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**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-640-SI

**JOINT MOTION TO EXTEND THE
LITIGATION STAY**

LR 7-1 CONFERRAL STATEMENT

The Moving Parties—National Wildlife Federation et al., the State of Oregon, the Nez Perce Tribe, the Coeur d'Alene Tribe, the Spokane Tribe, and the United States—conferred with the parties and amicus on this Motion.

The Confederated Tribes of the Umatilla Indian Reservation,¹ the Confederated Tribes of the Warm Springs Reservation of Oregon,¹ the Confederated Tribes and Bands of the Yakama Nation,¹ the Confederated Tribes of the Colville Reservation, the State of Washington, and the Northwest Power & Conservation Council support the motion to stay the litigation through August 31, 2023.

The Kootenai Tribe of Idaho, the Confederated Salish and Kootenai Tribes, the State of Montana, the State of Idaho,² the Inland Ports and Navigation Group (IPNG),³ and the Public Power Council (PPC)⁴ do not oppose the motion to stay the litigation through August 31, 2023.

The Columbia-Snake River Irrigators Association, Northwest RiverPartners, and James M. Waddell, P.E. responded to the conferral request but did not indicate a position of support for or opposition to the stay motion.

¹ The Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Nation support the motion to extend the litigation stay, based on the moving parties' commitment to rapidly engage on comprehensive, durable solutions in the Columbia River Basin. However, the process for engagement of these sovereigns—with their Treaty-reserved rights and legally recognized co-management status in the Columbia River Basin—has not yet been determined. The federal government must recognize, respect and protect the unique rights and interests of these three sovereigns by fully involving them in the development of regional solutions in this yet to be determined process.

² The State of Idaho indicated that it intends to file a response to clarify their positions.

³ IPNG indicated that, while it does not oppose the requested stay, it also does not endorse or agree with the positions or statements contained in Exhibits 1 and 2.

⁴ PPC indicated that it does not oppose the requested relief to stay the case through August 31, 2023, but that its lack of opposition to such relief does not signify that it endorses or otherwise agrees with the content of the two exhibits filed with the motion, and that it in fact has serious concerns with at least certain of the positions reflected in those exhibits. PPC also indicated that it expects to file a short response to the Motion to clarify its position and briefly outline some of its primary concerns.

MOTION TO EXTEND THE LITIGATION STAY

The National Wildlife Federation (NWF) et al., plaintiffs, the State of Oregon, the Nez Perce Tribe, and the United States asked the Court to stay proceedings in October 2021 (ECF 2411). The Court granted the motion (ECF 2415). The United States, NWF plaintiffs, Oregon, and the Nez Perce Tribe, joined by plaintiff-intervenors Coeur d’Alene Tribe and Spokane Tribe (together, Moving Parties), now ask the Court to extend the litigation stay through August 31, 2023. In support of the Motion, the Moving Parties state as follows:

1. “A district court has inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants.” *MAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

2. During the litigation stay, the United States prepared for and started engaging with other Tribes, States, and stakeholders on timely, basin-wide, durable comprehensive solutions that have the potential for resolving this litigation. As part of these efforts, the United States committed to developing strategies through inclusive regional collaborative processes that restore native fish and their affected habitats, honor the United States’ commitments to Tribal Nations, deliver affordable clean power, and satisfy other interests served by the Columbia River System projects. *See* Exhibit 1; *see also* Exhibit 2 (Administration commitments).

3. The United States also secured the services of the Federal Mediation and Conciliation Service (FMCS; www.fmcs.gov) to facilitate meaningful engagement on comprehensive solutions by the United States, Tribes, States, and Stakeholders. The Moving Parties have committed to engage with each other and other Tribes, States, and stakeholders within the FMCS process. They agree and expect that the first task following a continued litigation stay is for the Administration, in the forums managed by FMCS, to expeditiously collaborate with affected Tribes, States, and regional stakeholders and to produce by no later than December 1, 2022, a schedule of Administration actions and critical milestones that the Administration intends to pursue.

4. Based on the United States' commitments discussed above (¶ 2), as well as the Moving Parties' expectations that the participants in the FMCS process meaningfully collaborate and that sufficient progress is made on identifying and implementing comprehensive basin-wide solutions, the Moving Parties believe that a continued stay of the litigation is warranted. This stay will allow the Moving Parties and others to continue working toward solutions that have the potential to resolve all claims in this litigation.

5. In requesting a stay, the Moving Parties agree that the FMCS process and the participants need to make substantial progress on identifying and implementing comprehensive basin-wide solutions. Every 90 days during the extended stay, the Moving Parties therefore agree to file with the Court and serve on the parties and amicus a progress report of steps and actions taken during the FMCS process. The Moving Parties also agree that any party can move to lift the litigation stay for good cause, which can include the lack of sufficient progress on identifying and timely implementing comprehensive basin-wide solutions, whether due to the action or inaction of the Administration, the Plaintiffs, or any other party.

Based on the foregoing, the Moving Parties ask the Court to stay the case through August 31, 2023.

DATED Aug. 4, 2022

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CERTIFICATE OF SERVICE

I certify that on August 4, 2022, I filed the foregoing through the Court's CM-ECF system, which will automatically notify counsel of record. I also caused the foregoing to be manually sent to following:

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/s/ Michael R. Eitel
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