

Ongoing CRSO Litigation: Potential Additional and Significant BPA Ratepayer Financial Commitments

With the public release of the proposed U.S. Government (USG) commitments in the Columbia River System Operations litigation by at least three Congressional offices,¹ it is now clear there is the potential for even greater cost on the backs of public power ratepayers in the Northwest. The summary below indicates what we know so far from the USG Commitments, since they lack the level of detail needed for more precise analysis. **Moreover, even with the potential costs below, this agreement fails to protect BPA and its customers from exposure to further costs and operational changes through processes, lawsuits, claims, or parties outside of this agreement, denying the certainty utilities require to plan for the future.** As well, even with a lack of clarity in the USG Commitments, we have attempted to layer these commitments on top of the existing and future commitments that are ongoing or were recently agreed to.

A Multi-Billion Dollar Status Quo

In addition to the costs for fish and wildlife mitigation that come annually from power rates paid to BPA by public power utilities – an average of about \$685 million annually over the last ten years – there are other costs that have been recently added and potentially much more sizable obligations to come, including potentially onerous commitments with undefined costs via the USG Commitments.

At the same time, BPA plans to continue existing funding commitments at least at the same levels. The U.S. Government Commitments in Support of the Columbia Basin Restoration Initiative and in Partnership with the Six Sovereigns provide that “[i]n addition to the specific additional USG funding commitments herein, which will support centerpiece actions necessary for this basin-wide effort, and continuing Reclamation, Corps, and BPA funding for fish and wildlife accords, BPA intends to continue current funding for its Fish and Wildlife Program, subject to changed circumstances and/or legal requirements. The USG commits to thoroughly evaluate the potential options for increasing non rate-payer fish restoration funding in the Basin, taking into account the CBRI’s recognition that at least a doubling of basin-wide funding is needed to make meaningful progress towards “healthy and abundant” rebuilding goals.”

All of these costs are in addition to the recent P2IP agreement to study fish passage above Grand Coulee and Chief Joseph dams that has added \$10 million a year for 20 years to BPA’s power customer cost burdens. ***Taken together, these commitments could result in BPA rate increases from 5% to over 50%.***

P2IP Agreement

- **P2IP** - \$200 million over 20 years (agreement already finalized)
- **Short-term and long-term agreements with Spokane Tribe of Indians and Coeur d’Alene Tribe:** BPA to develop short- and long-term agreements with the Spokane and Coeur d’Alene Tribes for *supplemental* funding that address Tribal needs, such as funding a portfolio of projects including but not limited to restoring fish habitat, improving migratory passage in tributary streams, securing water for instream protection, and purchasing lands for conservation and habitat restoration (amount expected to be known by end of FY 24; Section V of P2IP Agreement).

¹ [Representative McMorris Rodgers \(R-WA\)](#); [Representative Newhouse \(R-WA\)](#); [Representative Fulcher \(R-ID\)](#)

- **Confederated Tribes of the Colville Reservation:** BPA will work to negotiate a long-term successor Accord (amount currently unknown; Section V of the P2IP Agreement).

Six Sovereign and U.S. Government Commitments

- **Mid-C Restoration Plan** – “whole of government” funding approach for “mitigation actions that would likely cost upwards of \$200M/year in additional funding over the next ten years” (p. 7) to be funded by U.S. Government, presumably including BPA.
- **Cold Water Refuge Projects** – study and complete 3 to 5 projects – “identify and seek funding” from unspecified sources for unknown costs.
- **Bull Trout** – Corps to provide \$87 million in funding for Albeni Falls fish passage; unclear BPA/power cost share (p. 9).
- **Native and Resident Fish & Shellfish** – undefined spending needs and funding sources.
- **Improved Ecosystem Function Commitments** – unclear spending levels and funding sources.
- **Backlog in Salmon Projects** – Corps to fund at least \$50 million for funding of priorities identified by CRITFC – likely to be reimbursable by BPA.
- **BPA Fish and Wildlife General Funding** - \$20 million in combined capital and expense increase for FY 2024 - 2025, and additionally:
 - \$200 million over 10 years for LSRCP hatchery upgrades, maintenance “guided” by fish and wildlife program managers and Sovereigns (inflation indexed);
 - \$100 million over 10 years for additional projects (inflation indexed) to be managed directly by the six agreement Sovereigns.
- **DOE Energy Program Proposal: Advancing Tribal Energy Sovereignty** – proposal for DOE to support tribal development of 1 to 3 GW of new renewable energy resources to be “accounted” for as replacement for the output of the LSRDs. Defines new roles for DOE, PNLL, and NREL in regional planning.
 - Likely capital cost of at least \$2 to \$6 billion, with numerous additional costs for transmission integration and capacity/flexibility replacement.
 - DOE and national labs take on redundant and confusing role in regional planning in conflict with BPA and NWPCC mandates.
- **Fish and Wildlife Contracting Reforms** -
 - “The USG will work with the Six Sovereigns, and other regional fish and wildlife mitigation project implementers, as appropriate, to identify and implement fish and wildlife mitigation contract efficiencies and flexibilities in a manner that respects state and tribal fish and wildlife expertise regarding mitigation and restoration project implementation, subject to applicable federal law. In support of this objective, Bonneville commits to near-term changes in support of the Six Sovereigns’ autonomy over fish and wildlife actions” (p 16)
 - Contracting reforms could significantly reduce transparency and accountability for F&W mitigation efforts funded by ratepayers.

Overall Takeaways

USG commitments expose customers to at least \$100 million in long-term additional F&W expenses, \$200 million in capital investments (in addition to the \$200 million of P2IP costs). Additionally, BPA could bear an undefined share of at least \$2 billion in “Mid-Columbia Restoration Plan” costs, plus undefined cost exposure for numerous other funding commitments. The commitments presume LSRD breaching and sets BPA up to be the off taker of 1 to 3 GW of new renewables developed by tribal entities, as well as undermining BPA’s power planning and acquisition authorities and at a minimum creating problematic political expectations for BPA’s role in funding “replacement” resources for the LSRDs. PPC is still analyzing various cost exposures to public power from this agreement and may supplement this document. ***Given the extreme uncertainty of funding obligations in the agreement, PPC staff estimates potential rate impacts of 5% to over 50%.***