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11 **UNITED STATES DISTRICT COURT**  
12 **WESTERN DISTRICT OF WASHINGTON**

13 **CENTER FOR ENVIRONMENTAL**  
14 **LAW AND POLICY**, a Washington  
15 non-profit corporation and  
16 **COLUMBIA RIVERKEEPER**, a  
Washington non-profit corporation

17 Plaintiffs,

18 v.

19 **UNITED STATES BUREAU OF**  
20 **RECLAMATION**, an agency of the  
Department of Interior, and **ROBERT**  
21 **W. JOHNSON**, in his official capacity  
as Commissioner of the Bureau of  
22 Reclamation

23 Defendant.

No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5  
U.S.C. § 706, and National  
Environmental Policy Act, 42 U.S.C. §  
4321 *et seq.*)

24 **I. Introduction**

25 1. This is a civil action for declaratory and injunctive relief under the  
26 Administrative Procedure Act (APA), 5 U.S.C. §§ 551-76. The claims arise from defendants'

1 violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370d, and  
2 the Council on Environmental Quality's regulations (CEQ) implementing NEPA, 40 C.F.R. §§  
3 1500-1508. This action is brought under the right of review provision of the APA, 5 U.S.C. §  
4 702.

5 2. This case involves the Bureau of Reclamation's (the Bureau) action to secure  
6 water rights to withdraw water from and drawdown Lake Roosevelt behind the Grand Coulee  
7 Dam on the Columbia River (the Lake Roosevelt Drawdown Project). The Bureau has failed  
8 to consider the environmental consequences of this action in violation of NEPA. The Bureau  
9 has not prepared and released to the public either an Environmental Assessment (EA) or an  
10 Environmental Impact Statement (EIS) considering and disclosing the potential environmental  
11 impacts of the Project.

12 3. Plaintiffs seek a declaratory judgment and injunctive relief to remedy the  
13 violations complained of herein. Plaintiffs also seek an award of costs, including attorney and  
14 expert witness fees. *See* Equal Access to Justice Act, 28 U.S.C. § 2412(d).

## 15 II. Jurisdiction and Venue

16 4. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 2201  
17 (declaratory relief), and 2202 (injunctive relief). Plaintiffs challenge final agency actions as  
18 defined by the APA, 5 U.S.C. § 551(13), pursuant to the Act's judicial review provisions, 5  
19 U.S.C. §§ 701-706.

20 5. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(e), as the plaintiffs  
21 reside in this district. Intra-district venue is appropriate in Seattle as plaintiff CELP's office is  
22 located in Seattle.

## 23 III. Parties

24 6. Plaintiff Center for Environmental Law and Policy (CELP) is a membership-  
25 based 501(c)(3) nonprofit organization incorporated in Washington State, with offices in  
26 Seattle and Spokane, Washington. CELP is dedicated to preserving and protecting the water

1 resources of western Washington and the Columbia River Basin. CELP achieves these goals  
2 through education, litigation, and advocacy. CELP's interest in the Columbia River and its  
3 tributaries dates back to the foundation of the organization more than a decade ago.

4 7. Columbia Riverkeeper is a 501(c)(3) non-profit, tax exempt, public interest  
5 conservation organization incorporated in Washington with headquarters in Hood River,  
6 Oregon. Columbia Riverkeeper's mission is to restore and protect the water quality of the  
7 Columbia River and all life connected to it, from the headwaters to the Pacific Ocean.  
8 Columbia Riverkeeper works to accomplish its mission through diverse activities including  
9 monitoring and commenting on the activities of federal, state and local agencies charged with  
10 responsibility over the Columbia basin. Additionally, Columbia Riverkeeper coordinates  
11 education research projects and presentations from the Columbia's headwaters to the Pacific  
12 Ocean. Columbia Riverkeeper and its members actively participate in governmental decision  
13 making processes that impact the Columbia River and species that depend on the river for  
14 survival.

15 8. Plaintiffs' members live and/or work near Lake Roosevelt. Some of plaintiffs'  
16 members recreate, on a continuing and ongoing basis, in Lake Roosevelt and on the banks of  
17 Lake Roosevelt. Plaintiffs' members use and enjoy species and habitat within Lake Roosevelt  
18 and the Columbia River for aesthetic, scientific, education, spiritual and recreational purposes.  
19 These uses include, but are not limited to, hiking, swimming, boating, wildlife observation,  
20 photography, and general aesthetic enjoyment. Plaintiffs' members intend to continue such  
21 uses on an ongoing basis in the future.

22 9. Plaintiffs and their members have been and continue to be actively involved in  
23 efforts to protect and restore the Columbia River from toxic pollution. These efforts include  
24 protecting humans and wildlife from exposure to legacy toxic pollutants. Plaintiffs have  
25 pursued numerous avenues to reduce the threats of toxic pollution in the Columbia River and at  
26 Lake Roosevelt. Plaintiffs and their members have written articles discussing the ecological

1 importance of and threats to the Columbia River and Lake Roosevelt, commented on various  
2 federal and state agency actions that affect the Columbia River and Lake Roosevelt, and when  
3 necessary, pursued litigation. For many decades, toxic metals from facilities upstream of Lake  
4 Roosevelt flowed into the lake. The toxic metals settled on the banks and lake bottom. The  
5 proposed release of water from the lake will lower the water elevation. In turn, Lake  
6 Roosevelt's contaminated banks will be exposed to the sun and wind. Such exposure creates a  
7 health hazards for plaintiffs' members who recreate on and in Lake Roosevelt.

8 10. Plaintiffs and their members have been, are being, and will continue to be  
9 harmed by the Bureau of Reclamation's actions in initiating and advancing the Lake Roosevelt  
10 Drawdown Project without following NEPA's procedural requirements. The Bureau's failure  
11 to follow procedural requirements increases the risk of actual, threatened, or imminent  
12 environmental harm. This increased risk of harm directly affects plaintiffs' and their members'  
13 interest in the recreational, aesthetic, and environmental values of the Columbia River and  
14 Lake Roosevelt. These risks include exposure to toxic contaminants as a result of lower lake  
15 levels.

16 11. The above-described recreational, scientific, aesthetic, educational,  
17 conservation, economic and other interests of plaintiffs and their respective members have  
18 been, are being, and unless the relief prayed for herein is granted, will continue to be adversely  
19 affected and irreparably injured by the Bureau's actions in initiating and advancing the Lake  
20 Roosevelt Drawdown Project and applying for water rights to carry out the Project.

21 12. The injuries described above are actual, concrete injuries suffered by plaintiffs  
22 and their members. These injuries are caused by the actions and omissions of the Bureau  
23 described herein and would be redressed by the relief sought.

24 13. Defendant Bureau of Reclamation is an agency of the United States Department  
25 of the Interior. The Bureau is the lead agency for NEPA purposes for the Lake Roosevelt  
26 Drawdown Project, described herein.



1 **The Lake Roosevelt Drawdown Project**

2 20. The Lake Roosevelt Drawdown Project proposes new withdrawals and  
3 diversions of water from behind the Grand Coulee Dam for irrigation, municipal and instream  
4 uses.

5 21. In December 2004, the State of Washington, Bureau of Reclamation, and the  
6 three Columbia Basin Project irrigation districts - the East Columbia Basin Irrigation District,  
7 the Quincy-Columbia Irrigation District, and the South Columbia Basin Irrigation District -  
8 signed a Memorandum of Understanding (MOU) that committed the Bureau to commence  
9 development of several water supply projects within the Columbia Basin Project. All water  
10 supplied to these projects is to come from water stored behind Grand Coulee Dam and  
11 controlled by the Bureau.

12 22. Water supply projects contemplated in the MOU include the “Lake Roosevelt  
13 Drawdown.” The Lake Roosevelt Drawdown Project would tap into the storage water  
14 authorized under the Bureau’s Reservoir Certificate No. 11793 to supply water to irrigators in  
15 the Odessa Subarea. The Lake Roosevelt Drawdown Project would also supply water to  
16 downstream industrial and municipal uses, for entities and lands that fall outside of the  
17 Columbia Basin Project.

18 23. The Odessa Subarea comprises, in part, a portion of the lands within the  
19 authorized boundaries of the Columbia Basin Project, but which do not receive Project water.

20 24. Sections 14-16 of the MOU detail how the parties (Washington, the Bureau, and  
21 the irrigation districts) plan to work together to bring 30,000 acre-feet of water from Lake  
22 Roosevelt to the Odessa Subarea. Section 14 states the Bureau will file a water right  
23 application with the State of Washington for a right to divert water from the federal storage  
24 rights in Lake Roosevelt to serve the Odessa Subarea. The 30,000 acre-feet will irrigate  
25 10,000 acres of farmland that is currently irrigated with groundwater. While this land is within  
26 the Columbia Basin Project, it has not yet received Columbia Basin Project water.

1           25.     MOU Sections 12 and 13 detail how the parties will enter into a water service  
2 contract to make 37,500 acre-feet available from the federal storage rights behind Grand  
3 Coulee Dam for non-Project uses. Of the 37,500 acre-feet, 25,000 acre-feet is to be allocated  
4 to municipal and industrial use. The remaining 12,500 acre-feet is to be left in-stream.  
5 Release of this water also requires a water right permit from Washington State.

6           26.     On August 19, 2005 the Bureau submitted a water right application to Ecology,  
7 and it was assigned application number S3-30486. The Bureau later withdrew the application,  
8 and submitted an amended application on May 22, 2008 and again on May 30, 2008. This  
9 application requests authorization from the state of Washington to allow the Bureau to divert  
10 45,000 acre-feet of water from its Lake Roosevelt storage right. Of this quantity, 30,000 acre-  
11 feet would be diverted for use in the Odessa Subarea and the remaining 15,000 acre-feet would  
12 be released downstream for instream flow augmentation purposes.

13           27.     On May 22, 2008 the Bureau submitted an application to Ecology and it was  
14 assigned application number S3-30556. The Bureau amended the application on May 30,  
15 2008. This application requests authorization from the state of Washington to allow the  
16 Bureau to divert 37,500 acre-feet of water from its Lake Roosevelt storage right. Of this  
17 quantity, 25,000 acre-feet would be diverted for downstream industrial and municipal uses and  
18 the remaining 12,500 acre-feet would be released downstream for instream flow augmentation  
19 purposes.

20           28.     Therefore, the proposed total water to be withdrawn under the two scenarios  
21 discussed above is 82,500 acre-feet. The commitment of water for out-of-stream uses totals  
22 55,000 acre-feet of water per year.

23           29.     On September 25, 2008, Ecology released the Reports of Examination (ROE)  
24 approving permits S3-30486 and S3-30556.

25           30.     To date, the Bureau has not conducted any environmental analysis pursuant the  
26 National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Council of

1 Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. § 1500-1517 for the  
2 MOU, the water right applications or any other aspect of the Lake Roosevelt Drawdown  
3 Project.

#### 4 CLAIM FOR RELIEF

#### 5 **The Bureau's Failure to Prepare an Environmental Assessment or Environmental** 6 **Impact Statement as Required by NEPA is Arbitrary, Capricious, and Not in Accordance** 7 **with Law under the Administrative Procedure Act**

7 31. Plaintiffs incorporate by reference all preceding paragraphs.

8 32. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and the  
9 Council on Environmental Quality's (CEQ) implementing regulations, 40 C.F.R. § 1500-1517,  
10 require that an agency prepare an Environmental Impact Statement (EIS) for every major  
11 federal action significantly affecting the environment. 42 U.S.C. § 4332(2)(C). The EIS must  
12 include an analysis of any adverse environmental impacts that cannot be avoided should the  
13 project be implemented, alternatives to the proposed action, and any irreversible and  
14 irretrievable commitment of resources which would be involved if implemented. *Id.*

15 33. If there is uncertainty over whether an EIS should be prepared, CEQ regulations  
16 mandate preparation of an Environmental Assessment (EA) to determine if an EIS is  
17 necessary. 40 C.F.R. § 1501.4. An EA must provide sufficient evidence and analysis for  
18 determining whether to prepare an EIS or a finding of no significant impact. 40 C.F.R. §  
19 1508.9.

20 34. NEPA's implementing regulations further dictate that until an agency has  
21 complied with NEPA and issued a record of decision, no action concerning the proposal can be  
22 taken that will have an adverse environmental impact or limit the choice of reasonable  
23 alternatives. 40 C.F.R. § 1561(a). NEPA's disclosure requirements are to insure that the  
24 agency has carefully and fully contemplated the environmental effects of its actions, and to  
25 insure that the public has sufficient information to challenge the agency.  
26



1           35.     An agency is required to evaluate, consider and disclose to the public the direct,  
2 indirect and cumulative effects of its actions in an EIS, or when appropriate, and EA. 42  
3 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.8.

4           36.     This review and disclosure must include cumulative impacts resulting from all  
5 past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

6           37.     NEPA also requires that an agency evaluate and disclose impacts from all  
7 “similar” or “cumulative” actions. 40 C.F.R. § 1508.25(a).

8           38.     NEPA mandates that as part of this analysis, a federal agency must consider  
9 alternatives to a proposed action and identify mitigation measures to reduce the effects of the  
10 proposed action. 40 C.F.R. § 1502.14(f).

11          39.     The Bureau is a federal agency subject to NEPA. Carrying out the Lake  
12 Roosevelt Drawdown Project by entering into the MOU with Washington State and the  
13 Columbia Basin Project irrigation districts and applying for water rights to drawdown Lake  
14 Roosevelt, withdraw water from Lake Roosevelt and deliver it to irrigation, municipal,  
15 industrial and instream flow uses is a major federal action that may significantly affect the  
16 human environment.

17          40.     Defendants have failed to prepare an EIS, or an EA, to asses and disclose the  
18 environmental impacts of the Lake Roosevelt Drawdown Project , in violation of NEPA. 42  
19 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1501.3, 1501.4.

20          41.     Defendants have failed to develop or consider alternatives to the Lake  
21 Roosevelt Drawdown Project, in violation of NEPA. 42 U.S.C. § 4332(2)(C); *see also* 42  
22 U.S.C. § 4332(2)(E).

23          42.     Defendants have failed to evaluate, consider and disclose to the public, the site-  
24 specific direct, indirect and cumulative effects of the Lake Roosevelt Drawdown Project,  
25 violation of NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.27(b)(7).

26

1 43. Defendants' failure to comply with NEPA for the Lake Roosevelt Drawdown  
2 Project constitutes arbitrary and capricious agency action, is an abuse of discretion, and is  
3 contrary to law and to procedures required by law. 5 U.S.C. § 702(2)(A), (D).

4 **RELIEF REQUESTED**

5 WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

6 A. Declare that defendants' action of entering into the MOU and/or applying for  
7 water rights S3-30486 and S3-30556 without preparing either an EA or EIS is contrary to  
8 NEPA.

9 B. Issue a temporary restraining order, preliminary injunction and/or permanent  
10 injunction preventing the defendants from taking any action related to Washington State water  
11 right permits S3-30486 and S3-30556 and the Lake Roosevelt Drawdown Project until such  
12 time as it can demonstrate compliance with NEPA.

13 C. Award plaintiffs their reasonable costs, litigation expenses, and attorney's fees  
14 associated with this litigation pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412;  
15 and

16 D. Any further relief the Court deems proper and just.

17 DATED this 1st day of December, 2008.

18 Respectfully submitted by:

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