

MEMORANDUM OF UNDERSTANDING

Through mediated discussions in *National Wildlife Federation v. National Marine Fisheries Service*, 3:01-cv-640-SI (D. Or.) (*NWF v. NMFS*), *Pacific Coast Federation of Fishermen's Associations v. Bonneville Power Administration*, 20-73761 (9th Cir.) (*PCFFA v. BPA*), *Coeur d'Alene Tribe v. Bonneville Power Administration*, 20-73762 (9th Cir.), and *Spokane Tribe of Indians v. Bonneville Power Administration*, 20-73775 (9th Cir.), the National Wildlife Federation et al. Plaintiffs, the State of Oregon, the State of Washington, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and the United States (the "Parties") have entered into this Memorandum of Understanding ("MOU").

WHEREAS, the U.S. Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS") issued biological opinions on Columbia River System ("CRS") operations in July 2020, the U.S. Army Corps of Engineers ("Corps"), the Bureau of Reclamation ("Reclamation"), and the Bonneville Power Administration ("Bonneville") completed a Final Columbia River System Operations Environmental Impact Statement in July 2020, and the Corps, Reclamation, and Bonneville issued a Final Record of Decision in September 2020;¹

WHEREAS, in *PCFFA v. BPA*, the National Wildlife Federation et al., Plaintiffs ("NWF Plaintiffs")² filed a petition for review in the Ninth Circuit Court of Appeals against Bonneville in December 2020; and in *NWF v. NMFS*, the NWF Plaintiffs filed an eighth supplemental complaint in January 2021 (ECF 2311, as corrected by ECF 2396), the Spokane Tribe of Indians filed a complaint-in-intervention in February 2021 (ECF 2320), Oregon filed a fifth supplemental complaint in March 2021 (ECF 2325), and the Coeur d'Alene Tribe of Indians filed a complaint-in-intervention in March 2021 (ECF 2330);

WHEREAS, NWF Plaintiffs and Oregon filed and the Nez Perce Tribe supported motions for injunctive relief in *NWF v. NMFS* in 2021 (ECF 2390; ECF 2392; ECF 2387);

WHEREAS, in *NWF v. NMFS*, the United States, the NWF Plaintiffs, the State of Oregon, and the Nez Perce Tribe jointly requested a stay of litigation through July 31, 2022 to implement certain negotiated short-term CRS operations while the parties worked to develop and begin implementing a long-term comprehensive solution that could resolve the claims in the litigation (ECF 2411), which the district court granted (ECF 2415); and the parties to the Ninth

¹ For purposes of this MOU, the Columbia River System (CRS) consists of 14 Federal dam and reservoir projects addressed in the 2020 CRSO EIS and 2020 CRSO EIS ROD: Libby, Hungry Horse, Albeni Falls, Grand Coulee, Chief Joseph, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville dams.

² For purposes of this MOU, the NWF Plaintiffs are: the Pacific Coast Federation of Fishermen's Associations, the Institute for Fisheries Resources, Sierra Club, Idaho Rivers United, Northwest Sport Fishing Industry Association, NW Energy Coalition, National Wildlife Federation, Columbia Riverkeeper, Idaho Conservation League, and Fly Fishers International.

Circuit proceedings subsequently sought to administratively close their petitions for review through August 2, 2022, which the Ninth Circuit granted (ECF 25);

WHEREAS, the United States, the NWF Plaintiffs, the State of Oregon, and the Nez Perce Tribe, joined by the Coeur d'Alene Tribe and the Spokane Tribe of Indians, subsequently moved to extend the litigation stay through (1) August 2023 (ECF 2423), which the district court granted on August 4, 2022 (ECF 2425) and the Ninth Circuit granted on August 11, 2022 (ECF 42); and (2) through October 2023 (ECF 2438), which the district court granted on September 1, 2023 (ECF 2441) and the Ninth Circuit granted on September 6, 2023 (ECF 47);

WHEREAS, during the litigation stay, the United States engaged the Federal Mediation and Conciliation Service ("FMCS") and, with the assistance of FMCS, participated in mediated discussions with States, Tribes, and other parties on timely, basin-wide, durable solutions that have the potential for resolving the litigation (ECF 2423-2);

WHEREAS, on March 21, 2022, the United States convened a Nation-to-Nation consultation between Federal departments and agencies and various leaders and representatives from the Tribes of the Columbia River Basin, where the Federal representatives heard clearly the request for accountability for United States Government ("USG") actions that have caused harm to the ecology of the river, its tributaries, and importantly, its first residents;

WHEREAS, on March 28, 2022, the Secretary of the Interior, the Secretary of Energy, the Assistant Secretary of the Army for Civil Works, the Chair of the Council on Environmental Quality, and the Under Secretary of Commerce for Oceans and Atmosphere/NOAA Administrator committed to identifying a strong and lasting path forward to restore healthy and abundant wild salmon and other native fish to the Columbia River Basin;³

WHEREAS, the Parties continued to engage through good faith mediation, including the United States' production of documents relevant to the mediation process, such as NOAA's September 30, 2022, Rebuilding Interior Columbia Basin Salmon and Steelhead Report (Rebuilding Report) (*see* <https://media.fisheries.noaa.gov/2022-09/rebuilding-interior-columbia-basin-salmon-steelhead.pdf>; *see also* ECF 2429; ECF 2430; ECF 2433; ECF 2434 (mediation progress reports));

WHEREAS, on March 21, 2023, President Biden announced a call to action to bring healthy and abundant salmon runs back to the Columbia River System;⁴

WHEREAS, on September 21, 2023, the United States entered into an agreement with the Coeur d'Alene Tribe, the Confederated Tribes of the Colville Reservation, and the Spokane Tribe of Indians to support and fund the Tribally led effort to restore salmon to the blocked habitat in the Upper Columbia River Basin above Chief Joseph and Grand Coulee Dams,

³ Columbia River Basin Fisheries: Working Together to Develop a Path Forward, *available at* <https://www.whitehouse.gov/ceq/news-updates/2022/03/28/columbia-river-basin-fisheries-working-together-to-develop-a-path-forward/>.

⁴ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/03/21/remarks-by-president-biden-at-the-white-house-conservation-in-action-summit/>.

including the habitats above private dams on the Spokane River. In accordance with the agreement, the Coeur d' Alene Tribe, the Spokane Tribe of Indians, and United States moved to stay and voluntarily dismiss without prejudice to reinstatement the existing litigation relating to the Coeur d' Alene Tribe's and Spokane Tribe of Indians' complaints-in-intervention (ECF 2442) and petitions for review, which the district court granted on September 28, 2023, and the Ninth Circuit granted on October 11, 2023;

WHEREAS, on September 27, 2023, President Biden issued a Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin ("Presidential Memorandum")⁵ that identified a priority for the Administration "to honor Federal trust and treaty responsibilities to Tribal Nations — including to those Tribal Nations harmed by the construction and operation of Federal dams that are part of the Columbia River System;"

WHEREAS, the Presidential Memorandum further directed that all relevant Federal agencies "work with the Congress and with Tribal Nations, States, local governments, and stakeholders: to pursue effective, creative, and durable solutions, informed by Indigenous Knowledge; to restore healthy and abundant salmon, steelhead, and other native fish populations in the Basin; to secure a clean and resilient energy future for the region; to support local agriculture and its role in food security domestically and globally; and to invest in the communities that depend on the services provided by the Basin's Federal dams to enhance resilience to changes to the operation of the CRS, including those necessary to address changing hydrological conditions due to climate change;"

WHEREAS, during the mediation, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, the State of Oregon, and the State of Washington (the "Six Sovereigns") provided to the United States a proposed Columbia Basin Restoration Initiative ("CBRI" (Attachment 1)), which they intend to advance. The CBRI is informed by decades of collective experience and represents the collaborative efforts of the Six Sovereigns to develop a comprehensive solution to shared and complex challenges in the Columbia River Basin;

WHEREAS, the United States worked with the Six Sovereigns to review, evaluate, and respond to the CBRI, which culminated in the United States Government's Commitments in Support of the CBRI ("USG Commitments" (Attachment 2)), including 10-year interim operations (2024-2033) for the four lower Snake River and four lower Columbia River dams ("USG Operations" (Attachment 2, Appendix B));

WHEREAS, as set forth in this MOU, the Parties agree to seek a five year stay of litigation from the district court and to move to extend the litigation stay for an additional five years if the Parties are continuing to work in partnership on Columbia River Basin restoration and have not terminated the MOU; the Parties further agree not to litigate over the USG Operations for a period of 10 years so long as this MOU remains in effect, to enable fulfillment

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/27/memorandum-on-restoring-healthy-and-abundant-salmon-steelhead-and-other-native-fish-populations-in-the-columbia-river-basin/>.

of the USG Commitments and allow for additional collaboration and partnership between the Parties to further advance the objectives of the Presidential Memorandum and the CBRI;

WHEREAS, the Parties remain committed to good faith collaboration with the regional sovereigns, and with other non-Party litigation participants as appropriate, including coordination on this MOU, the USG Commitments, USG Operations, and addressing questions or concerns over the MOU, the USG Commitments, and USG Operations;

NOW, THEREFORE, THE PARTIES STATE THE FOLLOWING UNDERSTANDING:

1. Parties. The signatories to this MOU are the United States, acting through the Federal agencies, the States of Washington and Oregon, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and NWF Plaintiffs.

1.1. “Federal agencies” refers to the U.S. Army Corps of Engineers, the Bureau of Reclamation, Bonneville Power Administration, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

1.2. “United States Government” or “USG” refers to the Departments and Agencies involved in salmon and native fish restoration and include, but are not limited to, the Executive Office of the President, the Departments of Interior, Commerce, Army, Energy, Transportation, and Agriculture, the Departments’ component agencies, and the Environmental Protection Agency.

1.3. “Non-Federal Parties” refers to the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, the State of Washington, the State of Oregon, and the NWF Plaintiffs.

2. USG Commitments in Support of the Columbia Basin Restoration Initiative. Subject to the provisions of the MOU, the Federal agencies agree to implement the USG Commitments, consistent with the Presidential Memorandum and in partnership with the Six Sovereigns and other stakeholders in the region, to make headway on the objectives in the CBRI. The Parties agree that nothing in this MOU is intended to modify, or will be interpreted as modifying, the USG Commitments, Presidential Memorandum, or the CBRI.

2.1. The Parties recognize that the USG Commitments and actions identified in this MOU are conditioned on and subject to the completion of any potential new and/or supplemental environmental compliance, as needed, under the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), and other laws. The Parties recognize that the USG Commitments and actions identified in this MOU could change depending on (1) the outcome of the environmental compliance and associated Federal agency decision-making processes, or (2) congressional action to authorize and fund the breach of the four lower Snake River dams, and that such changes could lead to modification or termination of this MOU in accordance with the terms of this MOU.

2.2. To the extent the Federal agencies' new or supplemental environmental compliance, or congressional action to authorize and fund breach, leads to actual or potential impacts to the USG Commitments or this MOU, the Parties agree to work collaboratively to consider modifications to the USG Commitments or this MOU in the new or supplemental environmental compliance documents or other forums as appropriate. This includes considering any actions that could be needed to complement, mitigate, or offset any potential modifications to the USG Commitments or this MOU.

3. USG Operations. While the MOU is in effect, the Federal agencies will implement the USG Operations for a 10- year period, and the Parties agree the USG Operations will remain in place: (1) unless the Federal agencies modify operations after completing any potential new or supplemental environmental compliance; (2) subject to any adaptive management consistent with the USG Commitments and other provisions identified therein; or (3) unless and until the Corps awards construction contracts for breach following congressional action to authorize and fund the breach of the four lower Snake River dams. If circumstances arise as identified in this section, the Parties agree to work together to consider modified operations in light of changed circumstances.

3.1. The Parties further agree that the Federal agencies will use the provisions contained in the 2023 Water Management Plan, 2023 Fish Passage Plan, and 2023 Fish Operations Plan for in-season management unless expressly modified by or through implementation of the USG Commitments.

3.2. As addressed in the USG Commitments, the Parties agree to work in partnership to continue monitoring and evaluating the USG Operations during the term of this MOU.

3.3. Consistent with section 9.2, the non-Federal Parties agree that they will not seek injunctive relief that would modify the USG Operations while this MOU is in effect for that Party.

4. Ongoing Collaboration on Restoration; Additional Actions. In accordance with the USG Commitments' expectations for continuing senior leadership engagement, the USG recognizes that additional actions will be needed to advance the shared interests in restoring healthy and abundant salmon and other native fish to the Columbia River Basin, including pursuing increased funding in support of basin-wide restoration as set forth in the USG Commitments and Presidential Memorandum. The Parties therefore agree to continue collaborating over development and implementation of additional actions that may be undertaken by the Parties to meet the shared goals. The Parties do not intend for this commitment, however, to include the renegotiation of the USG Commitments and USG Operations.

5. Compliance with Applicable Laws.

5.1. The Federal agencies have requirements to prepare certain analyses under Federal law when taking actions described in the USG Commitments or this MOU. The USG Commitments and the actions identified in this MOU therefore are conditioned on,

and subject to, completion of any required environmental compliance and compliance with all applicable laws. No provision of this MOU shall be interpreted as, or constitute, a commitment or requirement that the United States, acting through its departments and agencies, act in contravention of NEPA, the National Historic Preservation Act, the ESA, the Pacific Northwest Electric Power Planning and Conservation Act, the Clean Water Act, the Administrative Procedure Act, the Federal Advisory Committee Act, the Information Quality Act, or any other law or regulation, either substantive or procedural (including applicable State and Tribal law).

5.2. The USG agrees to use all appropriate legal authorities to fund, support, and implement this MOU. This MOU shall not be interpreted as binding any Federal agency to expend in any one fiscal year any sum in excess of appropriations made by Congress and available for purposes of this MOU for that fiscal year, nor as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations. The Parties agree that nothing in this MOU shall be interpreted as or constitute a commitment or requirement that any Federal agency take action in contravention of the anti-lobbying act, 18 U.S.C. § 1913, or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

5.3. Any obligation of State Parties to make any payment or expend any funds under this MOU attributable to commitments performed under this MOU after the last day of the current biennium is contingent upon the State Parties receiving from the applicable Legislative Assembly (including but not limited to its Emergency Board) appropriations, limitations, or other expenditure authority sufficient to allow the State Parties, in the exercise of their reasonable administrative discretion, to continue the commitments contemplated by this MOU.

5.4. Nothing in this MOU shall be construed to affect or limit the Parties—Federal, State, or Tribal—from complying with their obligations under, or affect their discretion under, any applicable laws; the MOU also does not affect or limit the Parties when engaging in—or predetermine the outcome of—any environmental, cultural resource review, administrative review, regulatory, or appeal process.

6. Communication Protocol. Given the timeline and the adaptive nature of the CBRI and the USG Commitments, it is not possible to anticipate all contingencies or eventualities. The Parties therefore commit to continue to engage in regular, good faith discussions to address any issues or questions that may arise.

6.1. Points of Contact. Each Party will identify point(s) of contact for receiving notices and managing their respective obligations under this MOU; each Party also will identify, in writing, any changes to those point(s) of contact within one month of a change.

6.2. Monthly Status Briefings. The Parties' points of contact will convene monthly informal status calls concerning implementation of the CBRI, the USG Commitments, and any additional actions needed to advance the Parties' shared interests

in restoring healthy and abundant salmon and other native fish to the Columbia River Basin.

6.3. **Information Sharing.** Upon request, the Parties agree to timely share documents developed in furtherance of the CBRI and the USG Commitments that are not internally confidential or privileged to a Party. The Parties also agree to provide each other with as much advance notice as practical of actions or events that have the potential to affect the USG Commitments, the CBRI, the Presidential Memorandum, or this MOU.

6.4. **Annual Meetings.** In addition to the meetings outlined in section 6.2 above, the Parties—including senior leadership within the USG, States, Tribes, and NWF Plaintiffs—agree to meet annually to review the progress made in implementing the CBRI, the USG Commitments, this MOU, and any additional actions needed to advance the Parties’ shared interests in restoring healthy and abundant salmon and other native fish to the Columbia River Basin. The Parties agree to jointly develop and post online a concise annual progress report, and to jointly file an annual status report in the district court litigation. The Parties further agree that additional leadership meetings may be required from time to time, corresponding to actions or milestones in the USG Commitments, such as the finalization of any supplemental or additional environmental analysis.

7. Dispute Resolution. The Parties agree to use best efforts to pursue the good faith implementation and support of the USG Commitments and this MOU. The Parties understand that questions or concerns may arise regarding Party compliance with the spirit or intent of the USG Commitments and this MOU, including but not limited to the results of Party conferral on issues arising when implementing the USG Commitments and this MOU and adjustments or modifications to the USG Commitments or USG Operations (if adjusted by the Federal agencies following environmental compliance and associated decision-making processes). It is the intent of the Parties that these procedures will permit the Parties to resolve disputes outside of court, and that litigation will be used only as a last resort after good faith efforts to resolve disagreements are unsuccessful and the MOU is terminated according to the provisions below.

7.1. **Point of Disagreement.** Any Party may raise a formal “point of disagreement” to initiate the dispute resolution processes of this MOU. A Party raising a formal point of disagreement shall provide all other Parties written notice that it is raising a formal point of disagreement. That written notice shall include a summary of the disagreement, the Party’s position on the appropriate resolution(s) of the disagreement, and any documents or supporting materials that assist in describing the disagreement and/or supporting the Party’s position on an appropriate resolution. If the Party raising the point of disagreement believes that emergency circumstances exist, a complete explanation of the emergency and a request for expedited dispute resolution to resolve the emergency shall be included. All Parties shall strive to provide notice of a point of disagreement at the earliest possible time.

7.2. **Informal Dispute Resolution.** The Parties will first work to resolve the point of disagreement at the staff level. The Parties’ points of contact will endeavor to timely

facilitate consultation and resolution. If a dispute cannot be resolved through informal dispute resolution, the Party or Parties raising the dispute may leave the dispute unresolved, obtain unanimous agreement to bypass formal dispute resolutions and proceed directly to withdrawals from or termination of the MOU, or pursue formal dispute resolution.

7.3. Formal Dispute Resolution. If the Parties are unable to reach agreement through informal dispute resolution, the Parties shall elevate the point of disagreement to each Party's senior leadership for timely consultation and good faith efforts to timely resolve the point of disagreement. The Parties agree that these good faith efforts to resolve points of disagreement at the senior leadership level are the primary method of formally resolving disputes under this MOU. However, if the point of disagreement remains unresolved following good faith efforts to do so at the senior leadership level, any Party may request mediation of an unresolved dispute with a settlement judge (or, with consent of all Parties, a non-judicial mediator or mediation body, like the Federal Mediation and Conciliation Service). The Parties agree that good faith efforts to resolve any disagreements shall be exhausted prior to requesting mediation and that, absent an agreement otherwise, the requesting Party shall provide at least 7 days' notice to the Parties' counsel before requesting mediation under this provision. The Federal agencies agree that, in mediation, they will coordinate with each other prior to advancing positions during the formal dispute resolution proceedings. The Parties agree to prioritize mediation to the extent practicable. The Parties agree to use best efforts to resolve the dispute resolution process within 90 days of the initial notice of point of disagreement.

7.4. If any Party provides notice in writing to all Parties that formal dispute resolution, including mediation as set forth in Section 7.3, has been unsuccessful, or the Parties unanimously agree to bypass all or part of the formal dispute resolution procedures, any Party may withdraw from this MOU pursuant to Section 9.1 below.

8. Effective Date. The MOU shall become effective upon full execution by all Parties. Within 30 days of full execution, the Parties agree to move to stay the *NWF v. NMFS*, 3:01-cv-640-SI (D. Or.) litigation; and dismiss without prejudice to reinstatement, administratively close, or stay the *PCFEA v. BPA*, 20-73761 (9th Cir.) petition, in accordance with the following provisions:

8.1. The Parties agree to jointly request the stay of the district court litigation for an initial period of five years. The Parties agree to meet and confer no later than 90 days before the expiration of the five-year stay to evaluate the progress of the MOU and USG Commitments. Any Party may withdraw from this MOU following good faith conferral within the 90-day conferral period without complying with the dispute resolution or termination procedures set forth in this MOU. Unless this MOU is terminated, all remaining Parties will jointly move for an additional five-year stay to match the spirit and intent of the USG Commitments and the Presidential Memorandum.

8.2. In keeping with Ninth Circuit General Order appendix A #27, the USG and NWF Plaintiffs agree to dismiss the Ninth Circuit petition without prejudice to

reinstatement upon the occurrence of stated conditions, namely: (1) the termination of the MOU or (2) the occurrence of a dispute requiring mediation. The Parties agree they may modify the Ninth Circuit filings to jointly move for administrative closure or a stay of the petition for review.

8.3. If all or part of the district court and Ninth Circuit litigation is not stayed, administratively closed, or dismissed without prejudice to reinstatement (consistent with section 8.2 above) within a reasonable time following full execution of this MOU by the Parties, this MOU shall become null and void.

9. Termination and Withdrawal

9.1. Withdrawal by Notice. Any Party may provide written notice to the other Parties of that Party's withdrawal from this MOU (1) after exhausting the dispute resolution provisions in section 7, (2) after conferring with the Parties during the 90-day conferral period addressed in section 8.1, or (3) in accordance with section 9.2 below. Said withdrawal is effective as of the day it is received by the Parties.

9.2. Withdrawal Due to Litigation. This MOU serves as the basis for a cessation of litigation in *NWF v. NMFS*, 01-cv-640-SI (D. Or.), and *PCFFA v. BPA*, 20-73761 (9th Cir.) as follows:

9.2.1. While the MOU is in effect for any non-federal Party, that Party agrees: (a) not to pursue claims in the above cases; and (b) not to initiate new litigation that arises from the same or substantially similar factual allegations or asserts the same or substantially similar claims for relief. If any Party initiates, re-initiates, joins in, or participates in litigation by supporting the same or substantially similar claims for relief, the USG may automatically withdraw from this MOU without complying with the dispute resolution procedures above.

9.2.2. If any non-Federal Party initiates, re-initiates, joins in, or participates in litigation that challenges environmental compliance for the CRS for the actions identified in the USG Commitments, any Party may withdraw from the MOU after complying with the dispute resolution procedures of this MOU.

9.2.3. For clarity, nothing in this section or the MOU shall prohibit any non-Federal party from filing claims or participating in lawsuits challenging Bonneville Power Administration's decisions made in any rates proceeding, with the exception that the non-Federal parties agree not to challenge Bonneville's recovery of the costs of the \$300 million funding commitment (or portion thereof) identified in the USG Commitments;

9.2.4. To the extent not addressed in Section 9, this Agreement does not address the rights of the Parties to assert or defend their inherent, reserved, or delegated rights.

9.3. Termination by Withdrawal. If a Party withdraws in accordance with the provisions of this MOU, the non-withdrawing Parties may concurrently provide notice of, and withdraw from, the MOU. The MOU, including any underlying commitments to implement the USG Commitments and USG Operations, is terminated upon the withdrawal of the USG, or upon the withdrawal of all non-Federal parties.

9.4. Termination by Duration. Unless terminated by withdrawal, this MOU will terminate 10 years from the effective date.

10. Enforceability. The Parties agree that the MOU is not to be construed as a consent decree enforceable as a court order in any litigation. The Parties further agree that the MOU shall not be used as the basis for contempt proceedings, for any lawsuit arising under the APA or related citizen suit authorities, or for any action for breach of contract, specific performance, monetary damages, or declaratory or injunctive relief. The sole and exclusive remedy for any alleged non-compliance with, or unresolved dispute under, this MOU is to withdraw from the MOU, and the MOU is not otherwise enforceable.

11. Miscellaneous Provisions

11.1. Entire Agreement; Modification. The MOU, including Attachments, sets forth the entire understanding between the Parties regarding the basis for a stay of litigation of the claims and requests for relief in *NWF v. NMFS*, 01-cv-640-SI (D. Or.), and *PCFFA v. BPA*, 20-73761 (9th Cir.). All previous understandings, agreements, and communications between the Parties, whether verbal, written, express, or implied, with reference to this MOU are superseded. This MOU may be modified only by a written amendment that is expressly agreed to and signed by all Parties.

11.2. No Admissions or Concessions. The Parties agree that they will not use the MOU against any Party as evidence of wrongdoing or liability on any claim for declaratory or injunctive relief in the *NWF v. NMFS* or *PCFFA v. BPA* litigation, or in any subsequent litigation between the Parties. The Parties agree that this MOU establishes no principle or precedent with regard to any issue addressed in this MOU.

11.3. Reservation of Rights. Nothing in this MOU is intended to abrogate, modify, or affect in any way any right of the Parties, and the MOU shall not be construed to have any such effect. Nor is anything in this MOU intended to create, abrogate, modify, or affect any of the United States' Treaty or trust obligations to Columbia Basin Tribes.

11.4. Force Majeure. No Party shall be required to perform due to any cause beyond its control. This may include, but is not limited to, court order, fire, flood, terrorism, pandemics, strike or other labor disruption, act of God, or riot. The Party whose performance is affected by a force majeure will notify the other Parties as soon as practicable of its inability to perform and make all reasonable efforts to promptly resume performance once the force majeure is eliminated. If the force majeure cannot be eliminated or addressed, and the Parties cannot agree as to whether the MOU should remain in force or be modified considering the force majeure, the Party whose

performance is affected by a force majeure may withdraw from the MOU after complying with the dispute resolution procedures of this MOU.

11.5. Costs, Including Attorneys' Fees. The Parties agree that each Party to this MOU shall bear its own attorneys' fees, costs, and expenses for creation, negotiation, and administration of this MOU, and that no Party may seek reimbursement or an award of attorneys' fees, costs, and expenses for creation, negotiation, or administration of this MOU. For purposes of this section, "administration" includes filing a request to the court to stay, administratively close, or dismiss without prejudice to reinstatement the *NWF v. NMFS* and *PCFFA v. BPA* litigation. This MOU does not otherwise affect a party's claim for fees and costs, or any defenses to any claim for fees and costs, arising in the underlying *NWF v. NMFS* and *PCFFA v. BPA* litigation; however, no Party may seek reimbursement or an award of attorneys' fees, costs, and expenses related to the litigation while this MOU is in effect for that Party.

11.6. Section Titles for Convenience Only. The titles for the sections are used only for convenience of reference and organization, and will not be used to modify, explain, or interpret any provision of this MOU or the intentions of the Parties.

11.7. Signing in Counterparts. This MOU may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this MOU may be detached from any counterpart of this MOU without impairing the legal effect of any signatures, and may be attached to another counterpart of this MOU identical in form having attached to it one or more signature pages.

APPROVED:

For THE STATE OF OREGON



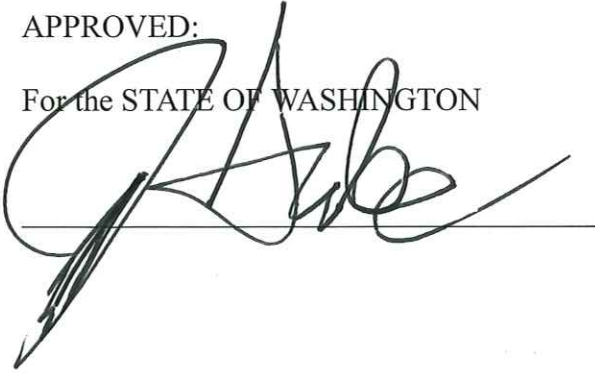
Governor Tina Kotek

12/13/23

Date

APPROVED:

For the STATE OF WASHINGTON

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher.

12/12/23
Date

APPROVED:

For the CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION



Gerald Lewis, Tribal Council Chairman
(Or authorized designee)

12-13-2023

Date

APPROVED:

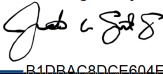
For the CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION


Gary Burke
Chairman, Board of Trustees

12-13-23
Date

APPROVED:

For the CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

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Jonathan W. Smith, Sr., Chair
Tribal Council

12/13/2023

Date

APPROVED:

For the NEZ PERCE TRIBE

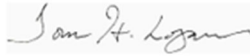


Shannon F. Wheeler, Chairman

12-13-2023
Date

APPROVED:

For the NATIONAL WILDLIFE FEDERATION et al. Plaintiffs



Senior Advisor – Conservation
Fly Fishers International

December 13, 2023

Date



Abby Tinsley
Vice President for Conservation Policy

December 13, 2023

Date



Miles Johnson, Legal Director

December 13, 2023

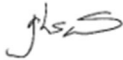
Date



Liz Hamilton, Northwest Sportfishing Industry Assn.

12/13/2023

Date



Glen H. Spain, Executive Director
Pacific Coast Federation of Fishermen's
Associations (PCFFA) and Institute for
Fisheries Resources (IFR)

December 13, 2023



Nicholas Nelson
Executive Director
Idaho Rivers United

12.13.2023

Date



Aaron Isherwood
Sierra Club


12/13/2023

Date



Nancy Hirsh
Executive Director
NW Energy Coalition

December 13, 2023



Justin Hayes
Executive Director
Idaho Conservation League
PO 844,
Boise, ID. 83702

12/13/23

Date

APPROVED:

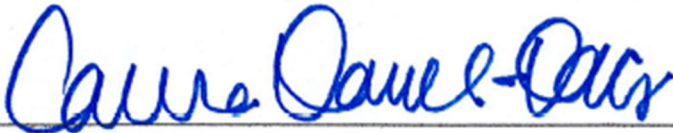
For THE UNITED STATES



Michael L. Connor
Assistant Secretary of the Army
(Civil Works)

Dec. 13, 2023

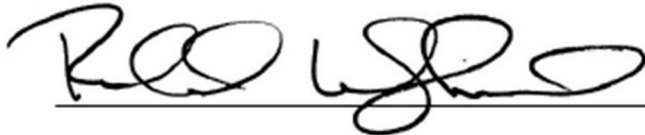
Date



Laura Daniel-Davis
Acting Deputy Secretary
U.S. Department of the Interior

DEC 12 2023

Date



Dr. Richard W. Spinrad
Under Secretary of Commerce
for Oceans and Atmosphere
and NOAA Administrator

12/11/2023

Date

JOHN HAIRSTON

Digitally signed by JOHN
HAIRSTON
Date: 2023.12.13 09:26:55 -08'00'

John L. Hairston,
Administrator and Chief Executive Officer,
Bonneville Power Administration

Date



David M. Turk, Deputy Secretary

December 14, 2023

Date

U.S. Department of Energy