

**Term Sheet for Stay of Preliminary Injunction Motion and Summary Judgment Schedule
NWF et al. v. NMFS et al. (3:01-cv-00640-SI)**

NWF et al., Oregon, and the Nez Perce Tribe (“Plaintiffs”) and the U.S. Army Corps of Engineers (Corps), Bureau of Reclamation, Bonneville Power Administration, U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) (the “United States”) (collectively, “the Parties”) have reached the following Agreement for short-term operations of the Columbia River System (“CRS”). This Agreement provides a compromise while the Parties work together to develop and begin implementing a long-term comprehensive solution.

The United States agrees to implement the operations specified in Sections I through III below.¹ The Parties agree to request a stay of the litigation (including but not limited to any preliminary injunction or summary judgment motions) in *NWF et al. v. NMFS et al.* (3:01-cv-00640-SI) through July 31, 2022. NWF et al. agrees to join with BPA to request a comparable stay/administrative action on its petition for review filed in the Ninth Circuit Court of Appeals (20-73761).

This Agreement is effective upon signature of the Parties and the entry of orders staying *NWF et al. v. NMFS et al.*, 3:01-cv-640-SI (D. Or.) and the pending petitions for review filed in the Ninth Circuit Court of Appeals (20-73761, 20-73762, 20-73775). Nothing in this Agreement alters or modifies the Parties’ rights (including any claims or defenses) in *NWF et al. v. NMFS et al.* or in any other forum, and no Party makes any concessions regarding the legal or scientific validity of the operations outlined in this Agreement, the 2020 CRSO Environmental Impact Statement, NMFS’s and FWS’s 2020 CRS Biological Opinions, or the 2020 CRSO Record of Decision.

I. SPILL OPERATIONS

A. Planned Spring Fish Passage Spill Operations for 2022

Table 1: Planned Spring Fish Passage Spill Operations² for 2022	
Project	Spring operation (April 3 to June 20 in Lower Snake River (LSR); April 10 to June 15 in Lower Columbia River (LCR))
Lower Granite	125% Gas Cap spill 24 hours per day/7 days per week until Adult Salmonid Abundance Criteria ³ is satisfied, at which point the Corps will implement the 2021 FOP operation (125% Gas Cap spill 16 hours per day/7 days per week; “performance standard” spill for 8 hours per day/7 days per week) subject to one modification: best

¹ Except as expressly modified in Sections I-III, the United States will implement CRS operations as outlined in FWS’s and NMFS’s 2020 CRS Biological Opinions, the 2020 CRSO Record of Decision, and other guiding documents including the annual Fish Operations Plan, Fish Passage Plan, Water Management Plan (WMP), and seasonal WMP updates.

² The fish passage spill operations outlined herein are subject to, and will be implemented consistent with, the annual Fish Operations Plan, Fish Passage Plan, WMP, and seasonal WMP updates.

³ The Adult Salmonid Abundance Criteria is satisfied when the earliest of the following conditions is met: (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, 2022.

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	efforts will be made to implement eight hours of performance standard spill between 0400 and 1200. ⁴
Little Goose	2021 FOP operation (125% Gas Cap spill 16 hours per day/7 days per week; 30% spill for 8 hours per day/7 days per week, subject to two exceptions specified in Table 3, 2021 FOP).
Lower Monumental	125% Gas Cap spill 24 hours per day/7 days per week until Adult Salmonid Abundance Criteria is satisfied, at which point the Corps will implement the 2021 FOP operation (125% Gas Cap spill 16 hours per day/7 days per week; “performance standard” spill for 8 hours per day/7 days per week) subject to one modification: best efforts will be made to implement eight hours of performance standard spill between 0400 and 1200.
Ice Harbor	125% Gas Cap spill 24 hours per day/7 days per week.
McNary	125% Gas Cap spill 24 hours per day/7 days per week.
John Day	125% Gas Cap spill 16 hours per day/7 days per week; “performance standard” spill for 8 hours per day/7 days per week, with priority to maintain 40% spill for 24 hours at The Dalles Dam as needed for TDG management.
The Dalles	2021 FOP Operation (40% spill for 24 hours per day).
Bonneville	125% Gas Cap spill 24 hours per day/7 days per week, capped at 150 kcfs.

B. Planned Fall/Winter Spill Operations from Sept. 1, 2022 to April 2, 2023 (LSR) and April 9, 2023 (LCR).

1. From September 1, 2022 to November 15, 2022 and March 1, 2023 to the start of the spring fish passage spill season in April 2023, the Corps will provide surface oriented spill at least three times each week on non-consecutive days for 4 hours each morning (generally between 0500 and 1100) through a spillway weir at each of the following five dams: Lower Granite, Little Goose, Lower Monumental, Ice Harbor, and McNary.

2. Except as modified herein, the Corps shall conduct the planned fall-winter spill operation as outlined in Term and Condition 1.G of NMFS’s 2020 CRS Incidental Take Statement.

II. RESERVOIR OPERATIONS

The Corps shall operate Lower Granite, Little Goose, Lower Monumental, and Ice Harbor Dams at minimum operating pool (MOP) with a 1.5 foot forebay operating range and a 1.0 foot range to the extent possible (referred to operationally as a “soft constraint”) from April 3 until August 14, 2022, unless adjusted on occasion to meet authorized project purposes, primarily Navigation, as specified in the FOP (e.g., 2021 FOP Section 4.6).

⁴ When conducting flexible spill operations at Lower Granite and Lower Monumental dams, similar exceptions to those that apply at Little Goose Dam (Table 3, 2021 FOP) may be required. These exceptions will be addressed in the 2022 FOP and coordinated regionally.

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III. SYSTEM OPERATIONAL REQUESTS

A. The Corps will implement SOR 2021-1 (Updated February 24, 2021 version) in 2022 and 2023. The Corps and Bonneville will refrain from within-day load shaping at Dworshak Dam as occurred during January 2021 unless necessary for equipment testing or other operation and maintenance related activities.

B. The Corps will implement SOR 2021-6 in 2021 and 2022. Zero Generation Operations as described in the 2020 CRSO ROD will no longer commence as early as October 15, and will instead commence once the previously defined implementation trigger of “few, if any” actively migrating anadromous fish (as described in SOR 2005-22) has been met. This trigger will be implemented in relation to both date (implementation will be limited to periods between December 1 and through February 28) and abundance.

IV. SIGNATURES

The Parties agree to the provisions set forth in this Agreement as evidenced by the signatures of their authorized representatives on the following pages.

NATIONAL WILDLIFE FEDERATION, *et al.*



Todd D. True, Earthjustice
Attorney for National Wildlife Federation, *et al.*

Oct. 21, 2021

Date

OREGON



October 20, 2021

Kate Brown
Governor
State of Oregon

Date

NEZ PERCE TRIBE

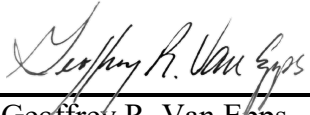
Samuel N. Penney 10-21-21

Samuel N. Penney Date
Chairman
Nez Perce Tribal Executive Committee

Shirley J. Allman 10/21/21

Shirley J. Allman Date
Secretary
Nez Perce Tribal Executive Committee

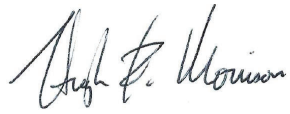
United States



Geoffrey R. Van Epps
Colonel, Corps of Engineers
Division Commander

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Lorri J. Gray
Regional Director, Columbia - Pacific Northwest
Interior Region 9
Bureau of Reclamation



Hugh R. Morrison
Deputy Regional Director
Columbia Pacific Northwest and Pacific Islands Regions
U.S. Fish and Wildlife Service

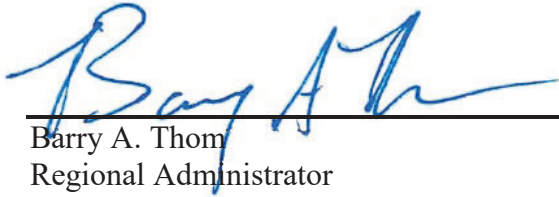
JOHN
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John L. Hairston
Administrator and CEO
Bonneville Power Administration



October 21, 2021

Barry A. Thom
Regional Administrator
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, West Coast Region.