

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH

SEP 29 2 37 PM '89

MADE BY SUMMER

BY CLERK

9/29/89

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

NATIONAL WILDLIFE FEDERATION,
et al.,

Plaintiffs,

ORDER OF INJUNCTION FOR
WESTERN AREA POWER
ADMINISTRATION

TROUT UNLIMITED, THE STONEFLY
SOCIETY OF THE WASATCH, THE
UTAH WILDLIFE LEADERSHIP
COALITION, THE SALT LAKE COUNTY
FISH AND GAME ASSOCIATION, AND
THE UTAH WILDLIFE FEDERATION,

Intervenors,

vs.

Civil No. 88-C-1175G

WESTERN AREA POWER ADMINISTRATION,
et al.,

Defendants,

and

COLORADO RIVER ENERGY DISTRIBUTORS
ASSOCIATION, INC.,

Intervenors.

Based upon the legal memorandums, other submissions and
evidence presented to the court in proceedings commencing
September 25, 1989, and continuing through September 29, 1989, and
the findings which were made, entered orally by the court at the

conclusion of the evidence and arguments of counsel, which findings may be supplemented at a later date,

IT IS HEREBY ORDERED:

1. Injunction - Effective September 29, 1989, Western Area Power Administration ("WAPA") is enjoined from implementing its Post 1989 Power Marketing Criteria and Call for Applications for Power (the Post 1989 Criteria) scheduled to take effect October 1, 1989. Effective upon approval by court order of a plan to be submitted by WAPA for modification of the post 1989 power contracts and until the completion of an adequate EIS, as hereinafter described at paragraph 4 herein, WAPA is enjoined from implementing its Post 1989 Power Marketing Criteria and Call for Applications for Power (the Post 1989 Criteria) scheduled to take effect October 1, 1989, to the extent that such implementation will result in any material increase as compared with existing criteria in seasonal and overall capacity or energy in marketing commitments for allocation of long term firm CRSP power by WAPA.

2. Existing Customers - Existing WAPA firm power contracts for the Colorado River Storage Project ("CRSP") are hereby extended pending approval by this court of the plan to be submitted by WAPA as set forth at paragraph 4 herein, or failing such approval until the preparation and verification of an adequate Environmental Impact Statement ("EIS") for the Post 1989

Criteria in compliance with the National Environmental Policy Act, 42 U.S.C. Sec. 4321 et seq.

3. New Customers¹ - Pending approval by this court of the plan to be submitted by WAPA pursuant to paragraph 4 herein, or failing such approval until the preparation and verification of an adequate Environmental Impact Statement ("EIS") for the Post 1989 Criteria in compliance with the National Environmental Policy Act, 42 U.S.C. Sec. 4321 et seq., WAPA shall provide short term CRSP power only from either excess CRSP generation or purchases at the same rates as long term firm power beginning October 1, 1989, to customers not currently having long term power contracts with WAPA who have executed long term firm power contracts pursuant to the Post 1989 Criteria ("the new customers"). This same arrangement shall apply to the cities of Hurricane and Enterprise, Utah which do not at present have an CRSP allocation and which currently receive power pursuant to an agreement with ICPA.

4. Interim Plan to be Submitted by WAPA - On or before November 1, 1989, WAPA shall prepare and submit to the court and parties to this litigation a plan for the marketing of firm CRSP power until the completion of WAPA's EIS, which will contemplate a modification by court order of the contracts

¹ As identified in "Table 4" of the August 24, 1989 Federal Register notice, 54 Fed. Reg. 35238.

including reopening clause which were to take effect on October 1, 1989, for the marketing of firm CRSP power pursuant to the post 1989 criteria. A hearing to determine whether this court shall approve that plan or any modification thereof shall be held on November 6, 1989, at 1:30 p.m. The plan to be submitted shall be designed to achieve the following objectives:

a. Appropriate reductions in allocations applicable to all contracting parties so that the seasonal and overall allocations of CRSP power under the post 1989 criteria will not materially exceed the level of long term firm power marketed under the existing criteria and the existing contracts.

b. Maintenance of the status quo as to water release patterns by operation by WAPA or recommendations by WAPA to the Bureau of Reclamation for operation of CRSP dams in terms of water release patterns. Operations and water release to be performed essentially in the same manner as now performed under the existing contractual arrangements.

c. The aforesaid modifications in all post 1989 contracts to be in force and effect from the date of approval by this court until completion of the WAPA Environmental Impact Statement and further court order.

d. Execution of a court order adopting the plan for modification of the post 1989 CRSP power contracts.

5. Post 1989 Power Contracts - The contracts executed by WAPA and its existing and intended customers in connection with the Criteria scheduled to become effective on October 1, 1989 are not abrogated but hereby are suspended pending approval or modification of the plan to be submitted by WAPA as set forth at paragraph 4 herein and any contract modifications required in connection therewith, or failing that until the preparation and verification of an adequate EIS and further order of this court.

6. WAPA EIS - Participating Agencies - In connection with the EIS relating to the post 1989 Criteria, WAPA formally shall request in writing with copies to the Court and to counsel to the parties to this litigation that the Bureau of Reclamation of the United States Department of the Interior ("DOI"), the United States Fish and Wildlife Service and the National Park Service participate as "participating agencies" in preparation of the EIS. In addition, other agencies whose participation is deemed necessary or appropriate by WAPA to the preparation of the EIS may be requested to participate.

7. WAPA EIS - The WAPA EIS shall adequately address the following issues, among others:

- a. The cumulative impacts of the post 1989 criteria on the environment and the operations of CRSP dams;
- b. The impacts of operations of CRSP dams pursuant to the Post 1989 Criteria upon endangered or threatened

species;

c. Alternatives to the current operations of CRSP dams and to the Criteria; and

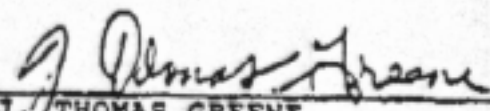
d. Mitigation measures in connection with the environmental impacts of the Criteria for the cumulative impacts of dam operations to the extent such impacts are identified. This paragraph is not intended to limit the scope of the EIS.

8. Department of Interior EIS - WAPA shall take all actions necessary to enforce and implement this injunction and shall cooperate fully with the DOI and the Bureau of Reclamation in connection with the DOI EIS at Glen Canyon Dam.

9. Jurisdiction Retained in this Court - This court shall retain jurisdiction to review the adequacy of the Environmental Impact Statement to be prepared by WAPA for the Criteria and for any related matters which may arise.

IT IS SO ORDERED.

DATED: September 29, 1989.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

COPIES: