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# In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 67, Original

STATE OF IDAHO, ex rel CECIL D. ANDRUS,  
Governor; WAYNE L. KIDWELL, Attorney General;  
JOSEPH C. GREENLEY, Director, Department of  
Fish and Game,

Plaintiff,

v.

STATE OF OREGON; STATE OF WASHINGTON,  
Defendants.

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ANSWER OF DEFENDANT STATE OF OREGON

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## ANSWER OF DEFENDANT STATE OF OREGON

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Defendant, State of Oregon, answers plaintiff's  
complaint as follows:

### I

Admits the allegations of paragraphs I, III, IV, VII  
and VIII.

### II

Defendant is without knowledge or information  
sufficient to form a belief as to the truth of the  
allegations of paragraphs XI, XV, XVII, XVIII and  
XXII.

### III

Answering paragraph II, admits Wayne L. Kid-  
well is the duly elected Attorney General of the State

of Idaho, that Joseph C. Greenley is the Director of the Idaho Department of Fish and Game, and that Cecil D. Andrus was the duly elected Governor of the State of Idaho when the complaint was filed.

#### IV

Answering paragraph VI, admits Oregon, Washington and Idaho occupy a major portion of the Columbia River Basin which contains an anadromous fishery wherein fish spawn, hatch, and grow to juvenile or "smolt" size in fresh water tributaries of the Columbia and Snake Rivers, migrate down stream to the Pacific Ocean through the Columbia Basin drainage and mature at sea for one, two, three or four years, depending on the species, and then reenter fresh water at the mouth of the Columbia River intent upon returning to their own spawning ground, to spawn and maintain the species.

#### V

Answering paragraph IX, admits the Idaho anadromous fishery is made up principally of upriver spring chinook salmon, summer chinook salmon, and summer steelhead trout. Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in this paragraph.

#### VI

Answering paragraph X, defendant denies benefits to Idaho have been substantially below an equitable

level. Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in this paragraph.

## VII

Answering paragraph XII, admits defendants formed the Oregon-Washington Columbia River Fish Compact in 1915 and that the compact was approved by the Congress of the United States on April 8, 1918, 40 Stat. 515.

## VIII

Answering paragraph XIII, admits Washington is represented in the Oregon-Washington Columbia River Fish Compact by its Department of Fisheries and that Oregon is represented in this compact by its Fish and Wildlife Commission, successor to its Fish Commission which was abolished after the complaint was filed.

## IX

Answering paragraph XVI, admits defendants have not enacted legislation permitting plaintiff to join the Oregon-Washington Columbia River Fish Compact.

## X

Answering paragraph XIX, admits hatchery production is necessary to supplement natural anadromous fish runs in the Columbia River Basin. Defendant

is without knowledge or information sufficient to form a belief as to the truth of the other allegations in this paragraph.

## **XI**

Answering paragraph XX, admits plaintiff permits no commercial fishing within its boundaries for anadromous fish and further admits plaintiff permits some sport fishing for anadromous fish. Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations in this paragraph.

## **XII**

Defendant denies each and every other allegation contained in the complaint.

### **FIRST DEFENSE**

The Court lacks jurisdiction over the subject matter of this suit.

### **SECOND DEFENSE**

The complaint fails to state a claim against defendant upon which relief can be granted.

### **THIRD DEFENSE**

Plaintiff has failed to join the Secretary of the Interior who is an indispensable party because:

1. The Bureau of Reclamation operates under the direction and control of the Secretary of the Interior. The Bureau of Reclamation owns, operates and man-

ages substantial land holdings in the Columbia River Basin, including reclamation, recreation and irrigation projects, dams and reservoirs, affecting fish runs in the Basin. In administering these projects, the Secretary of the Interior is required to take action to protect fishery resources.

2. The Fish and Wildlife Service operates under the direction and control of the Secretary of the Interior. The Secretary of the Interior is responsible, with advice and assistance from the Service, for management, development, advancement, conservation, and protection of fishery resources.

3. The Secretary is responsible for carrying out the trust responsibilities of the United States to various Indian tribes whose fishing rights may be affected by the relief sought by plaintiff.

4. The Administrator of the Bonneville Power Administration is appointed by and responsible to the Secretary of the Interior. The Administrator is responsible for sale and disposition of electric power generated by the Bonneville Power Project. In carrying out these duties the Administrator makes decisions affecting water flow and water levels in the Columbia River Basin which affects anadromous fish runs in the basin.

#### **FOURTH DEFENSE**

Plaintiff has failed to join the Secretary of Agricul-

ture who is an indispensable party because the Secretary is responsible for the supervision and direction of the United States Forest Service, which is in turn charged with the administration, preservation, regulation and protection of certain portions of the Snake River pursuant to the Wild and Scenic Rivers Act, 16 USC 1271 et seq, and the rules and regulations adopted pursuant thereto.

### **FIFTH DEFENSE**

Plaintiff has failed to join the Secretary of Commerce who is an indispensable party because the Secretary is responsible for the supervision and direction of the National Marine Fisheries Service, which is in turn the supervisor of and funding agency for the Columbia River Development Program. Pursuant to this program, National Marine Fisheries Service is charged with the preservation and enhancement of anadromous fish in the Columbia River Basin.

### **SIXTH DEFENSE**

Plaintiff has failed to join the Secretary of the Army and the Army Corps of Engineers which are indispensable parties because:

1. The Army Corps of Engineers, operating under the supervision, direction, and control of the Secretary, is responsible for construction, operation, and maintenance of several dams, including fish ladders



and related facilities, affecting anadromous fish runs in the Columbia River Basin.

2. Dams, locks, power plants and appurtenant works of the Bonneville Power Project were constructed and are maintained and operated by the Army Corps of Engineers under direction of the Secretary of the Army. The Bonneville Power Project facilities affect anadromous fish runs in the Columbia River Basin.

### **SEVENTH DEFENSE**

Plaintiff has failed to regulate the persons and instrumentalities under its control so as to maintain a minimum water flow in the Snake River above its confluence with the Columbia River sufficient to conserve and enhance the anadromous fish plaintiff seeks to obtain in this suit.

### **EIGHTH DEFENSE**

#### **I**

Anadromous fish migrating from Idaho to the Pacific Ocean and returning from the Pacific Ocean to Idaho must circumvent eight major obstructions, the dams constructed by the United States Corps of Engineers. Four of these dams are located within the State of Idaho on the Snake River and its major tributaries.

#### **II**

These dams and other dams within the State of

Idaho have substantially reduced the production of anadromous fish within the State of Idaho.

## **NINTH DEFENSE**

### **I**

An advisory council to the Oregon-Washington Columbia River Fish Compact includes a representative of the Idaho Department of Fish and Game. This council meets prior to action by the compact to respond and suggest modification in the proposals for adoption by the compact.

### **II**

The Idaho representative to the advisory council is also given a place at the head table at compact meetings and participates in all activities of the compact, even though Idaho does not have a vote.

### **III**

Idaho is a member of the Columbia River Management Council which coordinates fishery management activities in the Columbia River Basin.

## **TENTH DEFENSE**

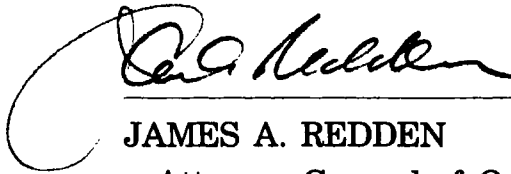
The United States District Court, District of Oregon, in *United States v. Oregon*, Civil 68-513, has and continues to exercise jurisdiction over defendants' regulation of the anadromous fishery in the Columbia River to insure regulations affecting the treaty Indian fishery comply with the Court's 1969 decree, 302 F. Supp. 899 (DC Or 1969).

**ELEVENTH DEFENSE**

A substantial number of anadromous fish claimed by plaintiff originated in or return to spawning grounds located in the State of Oregon.

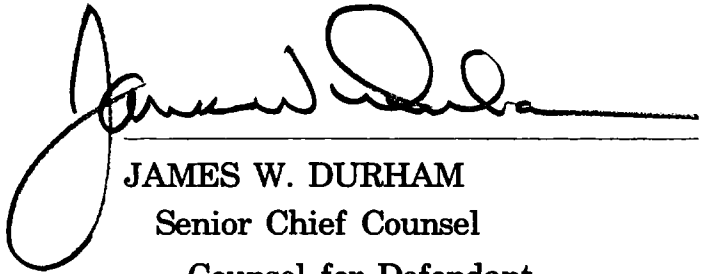
DATED: July 29, 1977.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James A. Redden", written over a horizontal line.

**JAMES A. REDDEN**

Attorney General of Oregon

A handwritten signature in dark ink, appearing to read "James W. Durham", written over a horizontal line.

**JAMES W. DURHAM**

Senior Chief Counsel

Counsel for Defendant

State of Oregon









