

ALLISON LAPLANTE (OSB # 02361)
Pacific Environmental Advocacy Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
(503) 768-6894
Fax (503) 768-6642
laplante@lclark.edu
Attorney for Plaintiff

MARK A. NITCZYNSKI (Col. # 20687)
United States Department of Justice
Environment & Natural Resources Division
1961 Stout Street, 8th Floor
Denver, CO 80294
mark.nitczynski@usdoj.gov
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL
ADVOCATES, a non-profit corporation,

Plaintiff,

v.

Civil No. 06-479-HA

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, a United States
Government Agency,

Defendant.

**ORDER GRANTING JOINT
MOTION TO EXTEND CONSENT
DECREE DEADLINE FOR AQUATIC
LIFE CRITERIA UNTIL FIVE
MONTHS AFTER COMPLETION OF
BIOLOGICAL OPINIONS**

Before the Court is the Joint Motion to Extend Consent Decree Deadline For Aquatic
Life Criteria Until Five Months After Completion of Biological Opinions (“Joint Motion”). For

Order Granting Joint Mot. to Extend
Consent Decree Deadline For Aquatic
Life Criteria Until Five Months After
Completion of Biological Opinions

the reasons stated in the Memorandum in Support of Joint Motion to Extend Consent Decree Deadline For Aquatic Life Criteria Until Five Months After Completion of Biological Opinions, and for good cause shown, the Court GRANTS the Joint Motion. Accordingly, the Consent Decree entered by this Court on May 29, 2008 (Doc. No. 38), and modified on December 29, 2008 (Doc. No. 42), June 11, 2009 (Doc. No. 46), October 13, 2009 (Doc. No. 50), March 4, 2010 (Doc. No. 55) and June 1, 2010 (Doc. 60), is hereby modified further as follows:

1. Paragraph 7 of the Consent Decree is modified to provide, in full:

“Except as provided in Paragraph 8, EPA shall complete its final action approving and/or disapproving the aquatic life criteria no later than five (5) months after both FWS and NMFS have provided to EPA their final BiOp(s). Under the Stipulated Order of Dismissal in Case No. 10-907-BR (D. Or.), NMFS is to complete its BiOp on or before December 31, 2011 and FWS is to complete its BiOp by June 30, 2012. Accordingly, EPA shall complete its final action approving and/or disapproving the aquatic life criteria by November 30, 2012. If either NMFS or FWS completes its BiOp more than thirty (30) days after its current deadline in the Stipulated Order of Dismissal in Case No. 10-907-BR (D. Or.), or if either BiOp remains incomplete as of October 30, 2012, then the Parties promptly shall meet and confer to discuss an extension of EPA’s deadline. In the event that one of the BiOps is completed after October 30, 2012 but prior to November 30, 2012, then EPA’s deadline automatically shall be extended to thirty (30) days after the date that EPA receives the BiOp. In the event that both of the BiOps are completed after October 30, 2012 but prior to November 30, 2012, then EPA’s deadline automatically shall be extended to thirty (30) days after the date that EPA receives the later BiOp.”

2. Paragraph 38 is added to the Consent Decree, to provide in full as follows:

“The United States agrees to pay, and NWEA agrees to accept \$6,000 in full settlement of all claims by NWEA for its costs of litigation (including reasonable attorneys’ fees and expenses) from the date this Consent Decree was executed by the Parties up to and including the date that the Joint Motion to Extend Consent Decree Deadline for Aquatic Life Criteria Until Five Months After Completion of Biological Opinions is submitted to the Court. The payment shall be made by electronic funds transfer to NWEA within one hundred twenty (120) days after the Court enters the Order Granting Joint Motion to Extend Consent Decree Deadline for Aquatic Life Criteria Until Five Months After Completion of Biological Opinions, and shall be sent to:

Bank name: Key Bank
Bank address: P.O. Box 22114, Albany, NY 12201-2114
ABA#: 123002011
Routing #: 123002011
Account # 370181015444
Name of account: Pacific Environmental Advocacy Center Attorney Escrow
Account/IOL TA
Federal Tax #: 93-0386858"

IT IS SO ORDERED.

Date: _____

Hon. Ancer L. Haggerty
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2010, I caused a true copy of the foregoing proposed ORDER GRANTING JOINT MOTION TO EXTEND CONSENT DECREE DEADLINE FOR AQUATIC LIFE CRITERIA UNTIL SIX MONTHS AFTER COMPLETION OF BIOLOGICAL OPINIONS to be served on each of the following counsel in the manner indicated below:

Allison LaPlante
PACIFIC ENVIRONMENTAL
ADVOCACY CENTER
10015 S.W. Terwilliger Blvd.
Portland, OR 97219
laplante@lclark.edu

Via Hand Delivery
 Via E-mail
 Via First-Class mail, postage pre-paid
 Via Overnight Mail
 Court notice of electronic filing via
CM/ECF

/s/ Mark A. Nitzynski
MARK A. NITCZYNSKI