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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

CASCADIA WILDLANDS; WILLAMETTE RIVERKEEPER; OREGON WILD; and NATIVE FISH SOCIETY,

Plaintiffs,

v.

EUGENE WATER & ELECTRIC BOARD,

Defendant.

Case No.: 6:25-cv-446-MTK

[PROPOSED] ORDER RE: PLAINTIFFS' MOTION FOR PRELMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' Motion for Preliminary Injunction. The Court has reviewed the filings submitted by all parties, and deeming itself fully advised, GRANTS Plaintiffs' Motion and hereby orders as follows:

1. EWEB must authorize, direct, and fund the following modifications to the fish trap in the Carmen-Smith Spawning Channel: (a) construct a trap box with capacity to accommodate multiple adult salmon or bull trout (e.g., 10–12 fish); (b) design the trap box with a fyke[1] entrance so that adult fish can volitionally enter during their natural period of upstream migration (generally dusk to midnight); (c) construct the trap box with round aluminum or steel pipe to minimize sharp edges and with spacing between pipes narrow enough to prevent fish from getting their heads stuck (e.g., $\leq$ 1 inch[2]); (d) construct a lid for the trap box to provide shade and calm fish in the trap; (e) install guidance picket weirs (wings) to lead fish to the trap entrance; (f) relocate the new trap downstream to take advantage of natural current for attraction flow: either at the tailout of the pool at the upstream end of the spawning channel or near the entrance of the spawning channel. For fish that are inside the trap, individual fish shall be netted and processed using methods to minimize stress, such as a covered cradle inside the trap box or a removable gate at the upstream end of the trap box to move individual fish into a covered, V-shaped trough. These actions must be completed by August 25, 2025.

2. EWEB must authorize, direct, and fund the following monitoring of the fish trap and trap-and-haul system: (a) by August 25, 2025, install underwater cameras at the trap entrance

[1] A fyke is a V-shaped trap entrance that narrows toward the interior of the trap, with an interior gap that is wide enough for fish to comfortably enter the trap and ends with a narrow opening to prevent fish from easily exiting. The fyke entrance can be fitted with a gate that can be closed when processing trapped fish.

[2] NMFS (National Marine Fisheries Service) 2022. NOAA Fisheries West Coast Region Anadromous Salmonid Passage Design Manual, NMFS, WCR, Portland, Oregon.

to observe fish behavior and evidence of trap avoidance; (b) give each trapped fish a PIT (Passive Integrated Transponder) tag[3] if it does not already have one (inserted into the dorsal sinus for Chinook salmon instead of into the body cavity), and use a covered cradle or V-shaped trough to keep fish calm and minimize handling or use a water bath with anesthetic; (c) install PIT tag antennas at the entrance to the spawning channel and at the tailrace barrier (flexible design) to collect data on fall back of fish transported upstream of the dam, and data on downstream movement of adult and subadult bull trout; and (d) collect tissue samples from all transported fish for genetic analysis.

3. EWEB must authorize, direct, and fund a team of biologists to plan additional changes to the fish trap that would be implemented by August 1, 2026, if the modifications ordered under paragraph 1 do not sufficiently improve collection and release of adult fish above the dam. NMFS, FWS, and ODFW biologists shall be included on the team and consulted about the need for additional changes to the trap. At a minimum, the team must consider the following: (a) moving the trap to the vicinity of the velocity barrier downstream of the dam; (b) creating a notch in the velocity barrier to create a single point of attraction; and (c) incorporating a passive adult trap upstream of the notch. If water velocity needs to be reduced through the trap, flow could be dissipated with additional notches in the barrier that would be blocked with a picket gate (or some other means of exclusion), and/or a velocity break could be installed upstream of the trap.

[3] PIT tags are small (grain of rice) tags implanted in fish with unique alphanumeric codes for identifying and tracking individual fish. The tags are based on radio-frequency identification (RFID) technology and are activated when a fish enters the electromagnetic field of an antenna. The activated tag transmits the unique code to a receiver where it is recorded and stored.

4. EWEB must authorize, direct, and fund the following measure(s) to reduce fall back over the dam when adult fish are released above the dam beginning in August 2025: (a) increase the distance between the release site and the dam; (b) release fish into free-flowing water rather than into the reservoir; or (c) release fish into a tributary. If these measures are not possible for all adult releases above Trail Bridge Dam, a team of biologists shall identify stream reaches that contain good spawning gravel where adult salmon could be released, and install a temporary weir at the downstream end to prevent fall back. The downstream end should include a pool area where fish could hold. Adult salmon released in the blocked area should be from the latter part of the run and close to spawning. The area must be closely monitored, especially shortly after fish are released, to observe fish behavior and to provide for downstream passage of any adult bull trout in the area.

5. EWEB must immediately implement dam operations to benefit downstream migration through Trail Bridge Dam to the maximum extent possible, including: (a) using the largest possible gate opening in the spillway; and (b) using the turbine only when necessary for dam safety or human safety.

Dated: this ____ day of _____, 2025

_____

United States District Judge