

Stephen T. Janik, OSB #741538  
Jack L. Orchard, OSB #721888  
[sjanik@balljanik.com](mailto:sjanik@balljanik.com)  
[jorchard@balljanik.com](mailto:jorchard@balljanik.com)  
Ball Janik LLP  
101 SW Main St., Ste. 1800  
Portland, OR 97204-3219  
(503) 228-2525  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

PORTLAND GENERAL ELECTRIC  
COMPANY, an Oregon corporation,

Plaintiff,

v.

STATE OF OREGON, by and through  
THE OREGON DEPARTMENT OF STATE  
LANDS, and +/- FIVE ACRES OF  
UNIMPROVED LAND ALONG THE  
WILLAMETTE RIVER NEAR WEST  
LINN, OREGON,

Defendant.

Case No.: 3:22-cv-00533-SB

**DECLARATION OF TIM SHIBHARA IN  
SUPPORT OF PORTLAND GENERAL  
ELECTRIC COMPANY'S RESPONSE  
TO GRAND RONDE MOTION FOR  
INTERVENTION**

I Tim Shibahara, declare as follows:

1 - DECLARATION OF TIM SHIBHARA IN SUPPORT OF PORTLAND GENERAL ELECTRIC  
COMPANY'S RESPONSE TO GRAND RONDE MOTION FOR INTERVENTION

1. I am Manager, Environmental Science and Licensing, Westside Biological Services for PGE. I am responsible for managing PGE's FERC license responsibilities for the Westside Hydro Facilities, including Clackamas River Hydro Project, FERC License No. 2195 and Willamette Falls Hydro Project No. 2233.

2. Throughout all parts of the "disputed property to be condemned" or "Property" as identified in the Complaint, and more specifically in Exhibit B to the Complaint, below Portland General Electric's (PGE) dam at the Willamette Falls, there are significant operational requirements for PGE's Willamette Falls Hydroelectric Project, No. 2233 ("Project"). These operations are required by PGE's Federal Energy Regulatory Commission ("FERC") License.

3. Fish Stranding and Salvage. Ordering Paragraph (D) of FERC's 2005 License for the Project adopted all conditions of the water quality certification issued by the Oregon Department of Environmental Quality ("ODEQ"). One such condition imposed by ODEQ, which FERC adopted into the License as required by section 401(d) of the Clean Water Act ("CWA") (33 U.S.C. § 1341(d)), requires PGE to "[i]mplement a Stranding Management Plan." Similarly, Ordering Paragraph (F) of FERC's 2005 License for the Project requires PGE to "salvage stranded Pacific lamprey in accordance with the St[r]anding Management Plan." Under this License-required Stranding Management Plan, PGE is required to identify any stranding of fish that occurs on the Property below the dam. Stranding can occur due to water level fluctuations. In particular, this occurs when PGE annually installs flashboards along the top of the dam in accordance with the Project Operations Plan. These boards are made of wood and raise the height of the dam, allowing for summer navigation upstream and increased hydroelectric generation. When they are installed, the water flow over the dam is temporarily reduced, leading to pools on the Property where endangered salmon (Chinook and Steelhead), lamprey, and other fish species may be stranded. To meet its obligations under the Stranding Management Plan, PGE accesses all parts of the Property to assess fish stranding, implement measures to salvage stranded fish, and report its efforts to FERC and the License-established

Fish Committee. PGE's activities on the Property include, for example, monitoring stranding pools; installing temporary flows to stranding pools (through notches in flashboards or removing felt cloth to a flashboard section); constructing egress channels to eliminate stranding pool blockages; and removal and transport of stranded fish. To meet its License obligations under the Stranding Management Plan, PGE must have continuous, unobstructed access to the Property.

4. Lamprey Passage. Several provisions of FERC's 2005 License for the Project require PGE to access the Property for purposes of facilitating passage of Pacific lamprey through the Project. Article 403 of the Project License required PGE to "conduct a preliminary assessment of use of lamprey ramps at the Falls." Moreover, Ordering Paragraph (D) of FERC's 2005 License for the Project adopted all conditions of the water quality certification issued by ODEQ. One such condition imposed by ODEQ, which FERC adopted into the License as required by CWA section 401(d) (33 U.S.C. § 1341(d)), required PGE to "[i]ninstall and provide flows at lamprey passage ramps." Finally, Ordering Paragraphs (E) and (F) of FERC's 2005 License for the Project adopted fish passage requirements imposed by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) require PGE to use the Property to construct, operate, and maintain lamprey passage. As required by these license conditions, PGE constructed, and currently operates and maintains, Pacific lamprey ramps on the Property to allow lamprey to migrate over the Falls. Several of these ramps, in fact, are installed directly at the Falls, extending from the top of the flashboards to the top of the dam, with one extending from a rock shelf below the dam to the top of the flashboards. FERC approved these lamprey passage structures in a license amendment order issued in 2007. Because these passage ramps are designed to be washed out each year by high river flows (that also wash out the flashboards), PGE uses the Property to maintain and re-install these lamprey passage facilities on a regular basis.

5. Cultural Resource Management. Article 409 of FERC's 2005 License for the Project requires PGE to implement a Historic Properties Management Plan (HPMP) for cultural

and historic properties that may be affected by the ongoing operation and maintenance of the Project during the Project's 30-year license term. Multiple historic and prehistoric petroglyphs are located on the Property. Pursuant to the requirements of the License-required HPMP, PGE accesses the Property to monitor these cultural sites, survey for additional sites when appropriate, and to appropriately manage these sites to prevent their destruction.

6. Dam Management and Project Safety. Under section 10(c) of the Federal Power Act (16 U.S.C. § 803(c)), PGE is required as the FERC licensee to "maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power," and to "conform to such rules and regulations as [FERC] may from time to time prescribe for the protection of life, health, and property." These requirements are expressly included in FERC's 2005 License for the Project under Ordering Paragraph (A), which provides: "The license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA." Under FERC's dam and project safety regulations (18 C.F.R. Part 12), PGE is required to conduct dam safety surveillance and monitoring activities, perform regular inspections of Project infrastructure, implement testing operations of infrastructure on at least an annual basis, maintain the security of the Project, and install and maintain appropriate signage, signals, and other warning systems to protect the public. All of these activities require regular access to the Property.

7. Public Safety. Consistent with its obligations under FPA Section 10 (c) and Ordering Paragraph (A) of FERC's 2005 License for the Project, PGE manages and controls safe public access around the Project, including the Property at issues here. The Property utilizes a major waterfall to provide elevation, with highly dangerous waters due to swift and powerful flows coming over the Falls, often accompanying with large, floating debris; rapid and unexpected changing river flows due to Project operations; and seasonal failure of flashboards

and concentrated flow areas for fishways. To maintain the security of Project infrastructure and protect the public, PGE actively manages the Property and adjacent waters to exclude the public. Boat access to the Property is restricted downstream by Oregon State Marine Board boating deadlines. Boat barriers are in place upstream of the Property to discourage boaters to navigate near the falls. PGE maintains signage near and around the Project's tailrace (which is above the boating deadline) to warn boaters of dangerous conditions within these areas. PGE maintains signage on both sides of the river downstream of the Falls to warn the public of this dangerous area and the potentially changing conditions at the Falls.

8. Willamette Falls Fish Ladder. Ordering Paragraphs (E) and (F) of FERC's 2005 License for the Project adopted fish passage requirements imposed by NMFS and USFWS related to a fish passage facility located near the center of the river at the apex of the horseshoe-shaped Falls. Oregon Department of Fish & Wildlife owns and operates this facility, but as required by our License, PGE conducts maintenance activities associated with the fish ladder operations; removes debris at the fish ladder sluiceway adjacent to the fish ladder; lubricates the gate stem for auxiliary water discharge at the ladder entrance and gate stems for the two exit gates; cleans out the level sensor stilling wells at entrances; cleans out debris at the auxiliary water channels at ladder entrances; and exercises all equipment each month. To access the fish ladder and conduct these license-required activities, PGE must have access to the Property.

9. Abernathy Channel. The Property includes Abernathy Channel, which is located adjacent to, but not including, the Grand Ronde Blue Heron property at the northeastern terminus of the Property. The Abernathy Channel is needed for PGE's obligations under the FERC License because PGE operates, accesses, and maintains Obermeyer weirs in the Abernathy Channel to control flows in this area. These FERC-licensed facilities are identified in Exhibit A of the Project's License, as amended by FERC in 2020. In addition to maintain this infrastructure within the Abernathy Channel portion of the Property, PGE manages this area and

often accesses it for fish stranding, cultural resources management, dam and project safety management, and Project security, as described in Paragraphs 4, 6, and 7 above.

*I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.*

DATED: June 10, 2022

/s/ Tim Shibahara

Tim Shibahara