

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IDAHO CONSERVATION LEAGUE,)
GREAT OLD BROADS FOR WILDERNESS,)
and IDAHO RIVERS UNITED,)
)
Petitioners,)
)
v.)
)
BONNEVILLE POWER ADMINISTRATION,)
)
Respondent.)
_____)

PETITION FOR REVIEW UNDER THE NORTHWEST POWER ACT

Petitioners Idaho Conservation League, Great Old Broads for Wilderness, and Idaho Rivers United respectfully petition this Court for review of the Bonneville Power Administration’s (“BPA”) Fiscal Year 2022 Power Reserves Distribution Clause Final Decision (“Power RDC Decision”). Petitioners also request review of all “preliminary, procedural, or intermediate agency action[s] or ruling[s] not directly reviewable,” 5 U.S.C. § 704, that preceded, fed into, and/or were effectively part of the Power RDC Decision. This petition is brought pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (“Northwest Power Act”), 16 U.S.C. § 839 *et seq.*, and the Administrative Procedure Act.

The Power RDC Decision was finalized on January 6, 2023.¹ This petition is filed within 90 days of that date and is thus timely under the Northwest Power Act. 16 U.S.C. § 839f(e)(5).

To the best of Petitioners' knowledge, there are no pending petitions for review of the same final decision. However, pending before this Court is Petitioners' challenge to BPA's decision adopting power and transmission rates for the fiscal years 2022–23. *See Idaho Conservation League et al. v. Bonneville Power Admin.*, No. 22-70122. That case presents many of the same threshold legal issues presented by this case. Oral argument in that case is scheduled for June 8, 2023 in Seattle.

Petitioners ask this Court to set aside the Power RDC Decision and remand to BPA to revisit the decision in a manner that complies with BPA's duties to fish and wildlife under the Northwest Power Act. Petitioners also ask for other declaratory and injunctive relief as necessary to remedy their injuries, including an order requiring BPA to provide increased funding for fish and wildlife mitigation efforts. This relief would remedy and/or prevent ongoing and imminent harm to Petitioners. Petitioners also ask this Court to award reasonable attorney's fees and

¹ The BPA Administrator's letter of January 6, 2023 can be found here: https://www.bpa.gov/-/media/Aep/rates-tariff/bp-24/Power-Administrator-Letter_Jan6th.pdf

costs as allowed under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable laws.

Dated: April 5, 2023

Respectfully submitted,

/s/ Andrew R. Missel

Andrew R. Missel

Laurence (“Laird”) J. Lucas

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Attorneys for Petitioners

Idaho Conservation League,

Great Old Broads for Wilderness, and

Idaho Rivers United

RULE 26.1 DISCLOSURE STATEMENT

Petitioners Idaho Conservation League, Great Old Broads for Wilderness, and Idaho Rivers United are all non-profit organizations recognized by the IRS as Section 501(c)(3) public charities. They have no public shares and no corporate parents or affiliates with public shares.

Dated: April 5, 2023

Respectfully submitted,

/s/ Andrew R. Missel

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CERTIFICATE OF SERVICE

In accordance with Federal Rules of Appellate Procedure 15(c)(1) and (2), I certify that I have served a copy of this petition “on each party admitted to participate in the agency proceedings” other than BPA, which in this context means each party that submitted comments on the Power RDC Decision. Those comments were submitted via BPA’s website; thus, I have accomplished service of this petition (not including this certificate of service or Exhibit 1) through an email sent today. *See* Fed. R. App. P. 25(c)(2)(B). The list of parties served is found in Exhibit 1. I was unable to determine the email address of one commenter, identified only as “Grace” on BPA’s website.

Federal Rule of Appellate Procedure 15(c) and Ninth Circuit Rule 15-1 contemplate that the Ninth Circuit Clerk should accomplish service on Respondent. Accordingly, I am sending four copies of the filed petition via mail to the Clerk: one courtesy copy, one copy to be served on BPA, one copy to be served on the U.S. Attorney for the District of Oregon, and one copy to be served on the Attorney General. *See* Fed. R. App. P. 15(c)(3); Fed. R. Civ. P. 4(i). In addition, I have emailed a copy of this petition to Richard Greene (ragreene@bpa.gov), an attorney at BPA, who is registered for the Appellate Electronic Filing System. *See* 9th Cir. R. 25-5(f)(2).

Respectfully submitted,

/s/ Andrew R. Missel
Andrew R. Missel

EXHIBIT 1: SERVICE LIST

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