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February 4, 2014

### MEMORANDUM

**TO:** Council Members

**FROM:** Tony Grover  
Director, Fish and Wildlife Division

**SUBJECT:** Briefing on Sandy River Hatchery ruling

John Shurts, general counsel, will brief the Council on the implications of Judge Ancer Haggerty's ruling in the federal district court of Oregon, *Case number 3:12-cv-431- HA, Native Fish Society and McKenzie Flyfishers, Plaintiffs, NMFS and ODFW, defendants*, regarding operations at the Sandy River Hatchery. Judge Haggerty found approval of the Hatchery Genetic Management Plan (HGMP) for ODFW's Sandy River Hatchery violated both the Endangered Species Act and the National Environmental Procedures Act (NEPA).

The judge found a violation of the ESA for what he considered to be an inadequate explanation as to why the operation of the hatchery -- producing a million juveniles a year, and with concerns about the stray rates of adults -- would not jeopardize the listed chinook, coho, chum and steelhead populations taking advantage of the expanded subbasin. And the judge found a NEPA violation for what the judge considered to be a failure to look an adequate range of alternatives and for an inadequately explained decision that mitigation measures reduced potential harm to such an extent that an environmental impact statement was not necessary. The court did not order a remedy yet, asking the parties to confer about remedies and possibly briefing proposed remedies as well.

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