species Task Force, formed in 2007, to address concerns regarding the infestation of Eurasian water milfoil in Lake Pend Oreille. The task force developed a strategic plan for the Lake that calls for an integrated management approach to milfoil. The task force also examined, monitored and made recommendations to deal with emerging aquatic invasive species issues, including flowering rush and invasive

mollusks. In addition, ICL is a partner in an effort to support non-herbicide management of milfoil at Sandpoint City Beach. I helped organize work parties and recruited volunteers for hand-pulling of flowering rush in the spring of 2011 and 2012.

7. ICL also supported legislation passed in 2008 to establish mandatory boat inspections across the State of Idaho to prevent the infestation of zebra and quagga mussels and to prevent the spread of other aquatic invasive species, such as milfoil and flowering rush. I also participated in the rulemaking to implement the new law. This program is now a model for the country.

8. I also represent ICL on the Nearshore Committee, which is a watershed advisory group for Lake Pend Oreille that collaborates on ways to prevent nutrient pollution in the nearshore areas of the lake. The Nearshore Committee recently carried out a two-year education campaign to encourage shoreline landowners to be good stewards of the lake, and to prevent erosion and stormwater runoff into Lake Pend Oreille. The committee also produces a boaters guide that shares information about how boaters can protect the lake by abiding by the no wake zone rules and using dump stations for grey water. The committee also conducts annual shoreline surveys to look for problem areas that need to be addressed.

9. When Bonner County was revising its zoning codes in 2007, I represented ICL on a diverse committee that spent more than a year revising zoning regulations to provide protection for wetlands and water quality, while also respecting private property rights. Our work helped establish zoning regulations that call for vegetated buffers to protect the lake and waterways from storm water runoff and erosion.

10. As a regular course of ICL's work, I review the impact that shoreline development projects have on the streams, rivers, lake, and related wetland habitats, to make sure they will not have any long-term negative impact on these resources. I also monitor major construction projects, such as the Sand Creek Byway highway realignment, to make sure that best management practices are being followed and storm water and other pollutants are not entering the waterway.

11. I also monitor the impact of wastewater dischargers and septic systems to surface water, by reviewing discharge permits, threatened and impaired water listings, 401 certifications and proposed changes to the rules that govern septic systems. My involvement has stopped legislation from being introduced in the Idaho Legislature that would have reduced the setback of septic systems to our lake, which could potentially increase nutrient loading in the lake.

12. In 2011, I teamed up with the Sandpoint Police Department and the Bonner General Hospital Foundation to launch a Drug Drop-Off program that allows residents of Bonner County to take their unused and expired pharmaceuticals to the police department for safe disposal, in order to keep the drugs out of our waterways and out of the wrong hands.

13. My work on the Pend d'Oreille Bay Trail project has multiple purposes, not the least of which is to protect more than a mile of shoreline in the urban area from development, which will help reduce the potential for erosion and storm water runoff into the lake.

14. As a representative of ICL, I was also actively engaged in the planning process for the Flexible Winter Power Operations ("FWPO") at Albeni Falls Dam. For example, on December 8, 2009, I attended a public meeting organized by the Bonneville Power Administration and the U.S. Army Corps of Engineers at Sandpoint High School, where the two agencies unveiled the FWPO.

15. On December 18, 2009, I wrote a letter on behalf of ICL to the U.S. Army Corps of Engineers ("USACE"), expressing concerns with the proposed FWPO and requested that the agency prepare an environmental impact statement before proceeding with the changes in winter operations of Albeni Falls Dam.

16. I also attended a series of additional public meetings and hearings, where more presentations and information were given to the public on the proposed FWPO. These meetings included: (1) a Lake Pend Oreille Basin Commission meeting on January 6, 2010, (2) an open house organized by the BPA and USACE in Sandpoint on May 25, 2010, (3) another Lake Pend Oreille Basin Commission meeting on June 30, 2010, and (4) another open house organized by the BPA and USACE in Sandpoint on August 4, 2011.

17. Then, on August 29, 2011, I wrote a letter on behalf of ICL to the USACE, providing comments on the draft environmental assessment for the FWPO. This letter expressed concerns regarding the potential effect of the FWPO to the lake and its resources, such as erosion, water quality degradation, loss of wildlife habitat, and aquatic invasive species. The letter also requested that the USACE prepare a more detailed environmental impact statement and outline a strategy for monitoring and mitigation.

18. Finally, I have been actively involved in efforts to plan, design, and implement the Clark Fork Delta Restoration Project. I attended one of the initial meetings organized by the Idaho Department of Fish and Game related to this effort on October 16, 2012. ICL plans to recruit and organize volunteers to assist in this work.

Personal Use and Enjoyment of Lake Pend Oreille and Its Environs

19. I am a part owner of waterfront on Lake Pend Oreille, as an owner in the Golden Meadows subdivision, which has a shared community waterfront beach and park where our children play and swim. Our homeowners association several years ago applied for and received an Idaho Department of Lands and USACE permit to stabilize the banks of our collective property because it was eroding away.

20. I own a canoe and a kayak, which I use to get out on Lake Pend Oreille for quiet recreation, as a safety volunteer for the Long Bridge Swim event, to float the Pack River and paddle the Pack River delta, and to paddle in the Clark Fork Delta, both for pleasure and for learning about activities and conditions around the lake shore that could impact the lake's water quality or fish and wildlife habitat. I am out on the lake many times over the course of the summer, swimming or paddling or taking a ride in a friend's sailboat or motorboat. One of my favorite paddling destinations is a rocky point owned by the U.S. Forest Service near the Clark Fork Delta.

21. In the spring of 2008, I was one of dozens of volunteers who spent a day planting willows and other native plants in the Pack River Delta as part of a Ducks Unlimited, Idaho Fish and Game, and Avista project to

restore the delta. The delta's rich wetland habitat has been eroding away over the decades due to fluctuating lake levels of Lake Pend Oreille.

22. During 2007 and 2008, I served as secretary of the Bonner County Aquatic Invasives Species Task Force, attending regular meetings of the task force and participating in field trips by boat on Lake Pend Oreille to monitor and map infestations and observe treatments. During this time I also observed grebes in the Denton Slough area and was able to work with the county and Idaho Fish and Game to make sure chemical treatment of milfoil was timed so as not to impact these rare ducks.

23. From 2006 to the present, I have served on the Nearshore Committee for the Lake Pend Oreille Nearshore TMDL, and for several summers, and including this September, participated in a shoreline survey by boat to observe development and changes along the shoreline, as well as to identify problem areas, such as erosion from building sites.

24. Over the years, including this spring, I have volunteered for the annual Water Festival, held either at Riley Creek Campground on the Pend Oreille River or at Samowen Campground on the Samowen Peninsula of Lake Pend Oreille, teaching fifth-grade students about watersheds and how stormwater runoff can damage water quality.

25. From 2010 to 2011, I made multiple tours of the Sand Creek Byway construction project to observe stormwater and erosion control measures along this highway realignment, which included a shoreline extension into Sand Creek. While we observed some problems early on in the project, the state hired a stormwater consultant to assist and my later visits and review of water quality records found few issues.

26. While working on comments concerning a major Bonner County development that could destroy wetlands, I came across a wetlands inventory prepared for the state of Idaho that named the Clark Fork Delta as one of the top 10 most important wetlands in the state. This knowledge has deepened my appreciation for the delta and the high quality habitat it provides.

27. In the summer of 2012 and this summer, I led a kayak trip to the Clark Fork Delta, which began at the log yard and circumnavigated islands in the delta. We observed eroding shorelines in the delta and flowering rush infestations.

Future Plans and Concerns

28. I am concerned that the winter lake level fluctuations will continue to degrade important wetland habitat in the Clark Fork Delta. The islands are gradually disappearing, resulting in a dramatic reduction of

habitat over the past 55 years. If this rate of erosion continues, or increases, it won't be much longer before this area is no longer a refuge for waterfowl, bald eagles and other wildlife. The delta is named among the Audubon Society's important bird areas, but if it continues to degrade, it will no longer be an important stopover for migrating birds.

29. More than 40 percent of the wetlands around Lake Pend Oreille have been lost since the dam was built, with most of the loss in the Clark Fork and Pack River deltas. I'm concerned that without a concerted effort to address this problem and avoid increased erosion, we will soon lose the deltas altogether and the ecological functions they provide.

30. The wetland type most in decline is the deciduous forested wetlands, which provide excellent habitat for birds of prey and other wildlife. Nearby, migratory birds rest in sheltered oxbows. It's sobering to kayak now through parts of the Clark Fork Delta that were once forests, and to find stumps of old cedars now standing like tiny little islands in Lake Pend Oreille.

31. As the islands disappear, this area will become less attractive for paddlers. Already there are few places for people in canoes or kayaks to paddle in a protected area with opportunities for wildlife viewing around the lake. This is one of the treasured places for this kind of recreation. As the

islands crumble into the river and lake, and the serpentine nature of the river declines, the water will speed up, and erode away the islands even faster. Eventually, this will just be a powerful river, with no shelter or refuge for boaters or wildlife.

32. I am concerned about the impacts on water quality in Lake Pend Oreille when we lose this important wetland system. Wetlands serve an important role in removing nutrients from the water column, helping to keep surface water quality high in our rivers and lakes. If this wetland disappears, we will lose the filtering function and clarity in Lake Pend Oreille.

33. I am also concerned with the spread of flowering rush through the Lake Pend Oreille ecosystem, both because it degrades the existing nearshore habitat and because there are no effective means of controlling this aquatic invasive species. I'm concerned that land managers will hurry chemical remedies through the approval process, before we can be assured that they are safe for our aquatic environment. While flowering rush is now in this watershed, we need time to develop safe and effective means of getting it under control. Any activities that hasten its spread, give land managers less time to come up with safe, effective solutions.

34. I am concerned that the decision of the Bonneville Power Administration and the U.S. Army Corps of Engineers to adopt the new

winter fluctuations at Albeni Falls Dam was made without undertaking a meaningful evaluation of the potential impacts to wildlife and water quality that could result from increased shoreline erosion and the spread of flowering rush. I am concerned that the agencies relied on outdated and incomplete information in the Environmental Assessment. And unless an Environmental Impact Statement is prepared, I worry that the decision to proceed with the new winter operations is being made without fully considering and disclosing the potential impacts.

35. I am also concerned that the agencies did not explore an alternative proposal which would include monitoring and mitigation for future impacts along with any new winter fluctuations.

36. In the future, I intend to continue to regularly paddle in the Clark Fork Delta to observe the changes in area. I also intend to continue to lead others to this area to learn about why this is a valued and threatened place.

37. I also intend to participate in the Clark Fork Restoration Project, by teaching others about the importance of this project, leading kayak trips to the delta, and recruiting volunteers to help with planting, monitoring and other volunteer needs. I am concerned, however, that the

existing funding will not be adequate to protect and recover this area, and as a result, it will continue to degrade.

38. I also intend to continue to be on the lookout for projects in and around Lake Pend Oreille that have the potential to cause erosion, destroy wetlands and habitat, and generally threaten the water quality and remaining habitat for the watershed's living creatures.

DATED this 19th Day of September, 2013.

/s Susan Drumheller

Susan Drumheller