

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

UNITED STATES OF AMERICA,  
Plaintiffs,  
WATERWATCH OF OREGON, INC., *et al.*,  
Plaintiff-Intervenors,  
and  
STATE OF OREGON by and through the  
STATE OF OREGON WATER RESOURCES  
COMMISSION  
Plaintiff-Intervenors-Applicant,  
v.  
GRANTS PASS IRRIGATION DISTRICT  
Defendant.

No. 98-CV-3034-HO

STIPULATED ORDER TO AMEND  
CONSENT DECREE

WHEREAS, the parties agree that the Grants Pass Irrigation District (“District”) has complied to date with the terms and conditions of the Consent Decree entered herein on August 27, 2001 (“Decree”), has proceeded with due diligence to fund and implement the Pumping/Dam Removal Plan, has made substantial progress in securing funding for the pumping plants and dam removal, including securing \$1.5 million for this project in the Bureau of Reclamation’s Fiscal Year 2006 budget and \$13 million for this project in

the President's Fiscal Year 2007 budget; and has obtained the required permits for implementing the Pumping/Dam Removal Plan;

WHEREAS, the parties acknowledge that the Bureau of Reclamation has essentially completed the engineering and environmental review for implementation of the Pumping/Dam Removal Plan and should be awarding the contract to implement the project this year;

WHEREAS, the parties acknowledge that the under the Bureau of Reclamation's current construction schedule the new pumping facilities, that are intended to replace the District's diversions at Savage Rapids Dam ("Dam"), will not be online until after the 2008 irrigation season, and the dam will not be removed until 2009;

WHEREAS, the District is willing to continue to engage and fund a lobbyist at the levels specified in subparagraph V.B.1. of the Decree to obtain the funding necessary to complete the project until the pumps are installed and the Dam is removed;

WHEREAS, the current construction schedule does not coincide with the deadlines stated in subparagraph V.C. 3 and 4 of the Decree for the District to cease operating the Dam as its diversion facility;

WHEREAS, subparagraph V. C. 5 of the Decree provides that the parties may by mutual agreement and consent extend the deadlines in subparagraphs V. C. 3 and 4 above and subparagraph X. F. of the Decree provides that the Decree may only be amended or modified with the written consent of all parties and approval of the court;

WHEREAS, the parties find it desirable to continue to implement the Pumping/Dam Removal Plan and to extend the deadlines in subparagraph V. C. 3 and 4 of the Decree to November 1, 2008, and;

WHEREAS, the Incidental Take Permit (“ITP”) issued to the District and authorizing incidental take of threatened Southern Oregon/Northern California (SONC) coho salmon associated with its irrigation diversion operations at Savage Rapids Dam, currently expires on November 1, 2006, as it was meant to coincide with the deadlines for ceasing diversion operations at Savage Rapids Dam and those deadlines were extended to November 1, 2006 last year by stipulation of the parties;

~~WHEREAS, the National Marine Fisheries Service has reviewed the ITP, HCP, biological opinion for the ITP, and monitoring reports required under the ITP, and finds that extending the Permit expiration date for two more years is consistent with the requirements of Section 10(a)(1)(B) of the Endangered Species Act;~~

ACCORDINGLY IT IS HEREBY STIPULATED AND AGREED that the Consent Decree entered August 27, 2001 is hereby amended as follows:

1. The November 1, 2005 deadline in subparagraphs V.C.3 and 4 of the Consent Decree for ceasing diversions at the Dam shall be extended to November 1, 2008.

~~2. The authorization of the ITP will also be extended until November 1, 2008. All terms and conditions of the ITP will remain in full force and effect.~~

~~32.~~ The second sentence of subparagraph V.B.1. on page 6 of the Consent Decree is modified to hereinafter provide:

“The District shall commit up to \$50,000 for lobbying expenses in 2001 and for each year thereafter until full funding for pump installation and Savage Rapids Dam removal is achieved, and thereafter the District shall continue to expend such sums for lobbying as are reasonably necessary until Savage Rapids Dam is removed.”

3. Paragraph VI. is modified to hereinafter provide:

“VI. INCIDENTAL TAKE PERMIT/HABITAT CONSERVATION PLAN

A. Incidental Take Permit (ITP) Application

If the District has not already done so, the District shall within thirty days after entry of the Stipulated Order to Amend Consent Decree, ~~submit~~ consult with NMFS personnel to obtain guidance in preparing a new application for a new ITP consistent with this Decree as amended. This application shall include a updated habitat conservation plan (HCP) that provides for measures, conditions, and duties as provided in paragraphs III, IV, and V of this Decree as amended, and that is otherwise consistent with this Decree as amended. The District shall submit its new ITP application, and updated HCP, to NMFS by not later than July 1, 2006.

B. ITP

1. NMFS will process the District’s application for a new ITP expeditiously and in good faith so that it can become effective upon the expiration of the current ITP set to expire on November 1, 2006, or as soon thereafter as practicable, but in any case by not later than April 1, 2007.

2. The HCP for any new ITP issued by NMFS shall include those requirements of Paragraphs III, IV, and V of this Decree as amended that are appropriate for an HCP.

3. The non-federal parties shall support issuance of a new ITP that is consistent with this Decree as amended.

4. The approval for any new ITP application consistent with the terms of this Decree as amended and issuance of a new ITP that is consistent with the terms of this Decree as amended is anticipated by the parties, but the parties

recognize that the permitting process must be followed. If for some reason NMFS should determine that it cannot approve the new ITP application consistent with this Decree as amended, then any disputes concerning the denial of the application shall be brought to this Court for determination.

~~5. The parties recognize that it may be necessary for NMFS to issue a short term permit or permits upon expiration of the new permit to allow adequate time for required analysis of the effects of issuing a long term ITP consistent with this Decree as amended. NMFS shall have discretion to extend the deadline for submission of an application for a long term permit consistent with this Decree as amended and to request instead an application for another short term permit or permits.~~

65. The District shall abide by the terms of the current ITP until issuance of the new ITP.”

Dated: \_\_\_\_\_, 2006.

SO ORDERED:

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Hon. Michael Hogan  
United States District Judge

AGREED

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