

Exhibit A

**Notification Process Regarding New Capital Hydropower Improvement Projects,
Columbia River Fish Mitigation Capital Projects, or Other Non-Power Capital Projects at
the Four Lower Snake River Dam and Reservoir Projects**

A. Introduction

1. The following Notification Process Regarding New Capital Hydropower Improvement Projects, Columbia River Fish Mitigation Capital Projects, or Other Non-Power Capital Projects at the Four Lower Snake River Dam and Reservoir Projects (“Notification Process”) shall be used by the U.S. Army Corps of Engineers (“Corps”)¹ to satisfy the Court’s April 3, 2017 Amended Opinion and Order’s (“April 3, 2017 Order”) mandate to “disclose sufficient information to Plaintiffs [National Wildlife Federation *et al.* or “NWF”] regarding the planned projects at each dam during the NEPA remand period, at appropriate and regular intervals.” ECF 2190 at 33. The Court’s order contemplates that NWF may then file a motion to enjoin a planned project where it believes such a request is necessary and appropriate under the April 3, 2017 Order.

B. Definitions

For purposes of the Corps providing information in response to the Court’s April 3, 2017 Amended Opinion and Order, the following definitions will apply.

2. Capital Hydropower Improvement Project – Any hydropower-related addition, replacement, or improvement project at any of the four Lower Snake River (“LSR”) Dam and Reservoir Projects that increases the capability, size, efficiency, or the useful life of the asset with an estimated expenditure of more than \$1 million through either direct funding from the Bonneville Power Administration (“Bonneville”) or a combination of direct funding and congressionally appropriated funding to physically complete the project and place the equipment into service. These Projects meet capitalization criteria based on accounting policies.
3. Capital Workgroup – A technical evaluation team made up of senior subject matter experts from the Corps, Bonneville, and Reclamation that meets every two months to discuss the need to initiate or advance proposed Capital Hydropower Improvement Projects and to approve or modify approvals of these projects moving forward to implementation. The Capital Workgroup also makes such approvals between meetings, as needed.
4. Columbia River Fish Mitigation (CRFM) Capital Project – Any addition, replacement, or improvement project at any of the four LSR Dam and Reservoir Projects that is

¹ Federal Defendants in this case include the Corps, National Marine Fisheries Service (“NMFS”), and the Bureau of Reclamation (“Reclamation”). However, NMFS and Reclamation do not have any responsibilities regarding the projects that are subject to this Notification Process. Therefore, the Corps will be the only federal defendant that will be bound by and responsible for providing the requisite information. The Corps will coordinate, as appropriate, with the Bonneville Power Administration, which is not a party to the case, because of the Bonneville Power Administration’s participation in the prioritization and funding of hydropower projects at the four LSR Dam and Reservoir Projects.

within the Corps' annual Civil Works budget for the purpose of developing, evaluating, and implementing fish passage improvements past the four LSR Dam and Reservoir Projects that was identified subsequent to the December 2016 Information Transmittal:

- a. For which congressional appropriation or an Administration Workplan includes design funding after the date the Court adopts the Notification Process;
 - b. For which the actual design or construction work will commence during the NEPA Remand Period; and
 - c. With an estimated expenditure of more than \$1 million of congressionally appropriated funding to physically complete the project and place the equipment into service.
5. December 2016 Information Transmittal – Information about projects at the LSR Dam and Reservoir Projects provided by the Corps in transmittals dated December 1, 2016 and December 22, 2016 from the Corps' counsel to NWF's counsel (copies of the cover letters of which are attached to the Todd True Declaration filed in this litigation as Exhibits D and D-1).
6. Existing Projects Subject to Disclosure – These projects include:
- a. Any Capital Hydropower Improvement Project that was not previously disclosed to NWF because it received Phase 1a approval from the Capital Workgroup subsequent to the compilation of the list of projects identified in Appendix A of the 2016 Hydro Asset Strategy;
 - b. Any Capital Hydropower Improvement Project that was not previously disclosed to NWF because it did not meet the notification criteria agreed to for the December 2016 Information Transmittal to NWF, but would meet the notification criteria described in this Notification Process; and
 - c. Any Columbia River Fish Mitigation Capital Project, that was not previously disclosed to NWF because it did not meet the notification criteria agreed to for the December 2016 Information Transmittal to NWF, but would meet the notification criteria described in this Notification Process.
7. Expansion – An approval of an addition of more than \$1 million to the total estimated cost of (1) any Capital Hydropower Improvement Projects for which the Corps provided information in the December 2016 Information Transmittal and which was listed in Exhibit G to the Todd True Declaration filed in this litigation, or of (2) any CRFM Capital Project or Other Non-Power Capital Project for which the Corps provided information in the December 2016 Information Transmittal.
8. Hydropower Maintenance Project or Activity – Any hydropower maintenance project or activity at any of the four LSR Dam and Reservoir Projects associated with activities

that restore assets to an operable or more reliable condition. These projects or activities may be planned (routine) or unplanned/infrequent (non-routine) and are necessary to restore equipment to an operable or more reliable condition in order to achieve their expected useful life; these projects do not increase the useful life of the asset or add functionality.

9. Lower Snake River Dam and Reservoir Projects or LSR Dam and Reservoir Projects – Ice Harbor Dam and Reservoir Project, Lower Monumental Dam and Reservoir Project, Little Goose Dam and Reservoir Project, and Lower Granite Dam and Reservoir Project.
10. NEPA Remand Period – July 6, 2016 through September 24, 2021 or as modified by Court Order.
11. New Capital Hydropower Improvement Project – Any hydropower-related addition, replacement, or improvement project at any of the four LSR Dam and Reservoir Projects that increases the capability, size, efficiency, or the useful life of the asset:
 - a. Approved by the Capital Workgroup to initiate Phase 1a after the date the Court adopts the Notification Process;
 - b. For which post-Phase 1a work will commence during the NEPA Remand Period; and
 - c. With an estimated expenditure of more than \$1 million through either direct funding from Bonneville, or a combination of direct funding and congressionally appropriated funding, to physically complete the project and place the equipment into service.

New Capital Hydropower Improvement Projects do not include any Hydropower Maintenance Projects or Activities, nor any of the projects listed in Exhibit F or Exhibit G to the Todd True Declaration filed in this action at ECF No. 2113.

For purposes of this Notification Process, the Corps will treat a Meaningful Enlargement of the Project for a Capital Hydropower Improvement Project as a New Capital Hydropower Improvement Project, and will provide information for such Meaningful Enlargement as provided in Section C.

12. Meaningful Enlargement of the Project – an additional need that is identified during the design or construction of a Capital Hydropower Improvement Project, and which:
 - a. Results in an estimated expenditure of more than \$1 million through either direct funding from Bonneville, or a combination of direct funding and congressionally appropriated funding to complete; and
 - b. Results from a need to address a newly-identified problem or improvement and thus will not include, for example, an increase in the estimated cost of the original

Capital Hydropower Improvement Project to address contractual issues or an increase in the cost of materials necessary to complete it.

13. Non-Power Maintenance Project or Activity – Any work or expenditure at any of the four LSR Dam and Reservoir Projects to preserve and maintain equipment in such condition that it may be effectively used for its designated functional purpose:
 - a. For the purpose of fulfilling the Corps’ responsibility to provide for congressionally authorized purposes at the LSR Dam and Reservoir Projects; and
 - b. That is fully accomplished with congressionally appropriated funding.
14. Other Non-Power Capital Projects – Any addition, replacement, or improvement project at any of the four LSR Dam and Reservoir Projects that is within the Corps’ annual Civil Works budget for the purpose of promoting or fulfilling any of the statutory purposes for the four LSR Dam and Reservoir Projects, other than the statutory purpose of providing hydropower:
 - a. For which congressional appropriation or an Administration Workplan includes design funding after the date the Court adopts the Notification Process;
 - b. For which the actual design or construction work will commence during the NEPA Remand Period; and
 - c. With an estimated expenditure of more than \$1 million of congressionally appropriated funding to physically complete the project and place the equipment into service.
15. Phase 1a – an exploratory step in the approval process for a Capital Hydropower Improvement Project that involves scoping and alternatives analysis to address the need for the project. Upon Phase 1a approval by the Capital Workgroup, the process for the Corps to obtain funding is initiated in order to evaluate the various ways the need for the project can be addressed. Phase 1a concludes when the Capital Workgroup decides whether to proceed to the next phase of the project.
16. Urgent Project – A New Capital Hydropower Improvement Project, Expansion, CRFM Capital Project, or Other Non-Power Capital Project that addresses a situation that immediately and significantly impacts the Corps’ ability to fulfill its responsibility to provide for the authorized purposes of the four LSR Dam and Reservoir Projects:
 - a. In the case of a Capital Hydropower Improvement Project for which work will likely commence without approval by the Capital Workgroup consistent with existing policies/practices or,
 - b. In the case of a CRFM Capital Project or Other Non-Power Capital Project, work will commence as soon as funding is available.

C. Information to be Provided, Process, and Timing

17. Information to be Provided: The Corps will identify New Capital Hydropower Improvement Projects, CRFM Capital and Other Non-Power Capital Projects, Existing Projects Subject to Disclosure, and Expansions within the scope of this Notification Process and provide the following information:

- a. An estimated range of the cost to physically complete the project based on current best estimates of total project cost, within the following four range categories: \$1 to 3 million; greater than \$3 million but less than \$7 million; greater than \$7 million but less than \$12 million; greater than \$12 million.
- b. A project description, as follows:
 - i. For New Capital Hydropower Improvement Projects and Existing Hydropower Projects Subject to Disclosure: a copy of the Summary Background Document prepared for the Capital Workgroup's review at Phase 1a;
 - ii. For CRFM Capital Projects and Other Non-Power Capital Projects: a statement from the Corps' budget request describing such project, once the budget request is publically available through the President's Budget, or, if the project is not included in such budget request, a one paragraph description of the project provided for purposes of this Notification Process;
 - iii. For Expansions of Capital Hydropower Improvement Projects: a copy of the Summary Background Document prepared for the Capital Workgroup's review when the expansion is proposed;
 - iv. For Expansions of a CRFM Capital Project or a Non-Power Capital Project: a statement from the Corps' budget request describing such project, once the budget request is publically available through the President's Budget, or, if the project is not included in such budget request, a one paragraph description of the project provided for purposes of this Notification Process; and
- c. An estimated schedule for implementation.

The Corps will not provide information on Hydropower Maintenance Projects or Activities or Non-Hydropower Maintenance Projects or Activities.

18. Timing:

- a. For New Capital Hydropower Improvement Projects or Expansion Projects, the Corps will provide the information described in Paragraph 17 within fourteen (14) days of the Capital Workgroup meeting at which the project obtained Phase 1a approval or subsequent approval in the case of an Expansion. In the event that the

Capital Workgroup approves a New Capital Hydropower Improvement Project or Expansion between the every two month meetings, the Corps will provide the specified information within fourteen (14) days of the Capital Workgroup meeting at which the project is approved.

- b. For Existing Projects Subject to Disclosure that were not previously disclosed to NWF for the reasons set forth in Paragraphs 6(a) and 6(b) above, the Corps will notify NWF and provide the information described in Paragraph 17 within fourteen (14) days of the date the Court adopts the Notification Process.
- c. For Existing Projects Subject to Disclosure that were not previously disclosed to NWF for the reasons set forth in Paragraph 6(c) above, the Corps will notify NWF and provide the information described in Paragraph 17 within thirty (30) days of the decision to utilize additional funds.

As previously communicated to NWF, there are no CRFM Capital Projects or Other Non-Power Capital Projects that were not previously disclosed to NWF that have been approved between the December 2016 Information Transmittal to NWF (referred to in Paragraph 6(c) above) and the present.

- 19. For CRFM Capital Projects and Other Non-Power Capital Projects, the Corps will provide the information described in Paragraph 17 within thirty (30) days of the release of the Corps' budget request describing the project, once the budget request is publically available through the President's Budget, or, if the project is not included in such budget request, within thirty (30) days of receipt of congressionally appropriated funding for the design of such a project.
- 20. In the event that an Urgent Project arises, work to address the urgent need will likely commence prior to notification to NWF. The Corps will make best efforts to notify NWF as soon as practicable.
- 21. The Corps will provide information from the date the Court adopts the Notification Process through the end of the NEPA Remand Period.

D. Constraints on Disclosures of Expenditures

- 22. To the extent documents to be provided under Paragraph 17 contain information that is protected or confidential under applicable law, agency regulation, or privilege, the Corps may redact such information.
- 23. To the extent such redaction described in Paragraph 22 would be necessary, but would result in the Corps not providing information to be provided under Paragraph 17, then the Corps and NWF will confer and jointly propose a protective order as necessary to ensure protection of such documents or information. Such circumstance is more likely to occur with respect to Existing Projects Subject to Disclosure or Expansions. To the extent such a protective order is necessary, the Corps may provide redacted information

until a protective order is issued, without violating its timing obligations described in Paragraphs 18 and 19 above.

E. Timing of any Motion

24. In order to minimize uncertainty and potential resource impacts (e.g., contractual termination costs, commitment of agency resources, etc.), if NWF deems it necessary to move to enjoin any New Capital Hydropower Improvement Project(s), CRFM Capital Project(s), or Other Non-Power Capital Project(s) or Expansion(s), it must do so within sixty (60) days of receiving the information described in Paragraph 17 from the Corps. The Corps will continue implementing the project(s) until resolution of any motion for injunction.
25. Nothing in this Notification Process is meant to waive or absolve the responsibilities of the Corps and NWF under Local Rule of Civil Procedure LR 7-1 to make a good faith effort through personal or telephone conferences to resolve a dispute prior to the filing of any motion for injunctive relief.