

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 10, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

STATE OF OREGON,

Intervenor Plaintiff,

v.

UNITED STATES DEPARTMENT
OF ENERGY; and DAN
BROUILLETTE, Secretary, UNITED
STATES Department of Energy,

Defendants.

NO: 2:08-CV-5085-RMP

ORDER MODIFYING AMENDED
CONSENT DECREE BETWEEN U.S.
DEPARTMENT OF ENERGY AND
STATE OF WASHINGTON

BEFORE THE COURT is a Joint Motion to Amend Consent Decree, ECF
No. 250, by Plaintiff State of Washington, Department of Ecology, and Defendants

ORDER MODIFYING AMENDED CONSENT DECREE BETWEEN U.S.
DEPARTMENT OF ENERGY AND STATE OF WASHINGTON ~ 1

1 Secretary of the United States Department of Energy Dan Brouillette¹ and the United
2 States Department of Energy (collectively, “the Parties”). The Parties stipulate to
3 amendment of the Consent Decree, ECF No. 59, the Amended Consent Decree, ECF
4 No. 222, and its subsequent amendments, ECF Nos. 232 and 242, on the basis that
5 the novel coronavirus (COVID-19) pandemic constitutes a *force majeure* event
6 justifying amendment under Section VII.E (*Force Majeure*) of the Consent Decree.
7 ECF No. 250 at 3–9.

8 The Court finds good cause for amendment based upon the parties’
9 agreement, as well as their showing, that the criteria for amendment of the Consent
10 Decree have been met. Accordingly, **IT IS HEREBY ORDERED** that the
11 Parties’ Joint Motion to Amend Consent Decree, **ECF No. 250**, is **GRANTED**.
12 The Consent Decree, ECF No. 59, as modified by the Amended Consent Decree,
13 ECF No. 222, and the amendments at ECF Nos. 232 and 242, is further amended,
14 by stipulation of the Parties, as follows:

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17
18
19 _____
20 ¹ The Court substitutes Secretary Brouillette in the caption in this matter. Fed. R.
21 Civ. P. 25(d).

1 **STIPULATION**

2 WHEREAS, on October 25, 2010, the Court entered a Consent Decree
3 between the United States Department of Energy (“DOE”) and the State of
4 Washington, ECF No. 59;

5 WHEREAS, after contested proceedings regarding modification of certain
6 aspects of the Consent Decree, the Court on March 11, 2016, issued an Amended
7 Consent Decree, ECF No. 222, including amendments to the Decree’s milestones for
8 tank waste retrievals and construction of the Hanford Waste Treatment and
9 Immobilization Plant;

10 WHEREAS, on October 12, 2018, the Court entered an agreed extension of
11 the B-2 and B-3 tank retrieval milestones, ECF No. 242;

12 WHEREAS, on May 21, 2020, DOE submitted to the State of Washington a
13 Section VII.E. (*Force Majeure*) proposal to extend certain milestones due to
14 ongoing work interruptions caused by the coronavirus (COVID-19) pandemic;

15 WHEREAS, following good-faith discussions during dispute resolution, DOE
16 and the State of Washington have agreed to a method for calculating an extension of
17 several milestones to offset work interruptions occurring between March 23, 2020,
18 and the end of Phase 2 of the Hanford Site Remobilization Plan; and

19 WHEREAS, DOE and the State of Washington have agreed that DOE may, as
20 it deems necessary, seek further milestone extensions pursuant to the Decree’s *force*

1 *majeure* provisions (Section VII.E.) to offset work interruptions at Hanford caused
2 by the COVID-19 pandemic that are not addressed by the amendment below;

3 **THEREFORE, IT IS HEREBY ORDERED:**

4 The Consent Decree between the U.S. Department of Energy and the State of
5 Washington, as amended, is modified as follows:

6 **I. Section IV.B.2**

7 Section IV.B.2 of the Consent Decree, ECF No. 59, as amended by ECF Nos.
8 222, 232, and 242, is hereby **VACATED** and **SUPERSEDED** by the following text:

9 In accordance with Appendix B, DOE shall complete retrieval of tank waste
10 from nine (9) additional SSTs selected by DOE on a date (the “Section IV.B.2 *force*
11 *majeure* amended date”) calculated consistent with the *force majeure* notification
12 submitted by DOE to the State of Washington on May 21, 2020, and the subsequent
13 agreement of DOE and the State of Washington on following dispute resolution. The
14 Section IV.B.2 *force majeure* amended date shall be the sum of September 30, 2026,
15 plus: one additional day for each day that elapses between March 23, 2020, and the
16 date immediately prior to the date upon which DOE commences Phase 2 of
17 remobilization at Hanford, plus an additional three-quarters of a day for each day
18 that elapses between the date upon which DOE commences Phase 2 and the date
19 immediately prior to the date upon which DOE commences Phase 3 of
20 remobilization at Hanford. For purposes of this provision, “Phase 2” and “Phase 3”

1 mean those stages of remobilization activities at Hanford as defined in DOE's
2 COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020).
3 DOE and the State of Washington agree to the above-defined calculations as a
4 reasonable approximation of anticipated schedule impacts, based on currently-
5 available information, but the parties recognize that these calculations may
6 underestimate the extent of schedule impacts caused by the *force majeure* event.
7 Thus, notwithstanding the schedule amendment calculated as set forth above, DOE
8 may propose to the State of Washington under Section VII.E. a further amendment
9 of this milestone in the event that the *force majeure* event has caused work
10 interruptions that are greater than the fractions in the above-described formula. In
11 addition, DOE may propose to the State of Washington under Section VII.E. a
12 further amendment of this milestone if, as DOE currently anticipates will be the
13 case, *force majeure*-related work interruptions continue during or after Phase 3. For
14 each month after entry of this amendment that work is interrupted due to the *force*
15 *majeure* event, DOE will provide a status update regarding those interruptions in the
16 monthly report required under Section IV.C.2., and will provide to the State of
17 Washington documentation related to the interruptions, to include, at a minimum,
18 any revisions to DOE's COVID-19 Remobilization Plan for Hanford, any checklists
19 and approval documents for moving between phases, any revised contractor
20 remobilization plans, and any correspondence between DOE and its contractors

1 referenced in any revisions to DOE’s Hanford remobilization plan. DOE shall make
2 best efforts to provide such documentation to the State of Washington in a timely
3 manner, which the parties agree will typically be within two weeks after such
4 documentation is finalized.

5 **II. Section IV.B.4**

6 The first sentence of Section IV.B.4 of the Consent Decree, ECF No. 59, as
7 amended by ECF Nos. 222, 232, and 242, is hereby **VACATED** and
8 **SUPERSEDED** by the following text, with the remainder of the paragraph to
9 remain unchanged:

10 In accordance with Appendix B, DOE shall complete the retrieval of five (5)
11 SSTs selected by DOE from the remaining C, A, and AX-Farm SSTs on a date (the
12 “Section IV.B.4 *force majeure* amended date”) calculated consistent with the *force*
13 *majeure* notification submitted by DOE to the State of Washington on May 21,
14 2020, and the subsequent agreement of DOE and the State of Washington following
15 dispute resolution. The Section IV.B.4 *force majeure* amended date shall be the sum
16 of June 30, 2021, plus: one additional day for each day that elapses between March
17 23, 2020 and the date immediately prior to the date upon which DOE commences
18 Phase 2 of remobilization at Hanford, plus an additional three-quarters of a day for
19 each day that elapses between the date upon which DOE commences Phase 2 and
20 the date immediately prior to the date upon which DOE commences Phase 3 of

1 remobilization at Hanford. For purposes of this provision, “Phase 2” and “Phase 3”
2 mean those stages of remobilization activities at Hanford as defined in DOE’s
3 COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020).
4 DOE and the State of Washington agree to the above-defined calculations as a
5 reasonable approximation of anticipated schedule impacts, based on currently-
6 available information, but the parties recognize that these calculations may
7 underestimate the extent of schedule impacts caused by the *force majeure* event.
8 Thus, notwithstanding the schedule amendment calculated as set forth above, DOE
9 may propose to the State of Washington under Section VII.E. a further amendment
10 of this milestone in the event that the *force majeure* event has caused work
11 interruptions that are greater than the fractions in the above-described formula. In
12 addition, DOE may propose to the State of Washington under Section VII.E. a
13 further amendment of this milestone if, as DOE currently anticipates will be the
14 case, *force majeure*-related work interruptions continue during or after Phase 3. For
15 each month after entry of this amendment that work is interrupted due to the *force*
16 *majeure* event, DOE will provide a status update regarding those interruptions in the
17 monthly report required under Section IV.C.2. and will provide to the State of
18 Washington documentation related to the interruptions, to include, at a minimum,
19 any revisions to DOE’s COVID-19 Remobilization Plan for Hanford, any checklists
20 and approval documents for moving between phases, any revised contractor

1 remobilization plans, and any correspondence between DOE and its contractors
 2 referenced in any revisions to DOE’s Hanford remobilization plan. DOE shall make
 3 best efforts to provide such documentation to the State of Washington in a timely
 4 manner, which the parties agree will typically be within two weeks after such
 5 documentation is finalized.

6 **III. Appendix B**

7 The Table in Appendix B of the Consent Decree, ECF No. 59, as amended by
 8 ECF Nos. 222, 232 & 242, is hereby **VACATED** and **SUPERSEDED** by the
 9 following:

10 **1. Tank Waste Retrievals**

11 Project	Description	Date
12 B-1	Complete retrieval of tank wastes from the following remaining SSTs in WMA-C: C-102, C-105, and C-111.	3/31/2024
13 B-2	Complete retrieval of tank wastes from the following SSTs in Tank Farms A and AX: A-101, A-102, A-104, A-105, A-106, AX-101, AX-102, AX-103, and AX-104. Subject to the	14 9/30/2026 plus the additional period described in this footnote ²

15
 16 ² The additional period for milestone B-2 shall be calculated as follows: one additional day for
 17 each day that elapses between March 23, 2020, and the date immediately prior to the date upon
 18 which DOE commences Phase 2 of remobilization at Hanford, plus an additional three-quarters
 19 of a day for each day that elapses between the date upon which DOE commences Phase 2 and the
 20 date immediately prior to the date upon which DOE commences Phase 3 of remobilization at
 21 Hanford. For purposes of this provision, “Phase 2” and “Phase 3” mean those stages of
 remobilization activities at Hanford as defined in DOE’s COVID-19 Remobilization Plan (HNF-
 PLAN-64858, Revision 1) (August 2020). DOE and the State of Washington agree to the above-
 defined calculations as a reasonable approximation of anticipated schedule impacts, based on
 currently-available information, but the parties recognize that these calculations may

	requirements of Section IV-B-3, DOE may substitute any of the identified 9 SSTs and advise Ecology accordingly.	
B-3	Of the 12 SSTs referred to in B-1 and B-2, complete retrieval of tank wastes in at least 5.	6/30/2021 plus the additional period described in this footnote ³

underestimate the extent of schedule impacts caused by the force majeure event. Thus, notwithstanding the schedule amendment calculated as set forth above, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone in the event that the force majeure event has caused work interruptions that are greater than the fractions in the above-described formula. In addition, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone if, as DOE currently anticipates will be the case, force majeure-related work interruptions continue during or after Phase 3. For each month after entry of this amendment that work is interrupted due to the force majeure event, DOE will provide to the State of Washington a status update regarding those interruptions in the monthly report required under Section IV.C.2. and will provide documentation related to the interruptions, to include, at a minimum, any revisions to DOE's COVID-19 Remobilization Plan for Hanford, any checklists and approval documents for moving between phases, any revised contractor remobilization plans, and any correspondence between DOE and its contractors referenced in any revisions to DOE's Hanford remobilization plan. DOE shall make best efforts to provide such documentation to the State of Washington in a timely manner, which the parties agree will typically be within two weeks after such documentation is finalized.

³ The additional period for milestone B-3 shall be calculated as follows: one additional day for each day that elapses between March 23, 2020, and the date immediately prior to the date upon which DOE commences Phase 2 of remobilization at Hanford, plus an additional three-quarters of a day for each day that elapses between the date upon which DOE commences Phase 2 and the date immediately prior to the date upon which DOE commences Phase 3 of remobilization at Hanford. For purposes of this provision, "Phase 2" and "Phase 3" mean those stages of remobilization activities at Hanford as defined in DOE's COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020). DOE and the State of Washington agree to the above-defined calculations as a reasonable approximation of anticipated schedule impacts, based on currently-available information, but the parties recognize that these calculations may underestimate the extent of schedule impacts caused by the force majeure event. Thus, notwithstanding the schedule amendment calculated as set forth above, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone in the event that the force majeure event has caused work interruptions that are greater than the fractions in the above-described formula. In addition, DOE may propose to the State of Washington under

IV. Appendix A

The Table in Appendix A of the Consent Decree, ECF No. 59, as amended by ECF Nos. 222, 232 & 242, is hereby **VACATED** and **SUPERSEDED** by the following:

1. WTP Construction and Startup

The milestones referred to in Section IV above are as follows:

Project	Description	Date
A-1	Achieve Initial Plant Operations for the Waste Treatment Plan	12/31/2036
A-2 Interim	HLW Facility Construction Substantially Complete	12/31/2030
A-3 Interim	Start HLW Facility Cold Commissioning	06/30/2032
A-4 Interim	HLW Facility Hot Commissioning Complete	12/31/2033
A-5 Interim	LAB Construction Substantially Complete	12/31/2012 (COMPLETED)
A-6 Interim	Complete Methods Validations	06/30/2032
A-7 Interim	LAW Facility Construction Substantially Complete	12/31/2020 plus the additional period described in this

Section VII.E. a further amendment of this milestone if, as DOE currently anticipates will be the case, force majeure-related work interruptions continue during or after Phase 3. For each month after entry of this amendment that work is interrupted due to the force majeure event, DOE will provide a status update regarding those interruptions in the monthly report required under Section IV.C.2. and will provide to the State of Washington documentation related to the interruptions, to include, at a minimum, any revisions to DOE’s COVID-19 Remobilization Plan for Hanford, any checklists and approval documents for moving between phases, any revised contractor remobilization plans, and any correspondence between DOE and its contractors referenced in any revisions to DOE’s Hanford remobilization plan. DOE shall make best efforts to provide such documentation to the State of Washington in a timely manner, which the parties agree will typically be within two weeks after such documentation is finalized.

		footnote ⁴
A-8 Interim	Start LAW Facility Cold Commissioning	12/31/2022 plus the additional period described in this footnote ⁵

⁴ The additional period for milestone A-7 (Interim) shall be calculated as follows: one additional day for each day that elapses between March 23, 2020, and the date immediately prior to the date upon which DOE commences Phase 2 of remobilization at Hanford, plus an additional three-quarters of a day for each day that elapses between the date upon which DOE commences Phase 2 and the date immediately prior to the date upon which DOE commences Phase 3 of remobilization at Hanford. For purposes of this provision, “Phase 2” and “Phase 3” mean those stages of remobilization activities at Hanford as defined in DOE’s COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020). DOE and the State of Washington agree to the above-defined calculations as a reasonable approximation of anticipated schedule impacts, based on currently-available information, but the parties recognize that these calculations may underestimate the extent of schedule impacts caused by the *force majeure* event. Thus, notwithstanding the schedule amendment calculated as set forth above, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone in the event that the *force majeure* event has caused work interruptions that are greater than the fractions in the above-described formula. In addition, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone if, as DOE currently anticipates will be the case, *force majeure*-related work interruptions continue during or after Phase 3. For each month after entry of this amendment that work is interrupted due to the *force majeure* event, DOE will provide to the State of Washington a status update regarding those interruptions in the monthly report required under Section IV.C.2. and will provide documentation related to the interruptions, to include, at a minimum, any revisions to DOE’s COVID-19 Remobilization Plan, any checklists and approval documents for moving between phases, any revised contractor remobilization plans, and any correspondence between DOE and its contractors referenced in any revisions to DOE’s Hanford remobilization plan. DOE shall make best efforts to provide such documentation to the State of Washington in a timely manner, which the parties agree will typically be within two weeks after such documentation is finalized.

⁵ The additional period for milestone A-8 (Interim) shall be calculated as follows: one additional day for each day that elapses between March 23, 2020, and the date immediately prior to the date upon which DOE commences Phase 2 of remobilization at Hanford, plus an additional three-

A-9 Interim	LAW Facility Hot Commissioning Complete	12/31/2023 plus the additional period described in this footnote ⁶
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quarters of a day for each day that elapses between the date upon which DOE commences Phase 2 and the date immediately prior to the date upon which DOE commences Phase 3 of remobilization at Hanford. For purposes of this provision, “Phase 2” and “Phase 3” mean those stages of remobilization activities at Hanford as defined in DOE’s COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020). DOE and the State of Washington agree to the above-defined calculations as a reasonable approximation of anticipated schedule impacts, based on currently-available information, but the parties recognize that these calculations may underestimate the extent of schedule impacts caused by the *force majeure* event. Thus, notwithstanding the schedule amendment calculated as set forth above, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone in the event that the *force majeure* event has caused work interruptions that are greater than the fractions in the above-described formula. In addition, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone if, as DOE currently anticipates will be the case, *force majeure*-related work interruptions continue during or after Phase 3. For each month after entry of this amendment that work is interrupted due to the *force majeure* event, DOE will provide a status update regarding those interruptions in the monthly report required under Section IV.C.2. and will provide to the State of Washington documentation related to the interruptions, to include, at a minimum, any revisions to DOE’s COVID-19 Remobilization Plan, any checklists and approval documents for moving between phases, any revised contractor remobilization plans, and any correspondence between DOE and its contractors referenced in any revisions to DOE’s Hanford remobilization plan. DOE shall make best efforts to provide such documentation to the State of Washington in a timely manner, which the parties agree will typically be within two weeks after such documentation is finalized.

⁶ The additional period for milestone A-9 (Interim) shall be calculated as follows: one additional day for each day that elapses between March 23, 2020, and the date immediately prior to the date upon which DOE commences Phase 2 of remobilization at Hanford, plus an additional three-quarters of a day for each day that elapses between the date upon which DOE commences Phase 2 and the date immediately prior to the date upon which DOE commences Phase 3 of remobilization at Hanford. For purposes of this provision, “Phase 2” and “Phase 3” mean those stages of remobilization activities at Hanford as defined in DOE’s COVID-19 Remobilization Plan (HNF-PLAN-64858, Revision 1) (August 2020). DOE and the State of Washington agree to the above-defined calculations as a reasonable approximation of anticipated schedule impacts, based on currently-available information, but the parties recognize that these calculations may underestimate the extent of schedule impacts caused by the *force majeure* event. Thus,

1	A-12 Interim	Steam Plant Construction Complete	12/31/2012 (COMPLETED)
2	A-13 Interim	Complete Installation of Pretreatment Feed Separation Vessels FEP-SEP-OOOO1A/1B	12/31/2031
3	A-14 Interim	PT Facility Construction Substantially Complete	12/31/2031
4	A-15 Interim	Start PT Facility Cold Commissioning	12/31/2032
5	A-16 Interim	PT Facility Hot Commissioning Complete	12/31/2033
6	A-17	Hot Start of Waste Treatment Plant	12/31/2033
7	A-18 Interim	Complete Structural Steel Erection Below Elevation 56' in PT Facility	12/31/2009 (COMPLETED)
8	A-19 Interim	Complete Elevation 98' Concrete Floor Slab Placements in PT Facility	12/31/2031
9	A-20 Interim	Complete Construction of Structural Steel to Elevation 14' in HLW Facility	12/31/2010 (COMPLETED)
9	A-21 Interim	Complete Construction of Structural Steel to Elevation 37' in HLW Facility	12/31/2012 (COMPLETED)

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, provide copies for counsel, and **re-close the case.**

DATED December 10, 2020

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge

notwithstanding the schedule amendment calculated as set forth above, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone in the event that the *force majeure* event has caused work interruptions that are greater than the fractions in the above-described formula. In addition, DOE may propose to the State of Washington under Section VII.E. a further amendment of this milestone if, as DOE currently anticipates will be the case, *force majeure*-related work interruptions continue during or after Phase 3. For each month after entry of this amendment that work is interrupted due to the *force majeure* event, DOE will provide a status update regarding those interruptions in the monthly report required under Section IV.C.2. and will provide to the State of Washington documentation related to the interruptions, to include, at a minimum, any revisions to DOE's COVID-19 Remobilization Plan, any checklists and approval documents for moving between phases, any revised contractor remobilization plans, and any correspondence between DOE and its contractors referenced in any revisions to DOE's Hanford remobilization plan. DOE shall make best efforts to provide such documentation to the State of Washington in a timely manner, which the parties agree will typically be within two weeks after such documentation is finalized.