



November 21, 2023

Mr. Gregory Goldstein
Acting Director, Federal Mediation and
Conciliation Services
2100 K Street NW
Washington, DC 20427

Ms. Brenda Mallory
Chair, Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Subject: Concerns Regarding Proposed Commitments for the CRSO EIS Litigation Mediation Process

Dear Mr. Goldstein and Ms. Mallory,

I am writing on behalf of the Inland Ports and Navigation Group (IPNG), a group of thirty-one entities that includes barge operators, farmers, ports, cruise ships, and many other businesses within the Pacific Northwest Waterways Association (PNWA, www.pnwa.net). As one of the defendant intervenors—who have the same rights as defendants (USG)—in the Columbia River Systems Operations Environmental Impact Statement (CRSO EIS) litigation, whose members will be devastated, we are obliged to voice our serious concerns over the secretly negotiated, recently circulated, confidential proposed commitments (Exhibit 2, United States Government (USG) Commitments) set forth by the U.S. Government.

Our members are the experts on Columbia River system navigation, river-based commerce, river system safety, and irrigated farming. The USG Commitments disregard our expertise on river operations, threaten human life, ignore studies necessary to ensure spill will provide safe fish passage, and risk environmental disasters from unsafe cargo passage. The USG Commitments are founded on directing action toward an assumption of future dam breaching that will devastate the rural communities in which nearly 50% of households are living paycheck to paycheck, according to the United Way and the White House Climate and Economic Justice Screening Tool, without any concern for these social justice impacts. We will not be co-opted into a process that has left us out of negotiations for the past 18 months by providing detailed proposed edits to the proposed USG Commitments. Further, our objections to those commitments are not just in the details but rather stem from fundamental overarching assumptions and untenable positions. These overarching assumptions and an initial response to Appendix B of the USG Commitments are included below.

Before we discuss these concerns, there are components of the USG Commitments that we strongly support. We have embodied a spirit of finding opportunities for solutions. However, we have been given virtually no opportunity to do so, so we want to make clear that there are provisions in the USG Commitments that PNWA would likely support upon seeing a final proposed agreement. PNWA supports many of the objectives in the USG Commitments, such as energy resiliency, bolstering Columbia River Basin salmon and steelhead populations, meeting decarbonization goals, supporting tribal energy initiatives, and investment in rural communities. Contingent upon final negotiations, PNWA would potentially support the list of measures in the USG Commitments for which Northwest River Partners voiced detailed support. (Northwest River Partners Letter the USG via FMCS, pages 3-7 (Nov. 17, 2023)). PNWA will not reproduce an exhaustive list of those numerous areas of potential agreement.

Unfortunately, this flawed process has produced a USG Commitments document that we cannot agree with due to the following overarching assumptions and positions.

- The USG Commitments rely on the fundamentally flawed NOAA “Rebuilding Interior Columbia Basin Salmon and Steelhead Report” (NOAA Paper). This is a political report that lacks the support of the scientific community. It is not consensus science regarding the four Lower Snake River Dams (LSRD) and salmon. Rather, the science is strongly disputed. The USG Commitments pursue an objective untethered to any lawful standard, that is subjective, and that lacks any legal foundation. “Healthy and abundant” salmon populations is a vague and undefined policy objective not required by the Endangered Species Act (ESA).
- The USG Commitments fail to address river navigation as a critically impacted benefit of the current system, providing only a paltry \$750,000 for a study of impacts. This is inadequate to account for impacts that could be as much as \$30 billion, according to one study.
- The USG Commitments fail to ensure the delivery of affordable and reliable clean power as pledged by the USG on the August 8, 2022, Commitments commonly referred to as Exhibit 2.
- The USG Commitments fail to ensure the many resilience needs of stakeholders across the region will be met as pledged by the USG in the August 8, 2022, Commitments commonly referred to as Exhibit 2.
- The complexity of the proposed operational changes warrants a thorough study of their potential impacts on river navigation by the U.S. Army Corps of Engineers Research and Development Center (ERDC) in Vicksburg, MS, prior to implementation, as well as a completely new NEPA analysis.

The Science is Not Clear

The 2022 NOAA Paper calls for breaching the four LSRD in direct contradiction of the findings of the 2020 Final Environmental Impact Statement (FEIS) and Record of Decision (ROD), despite

the paper itself stating there is no new science. The NOAA Paper is based on a new, undefined, policy-driven objective of “healthy and abundant” salmon populations instead of the ESA jeopardy standard (further discussed below). The 2022 NOAA Paper also suddenly endorses the scientific hypothesis of delayed mortality, again with no new science, which was rejected in the FEIS and ROD for not being adequately demonstrated. IPNG submitted a scientific analysis by well-regarded PNWA scientist, Mr. Ian Coulter, concluding that the evidence supporting delayed mortality is contradictory and inconclusive. Mr. Coulter outlined the significant deficiencies in the delayed mortality hypothesis, including the mechanism(s), scale, and lack of significance of delayed mortality.

Until these deficiencies in the research are addressed, delayed mortality cannot be the basis for decisions or commitments by the USG.

“Healthy and Abundant” has no Enforceable Legal Basis

The proposed USG Commitments establish the goal of “healthy & abundant” salmon populations without a quantitative definition. What constitutes “healthy & abundant”? Who is the judge of when it is achieved? These questions have gone unanswered. Further, there is no legal justification for the modification of the goal. The ESA requires agency actions that do not “jeopardize the continued existence of the species.” “Healthy and abundant” is an undefined standard with no enforceable legal basis. We cannot agree to its adoption as an objective.

Navigation is a Critically Impacted Authorized Purpose of the Current System

The USG Commitments propose river-system operational changes that raise serious safety concerns, as discussed below. It also treats the replacement of river-based transportation as barely a footnote, failing to acknowledge the harmful emissions and nationwide economic impact that will result if navigation is eliminated. The river-based transportation system cannot be replaced with alternatives if the four LSRD are removed while still meeting the USG’s clean energy goals. Removal of the four LSRD will increase transportation and related environmental costs in the U.S. by well over \$7.3 billion over 30 years. (FCS Group, Aug. 13, 2023). Removal of the four LSRD would require at least 23.8 million miles in additional trucking activity annually and more than 201 additional unit trains. (FCS Group, Aug. 13, 2023). This would increase harmful greenhouse gas emissions by the equivalent of adding one new coal-fired power plant to the grid every 2-3 years. The USG Commitments also fail to account for the likelihood that the river-based navigation system cannot be replaced by train and truck transit due to geographic constraints and environmental concerns in the region.

River barging and river cruising would disappear along with the jobs and economic contributions they make to the regional and national economy. Farms will be bankrupted by the shift in freight costs and the lack of irrigation water caused by removal of the locks and dams. These impacts will devastate local schools and emergency services—reducing local tax revenue by \$18 million annually and likely eliminating 15% of the regional workforce. (FCS Group, Aug. 13, 2023).

Despite these devastating impacts, the USG Commitments recommend a paltry \$750,000 for transportation infrastructure impact studies. It is imperative that the US Government conduct a thorough and complete study that includes all the region's stakeholders and experts and analyzes numerous factors, including engineering and permitting of new infrastructure; environmental impacts from greenhouse gases; environmental justice; rail and road safety; and workforce accessibility and readiness. The pragmatic consequences of impeding the movement of goods via the Columbia Snake River System—integral to our national trading efficacy—are being overlooked. The intricate network of river barging, which is pivotal for thousands of farms and a vast twelve-county region across three states, is integral to our economy and global, national, and regional food security. The proposed USG Commitments ignore these concerns.

Affordable and Reliable Energy Cannot be Assured Under these Commitments

The USG Commitments fail to address how new renewable energy will replace hydropower reliability and responsiveness. The Commitments also fail to address how newly proposed power sources will be effectively integrated into the regional power system nor how such massive infrastructure projects and associated high-voltage transmission lines will get permitted.

We had some assurances through the August 8, 2022 Commitments that the region's and nation's clean power needs would be adequately addressed. Public Power Council's and Northwest River Partners' comments demonstrate the impossibility of meeting these USG Commitments. The failure of the USG to meet these objectives compels us to reject much of the USG Commitments document as it relates to energy production.

Resiliency for Impacted Communities cannot be Assured

The loss of clean, reliable, and responsive hydropower and the removal of one of only three transportation modalities (and the cleanest among them) available to support the region's economy cannot meet the resiliency needs of impacted communities, as committed to by the USG on August 8, 2022.

IPNG submitted a well-researched paper (FCS Group) outlining the adverse impacts on underserved and underrepresented communities along the Snake River if the four LSRD were breached. The paper also outlined the damaging effects of their energy replacements. The failure of these USG Commitments to seriously estimate the aftermath of dam breaching compels us to reject the overall document.

Safety of CSRS River Operators

We have serious concerns about the proposed spill and operational changes in the Commitments document on the eight Federal Columbia Snake Hydropower Projects. The proposed operational changes do not contain information like spill patterns and scheduled times of new spills, which is critical information that is standard in these types of operational changes. Even more concerning is that these changes are not undergoing any study at the U.S.

Army Corps of Engineers' Engineer Research and Development Center (ERDC). Expert river Captains and Pilots with decades of experience have reviewed the proposed changes and they have safety concerns related to the lack of modeling of these significant changes. These proposed operational changes pose a genuine threat to life and property and effective fish passage if these changes are implemented without first being fully understood. The river system changes in Appendix B of the USG Commitments ignore Judge Simon's previous Order requiring that operational and spill changes be modeled at ERDC because the Court's "concerns for both human safety and the listed species require calculating appropriate spill patterns in advance of increasing spill." The Judge's rationale in 2017 holds true to the changes being proposed in Appendix B.¹

Some of the proposed changes are also unlawful because they would eliminate the congressionally authorized Federal navigation channel. The proposed reservoir elevations at McNary Pool and The Dalles Dam will prevent the maintenance of the Congressionally required 14-foot navigation channel due to natural shoaling and will prevent river operators from accessing their docks in the McNary Pool. The USG cannot modify the Flood Control Act of 1962, by which Congress authorized the Federal navigation channel, and yet knowingly or unknowingly, Appendix B of the USG Commitments unlawfully does just that.

Further, these changes are so significant as to warrant a new NEPA process and Environmental Impact Statement (EIS) before implementation.

It is imperative to reassess the proposed USG Commitments to account for the substantial economic, infrastructure, and environmental ramifications that might ensue. We advocate for a balanced approach that honors our environmental responsibilities while safeguarding the region's economic viability. We are discouraged that agriculture, water-borne commerce, and rural economies, which depend so heavily on the LSRD, are not accounted for in the proposed USG Commitments.

We urge the Federal Mediation and Conciliation Service and the White House Council on Environmental Quality to reconsider the proposed USG Commitments, with a realigned focus on achieving a robust, clean power system and valuing all the region's stakeholders. Our

¹ In his 2017 Order (ECF No. 2194, Amended Opinion and Order, Apr. 3, 2017) Judge Simon stated "The Court recognizes that concerns for both human safety and the listed species require calculating appropriate spill patterns in advance of increasing spill. As Defendants describe, the Corps implements spill using particular spill patterns at each dam, and any change to spill can change the spill pattern and result in eddies or other flow issues that might delay or preclude juveniles from downstream migration, prevent adults from upstream migration, and negatively affect navigation through the lock systems.

...

The Court also recognizes that each dam is unique and an "across-the-board" approach to spill is not the most effective means to increase salmonid survival at each dam. There are specific considerations at each dam that affect both juvenile and adult migration, and providing time to study and prepare for the increase in spill will allow proper analyses on the best methodology for each dam. Additionally, it also allows sufficient time to consider whether there may be other unintended negative consequences unrelated to salmonid survival."

commitment to a sustainable and thriving Pacific Northwest remains resolute, and we request, with respect, that our position be given serious consideration in your ongoing deliberations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Neil Maunu', with a long horizontal flourish extending to the right.

Neil Maunu, Executive Director

Pacific Northwest Waterways Association (PNWA) & Inland Ports and Navigation Group (IPNG)

CC:

Matt Philibeck, Commissioner, Federal Mediation and Conciliation Services

Sara Rothi-Gonzalez, Senior Director for Water, White House Council on Environmental Quality