

DAN RAYFIELD
Attorney General
DEANNA CHANG #192202
CHRISTINA L. BEATTY-WALTERS #981634
AUSTIN D. SAYLOR #085614
Senior Assistant Attorneys General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Deanna.J.Chang@doj.oregon.gov
Tina.BeattyWalters@doj.oregon.gov
Austin.Saylor@doj.oregon.gov

Attorneys for Intervenor-Plaintiff/Counter-Defendant State of Oregon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION,
et al.

Plaintiffs,

and

STATE OF OREGON, et al.,

Intervenor-Plaintiffs,

v.

**NATIONAL MARINE FISHERIES
SERVICE,** et al.,

Defendants,

and

PUBLIC POWER COUNCIL, et al.,

Intervenor-Defendants.

Case No. 3:01-cv-00640-SI

[PROPOSED] ORDER

This matter comes before the Court on the motions for preliminary injunctive relief (hereafter, “Motions”) filed by Plaintiffs and Intervenor-Plaintiff State of Oregon. The Court has reviewed the filings submitted by all parties and taken oral argument and, deeming itself fully advised, GRANTS the Motions and hereby ORDERS:

I. FISH PASSAGE SPILL OPERATIONS INJUNCTION

A. Definitions:

1. “125% Gas Cap spill” means spill to the maximum level that meets, but does not exceed, the Total Dissolved Gas (“TDG”) criteria allowed under state laws.
2. “FOP” means the U.S. Army Corps of Engineers’ (“Corps”) annual Fish Operations Plan.
3. “FPP” means the Corps’ annual Fish Passage Plan.
4. “FPP spill patterns” means the project-specific spill bay gate openings reflected in the FPP tables.
5. “MIP” means Minimum Irrigation Pool elevation as measured in feet above mean sea level in the reservoir forebay.
6. “MOP” means Minimum Operating Pool elevation as measured in feet above mean sea level in the reservoir forebay.

- B.** Except as provided in Paragraph 3 below, Federal Defendants shall implement the spill operations set forth in Table 1 below beginning in Spring 2026 and continuing until otherwise ordered by this Court.

Table 1: Injunction spill operation

Project	Spring spill season (early April – mid-June)	Summer spill season (mid-June – end of August)	Fall/Winter spill season (early September – end November; early March – early April) Shutdown period Dec. 1 – Feb. 28/29 to address freezing issues and maintenance except as noted below.
Lower Granite	<u>Apr. 3 – June 20</u> 125% Gas cap spill 24 hours per day	<u>June 21 – Aug. 31</u> 18 kcfs 24 hours per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 2</u> Low volume surface passage via spillway weir (Bay 1 RSW) 24 hours per day
Little Goose	<u>Apr. 3 – June 20</u> 125% Gas cap spill 24 hours per day until adult criteria reached ¹ After adult criteria reached: 125% Gas cap spill 16 hours/day and 30% for 8 consecutive daytime hours.	<u>June 21 – Aug. 31</u> 30% spill 24 hours per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 2</u> Low volume surface passage via spillway weir (Bay 1 ASW @ high crest) 24 hours per day

¹ Little Goose Adult Criteria –Within 1 business day of when the earliest of the following conditions occurs: (1) a cumulative total of 25 adult spring Chinook salmon (not including jacks) pass Lower Monumental Dam; or (2) a cumulative total of 50 adult spring Chinook salmon (not including jacks) pass Ice Harbor Dam; or (3) April 24, 2026, the Corps will implement performance standard spill at Little Goose Dam for 8 consecutive AM hours (April 3–15 starting at 0500 hours; April 16–June 20 starting at 0400 hours) to target hours of peak adult passage. If lack of load conditions preclude the implementation of performance standard spill during the targeted periods, performance standard spill will begin as soon as practicable during AM hours and continue for up to 8 consecutive hours. If a second block is needed, it will start as soon as load conditions allow, continue for at least two consecutive hours, and conclude no later than 2000 hours.

Project	Spring spill season (early April – mid-June)	Summer spill season (mid-June – end of August)	Fall/Winter spill season (early September – end November; early March – early April) Shutdown period Dec. 1 – Feb. 28/29 to address freezing issues and maintenance except as noted below.
Lower Monumental	<u>Apr. 3 – June 20</u> 125% Gas cap spill (uniform spill pattern) ^{2,3} 24 hours per day	<u>June 21 – Aug. 31</u> 17 kcfs 24 hour per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 2</u> Low volume surface passage via spillway weir (Bay 8 RSW) 24 hours per day
Ice Harbor	<u>Apr. 3 – June 20</u> 125% Gas cap spill 24 hours per day	<u>June 21 – Aug. 31</u> 45 kcfs 24 hours per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 2</u> Low volume surface passage via spillway weir (Bay 2 RSW) 24 hours per day
McNary	<u>Apr. 10 – June 15</u> 125% Gas cap spill 24 hours per day	<u>June 16 – Aug. 31</u> 57% spill 24 hours per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 9</u> Low volume surface passage via both spillway weirs (Bay 19 and Bay 20 TSWs) 24 hours per day

² Monitor and manage adult conversion rates in-season via Technical Management Team (TMT) process.

³ Suspend juvenile fish transportation at Lower Monumental to avoid within day spill fluctuation.

Project	Spring spill season (early April – mid-June)	Summer spill season (mid-June – end of August)	Fall/Winter spill season (early September – end November; early March – early April) Shutdown period Dec. 1 – Feb. 28/29 to address freezing issues and maintenance except as noted below.
John Day	<u>Apr. 10 – June 15</u> 125% Gas cap spill 24 hours per day	<u>June 16 – Aug. 31</u> 40% spill 24 hours per day	<u>Sep. 1 – Nov. 30; and Mar. 1 – Apr. 9</u> Low volume surface passage via both spillway weirs (Bay 18 and Bay 19 TSWs) 24 hours per day Approximately 1.6 kcfs Bay 2 for adult attraction when adult ladder is watered up (not during winter maintenance).
The Dalles	<u>Apr. 10 – June 15</u> 40% spill up to 125% Gas cap spill ⁴ (Gas cap fish passage spill prioritizes spillbays 1-8 and Ice Trash Sluiceway) 24 hours per day	<u>June 16 – Aug. 31</u> 40% (fish passage spill prioritizes spill bays 1-8 and Ice Trash Sluiceway) 24 hours per day	<u>Sep. 1 – Apr. 9</u> Ice Trash Sluiceway will operate at the lowest functional level using current FPP guidelines (~3 to 5 kcfs) 24 hours per day Scheduling routine or non-routine below waterline maintenance will be coordinated in FPOM.

⁴ TDG in The Dalles tailrace may fluctuate up to 125% prior to reducing spill at upstream projects or reducing spill at The Dalles below 40%. Maintain 40% spill for 24 hours at The Dalles and reduce John Day spill below the 125% TDG spill cap as needed for TDG management. Spill above 40%, up to 125% TDG, may occur for TDG management or for carrying reserves.

Project	Spring spill season (early April – mid-June)	Summer spill season (mid-June – end of August)	Fall/Winter spill season (early September – end November; early March – early April) Shutdown period Dec. 1 – Feb. 28/29 to address freezing issues and maintenance except as noted below.
Bonneville	<u>Apr. 10 – June 15</u> 125% Gas Cap spill (Prioritizes concurrent operation of spillway, Power House 1 Ice Trash Sluiceway, and Power House 2 Corner Collector) 24 hours per day	<u>June 16 – Aug 31</u> 95 kcfs plus Powerhouse 1 Ice Trash Sluiceway and Powerhouse 2 Corner Collector 24 hours per day	<u>Sep. 1 – Apr. 9</u> Powerhouse 1 Ice Trash Sluiceway will operate 24 hours per day <u>Sep. 1 – Apr. 9</u> Powerhouse 2 Corner Collector will operate 24 hours per day <u>Sep. 1 – Apr. 9</u> Adult attraction 24 hours per day Scheduling routine or non-routine below waterline maintenance will be coordinated in FPOM.

1. Zero-flow operations (i.e., less than 5 kcfs) are prohibited at each of the four dams on the Lower Snake River, which shall instead always provide at least minimal discharge (5 kcfs or greater) from the dams (e.g., via spillways or powerhouses).
2. The annual FOP will be used by the Federal Defendants in determining spill patterns, processes, and procedures for implementation of the operations in Table 1 and the zero-flow prohibition stated above.
3. Federal Defendants may make planned or un-planned adjustments to the injunction spill operation for the reasons set forth in the annual FOP and

following the procedures set forth in the annual FOP, including deference provided to the Action Agencies for energy emergencies, human safety, or infrastructure integrity emergencies.

- a. Any adjustments taken under this paragraph shall be limited to addressing the condition(s) at issue and shall not otherwise alter the injunction spill operation.
- b. Federal Defendants shall restore the injunction spill operation as soon as practicable after the condition requiring adjustment is addressed.
- c. Beginning in 2026, Water Management Plans and FOPs must require, before curtailing voluntary spill to help carry energy reserves (e.g., as outlined in the 2025 FOP), due diligence implementation of preemptive actions, as well as a declaration of power system emergency and/or spill variance reporting.
- d. Deviations from spill orders, including rationale and resolution, shall be updated regularly on electronic platforms available to regional sovereigns.

II. RESERVOIR FOREBAY ELEVATION OPERATIONS INJUNCTION

- A. Federal Defendants shall operate all Lower Snake River dam reservoirs (i.e., Lower Granite, Little Goose, Lower Monumental, and Ice Harbor) at MOP with a 1-foot operating range allowance from March 1 through August 31, as shown in Table 2. These operations shall commence in 2026 and are required until otherwise ordered by this Court.

Table 2: Injunction for Lower Snake River Reservoirs	
Project	MOP (feet above mean sea level (ft msl) with 1-ft operating range from March 1 to August 31 starting in 2026

Lower Granite	733.0
Little Goose	633.0
Lower Monumental	537.0
Ice Harbor	437.0

- B. Federal Defendants shall operate McNary, the Dalles, and Bonneville dam reservoirs at a combination of lowest “normal” (i.e., recent) operating elevation and MOP with a 1.5-foot operating range allowance from March 1 through August 31, as shown in Table 3. These operations shall commence in 2026 and are required until otherwise ordered by this Court.

Table 3: Injunction for Lower Columbia River Reservoirs	
Project	Required pool elevations (ft msl) with 1.5-ft operating range March 1 through August 31 starting in 2026
McNary	337.0
The Dalles	155.0
Bonneville	71.5

- C. By July 1, 2026, the Federal Defendants will provide a summary to regional fish managers of which operational criteria and authorized purposes are associated with pool elevation lower limits that exceed original MOP designations for each of the lower Columbia River and Lower Snake River Projects. For Bonneville, The Dalles, and McNary dams, this summary will include a description of when and why any minimum operation limits increased from the original MOP designations, and what actions are needed to return to original MOP elevations.
- D. John Day Reservoir:
1. From March 1 through June 15, Federal Defendants shall operate John Day at MIP (262.0 ft msl) with a 1.5-foot operating range. This operation shall commence in 2026 and is required until otherwise ordered by this Court.

2. From June 16 through August 31, Federal Defendants shall operate John Day at 1 foot above MIP (263.0 ft msl) with a 1.5-foot operating range. This operation shall commence in 2026 and is required until otherwise ordered by this Court.
3. Within one year of entry of this Order, Federal Defendants shall submit to the Court a plan detailing actions necessary for the John Day reservoir to operate at MOP (257.0 ft msl) with a 1.5-foot operating range from March 1 through August 31.
 - a. The plan developed by Federal Defendants must, at a minimum, identify and propose solutions to water supply impacts, if any, to municipalities, hatcheries, and irrigators associated with operating John Day reservoir at MOP with a 1.5-foot operating range from March 1 through August 31.
 - b. Within 30 days of submission of the plan, Federal Defendants must show cause why the Court should not order them to implement water supply mitigation actions necessary to operate the John Day reservoir at MOP with a 1.5-foot operating range from March 1 through August 31. Any party may file a response in support of or in opposition to Federal Defendants' show cause response.

III. INFRASTRUCTURE REPAIR AND MAINTENANCE INJUNCTION

- A. The Dalles Dam Spillway: No later than February 28, 2027, Federal Defendants shall complete necessary repairs as set forth in the Corps' design documentation to return spill bay 9 to service. Once returned to service, Federal Defendants shall

ensure it remains fully functional and able to effectuate spill as identified in Table 1.

- B. Bonneville Dam Stilling Basin Modification: No later than February 28, 2027, Federal Defendants shall complete installation of barriers in the stilling basin as set forth in the Corps' design documentation that will allow Bonneville to operate at 125% TDG spill during spring spill. Once barriers have been installed, Federal Defendants shall ensure the stilling basin remains unobstructed and Bonneville Dam is able to effectuate spill as identified in Table 1.
- C. John Day Fish Ladder Temperatures: No later than February 29, 2028, Federal Defendants shall complete installation of a cooling structure, with real-time temperature recording, at the exit of the John Day fish ladder. Federal Defendants shall provide real-time temperature data from John Day Dam to regional fish managers to allow for in-season management beginning in 2026. Once the cooling structure is installed, Federal Defendants shall ensure it remains fully functional.
- D. Lower Granite Auxiliary Water Supply (AWS) Pumps: No later than February 28, 2027, Federal Defendants shall replace Lower Granite fishway AWS pumps with pumps that will allow Little Goose Reservoir to be operated at the above-specified MOP elevation (i.e., 633 ft msl). Once the pumps have been installed, Federal Defendants shall ensure they remain fully functional.
- E. Lower Monumental Dam Fish Transport: Federal Defendants shall cease transportation of juvenile fish from Lower Monumental Dam, effective with the 2026 juvenile fish passage operations.

**IV. EMERGENCY NON-OPERATIONAL CONSERVATION MEASURES
INJUNCTION**

A. Predation Reduction and Management

1. Avian Predation – Astoria-Megler Bridge: Federal Defendants shall ensure that the double-crested cormorant colony nesting on the Astoria-Megler Bridge has been relocated to East Sand Island.
 - a. Relocation efforts shall begin March 15, 2026, and continue until the colony has been fully relocated.
 - b. Hazing efforts at the Astoria-Megler Bridge should begin March 15 annually and continue every year until otherwise ordered by the Court to ensure that reestablishment of a colony does not occur.
2. Avian Predation – Blalock Islands: Federal Defendants shall begin efforts to ensure that there are no nesting Caspian terns and no more than 1,000 nesting gulls on the Blalock Islands on March 1 of each year, beginning in 2026 and continuing every year until otherwise ordered by the Court.
 - a. Habitat manipulation, active hazing, and/or lethal removal may be used to manage Caspian tern and gull populations, as long as there are no adverse impacts to fish travel time or juvenile fish survival (*e.g.*, birds are not displaced to Badger Island).
3. Non-Native Piscine Predation – Beginning no later than March 1 of each year, beginning in 2026 and continuing every year until otherwise ordered

by the Court, Federal Defendants shall take measures to reduce non-native piscine predation on listed species as follows:

- a. Federal Defendants shall remove all non-native piscine predators encountered at the Lower Granite adult trap.
- b. Federal Defendants shall provide a written annual report by December 31 of each year detailing the number and type of non-native piscine predators removed.

B. Steelhead Kelt Reconditioning

1. Federal Defendants shall ensure that wild/natural steelhead kelts in Snake Basin tributary weirs and Lower Granite, Little Goose, and Lower Monumental dams are collected and transported to the steelhead kelt reconditioning facility at the Nez Perce Tribal Hatchery within 24 hours of being notified of their presence, and are reconditioned at the Hatchery. These actions shall commence in 2026 and continue until otherwise ordered by the Court.
 - a. Collection and transportation at Snake Basin tributary weirs shall begin when tributary weirs are installed (on or about March 1) and will no longer be required when the steelhead kelt reconditioning facility has reached full capacity (750 steelhead kelt) or June 30, whichever comes first.
 - b. Collection and removal at Lower Granite, Little Goose, and Lower Monumental dams shall begin when the Corps initiates operation of the juvenile bypass facility and will no longer be required when

the steelhead kelt reconditioning facility has reached full capacity (750 steelhead kelt) or June 30, whichever comes first.

- C. Snake River Sockeye: Federal Defendants shall undertake the following actions to reduce adult migration mortality, establish a secondary broodstock and hatchery safety net, and reduce the risk of further genetic and demographic decline:
1. Federal Defendants shall maximize adult trap-and-transport operations by:
 - a. expanding operation of the Lower Granite Dam trap to seven days per week, during the Snake River sockeye migration season (the last week of June through the last week of July); and,
 - b. targeting collection of at least 25% and up to 50% of the adult sockeye return at Lower Granite Dam for transport; and,
 - c. providing holding ponds for adult sockeye at Dworshak Hatchery.
 2. Federal Defendants shall work with the Nez Perce Tribe to develop and finalize a Hatchery and Genetic Management Plan (HGMP) for a non-captive brood safety-net hatchery program for Snake River sockeye by September 1, 2026.
- D. Tucannon River Spring Chinook: Federal Defendants shall take the following actions to enhance hatchery operations and address adult salmon and steelhead access and juvenile salmon and steelhead predation bottlenecks at the mouth of the Tucannon River, in coordination with Washington Department of Fish Wildlife, Nez Perce Tribe and Confederated Tribes of the Umatilla Indian Reservation. These actions shall commence in 2026 and continue until otherwise ordered by the Court.
1. Federal Defendants shall scope and develop a plan for dredging the sedimentation at the mouth of the Tucannon River and the adjacent Lower

Monumental reservoir to improve juvenile and adult access to and from the River. Dredging shall be completed during the 2026/2027 in-water work window.

2. Federal Defendants shall locate, scope, and design a weir and an associated adult trap in the lower Tucannon River and downriver of the current trap, to facilitate more efficient broodstock collection, more effective exclusion of non-native fish, and safer passage of fish destined for natural spawning. The design documents shall be submitted to the Washington Department of Fish and Wildlife, Nez Perce Tribe, and Confederated Tribes of the Umatilla Indian Reservation for approval no later than December 31, 2026. Within 60 days of approval of the design documents, Federal Defendants shall submit permit applications necessary to commence construction of the weir and trap.

Michael H. Simon
United States District Judge

Submitted by: Deanna Chang
Senior Assistant Attorney General
Attorney for State of Oregon