

**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 BRAD SMITH

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Attorney for Petitioner

I, BRAD SMITH, hereby state and declare as follows:

1. My name is Brad Smith, and I reside in Sandpoint, Idaho. 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 have been a resident of Idaho since 1985 and have lived in the communities of Idaho Falls, Coeur d’Alene, Moscow, Boise, and Sandpoint. I have a deep personal connection and commitment to Idaho and its natural resources. I have traveled extensively throughout Idaho to use and enjoy its rivers, lakes, mountains, forests, and deserts for my own recreational, spiritual, aesthetic, and professional purposes. I regularly go camping, hiking, rafting, canoeing, kayaking, skiing, and snowshoeing. I also enjoy outdoor photography and fishing.

3. I am a Conservation Associate for the Idaho Conservation League (“ICL”), where I have worked and maintained a membership since June 1, 2005. I first began working for ICL as an intern during the summer of 2005 in our Boise office. I began working with ICL full time in January of 2007. In August of 2011, I relocated to our Sandpoint Office.

4. In my professional capacity with ICL, I am responsible for professional advocacy and public outreach and education activities that further ICL’s mission to protect Idaho’s clean water, wilderness, and quality of life. I also

rely on ICL to represent my personal interests, which are closely aligned with the organization's mission.

Overview of ICL

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.

My Work for ICL on Issues Related to the Albeni Falls Dam

6. ICL has a long history of working on issues related to Lake Pend Oreille, Pack River, Clark Fork River, and Pend Oreille River, much of which is described in the Declaration of Susan Drumheller. In addition to Susan's involvement in issues related to Lake Pend Oreille and the Flexible Winter Power Operations ("FWPO") planning process, in my official capacity with ICL, I have also been greatly involved in issues affecting the Lake Pend Oreille Basin.

7. For example, I reviewed both the draft and final environmental assessments for FWPO and contributed to the technical comments submitted to the

U.S. Army Corps of Engineers and the Bonneville Power Administration by Susan Drumheller, on behalf of ICL.

8. On December 9, 2011, I attended a public meeting sponsored by the Lake Pend Oreille Basin Commission at Sandpoint City Hall, where I was asked to present ICL's concerns with FWPO to the public, including problems with shoreline erosion. I also shared a copy of the "ledger" published on the BPA's website, showing the total mitigation credits at that time, related to the construction of Albeni Falls Dam and the areas inundated by artificially increasing the elevation of the lake. I also presented a proposed budget for restoration work in the Clark Fork Delta, which was prepared by the Idaho Department of Fish and Game. At that time, the preliminary cost estimate for the Clark Fork Delta Restoration Project was approximately \$16,445,000.

9. On December 14, 2011, I attended a public hearing organized by the Bonneville Power Administration and the U.S. Army Corps of Engineers at the Bonner County Administration Building. At the meeting, the two agencies presented information about FWPO and answered questions from concerned members of the public, including members of the Idaho Conservation League. I inquired about operational loss assessment and mitigation.

10. Finally, I have also participated in efforts to plan, design, and implement the Clark Fork Delta Restoration Project proposed by the Idaho

Department of Fish and Game. On March 6, 2013, and again on July 18, 2013, I attended two separate meetings organized by the Department related to this effort. ICL plans to recruit and organize volunteers to assist in restoration activities in the Clark Fork Delta, such as cutting stock for willows and planting native vegetation.

11. Many of ICL's members and supporters in the local community continue to be concerned about the effects of the on-going operations of Albeni Falls Dam and the FWPO to the Lake and its resources. The lakes, rivers, and wetlands in the area are of immense importance to ICL's members and the community. They are gravely concerned that without mitigation for the operational effects to our environment caused by Albeni Falls Dam, their future use and enjoyment of Lake Pend Oreille, its tributaries, and its deltas will be significantly impaired.

Personal Use and Enjoyment of Lake Pend Oreille and Its Environs

12. My family moved to northern Idaho in 1986 where we enjoy an unparalleled quality of life. When I was in grade school, my father, brother, uncle, and my cousins fished for kokanee on Lake Pend Oreille. We also camped on the shores of the lake, went swimming, and viewed the mountain goats on the cliffs above the lake near Bayview, Idaho.

13. When I was in high school, my father purchased a sea kayak, which we used to paddle the channels of the Clark Fork Delta. We enjoyed these outings

because we were able to view wildlife and scenery in the Clark Fork Delta, which are unique to the area.

14. Today, my wife, daughter, and I enjoy visiting the Sandpoint, Idaho City Beach on Lake Pend Oreille, where we go swimming and let our daughter play in the sand. We also enjoy taking walks along the trails and shorelines of Lake Pend Oreille, where we view the scenery and wildlife, such as bald eagles and osprey. We have a 17-foot canoe that we use to paddle on the Lake as well as the lower reaches of the Pack River and Clark Fork River, including the channels of the deltas formed by these two river systems.

15. For example, on September 5, 2012, my Supervisor and I paddled the Pack River in my canoe, from the Pack River Store, down stream into the Pack River Delta. While we were paddling, we enjoyed fly-fishing. We caught several rainbow trout during our trip. We also observed how lake level fluctuations from Albeni Falls Dam are contributing to the erosion of shorelines along the lower reaches of the Pack River and its delta habitats.

16. On April 25, 2013, my co-worker and I paddled the Clark Fork Delta in my canoe to survey areas of shoreline erosion. We put in at the bridge upstream of the Delta near the town of Clark Fork, Idaho, and paddled down the main channel. During the trip, we observed areas of intense erosion. The extent of the

Clark Fork Delta has been greatly reduced since the construction of Albeni Falls Dam, which troubles me.

Future Plans and Concerns

17. My family and I plan to continue to live in the community of Sandpoint, Idaho. Living in this community affords us a spectacular quality of life and environment to raise our daughter and enjoy the natural beauty and outdoor recreation opportunities available to us.

18. For example, we plan to continue to paddle our canoe on Lake Pend Oreille, the Clark Fork River, and the Pack River. In fact, I plan to paddle in the Clark Fork Delta in the Spring of 2014, take photographs and view wildlife. I also plan to paddle the lower Pack River, where I enjoy viewing the scenery and fishing for trout.

19. My family and I also plan to visit the Sandpoint City Beach on a regular basis. The beach is a great place to enjoy the fantastic summer weather, play in the sand, and go swimming in the Lake. We also greatly enjoy the views of the Lake and the surrounding mountains from the City Beach.

20. Every spring, we also like to go to Green Bay, on the western shore of Lake Pend Oreille. There is a spectacular hiking trail there that we plan to use, which offers outstanding views of the Lake, Scotchman Peaks, and Green

Monarchs. I also enjoy viewing the rock formations that jut out of the shoreline at Green Bay.

21. I am deeply concerned, however, that the on-going shoreline erosion attributable to operations of Albeni Falls Dam, including increased erosion rates that could result under the new FWPO plan, will affect my future use and enjoyment of Lake Pend Oreille, the Pack River, the Clark Fork River, and the two deltas formed by these river systems.

22. Because the Bonneville Power Administration and the U.S. Army Corps of Engineers did not prepare an Environmental Impact Statement to consider the impacts of the new operations, I am concerned that the agencies have chosen to proceed with the new fluctuations without adequately understanding the potential impacts. The Environmental Assessment for FWPO recognizes that the repeated filling and draining of Lake Pend Oreille every winter may increase shoreline erosion; however, the agencies dismiss the increase as insignificant without providing up-to-date information on shoreline characteristics and erosion rates and without estimating how much the winter fluctuations are expected to increase erosion.

23. Additionally, unless the Bonneville Power Administration and U.S. Army Corps of Engineers modify the operations of Albeni Falls Dam and monitor and mitigate the effects of these operations to the Lake and its environment, I am

concerned that alarming rates of erosion will continue to occur and be exacerbated by FWPO. Unless these effects are mitigated, the continued operations of Albeni Falls Dam, including FWPO will impair my future use and enjoyment of these areas as well as that of my family.

DATED this 19th Day of September, 2013.

/s Brad Smith

Brad Smith