UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 12-70338

IDAHO CONSERVATION LEAGUE,
Petitioner

v.

BONNEVILLE POWER ADMINISTRATION,
Respondent

Petition for Review
Under the Northwest Power Act

DECLARATION OF JOHN ROBISON

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Attorney for Petitioner

I, JOHN ROBISON, hereby declare as follows:

1. My name is John Robison, and I reside in Boise, Idaho. The following matters are personally known to me and, if called as a witness, I could and would testify truthfully thereto.

Statement of Qualifications & Basis for Testimony Regarding Erosion

2. I am a graduate of Bowdoin College, where I earned a BA in Biology, a graduate of the Teton Science School's year-long Professional Residency in Environmental Education program, and a graduate of the University of Vermont's Field Naturalist Program, where I earned an MS in Botany.

3. Professionally, I have worked on natural resource management and environmental education issues since 1994. And I currently work as the Public Lands Director for the Idaho Conservation League (ICL).

4. I have reviewed the *Albeni Falls Dam Flexible Winter Power Operations, Final Environmental Assessment* (2011) (the "*EA*") prepared by the U.S. Army Corps of Engineers (Corps) and the Bonneville Power Administration (BPA). I have also reviewed two documents from the Administrative Record in this matter: *Biology, Ecology and Management of Flowering Rush (Butomus umbellatus)* (Parkinson *et al.* 2010); and *Kokanee and Rainbow Trout Research, Lake Pend Oreille, 2008* (Wahl et al. 2010).

Flowering Rush

5. Flowering rush is a non-native aquatic plant the grows along lake shores and in slow moving water bodies up to 20 feet deep. *Parkinson*, p. 5. Flowering rush can spread aggressively and densely colonize previously open waters. *Id.* at 7. One substantial means by which flowering rush spreads is through rhizome fragmentation, which occurs when a section of the plant breaks off. *Id.* at 5. Rhizome fragmentation facilitates long-distance dispersal. *Id.*

6. According to the *EA*, flowering rush was only recently identified at Lake Pend Oreille, but anecdotal observations suggest the plant has nearly doubled its growing area coverage in three years. *EA*, p. D-9. And the *EA* explains that the "rapid colonization of flowering rush may begin to reduce the extent of native plants, which would in turn affect the local ecosystem and fish and wildlife species." *Id.*

7. Flexible Winter Power Operations (FWPO), which would fluctuate water levels at Lake Pend Oreille over a five-foot range up to three times from mid-December until March 31 every year, could facilitate the spread of flowering rush around Lake Pend Oreille and further downstream.

8. Research shows that water level drawdowns promote the establishment and expansion of flowering rush. *Parkinson*, p. 6. *Parkinson* found

that rhizome fragmentation can occur "easily with minor disturbances such as moving water, waves, passing boats or waterfowl." *Parkinson*, p. 5. At Lake Pend Oreille, lake level fluctuations will create moving water, which can fragment and disperse rhizomes.

9. Because FWPO will take place in the relatively barren drawdown zone below Lake Pend Oreille's full pool level, once rhizomes are fragmented, they may be dispersed to areas which are ideal for their establishment. "Ideal conditions for rhizome establishment are shallow, sparsely vegetated or unvegetated silty substrates and water currents less than 2 mph." *Id.* This is confirmed in the *EA*, which provides: "Fluctuating lake water levels and, in particular, drawdowns that expose unvegetated sediments provide ideal sites for [flowering rush] establishment (Delisle et al. 2003)." *EA*, p. 3-20.

10. The *EA* says the "threat" that the spread of flowering rush poses to Lake Pend Oreille's ecosystem "warrants additional research." *Id.* I agree.

11. The spread of flowering rush can decrease bull trout habitat and increase the predation of bull trout. As *Parkinson* explains, the spread of flowering rush can form dense stands which create habitat more suitable for non-native fish like northern pike, and decreases the availability of open-water habitat preferred by bull trout. *Parkinson*, p. 7. Northern pike have been documented to be "significantly depredating cutthroat and bull trout" in the Flathead River. *Id.*

Northern Pike are present in Lake Pend Oreille but the species does not appear to be mentioned in the *EA*. *Wahl*, p. 3.

12. As to wildlife, Lake Pend Oreille supports populations of waterfowl that nest around the lake, including an overwintering redhead duck population which may be the largest in the U.S. *EA*, p. 3-22. According to the *EA*, flowering rush is a "very aggressive effective colonizer and aggressive competitor" which can displace native aquatic plants which are a food source for Lake Pend Oreille's overwintering waterfowl. *Id.* at 4-28.

13. The *EA* does not include any mapping of flowering rush around Lake Pend Oreille. It also does not include any mapping of the shoreline affected by the flexible winter power operations, or mapping of wetlands and other riparian and aquatic habitat important to fish and wildlife around Lake Pend Oreille. With this information, it would be possible to make at least a basic evaluation of the potential for flowering rush to spread around Lake Pend Oreille and to then provide a more thorough analysis of potential impacts to fish and wildlife.

DATED this 19th day of September, 2013.

/s John Robison
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John Robison