

COLUMBIA BASIN RESTORATION INITIATIVE

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Purpose

This briefing provides a description of the “Columbia Basin Restoration Initiative” and the “USG Commitments” in response. These two documents were created in the context of the FMCS mediation in the long-running *NWF v. NMFS* litigation over the operation of dams on the mainstem Columbia River and lower Snake River. The mediation was sometimes referred to as the “FMCS Mediation” as the mediators were the Federal Mediation and Conciliation Service.

Background

The *NWF v. NMFS* litigation has been ongoing since 2001. The plaintiffs allege that the federal agencies operation of the dams (aka hydrosystem) violates the Endangered Species Act and the National Environmental Policy Act because it causes too much salmon mortality. The federal agencies involved are the Bonneville Power Administration (BPA), the Corps of Engineers (Corps) and the Bureau of Reclamation (BoR). The defendants and those aligned with them claim the dams do not kill that many salmon and that other sources are to blame for salmon mortality. The four Columbia River Treaty Tribes (Warm Springs, Yakama Nation, Umatilla Tribes, Nez Perce Tribe) have been amicus parties in the litigation since it was filed in 2001.

The settlement memorialized in the December 14, 2023 Memorandum of Understanding and Motion to Stay the *NWF v. NMFS* litigation is a result of the Biden Administration’s decision to attempt to resolve this decades-long litigation, during which time four different federal government biological opinions were ruled illegal by the Court. In 2021, the Biden Administration agreed to explore settlement with the plaintiffs. That eventually led to the FMCS mediation involving all the parties to the litigation.

During the course of the mediation, in 2023, the four Columbia River Treaty Tribes began drafting a comprehensive strategy for salmon and steelhead recovery in the Columbia Basin, that would also take into account and address the needs of other river stakeholders, such as the transportation, agriculture, energy and recreation industries. The States of Oregon and Washington joined the Tribes in this effort, and that led to the Columbia Basin Restoration Initiative (CBRI).

The Six Sovereigns (four Treaty Tribes and Oregon and Washington) delivered the CBRI to the United States Government (USG) in the mediation, and the USG and the Six Sovereigns started negotiating around it in private caucus meetings. After many months of negotiations, the Six Sovereigns and USG came to a settlement, represented in the USG Commitments and CBRI documents, and memorialized in a Memorandum of Understanding. On December 15, 2023, those documents were presented to the Court along with Motion for Stay of the litigation for five years, that may be extended another five years if the USG is living up to its commitments.

Certain parties (Public Power Council, NW Riverpartners, Inland Ports and Navigation Group, Idaho and Montana) to the mediation filed opposition briefs to the Motion for Stay, and the US DOJ filed a reply. The Court granted the Motion and issued an order staying the litigation until December 14, 2028.

Brief Description of the CBRI and the USG Commitments

The CBRI, the USG Commitments and the Motion for Stay are attached. Below is a summary of the CBRI and what the USG agrees to do in the USG Commitments.

Brief Summary of CBRI

The Warm Spring Tribes, Yakama Nation, Umatilla Tribes, and Nez Perce Tribe collaborated with Oregon and Washington on the Six Sovereigns' Columbia Basin Restoration Initiative with the objectives described below. The environmental NGO plaintiffs also joined in support of the CBRI. The CBRI addresses:

1. Lower Snake River Restoration (LSRR). Develop & advance an urgent, comprehensive restoration strategy to restore salmon and steelhead to healthy and abundant levels and complete actions to secure continuity of services associated with the Lower Snake River restoration.
2. As part of the LSRR strategy, develop a strategy to replace or mitigate for the services provided by the Lower Snake River dams, consistent with decarbonization goals and integration of renewables.
3. Ensure all native species, regardless of Endangered Species Act listing status, are considered in the strategy in a way that improves ecosystem function in the Columbia River and its tributaries.
4. Ensure interim fish measures (hydro operations) are adequate to minimize additional generational decline of native fish populations.
5. Secure necessary regulatory compliance, authorizations, and appropriations to implement strategy.
6. Ensure the recovery strategy honors federal commitments to Tribal nations.
7. Secure commitments for additional restoration funding for listed mid-Columbia species in the mainstem Columbia and its tributaries, consistent with the NOAA Rebuilding Report.
8. Advance fish passage above blocked areas.

Summary of the USG Commitments

This summary goes section by section (with page numbers) through the USG Commitments:

Policy Introduction (pp. 1-3)

Recognition and acceptance of:

- Background of Salmon Steelhead declines.
- Biden Administration Recognition of Reality of Declines and Need for Urgent Action.
- NOAA Rebuilding Report identifies hydrosystem as limiting factor.
- Murray-Inslee Report and its recommendations that it is possible to breach the Lower Snake River Dams (“LSRD”), but the services must first be replaced.
- Biden Administration commitment to development of long-term strategy.
- Urgency is clear, and must address social and economic factors before full suite of actions (breach) can move forward.

A demonstration of the Administration's recognition and acceptance of these key facts is the Sept. 27, 2023 Presidential Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin. This Presidential Memorandum makes “healthy and abundant” salmon populations in the Columbia Basin an Administration Priority, and it directs agencies to review existing and necessary authorities to assure consistency and carry out the goal. It also further directs agencies to review budgets and identify any unallocated funding that might contribute towards goal, and develop funding needs.



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Federal Commitments (pp. 3-17)

1

Lower Snake River Restoration

(pp. 3-6)

This section makes commitments to develop the tools and information needed to clarify the science and facts around the four lower snake dams and the services they provide.

- i. **Tribal Energy Sovereignty.** Provide targeted assistance to Lower River Treaty Tribes (LRTT's) in PNW to develop energy projects, presumed to be at least 1,000-3,000 MW, that may be counted as replacement power for LSR dams if Congress authorizes dam breach. Will include support to increase tribal staff capacity.
2. **Energy Analysis.** \$5 million to Pacific Northwest National Laboratory ("PNNL") to conduct regional energy needs planning analysis with Tribes and States, which will account for actions necessary to ensure healthy and abundant salmon populations, including breach of LSR dams.
3. **Transportation Upgrades.** Prioritize work with Six Sovereigns to address rail, road and upgrades necessary to improve salmon passage and survival.
4. **Transportation Analysis.** Conducted by Corps jointly with State of WA. Develop alternatives to barge transport to present to Congress in support of dam breach request.
5. **Recreation Analysis.** Conducted by Corps with WA and others as appropriate to address breach of LSR dams and reservoir drawdown. To be informed by Tribal Circumstances analysis that DOI will conduct, based on the 1999 report, and in consultation with the four Lower River Treaty Tribes ("LRTTs" or "Treaty Tribes").
6. **Water Supply (Irrigation) Analysis.** BOR and USDA will fund and conduct water supply replacement study for breach of dams.
7. **Tribal Circumstances Report.** Use 1999 Tribal Circumstances Report, in consultation with Treaty Tribes, to compile and complete analysis of historic, cumulative and ongoing impacts the Federal dams on

the Columbia River, including the lower Snake River dams, have on Columbia River Basin Tribes.

2

Reintroduction of Salmon to Upper Columbia

(pp. 6-7)

1. BPA will fund the UCUT Tribes Phase Two Implementation Plan ("P2IP") studies for reintroduction above Chief Joseph and Grand Coulee Dams - \$200 million over 20 years;
2. NOAA funding for Enloe Dam Removal (Similkameen River in Upper Columbia) - \$2.3 million.

3

Restoration of Mid-Columbia Listed Stocks (Zone 6 + McNary pool)

(pp. 7-8)

1. Sovereigns and USG will develop broad suite of actions by June 2024 to rebuild stocks. Will identify funding opportunities across all federal agencies for implementation starting in 2026, including new appropriation needs and legislative action. NOAA to lead federal effort in working with Sovereigns.
2. Mid-C Subset of Near-Term Priority Actions: USG will identify funding opportunities in FY 2024-2025 for a short list of high priority projects.
3. Implement cold water refugia projects in mainstem Columbia (dredging river mouths) in FY 2024-2025.

4

Other Native Fish and Improved Ecosystem Function Projects

(pp. 8-10)

1. Contribute additional funding and commit to process to seek more funding for other native fish, including pacific lamprey (\$5.8 million in FY24-25 on top of Accord funding of \$5 million), white sturgeon, bull trout (\$700K), resident fish and shellfish.
2. Increase restoration on federal lands (culvert removals,



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priority Columbia Basin for restoration grants);

3. Corps funding additional \$20 million of projects in FY 24-25 as directed by Six Sovereigns;
4. Ocean/marine environment research.

5

Interim Fish Operations

(pp. 11-12)

1. Involves spill amounts and times at LSR and mainstem dams. Expressed in detail in Appendix B;
2. USG proposed more (earlier) spill in spring and winter and less in summer.
3. Earlier reduction summer spill at Snake projects and McNary – moved from Aug. 15 to Aug. 1;
4. Adaptive management process if observe unexpected events/impacts.
5. Also develop Sovereign-driven process to provide input on managing operations prior to breach, and refine Regional Forum processes that manage operations and adjustments in season, by September 30, 2024;
6. Corps will provide at least \$50 million in additional FY 2024 funding to help address backlog of Columbia and Snake River dam O&M projects identified by CRITFC (with staff from tribes).

6

Modernization of Energy & Other Economic Sectors

(pp. 12-13)

1. Regional energy needs study and Tribal Energy Sovereignty effort as detailed in Appendix A

and above;

2. Along with Tribal Energy Sovereignty effort, will include fish and watershed health considerations in energy projects;
3. Reduce local and regional economic burdens;
4. Energy project siting consultations with tribes;
5. Clean Water Act coordination for tribal concerns.

7

Authorization Studies and Timelines

(pp. 13-14)

1. Presidential Memorandum will inform budget and appropriation requests as well as any required authorizations;
2. Will work with sovereigns to complete any necessary environmental compliance documents for aggressive advancement of habitat and fish passage restoration, and interim operations.

8

Additional Basin-Wide Funding Commitments

(pp. 14-16)

1. Hatchery Backlog:
 - i. NOAA funding - \$60 million MA + some allocation of \$240 million funding for non-Mitchell Act;
 - ii. BPA funding - \$200 million (+ inflation) for Lower Snake River Comprehensive Mitigation Plan hatcheries over 10 years;
3. EPA funding of \$85 million in FY 2023-25 for toxics reductions;
4. BPA funding of \$100 million (+ inflation) to Six Sovereigns over 10 years for habitat restoration;



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5. Continued funding of current long-term fish and wildlife funding agreements and NPCC Fish and Wildlife Program (~\$2.5 billion over 10 years, includes much of but not all of Accord funding);
6. OMB to develop cross-cut budget for Columbia Basin salmon and steelhead restoration by January 31, 2024.
7. Increased Funding for Basin Wide Restoration: evaluation of all options to increase basin-wide funding (recognizing Six Sovereigns request for roughly double current amount). Jointly develop suite of actions and projects with budgets for 10 years by June 2024 and strategy to fund.

9

**Fisheries Management and
Other Partnership Commitments**

(pp. 16-17)

1. Jointly work to seek management reforms to Columbia Basin fish and wildlife mitigation management, including but not limited to contracting reforms.
2. Pilot project of grants to states and tribes from BPA.
3. Continued Administration Engagement from USG on CBRI and implementation of USG Commitments.



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