

RONALD J. TENPAS  
Assistant Attorney General  
Environment & Natural Resources Division

JEAN E. WILLIAMS, Chief  
KEVIN W. McARDLE, Trial Attorney (D.C. Bar No. 454569)  
[Kevin.McArdle@usdoj.gov](mailto:Kevin.McArdle@usdoj.gov)  
United States Department of Justice  
Environment and Natural Resources Division  
Wildlife and Marine Resources Section  
Benjamin Franklin Station, P.O. Box 7369  
Washington, D.C. 20044-7369  
Telephone: (202) 305-0219/0339  
Facsimile: (202) 305-0275

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON

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ALLIANCE FOR THE WILD ROCKIES  
and FRIENDS OF THE SWAN,

No. CV 04-1813-JO

Plaintiffs,

**FEDERAL DEFENDANTS' NOTICE OF  
INVESTIGATIVE REPORT**

v.

DAVE ALLEN, Regional Director, U.S. Fish  
and Wildlife Service; UNITED STATES  
FISH AND WILDLIFE SERVICE, an  
agency of the U.S. Department of the  
Interior; and DIRK KEMPTHORNE,  
Secretary, U.S. Department of the Interior,

Defendants,

and

BUILDING INDUSTRY ASSOCIATION  
OF WASHINGTON and IDAHO FARM  
BUREAU FEDERATION

Defendant-Intervenors.

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Federal Defendants hereby notify the Court of an Investigative Report issued by the Department of the Interior's Inspector General on December 15, 2008 that may affect this action. The Report sets forth the Inspector General's findings from an investigation into former Deputy Assistant Secretary Julie MacDonald's influence on twenty Endangered Species Act ("ESA") listing and critical habitat decisions. The Investigative Report, entitled "The Endangered Species Act and the Conflict between Science and Policy," is the result of a second investigation into Ms. MacDonald's participation in the Fish and Wildlife Service's rulemaking activities under ESA Section 4 undertaken at the request of several members of Congress. The Report is available on the Office of the Inspector General's website.<sup>1/</sup>

The Report concludes that Ms. MacDonald, acting alone or in concert with other Department of the Interior officials, took actions that potentially jeopardized the ESA decisional process in thirteen of the twenty investigated listing and critical habitat actions. Among the thirteen listing and critical habitat designations is the final designation of critical habitat for the bull trout, 70 Fed. Reg. 56212 (Sept. 26, 2005), the rule Plaintiffs have challenged in this action.

As a result of this Investigative Report, Federal Defendants will be reviewing the decision and administrative record for this action to determine whether to continue this litigation, amend their litigation position, or pursue further administrative action with respect to the challenged rule. Within 45 days Federal Defendants will advise the Court of its progress in reviewing these determinations.

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<sup>1/</sup>[http://www.doioig.gov/upload/Endangered%20Species%20FINAL%20REDACTED5%20w\\_TOC\\_encryption.pdf](http://www.doioig.gov/upload/Endangered%20Species%20FINAL%20REDACTED5%20w_TOC_encryption.pdf) (last visited Dec. 22, 2008).

Respectfully submitted this 22<sup>th</sup> day of December, 2008.

RONALD J. TENPAS  
Assistant Attorney General  
JEAN E. WILLIAMS, Chief

*Kevin W. McArdle*

KEVIN W. McARDLE, Trial Attorney, DC Bar # 454569

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of December, 2008, I electronically filed a copy of the forgoing document with the Clerk of the Court using the CM/ECF system which will automatically notify all counsel of record of the filing via e-mail.

/s/ Kevin W. McArdle  
KEVIN W. McARDLE