

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Defending County)
Officers and Employees Who are in)
Compliance with the County's Best)
Management Practices Policy)
_____)

RESOLUTION NO. 36-02

WHEREAS, the National Marine Fisheries Services ("NMFS") has adopted rules and regulations to provide for the conservation of 14 salmon and steelhead population groups under Section 4(d) of the Endangered Species Act; and

WHEREAS, these rules and regulations prohibit the take of the listed species, but do not apply to actions that are carried out under approved state, local or tribal programs; NMFS approves those programs that are adequate to conserve the listed species; and

WHEREAS, section 11 of the Endangered Species Act provides both civil and criminal penalties for violation of the provisions of the Act and authorizes citizen suits to enforce the provisions of the Act, including reasonable attorney and expert witness fees to any party, whenever the court determines such award is appropriate.

WHEREAS, NMFS has approved Oregon Department of Transportation's ("ODOT") "Routine Road Maintenance - Water Quality and Habitat Guide - Best Management Practices (July 1999) (the "ODOT Guide"); and

WHEREAS, the Columbia County Public Works Director is in charge of the Columbia County Road Department and Forests, Parks and Recreation Department, hereinafter referred to as the "Public Works Departments", and has applied the ODOT guide to operations of the Public Works Departments with only a few modifications; and

WHEREAS, the Columbia County guide is entitled "Columbia County Best Management Practices for Water Quality and Fish Habitat Preservation in Assistance for the Recovery of Salmon and Steelhead" (the "Columbia County guide"); and

WHEREAS, while the Columbia County guide has not been separately approved by NMFS, to the extent the Columbia County guide is consistent with the ODOT guide, it is reasonable to believe NMFS will not object to the Columbia County guide; and

WHEREAS, despite approval of the ODOT guide by NMFS, ODOT, Columbia County, and their officers and employees are subject to the risk that a citizen suit might be filed to enjoin alleged violations of the Endangered Species Act; and

WHEREAS, pursuant to ORS 30.285 of the Oregon Tort Claims Act, Columbia County is required to defend, save harmless and indemnify its officers, and employees, whether elective or appointed, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty; and

WHEREAS, Columbia County has tort liability insurance to provide coverage for its officers and employees from any tort claim or demand arising out of an alleged act or omission occurring in the performance of duty; a significant exception to this coverage is for environmental pollution; and

WHEREAS, to the extent that an alleged violation of the Endangered Species Act is characterized as a tort, the County and its officers and employees are protected by the County's tort liability insurance, except for environmental pollution; and

WHEREAS, in actions for civil or criminal penalties, tort actions based on environmental pollution, or citizen suits under the Endangered Species Act, however, there is no insurance coverage, and County officers and employees are subject to the risk of incurring attorney fees and costs in the defense of such actions, even if such actions and suits are totally without merit; and

WHEREAS, to the extent that County officers and employees are acting within the scope of their duties, it is reasonable and just that they be afforded the same protection in actions brought under Section 11 of the Endangered Species Act as they are under the Oregon Tort Claims Act;

NOW, THEREFORE, IT IS HEREBY RESOLVED that Columbia County will defend, save harmless and indemnify its officers and employees, whether elective or appointed, against any action or suit brought under the Endangered Species Act, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty, to the extent the officer or employee was acting in compliance with the Columbia County guide, or otherwise within the scope of their duties;

IT IS HEREBY FURTHER RESOLVED that Columbia County will not accept liability or responsibility for acts or omissions its officers or employees which are not in compliance with the Columbia County guide or within the scope of their duties.

DATED this 19th day of June, 2002.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Chair

By: not present
Commissioner

By: [Signature]
Commissioner

Approved as to form

By: [Signature]
Office of County Counsel
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