

Judge says he can't consider Obama administration's salmon and dams plan

By [Matthew Preusch](#)

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Thomas Boyd/The Oregonian

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Redden letter

[Read a PDF of Judge Redden's letter.](#)

A federal judge today appeared to reject the Obama administration's attempt to help a Bush-era plan for Northwest salmon and dams pass legal muster.

Opponents of the plan are claiming the letter from U.S. District Court Judge James Redden as a victory, if only a procedural one.

Last fall, the administration supplemented to the Bush plan, called a biological opinion, to try to garner the approval of the Portland judge.

Redden has twice before rejected federal [blueprints for Columbia Basin salmon](#), but he has given the government multiple opportunities to amend the one currently before his court.

Judge Redden said in a letter to attorneys today that federal procedural rules prevent him from considering the Obama administration's additions, called the Adaptive Management Implementation Plan, to the Bush plan.

The AMIP "is a positive development," Redden wrote in a letter to attorneys. "The AMIP, however, is not part of the administrative record, and it does not fall into any exception to the record-review rule."

That means he can't consider the Obama administration's changes, which the administration called an "insurance plan" for the fish, if he rules on the legality of the biological opinion.

The State of Oregon, salmon advocates and the Nez Perce tribe are suing the federal government, saying its plan doesn't do enough to protect the imperiled fish from the harmful impact of power-producing dams.

In his letter and a proposed order, the judge lays out in fairly plain language what he thinks the federal government should do next.

In essence, he suggest the administration take three more months to reconsider the Bush plan and how to incorporate their additions into it under a process called a voluntary remand.

"A voluntary remand provides a mechanism by which the federal defendants can cure this procedural defect, without starting from scratch and without jeopardizing the progress made through the regional collaborative process," he writes.

He also said the administration needs to consider the "best available science" during their review.

"They cannot rely exclusively on materials that support one position, while ignoring new or opposing scientific information," Redden writes.

When the administration presented their plan to Redden last November, Jane Lubchenco, the Oregon ecologist and current head of the [National Oceanic and Atmospheric Administration](#), defended the scientific merit of the plan.

"I stand 100 percent behind the science," [Lubchenco said at the time](#).

The agencies, including NOAA, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, have until February 19th to respond to the judge.

"We sure hope they take him up on the idea to fix this plan, and we hope they take the opportunity to truly engage us and the other plaintiffs to find a long-term solution to this long-standing issue in the region," said Nicole Cordan, attorney for the group Save Our Wild Salmon.

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