

CHRISTOPHER G. WINTER, OSB No. 984355  
[chris@crag.org](mailto:chris@crag.org) - (503) 525-2725  
MAURA C. FAHEY, OSB No. 133549  
[maura@crag.org](mailto:maura@crag.org) - (503) 525-2722  
Crag Law Center  
917 SW Oak Street, Suite 417  
Portland, OR 97205  
Fax: (503)296-5454

QUINN READ (*Pro hac vice pending*)  
Oregon Wild  
5825 N. Greely Ave.  
Portland, OR 97217  
Phone: (503) 283-6342 (x226)  
Fax: (503) 283-0756  
Email: [qr@oregonwild.org](mailto:qr@oregonwild.org)

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**MEDFORD DIVISION**

AUDUBON SOCIETY OF PORTLAND,  
OREGON WILD, and WATERWATCH OF  
OREGON,

*Plaintiffs,*

v.

SALLY JEWELL, Secretary of United States  
Department of Interior; DANIEL M. ASHE,  
Director of United States Fish and Wildlife  
Service; and UNITED STATES FISH AND  
WILDLIFE SERVICE, an Administrative  
Agency of the United States Department of the  
Interior,

*Defendants.*

Case No.: 1:14-cv-675

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

(Pursuant to National Wildlife Refuge System  
Administration Act, 16 U.S.C. § 668dd)

## NATURE OF ACTION

1. Plaintiffs AUDUBON SOCIETY OF PORTLAND, OREGON WILD, and WATERWATCH OF OREGON challenge the failure of Defendants SALLY JEWELL, Secretary of the Interior, DANIEL M. ASHE, Director of the U.S. Fish and Wildlife Service, and the U.S. FISH AND WILDLIFE SERVICE (collectively “FWS”) to take required action to develop and implement comprehensive conservation plans (“CCP”) for five National Wildlife Refuges (“NWR”) within the Klamath Basin NWR Complex (“Klamath Complex”) including, Lower Klamath, Upper Klamath, Tule Lake, Clear Lake, and Bear Valley NWRs under the National Wildlife Refuge System Administration Act (“Refuge Act”), 16 U.S.C. § 668dd.

2. The Klamath Basin’s wetland features and location has made it one of the continent’s most important parcels of waterfowl habitat. An estimated 80 percent of Pacific Flyway waterfowl pass through the Basin and National Wildlife Refuges during migration. More than 70 bird species depend on the Basin’s wetlands, including several species of conservation concern. As a result of the development of commercial agriculture in the region, spurred further by the initiation of the federal Klamath Reclamation Project in 1905, 80 percent of the wetlands in the Basin have been drained and destroyed. The Klamath NWR Complex was established to preserve and protect the remaining waterfowl and wildlife habitat in the Basin. However, agricultural use of leased refuge lands and related water shortages pose ongoing threats to the Basin’s remaining wetlands and the species that depend on them.

3. Plaintiffs ask this Court to order Defendants to comply with the mandatory, non-discretionary deadline in 16 U.S.C. § 668dd(e)(1)(B) to develop and implement a comprehensive conservation plan for each unit of the National Wildlife Refuge system “within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted

October 9, 1997].” Over eighteen months have passed since the date on which the comprehensive conservation plans were due, October 9, 2012.

4. Specifically, Plaintiffs seek an order declaring that FWS failed to comply with their statutorily-mandated duty to prepare a CCP for each NWR unit in violation of the Refuge Act and the Administrative Procedure Act, 5 U.S.C. § 706 (“APA”). Plaintiffs also seek an order requiring FWS to prepare and implement the required CCPs by a certain date, as well as attorneys’ fees and costs pursuant to 28 U.S.C. § 2412(d).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (declaratory judgment), and 28 U.S.C. § 2202 (injunctive relief). The challenged agency inaction is subject to this Court’s review under the APA, 5 U.S.C. § 706.

6. Venue is this Court is proper under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and a substantial part of the land at issue is within this judicial district. Plaintiffs each reside in and maintain their primary place of business in this judicial district. Three of the five National Wildlife Refuges (NWR) at issue in this action are located entirely or partially within this judicial district, including Upper Klamath NWR, Bear Valley NWR, and portions of Lower Klamath NWR.

### **PARTIES AND STANDING**

#### ***Plaintiffs***

7. Plaintiff AUDUBON SOCIETY OF PORTLAND (“Portland Audubon”) is a nonprofit organization with over 13,000 members. Portland Audubon was founded in 1902 in part to help establish the Klamath National Wildlife Refuges. Portland Audubon’s mission is to

promote the understanding, enjoyment and protection of native birds, other wildlife and their habitats. Portland Audubon and its members are being, and will be, adversely affected by Defendant's actions or failure to act complained of herein.

8. Portland Audubon engages in conservation work to protect and advocate for birds and other wildlife in Oregon and throughout the Klamath Basin region. Portland Audubon also provides education to its members and the public, maintains nature sanctuaries to protect habitat and ecosystems, and organizes birding and natural history activities. Restoring and protecting the health of the Klamath NWR Complex is of paramount importance to birds along the Pacific Flyway. Portland Audubon has specifically focused resources on the Klamath Basin area in 2014 in light of the drought emergency that has plagued the region. Portland Audubon staff tracks developments in the region and provides education and information to its members and the public through action alerts, press releases, fact sheets, reposting of letters to lawmakers and information distributed by U.S. Fish and Wildlife Service staff relating to the Klamath Complex.

9. Portland Audubon's primary concerns are the protection of remaining waterfowl habitat and wetlands in the Klamath Complex. Portland Audubon has members that regularly visit, use, or enjoy the Klamath Complex Refuges for bird watching and other recreational, aesthetic, scientific, educational and spiritual purposes, and Portland Audubon's members will continue to do so on a regular basis indefinitely into the future. Agricultural use of leased refuge lands and related water shortages pose an ongoing threat to the Klamath Complex's remaining wetlands and the birds that depend on them and therefore to the interests of Portland Audubon and its members. Defendant's failure to analyze and plan for these competing uses of the Klamath Complex, as required by law, harms the interests of Portland Audubon and its members.

10. Plaintiff OREGON WILD is a nonprofit organization with approximately 13,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild is headquartered in Portland, Oregon, and has field offices in Eugene, Oregon and Bend, Oregon. Oregon Wild and its members are being, and will be, adversely affected by FWS's failure to act.

11. Oregon Wild and its members are dedicated to protecting and restoring Oregon's lands, wildlife and waters as an enduring legacy. Oregon Wild has a program specifically focused on restoring balance to the Klamath Basin to protect fish, wildlife and water resources. For nearly two decades Oregon Wild has been a leading voice for conservation in the Klamath Basin. The interests of Oregon Wild and its members in observing and enjoying the wildlife in and around the Klamath Complex refuges are dependent, and will continue to be dependent, on the maintenance of healthy and viable wildlife habitat and water resources within the system, and will be enhanced by a conservation plan setting out the means to achieve those goals.

12. To achieve its goals, Oregon Wild disseminates to government agencies, members of Congress, and the general public a wide array of educational and informative materials addressing the issues surrounding wildlife and water resources in the Klamath Basin NWR Complex. These materials include, but are not limited to, fact sheets, white papers, letters to Congress, press releases, reprints of news articles and action alerts. Oregon Wild also joined a coalition of concerned groups in urging lawmakers to address the dire water situation that threatens and negatively impacts fish and wildlife in the Tule Lake and Lower Klamath National Wildlife Refuges.

13. The U.S. Fish and Wildlife Service's failure to develop and implement a comprehensive conservation plan for each of the units of the Klamath Basin NWR Complex injures Oregon Wild and its members by interfering, *inter alia*, with their aesthetic enjoyment of

the Klamath Complex refuges and their inhabitants. Without comprehensive conservation plan(s), harmful activities such as pesticide and herbicide use and excessive irrigation withdrawals continue on the refuges without any analysis of the compatibility of those activities with the primary purpose of the Klamath Complex, waterfowl management. Defendant's failure to adequately manage the Klamath Complex to protect wildlife habitat and aquatic resources compromises members' enjoyment of the Refuges because current conditions pose a risk to native ecosystems and wildlife, and injure aesthetic and recreational interests of those who seek to protect and maintain biodiversity.

14. Plaintiff WATERWATCH OF OREGON ("WaterWatch") is a nonprofit river conservation organization devoted to restoring and protecting natural flows in Oregon's rivers to sustain native fish, wildlife and the people who depend on healthy rivers. WaterWatch has its main office in Portland, Oregon and has maintained a longstanding field office and staff presence in southern Oregon. For over a decade, WaterWatch has had a program devoted to restoring the Klamath Basin by working to bring water demand back into balance with the natural abilities of the system to ensure sufficient water for fish, wildlife, wetlands and the National Wildlife Refuge Complex. WaterWatch also seeks to increase legal compliance and agency accountability on water allocation and other management decisions that affect the Klamath Basin.

15. WaterWatch achieves its goals by holding regulators accountable, working with the lawmakers to pass balanced water legislation, educating the public, submitting testimony and comments to lawmakers and agencies, and when necessary, litigating on behalf of the public interest in healthy rivers. Many members and supporters of WaterWatch visit and enjoy the lands and waters in the Klamath Basin, including the Klamath NWR Complex to engage in

hiking, fishing, hunting, photography, education, watershed research and wildlife observation. Defendant's failure to comply with its legal obligations in managing the Klamath Complex refuges injures WaterWatch's members use and enjoyment of the region. For example, by favoring water deliveries for refuge agricultural leases over refuge wetlands during drought, current management reduces or eliminates important refuge habitats and dependent populations of fish and wildlife, thereby reducing or eliminating the enjoyment of these refuge amenities by WaterWatch members.

16. Plaintiff organizations have standing to bring this action on behalf of themselves and their members. Members of Plaintiff organizations live near and enjoy the use of the Klamath National Wildlife Refuge Complex and the individual refuges affected by Defendant's inaction, and they will continue to visit and enjoy the resources of the five NWRs at regular times indefinitely into the future. The above-described education, scientific, aesthetic, conservation and recreational interests of the Plaintiff organizations and their members have been and will continue to be adversely affected and irreparably injured by Defendants' failure to develop and implement comprehensive conservation plan(s) as required by the Refuge Act.

***Defendants***

17. Defendant SALLY JEWELL is the Secretary of the United States Department of the Interior ("Secretary"). The Secretary is the official ultimately responsible for Klamath Complex management and for compliance with all laws applicable to the Klamath Complex Refuges, including the Refuge Act and the APA. The Secretary is sued in her official capacity.

18. Defendant DANIEL M. ASHE is the Director ("Director") of the U.S. Fish and Wildlife Service ("FWS"). He is legally responsible for overseeing FWS activities, including the development of conservation plans under the Refuge Act. He is sued in his official capacity.

19. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the federal agency responsible for national wildlife refuge management and operation and charged with ensuring NWRs are in compliance with the regulations and laws that govern them, including the Refuge Act and the APA. FWS's mission is to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people.

### **LEGAL BACKGROUND**

20. All National Wildlife Refuge management is governed by the National Wildlife Refuge System Administration Act ("Refuge Act"). 16 U.S.C. § 668dd. The Secretary and FWS are responsible for managing all NWRs. *Id.* § 668dd(a)(1). The purpose of the Refuge Act was to set aside lands designated as wildlife refuges for "the conservation, management, and where appropriate, restoration, of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." *Id.* § 668dd(a)(2).

21. The Klamath Refuge Complex is also governed by the Kuchel Act of 1964, which provides that the refuges "shall be administered by the Secretary of Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith." 16 U.S.C. § 6951

22. The Refuge Act was amended in 1997 by the National Wildlife Refuge System Improvement Act. 16 U.S.C. § 668dd(e)(1)(B). The amendments required FWS to develop and implement a "comprehensive conservation plan" for each unit of the national wildlife refuge system. 16 U.S.C. § 668dd(e).

23. A comprehensive conservation plan (CCP) is "a document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge." 50 C.F.R. § 25.12. The Secretary

“shall prepare a comprehensive conservation plan . . . for each refuge within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted October 9, 1997].” 16 U.S.C. § 668dd(e)(1)(B). The comprehensive conservation plans were therefore due by October 9, 2012.

24. In developing the comprehensive conservation plans, the Secretary, “shall identify and describe” several factors, including: “the purpose of each refuge comprising the planning unit;” “the distribution, migration patterns, and abundance of fish, wildlife and plant populations and related habitats within the planning unit;” “significant problems that may adversely affect the populations and habitat of fish, wildlife and plants within the planning unit and the actions necessary to correct or mitigate such problems;” and “opportunities for compatible wildlife-dependent recreational uses.” 16 U.S.C. § 668dd(e)(2).

### **FACTS**

25. The Klamath National Wildlife Refuge Complex consists of six refuges including the Upper Klamath, Lower Klamath, Tule Lake, Clear Lake, Bear Valley, and Klamath Marsh Refuges.

26. On April 29, 2010 the FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Upper Klamath, Lower Klamath, Tule Lake, Bear Valley, and Clear Lake National Wildlife Refuges. 75 Fed. Reg. 22620 (April 29, 2010). A separate CCP process was completed for the Klamath Marsh Refuge in 2010.

27. FWS held a scoping process, whereby it held public meetings and solicited comments from the public. Plaintiffs Oregon Wild and WaterWatch submitted comments to FWS during the scoping process. The scoping process closed on June 28, 2010.

28. The next step in the conservation plan process for FWS is to release a draft CCP and draft environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, for public review and input. To date, FWS has yet to release either a draft CCP or environmental document for any of the five units subject to this action.

29. Historically, the Klamath Basin contained approximately 350,000 acres of shallow lakes, wetlands and freshwater marshes that supported populations of over six million water birds. Today, less than 25 percent of the historic wetlands and marshes remain in the Basin.

30. The Klamath Refuge Complex was established to conserve the Klamath Basin's remaining wetland habitat. However, Upper Klamath, Lower Klamath, Tule Lake, and Clear Lake Refuges exist within the U.S. Bureau of Reclamation ("Reclamation") Klamath Project and were subject to conversion from wetland habitats to farmland. The Kuchel Act stopped wetland reclamation on the refuges and dedicated the lands to waterfowl management. Today, FWS and Reclamation administer a Public Lease Lands program on the Lower Klamath and Tule Lake refuges. Refuge lands are also subject to farming under permits granted in cooperation with FWS.

31. Lower Klamath National Wildlife Refuge was established in 1908 as the nation's first waterfowl refuge. It is a 46,000-acre refuge located in northeastern California and southern Oregon. Lower Klamath Refuge is one of the most biologically productive refuges within the Pacific Flyway. Approximately 80 percent of the flyway's migrating waterfowl pass through the Klamath Basin, with 50 percent of those birds using the Lower Klamath Refuge. The refuge provides habitat for 25 species of special concern listed as threatened or sensitive by California and Oregon.

32. Approximately 5,000 acres of the Lower Klamath Refuge are leased to farmers under the Public Lease Lands program. Another 5,000-7,000 acres are farmed under permits in cooperation with FWS. Water within the refuge is delivered through a system of diversion of irrigation canals associated with the Reclamation Project. Due to the over-allocation of water within the system, the refuge often faces water shortages.

33. Tule Lake National Wildlife Refuge was established in 1928 as a “preserve and breeding ground for wild birds and mammals.” It is a 39,116-acre refuge located in the Tule Lake Basin of northeastern California. It is made up of primarily open water and cropland with approximately 17,000 acres leased for crop farming under the Public Lease Lands program. An additional 1,900 acres are farmed under permits. Tule Lake Refuge provides habitat for the endangered Lost River and shortnose suckers and is a significant staging area for migrating waterfowl during spring and fall migrations.

34. Clear Lake National Wildlife Refuge was established in 1911 as a “preserve and breeding ground for native birds.” It is located in northeastern California and contains the Clear Lake Reservoir, approximately 20,000 acres of open water, surrounded by over 26,000 acres of upland bunchgrass, low sagebrush, and juniper habitat.

35. Clear Lake Refuge provides nesting sites for American white pelicans, double-crested cormorants and other colonial nesting birds. Upland areas of the refuge are habitat for pronghorn antelope, mule deer, and sage grouse. The Clear Lake Reservoir is the primary source of water for the agricultural program of the eastern half of the Klamath Basin, with water levels regulated by the Bureau of Reclamation.

36. Upper Klamath National Wildlife Refuge was established in 1928 as a “refuge and breeding grounds for birds and wild animals.” It is located in southwestern Oregon and

contains 15,000 acres, comprised mostly of bulrush-cattail marsh and open water, and approximately 30 acres of forested uplands. The refuge serves as nesting and brood rearing habitat for waterfowl and colonial nesting birds. Bald eagles and osprey also nest nearby and use refuge waters for feeding.

37. Bear Valley National Wildlife Refuge was established in 1978 to protect a major night roost site for wintering bald eagles in Southern Oregon. The refuge is 4,200 acres and consists primarily of old growth ponderosa pine, incense cedar, and white Douglas fir. Bear Valley Refuge has served as a roost for as many as 300 bald eagles in a single night.

38. Continued commercial agricultural operations on NWR lands, excessive water diversions, agricultural pollution, and drought have further damaged the remaining wetland habitat within the Klamath NWR Complex. The loss of habitat and competing uses of the Klamath Complex pose a significant risk to the future health and viability of the refuges and those species that depend on their resources.

#### **FIRST CLAIM FOR RELIEF**

39. Plaintiffs re-allege, as if fully set forth herein, each and every allegation in the preceding paragraphs.

40. FWS has a mandatory and nondiscretionary duty under the Refuge Act to prepare a comprehensive conservation plan for the Lower Klamath National Wildlife Refuge “within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted October 9, 1997].” 16 U.S.C. § 668dd(e)(1)(B). The conservation plan was required to be completed by October 9, 2012.

41. On April 29, 2010, FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Lower Klamath NWR. FWS held

a scoping process, which closed on June 28, 2010. FWS Region 8, Pacific Southwest Region's website estimated the plan would be completed in 2013. As of April 24, 2014, FWS had not completed a CCP for the Lower Klamath NWR. Plaintiffs are not aware that Defendants have established any schedule for completing the required CCP for the Lower Klamath NWR. Plaintiffs therefore have reason to believe that Defendants contend that they have discretion to postpone completing the comprehensive conservation plan. This is so despite the fact that the Lower Klamath NWR is adversely affected by competing uses within the Klamath Complex.

42. FWS's failure to complete a comprehensive conservation plan for the Lower Klamath NWR violates § 668dd(e)(1)(B) of the Refuge Act and is unlawful.

43. FWS's failure to complete a CCP for the Lower Klamath NWR, as required by 16 U.S.C. § 668dd(e)(1)(B), also constitutes agency action "unlawfully withheld and unreasonably delayed" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the FWS's failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance with law, and a failure to observe the proper procedure under the APA, 5 U.S.C. § 706(2).

### **SECOND CLAIM FOR RELIEF**

44. Plaintiffs re-allege, as if fully set forth herein, each and every allegation in the preceding paragraphs.

45. FWS has a mandatory and nondiscretionary duty under the Refuge Act to prepare a comprehensive conservation plan for the Tule Lake National Wildlife Refuge "within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted October 9, 1997]." 16 U.S.C. § 668dd(e)(1)(B). The conservation plan was required to be completed by October 9, 2012.

46. On April 29, 2010, FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Tule Lake NWR. FWS held a scoping process, which closed on June 28, 2010. FWS Region 8, Pacific Southwest Region's website estimated the plan would be completed in 2013. As of April 24, 2014, FWS had not completed a CCP for the Tule Lake NWR. Plaintiffs are not aware that Defendants have established any schedule for completing the required CCP for the Tule Lake NWR. Plaintiffs therefore have reason to believe that Defendants contend that they have discretion to postpone completing the comprehensive conservation plan. This is so despite the fact that the Tule Lake NWR is adversely affected by competing uses within the Klamath Complex.

47. FWS's failure to complete a comprehensive conservation plan for the Tule Lake NWR violates § 668dd(e)(1)(B) of the Refuge Act and is unlawful.

48. FWS's failure to complete a CCP for the Tule Lake NWR, as required by 16 U.S.C. § 668dd(e)(1)(B), also constitutes agency action "unlawfully withheld and unreasonably delayed" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the FWS's failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance with law, and a failure to observe the proper procedure under the APA, 5 U.S.C. § 706(2).

### **THIRD CLAIM FOR RELIEF**

49. Plaintiffs re-allege, as if fully set forth herein, each and every allegation in the preceding paragraphs.

50. FWS has a mandatory and nondiscretionary duty under the Refuge Act to prepare a comprehensive conservation plan for the Clear Lake National Wildlife Refuge "within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997

[enacted October 9, 1997].” 16 U.S.C. § 668dd(e)(1)(B). The conservation plan was required to be completed by October 9, 2012.

51. On April 29, 2010, FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Clear Lake NWR. FWS held a scoping process, which closed on June 28, 2010. FWS Region 8, Pacific Southwest Region’s website estimated the plan would be completed in 2013. As of April 24, 2014, FWS had not completed a CCP for the Clear Lake NWR. Plaintiffs are not aware that Defendants have established any schedule for completing the required CCP for the Clear Lake NWR. Plaintiffs therefore have reason to believe that Defendants contend that they have discretion to postpone completing the comprehensive conservation plan. This is so despite the fact that the Clear Lake NWR is adversely affected by competing uses within the Klamath Complex.

52. FWS’s failure to complete a comprehensive conservation plan for the Clear Lake NWR violates § 668dd(e)(1)(B) of the Refuge Act and is unlawful.

53. FWS’s failure to complete a CCP for Clear Lake NWR, as required by 16 U.S.C. § 668dd(e)(1)(B), also constitutes agency action “unlawfully withheld and unreasonably delayed” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the FWS’s failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance with law, and a failure to observe the proper procedure under the APA, 5 U.S.C. § 706(2).

#### **FOURTH CLAIM FOR RELIEF**

54. Plaintiffs re-allege, as if fully set forth herein, each and every allegation in the preceding paragraphs.

55. FWS has a mandatory and nondiscretionary duty under the Refuge Act to prepare a comprehensive conservation plan for the Upper Klamath National Wildlife Refuge “within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted October 9, 1997].” 16 U.S.C. § 668dd(e)(1)(B). The conservation plan was required to be completed by October 9, 2012.

56. On April 29, 2010, FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Upper Klamath NWR. FWS held a scoping process, which closed on June 28, 2010. FWS Region 8, Pacific Southwest Region’s website estimated the plan would be completed in 2013. As of April 24, 2014, FWS had not completed a CCP for the Upper Klamath NWR. Plaintiffs are not aware that Defendants have established any schedule for completing the required CCP for the Upper Klamath NWR. Plaintiffs therefore have reason to believe that Defendants contend that they have discretion to postpone completing the comprehensive conservation plan. This is so despite the fact that the Upper Klamath NWR is adversely affected by competing uses within the Klamath Complex.

57. FWS’s failure to complete a comprehensive conservation plan for the Upper Klamath NWR violates § 668dd(e)(1)(B) of the Refuge Act and is unlawful.

58. FWS’s failure to complete a CCP for Upper Klamath NWR, as required by 16 U.S.C. § 668dd(e)(1)(B), also constitutes agency action “unlawfully withheld and unreasonably delayed” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the FWS’s failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance with law, and a failure to observe the proper procedure under the APA, 5 U.S.C. § 706(2).

//

**FIFTH CLAIM FOR RELIEF**

59. Plaintiffs re-allege, as if fully set forth herein, each and every allegation in the preceding paragraphs.

60. FWS has a mandatory and nondiscretionary duty under the Refuge Act to prepare a comprehensive conservation plan for the Bear Valley National Wildlife Refuge “within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 [enacted October 9, 1997].” 16 U.S.C. § 668dd(e)(1)(B). The conservation plan was required to be completed by October 9, 2012.

61. On April 29, 2010, FWS announced its intent to prepare a comprehensive conservation plan and environmental impact statement for the Bear Valley NWR. FWS held a scoping process, which closed on June 28, 2010. FWS Region 8, Pacific Southwest Region’s website estimated the plan would be completed in 2013. As of April 24, 2014, FWS had not completed a CCP for the Bear Valley NWR. Plaintiffs are not aware that Defendants have established any schedule for completing the required CCP for the Bear Valley NWR. Plaintiffs therefore have reason to believe that Defendants contend that they have discretion to postpone completing the comprehensive conservation plan. This is so despite the fact that the Bear Valley NWR is adversely affected by competing uses within the Klamath Complex.

62. FWS’s failure to complete a comprehensive conservation plan for the Bear Valley NWR violates § 668dd(e)(1)(B) of the Refuge Act and is unlawful.

63. FWS’s failure to complete a CCP for Bear Valley NWR, as required by 16 U.S.C. § 668dd(e)(1)(B), also constitutes agency action “unlawfully withheld and unreasonably delayed” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the FWS’s failure to comply with this provision is arbitrary

and capricious, an abuse of discretion, not in accordance with law, and a failure to observe the proper procedure under the APA, 5 U.S.C. § 706(2).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that Defendants violated 16 U.S.C. § 668dd(e)(1)(B) of the Refuge Act and the APA by failing to comply with the nondiscretionary duty to complete comprehensive conservation plans for each of the five named Klamath NWR Complex refuges including, Lower Klamath, Upper Klamath, Tule Lake, Clear Lake and Bear Valley refuges.

B. Provide injunctive relief compelling Defendants to issue CCPs for each refuge by a date certain, at the earliest possible time;

C. Retain continuing jurisdiction to review Defendant's compliance with the injunctive relief requested herein;

D. Award to Plaintiffs their costs of litigation, including reasonable attorneys' fees under the Equal Access to Justice Act or other applicable statute; and

E. Provide such other relief as the Court deems just and proper.

DATED this 24th day of April, 2014.

Respectfully submitted,

s/ Christopher G. Winter  
Christopher G. Winter, OSB # 984355  
Tel: (503) 525-2725  
Email: [chris@crag.org](mailto:chris@crag.org)  
Maura C. Fahey, OSB # 133549  
Tel: (503) 525-5722  
Email: [maura@crag.org](mailto:maura@crag.org)  
Crag Law Center  
917 SW Oak St., Suite 417  
Portland, Oregon 97205  
Fax (503) 296-5454

Quinn Read, *Pro hac vice pending*  
Tel: (503) 283-6342 (x226)  
Email: qr@oregonwild.org  
Oregon Wild  
5825 N. Greely Ave.  
Portland, OR 97217  
Fax: (503) 283-0756

*Attorneys for Plaintiffs*