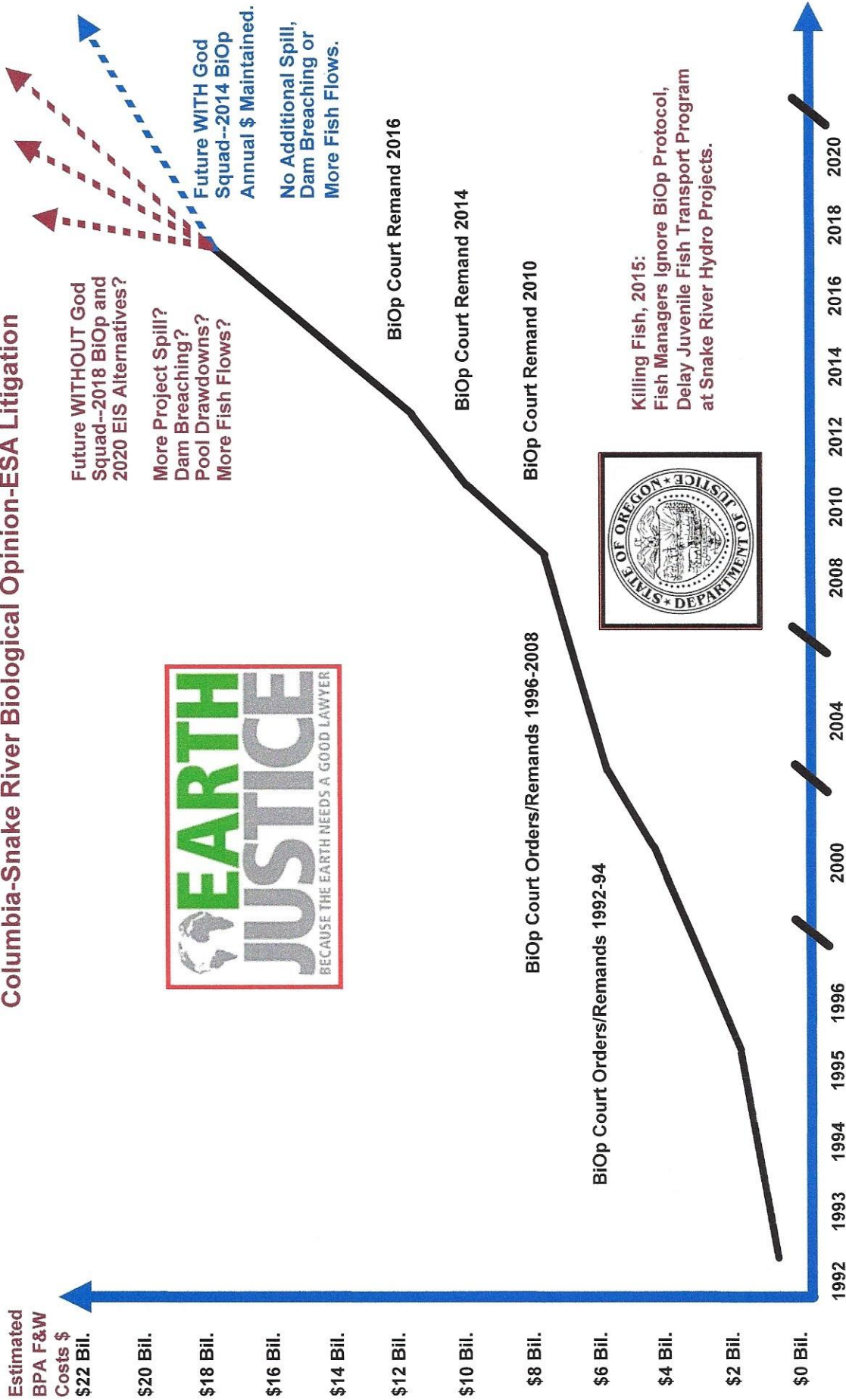


THE PATH TOWARD GOD SQUAD

Columbia-Snake River Biological Opinion-ESA Litigation



Implementing God Squad

The Legal/Administrative Steps for ESA Committee Action To End Twenty-Five Years of Columbia-Snake River ESA Litigation

The Endangered Species Act (ESA) contains direct authorization to bring closure to federal agency actions designated as the final mitigation measures, to be adopted for a specific ESA-listed species. This authorization is exercised through the Endangered Species Committee (God Squad Committee), that establishes which set of mitigation actions will be deemed adequate for federal agency projects, programs, or operations. The Committee confers an exemption on agency actions from further mitigation measures, or “risk of extinction” jeopardy review, and the exemption is upheld by the federal ESA statute.

The God Squad process is the administrative tool for dealing with the twenty-five-year litigation saga underlying the acceptance of a Federal Columbia-Snake River hydro project operations biological opinion—the set of “reasonable and prudent alternatives” (RPAs) determined by the federal hydro operators to avoid further harm to river system salmon and steelhead. Despite the expenditure of billions-of-dollars, significant federal agency collaboration with multiple public and private parties, and demonstrable improvements to the fish runs, litigation actions have been relentlessly levied against the federal agencies’ biological opinion, with federal judges ordering more and more “mitigation” measures (see attached “Life without God Squad figure).

Many regional entities question the underlying competence and motives for continued BiOp litigation. Therefore, the invocation of the God Squad process, to suppress the litigative addiction surrounding hydro project BiOp operations, is the legitimate and most rational action to be taken. The current circumstances testify to the statutory design for the God Squad process within the ESA.

Implementing God Squad Review:

Specific to the Columbia-Snake River federal project operations, the following administrative/legal steps would be conducted to initiate and complete the ESA Committee (God Squad) review process:

- ✓ As the head of one of the Columbia-Snake River hydropower agencies (USBR-Interior) the Sect. of Interior would direct the submittal of an application to Interior for an exemption, for hydro project operations. The application would be prepared by USBR-Interior staff.¹
- ✓ The Sect. of Interior would call for ESA Committee formation, represented by the Sect. of Agriculture, Sect. of the Army, the Chairman of the Council of Economic Advisors, the EPA Administrator, the NOAA Fisheries Administrator, and representatives from the Northwest Governors’ offices.

¹ Application preparation could be coordinated with BPA-Dept. of Energy, NOAA Fisheries and USACE.

- ✓ The Sect. of Interior would publish notice of receipt of the exemption application in the Federal Register, summarizing key application details.
- ✓ The initial review, and acceptance, of the exemption application would be made by the Sect. of Interior. The application would:
 - Specifically identify the consultation process conducted by the Sect. of Interior (Interior) with the other action agencies to prepare the 2014 BiOp—the 2014 BiOp being the product of agency consultation. The 2014 BiOp being determined to consider adequate RPAs, to avoid a “risk of extinction” jeopardy standard.
 - Specifically identify U.S. Judge Michael Simon’s 2016 order remanding the 2014 BiOp, determining that the federal agencies’ RPAs did not meet the “risk of extinction” jeopardy standard (as so interpreted by the Judge).
 - Specifically reference all previous biological assessments contained within the 2014 BiOp, and all previous environmental reviews associated with the 2014 BiOp.
- ✓ The Sect. of Interior would approve acceptance of the exemption application and convene the ESA Committee to hold a public hearing on the application. A hearing location like the Tri-Cities, WA, would be most appropriate given the location of the hydro projects and several key stakeholders.
- ✓ The Sect. of Interior would submit a Report to the ESA Committee, including two key items:
 - A statement of evidence why the federal hydro project operations are in the public/regional interest.
 - A determination of acceptable RPAs to the agencies actions (the 2014 BiOp RPAs), and any other appropriate mitigation actions such as continued funding of state/tribal habitat projects (at 2014 BiOp annual funding levels).
- ✓ The ESA Committee would convene and vote on approval for the exemption (five members approving) based on:
 - The Sect.’s Committee Report; and acknowledging Judge Simon’s previous remand of the 2014 BiOp RPAs—this is Judge Simon’s determination.
 - The approval by the Committee of reasonable mitigation and enhancement measures, specifically those in the 2014 BiOp. These measures now become the action agencies’ Mitigation Plan for hydro project operations.
- ✓ Exemption application approval is now the agencies’ final action under the ESA. The Mitigation Plan is not subject to further jeopardy standard review.

Columbia-Snake River Irrigators Association

Ending Columbia-Snake River ESA Litigation

Life with God Squad

- ✓ ESA Statute and Administrative Protection—Section 1536.
- ✓ Hydro Projects' Exemption and Mitigation Plan in Place.
- ✓ Subject to Judicial Review—But Much Different Standard than BiOp RPAs.

Life without God Squad

- ✓ Governed by BiOp Litigation and Judge Michael Simon, Along with Earth Justice and Oregon.
- ✓ ESA Legislative Relief? Really?
- ✓ Political Agreement? Really?
- ✓ 2018-2020:
 - More Project Spill.
 - Reservoir Drawdowns.
 - More BPA \$\$.

