



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

In Reply Refer To: A-7

September 21, 2023

Bonneville's Customers and Constituents:

Today, September 21, 2023, as part of mediated discussions the Bonneville Power Administration (Bonneville) and other agencies and Departments within the U.S. Government entered into a Memorandum of Understanding and Settlement Agreement (Settlement) with the Confederated Tribes of the Colville Reservation, the Coeur d'Alene Tribe, and the Spokane Tribe of Indians for certain funding for implementation of the Phase 2 Implementation Plan (P2IP) projects for reintroducing specific non-Federally protected salmonid stocks above Chief Joseph and Grand Coulee dams in the Upper Columbia River Basin.

Bonneville determined this Settlement is reasonable and in the best interest of Bonneville and its ratepayers because it dismisses without prejudice the Coeur d'Alene Tribe and the Spokane Tribe of Indians' existing litigation against Columbia River System operations, maintenance, and configuration over a twenty-year period. This Settlement also establishes a collaborative forum for reviewing and analyzing reintroduction of non-Federally protected salmonid stocks above Chief Joseph and Grand Coulee dams. This Settlement is intended to begin in fiscal year 2024. The funds expended to support the Settlement would not impact the base power rates during the BP-24 rate period and only have a slight (around 0.5%) impact in future rate periods.

### Background

In 2020, the Coeur d'Alene Tribe and the Spokane Tribe of Indians brought legal challenges to the Columbia River System Operations Environmental Impact Statement Record of Decision and associated consultations under the Endangered Species Act. See Coeur d'Alene Tribe's Petition for Review (Doc. 11938199) filed in *Coeur d'Alene Tribe v. Bonneville Power Administration*, 20-73762 (9th Cir. Dec. 23, 2020), the Spokane Tribe of Indians' Petition for Review (Doc. 11944854) filed in *Spokane Tribe of Indians v. Bonneville Power Administration*, 20-73775 (9th Cir. Dec. 24, 2020). In 2021, Bonneville and other agencies and Departments within the U.S. Government entered into mediated litigation settlement discussions with the Confederated Tribes of the Colville Reservation, the Coeur d'Alene Tribe, and the Spokane Tribe of Indians and other entities in an attempt to resolve claims against the Columbia River System Operations Environmental Impact Statement Record of Decision and associated consultations under the Endangered Species Act outside of the courtroom. These discussions were productive and ultimately led to the Settlement that Bonneville entered into today.

### Proposed Settlement

Under the Settlement, Bonneville will provide the Confederated Tribes of the Colville Reservation, the Coeur d'Alene Tribe, and the Spokane Tribe of Indians \$10 million per year for the 20-year duration of this Agreement, for a total of \$200 million (adjusted for inflation) for

<sup>1</sup> The Settlement also provides an additional benefit by resolving the claims brought by the Coeur d'Alene Tribe and the Spokane Tribe of Indians in the *Nat'l Wildlife Fed'n, et al. v. Nat'l Marine Fisheries Serv., et al.* litigation in the U.S. District Court for the District of Oregon.

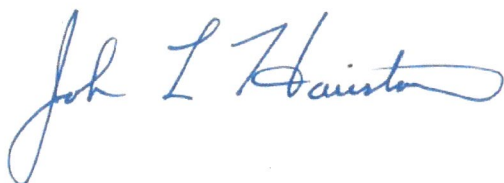
reintroducing specific non-Federally protected salmonid stocks above Chief Joseph and Grand Coulee dams in the Upper Columbia River Basin. Any Federal congressionally appropriated funding that is reimbursed by Bonneville because of P2IP expenditures by any other Federal agency, including the U.S. Army Corps of Engineers (Corps) and the U.S. Bureau of Reclamation (Reclamation), will count towards Bonneville's total funding commitment and will not be in addition to the \$200 million total (adjusted for inflation). Consistent with the Phase 2 timeline, the Corps, Reclamation, U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) will work to identify additional funding needs for the implementation of P2IP beyond the total of \$200 million (adjusted for inflation) Bonneville will fund. Any additional funding would not come from Bonneville and would be sought by the Corps, Reclamation, USFWS, and NMFS consistent with the Settlement.

Additionally, pursuant to the Settlement, Bonneville, is developing separate 10-year funding agreements with the Coeur d'Alene Tribe and the Spokane Tribe of Indians for projects that will establish fixed budgets to supplement existing Fish and Wildlife programs and projects implemented by these Tribes. These expanded projects will produce increased numbers of resident and anadromous fish, restore fish habitat, improve migratory passage in tributary streams, secure water for instream protection, and purchase lands for conservation and habitat restoration.

Given settling this potentially costly litigation, Bonneville concludes this Settlement is beneficial and will help obtain operational, financial and litigation certainty in the Upper Columbia River Basin by dismissing without prejudice the claims brought by the Spokane Tribe of Indians and the Coeur d'Alene Tribe against Bonneville. The Settlement also accounts for P2IP expenditures from other Federal agencies. Lastly, the Settlement is narrowly drafted to provide certainty to Bonneville by providing benefits for fish within fixed budget commitments. Given these aspects and the more specific parameters set forth in the Settlement itself, Bonneville concludes this Settlement is a reasonable exercise of the agency's discretionary authority to settle claims and to operate in a businesslike manner. See, e.g., 16 U.S.C. § 832a(f); 16 U.S.C. § 839f(b).

If you have any questions, please contact your Power Account Executive or Constituent Account Executive. You also can call us toll free at (800) 622-4519

Sincerely,

A handwritten signature in blue ink that reads "John I. Hairston". The signature is fluid and cursive, with a long horizontal flourish at the end.

John Hairston  
Administrator and Chief Executive Officer