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11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF WASHINGTON**

13 STATE OF WASHINGTON,  
14 DEPARTMENT OF ECOLOGY,

15 Plaintiff,

16 v.

17 JENNIFER GRANHOLM,  
18 Secretary of the United States  
19 Department of Energy, and the  
20 UNITED STATES DEPARTMENT  
21 OF ENERGY,

22 Defendants.

NO. 2:08-cv-5085-RMP

JOINT MOTION TO  
MODIFY CONSENT  
DECREE

01/07/2025  
Without Oral Argument

1 Plaintiff the State of Washington, Department of Ecology, and Defendants  
2 Jennifer Granholm, Secretary of the United States Department of Energy, and  
3 the United States Department of Energy (collectively, “the Parties”) jointly seek  
4 the Court’s approval and entry of the modifications to the Consent Decree  
5 described in this Joint Motion and in the accompanying [Proposed] Order. The  
6 Parties’ proposed modifications are the product of a multi-year mediation  
7 process that covered numerous topics related to ongoing environmental cleanup  
8 work at the Hanford Nuclear Reservation, including under the Consent Decree  
9 in this matter as well as the Hanford Federal Facility Agreement and Consent  
10 Order (“Tri-Party Agreement”). *See* ECF No. 262. Now, having considered and  
11 responded to public comments received during a 120-day period that included  
12 opportunities for both written and in-person input, and having also engaged in  
13 formal consultation with stakeholder Tribal Nations, the Parties seek entry of the  
14 proposed modifications to the Consent Decree.

15 **BACKGROUND**

16 The Court entered the original Consent Decree between the United States  
17 Department of Energy (“DOE”) and the State of Washington (“State”) in this  
18 matter on October 25, 2010. ECF No. 59. Following contested proceedings to  
19 modify aspects of the Decree, the Court issued an Amended Consent Decree on  
20 March 11, 2016. ECF No. 222. Among other changes, that Amended Decree  
21 included revised deadlines for construction and initial operations of the Waste  
22 Treatment Plant. *See id.* at 13–14 (requiring DOE to achieve “hot start” of the  
23 Waste Treatment and Immobilization Plant (“WTP”) by December 31, 2033,  
24 and begin WTP initial operations by December 31, 2036.). Upon joint motions  
25 by the Parties at various times over the past eight years, the Court has  
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1 subsequently further modified the Amended Consent Decree to extend certain  
2 deadlines for constructing and commissioning WTP facilities and retrieving tank  
3 wastes. *See, e.g.*, ECF No. 259 (granting milestone extensions due to *force*  
4 *majeure* impacts from the COVID-19 pandemic); ECF No. 264 (granting an  
5 approximately four-month extension of the milestone for beginning Low-  
6 Activity Waste Facility cold commissioning).

7 **I. Leadup to the 2020-2024 “Holistic” Mediation**

8 In 2017, prompted by ballooning cost projections for the WTP—and the  
9 Pretreatment Facility in particular—DOE commissioned the U.S. Army Corps  
10 of Engineers (“Corps”) to evaluate the impacts of various funding scenarios on  
11 DOE’s ability to achieve initial operations of the WTP by 2036. The Corps’  
12 June 2018 report, *Parametric Evaluation of the Waste Treatment and*  
13 *Immobilization Plant*, indicated that even with significant increases in funding  
14 over many years, meeting key deadlines for WTP construction and  
15 commissioning would be difficult.

16 In May 2019, DOE initiated an Analysis of Alternatives (“AoA”) to  
17 continue assessing options for constructing and operating the High-Level Waste  
18 (“HLW”) Facility—including potential approaches that would obviate the need  
19 for the Pretreatment (“PT”) Facility in its current configuration.<sup>1</sup> This AoA was  
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21 <sup>1</sup> AoAs are analytical comparisons of the operational effectiveness, suitability,  
22 risk, and life cycle cost of alternatives that satisfy validated capability needs.  
23 Broadly speaking, AoAs provide inputs that DOE can use to develop preferred  
24 alternatives that, based on further analysis, may support decisions on an  
25 approach that best meets the overall mission need at the best value to the  
26 taxpayer. *See* DOE Guide 413.3-22 (June 6, 2018), *available at*

1 eventually expanded to cover 19 potential options for the HLW and PT  
2 Facilities, including options developed by the State.<sup>2</sup>

3 On September 4, 2019, DOE notified the State of a “serious risk . . . that  
4 DOE may be unable to meet” ten milestones for constructing and achieving  
5 initial operation of the WTP: two for the WTP (Milestones A-1 and A-17); three  
6 for the HLW Facility (Milestones A-2 to A-4); and five for the PT Facility  
7 (Milestones A-13 to A-16 and A-19). *See* ECF No. 245, Ex. A (2019 Serious  
8 Risk Notice). In that notice, DOE outlined multiple factors that had led it to  
9 conclude that its ability to meet those milestones was at “serious risk,” including  
10 dramatic increases in the projected costs and in the schedule for constructing and  
11 commissioning those Facilities. In particular, DOE concluded that the Corps  
12 Report, follow-on assessments, and the then-ongoing AoA provided persuasive  
13 evidence that the HLW Facility and PT Facility—and thus the WTP Facility as a  
14 whole—would most likely be delayed significantly beyond the milestones in the  
15 Amended Consent Decree based even on optimistic assumptions regarding  
16 future funding. *Id.* at 1–2.

17 Some months prior to this notice (in late May 2019), the then-Director of  
18 Ecology proposed that the Parties engage in intensive and broad-ranging  
19 negotiations to identify “a new holistic path forward” regarding DOE’s Hanford  
20 tank waste cleanup mission. In June 2019, DOE agreed in principle with the  
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22 [https://www.directives.doe.gov/directives-documents/400-series/0413.3-](https://www.directives.doe.gov/directives-documents/400-series/0413.3-EGuide-22/@@images/file)  
23 [EGuide-22/@@images/file](https://www.directives.doe.gov/directives-documents/400-series/0413.3-EGuide-22/@@images/file).

24 <sup>2</sup> The State participated in the AoA during the course of the below-described  
25 mediation, and contributed scenarios to be assessed. DOE issued the final AoA  
26 on January 12, 2023.

1 idea of engaging in holistic negotiations. The Parties then spent a number of  
2 months defining the nature and scope of those negotiations. Following issuance  
3 of DOE’s September 2019 notice, the Parties had significantly different  
4 perspectives on potential solutions for addressing the serious risks, but  
5 continued to agree that the most productive path for resolving those differences  
6 would be to engage in mediated negotiations spanning issues arising under both  
7 the Consent Decree and the Tri-Party Agreement.<sup>3</sup> The Parties informed the  
8 Court in June 2020 of their entry into mediation, and have since provided  
9 periodic status updates. *See* ECF No. 245. The proposed Consent Decree  
10 modifications described below, and set forth in the accompanying proposed  
11 Order, are among the results of that long-term mediation, spanning 2020–2024  
12 and involving more than 100 mediation sessions.

13 **II. Overview of Proposed Consent Decree Modifications**

14 The confidentiality of the Parties’ mediated discussions allowed for  
15 candid exchanges of viewpoints and made possible a problem-solving rather  
16 than adversarial approach.

17 The Parties successfully negotiated proposed Consent Decree  
18 modifications to address two broad issues: (1) the at-risk milestones for the  
19 Pretreatment Facility, the High-Level Waste Facility, and startup of the full  
20 WTP operations, and (2) technical challenges that may preclude DOE’s ability  
21 to retrieve two of the nine single-shell tanks currently due for retrieval by May  
22 2028 under Milestone B-2.

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25 <sup>3</sup> The U.S. Environmental Protection Agency (“EPA”) participated in the  
26 mediation due to its role as a party to the Tri-Party Agreement.

1           Regarding the at-risk WTP milestones, the Parties agreed to a multi-  
2           phased approach that will allow DOE to shift to a “direct feed” approach to  
3           treating high-level waste, including establishing those pretreatment capabilities  
4           needed to treat high-level waste through a direct-feed approach in lieu of using  
5           the PT Facility in its current configuration. Additional pretreatment capabilities  
6           will be provided after the High-Level Waste Facility begins treating waste in a  
7           direct feed configuration, including “sludge washing,” which optimizes high-  
8           level waste treatment by reducing the chemical volume in the waste.<sup>4</sup> To  
9           facilitate this approach, the Parties propose several milestones for future  
10          negotiations ahead of key junctures along the path of such a changed treatment  
11          approach and achieving WTP initial operations. *See* [Proposed] Order at 2–7.  
12          Those include future negotiations for new milestones regarding (1) the  
13          pretreatment capabilities that will be needed to treat high-level waste through a  
14          direct-feed approach, in lieu of using the PT Facility in its current configuration,  
15          [Proposed] Order at 6, 14 (Table, Appendix A, Milestones A-26, A-27, A-28),  
16          and (2) constructing and commissioning a Waste Transfer Vault and High-Level  
17          Waste Effluent Management System, *id.* (Milestone A-25).

18           In the meantime, pending those future negotiations, the Parties have  
19           agreed to retain all of the at-risk milestones in the Consent Decree—but with  
20           asterisks expressly acknowledging that “the Parties anticipate that modifications  
21           to these at-risk milestones and potentially other aspects of the Decree will be  
22           necessary based on information developed or decisions made related to ongoing  
23           \_\_\_\_\_

24           <sup>4</sup> This approach to treating high-level waste is subject to DOE satisfying its  
25           applicable statutory and regulatory obligations, including under the National  
26           Environmental Policy Act and National Historic Preservation Act.

1 evaluations of the program of record for treatment of high-level waste at  
2 Hanford.” [Proposed] Order at 14; *see also id.* at 2, n.1. This approach  
3 maintains the Consent Decree’s existing milestone structure while recognizing  
4 that further modifications will be necessary moving forward. In the case of the  
5 hot commissioning milestone for the High-Level Waste Facility, much of this  
6 information will come in the form of a critical path schedule for the facility to be  
7 submitted to Ecology in 2028, *id.* at 13 (Milestone A-23), with negotiation of  
8 any adjustments to the milestone to be completed six months later, *id.* at 14  
9 (Milestone A-24). In the case of Pretreatment Facility and full Waste Treatment  
10 Plant (WTP) operations milestones, adjustments will be informed by  
11 information on the completion of waste treatment that is available when the  
12 High-Level Waste Facility begins operating. *See id.* at 14 (Milestones A-27 and  
13 A-28). The Parties agree that this approach should result in milestones that are  
14 better calibrated to be realistic and achievable, while not relieving DOE of its  
15 obligation to comply with any deadlines.

16 The proposed modifications regarding tank retrievals are more modest.  
17 The Parties agreed through mediation that, due to certain tank condition issues  
18 that DOE expects may adversely impact retrieval of single-shell tanks A-104  
19 and A-105 (which are currently two of the nine tanks due for retrieval by May  
20 2028), there should be options for DOE either to complete retrieval of those  
21 tanks on a longer timeframe or to substitute other tanks for either (or both) A-  
22 104 and A-105.<sup>5</sup> The proposed extension also allows time to evaluate, pursuant  
23 to new Tri-Party Agreements milestones, new retrieval technologies that may  
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25 <sup>5</sup> In the case of such a substitution, A-104 and/or A-105 would be retrieved  
26 pursuant to the Tri-Party Agreement.

1 aid the retrieval efforts in these tanks. Accordingly, the Parties propose to add a  
2 new milestone, B-4, for DOE to complete retrieval of tank wastes from tanks A-  
3 104 and A-105 by December 2040. [Proposed] Order at 5, 15 (Table, Appendix  
4 B).

5 Alternatively, if DOE deems retrieval of either or both of those tanks not  
6 to be practicable, DOE may opt to “complete retrieval of up to two substitute  
7 tanks as provided in Section IV.B.2.” See [Proposed] Order at 15 (Table,  
8 Appendix B). The proposed modifications in Section IV.B.2. would allow DOE  
9 to select such substitute tank(s) from among the S, SX, or U Tank Farms. *Id.* at  
10 8. This provision is a more specific version of the Consent Decree’s existing  
11 allowance for tank substitutions, which would be retained as-is. See Consent  
12 Decree Section IV.B.3 (ECF No. 59 at 5). The total number of tanks that DOE  
13 must retrieve pursuant to the Consent Decree would remain unchanged under  
14 the Parties’ proposed modifications.

15 Lastly, the Parties propose a new milestone for DOE to achieve “initial  
16 plant operations” for low-activity waste glass production within three years after  
17 successful hot commissioning of the Low-Activity Waste Facility (i.e., “over a  
18 rolling period of at least 3 months leading to the milestone date, operating the  
19 WTP to produce . . . low-activity waste glass at an average rate of at least 21  
20 MTG/day,” Consent Decree Section IV.A.3). [Proposed] Order at 5, 13 (Table,  
21 Appendix A). Currently, the Decree requires DOE to achieve that metric for  
22 low-activity waste glass only after full WTP operations. Consent Decree  
23 Section IV.A.3. Adding new milestone A-22 will instead require DOE to  
24 achieve the metric within three years after successful hot commissioning of the  
25 Low-Activity Waste Facility. This proposed modification is unrelated to the at-  
26

1 risk WTP milestones, but recognizes that the Low-Activity Waste Facility and  
2 its supporting capabilities will begin operating years ahead of the rest of the  
3 WTP complex.

4 **III. Public and Tribal Nation Engagement Process**

5 On April 29, 2024, the Parties notified the Court that they had reached  
6 agreement through mediation on other potential modifications to the Consent  
7 Decree, including potential changes related to the program of record for the  
8 treatment of Hanford’s high-level waste. ECF No. 262. An extensive public  
9 engagement process followed. Beginning in May 2024, the Parties invited  
10 public comments on the proposed Consent Decree modifications as well as  
11 sixteen Tri-Party Agreement change packages. *See* Consent Decree Section  
12 VII.A.2 (requiring public comment on proposed modifications where the State  
13 deems proposed changes to be “significant”). The public engagement process  
14 included three in-person public meetings (which were also live-streamed and  
15 made available for later viewing), acceptance of written comments through  
16 September 1, 2024, and formal consultation with stakeholder Tribal Nations.

17 The Parties and EPA jointly issued written responses to public and Tribal  
18 comments on December 19, 2024. Exhibit 1. While there were generalized  
19 comments questioning the timeframe and cost of the Hanford cleanup, *see id.* at  
20 12–15, 18–19, the Parties did not receive comments objecting to the gist of the  
21 proposed Consent Decree modifications—i.e., moving to a direct-feed approach  
22 to starting the High-Level Waste Facility, providing remaining pretreatment  
23 functions after High-Level Waste Facility hot commissioning, and extending the  
24 timeframe for completing the retrieval of waste from tanks A-104 and A-105.  
25 There were comments supportive of the idea of moving forward to begin  
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1 treating high-level waste as quickly as possible, as well as supportive of  
2 delaying the retrieval of tanks A-104 and A-105 while potential new retrieval  
3 technologies are evaluated under Tri-Party Agreement milestones. *Id.* at 18, 23.

4 **DISCUSSION**

5 **I. The Proposed Modifications to the Consent Decree Are Warranted.**

6 The Consent Decree in this matter “may be amended by mutual  
7 agreement of the State [of Washington] and DOE upon approval by the Court.”  
8 Consent Decree Section VII.A.1 (ECF No. 59 at 11). The schedules set forth in  
9 Section IV of the Decree, including the milestones for Waste Treatment Plant  
10 construction and initial startup, “may be amended . . . if (1) a request for  
11 amendment is timely, and (2) good cause exists for the amendment.” *Id.* VII.B  
12 (ECF No. 59 at 12). The Parties agree that, to the extent applicable, both of  
13 those criteria are met regarding the modifications described in this Joint Motion.  
14 In addition, the Parties agree that the proposed modifications are appropriate  
15 under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). *See id.* at  
16 393 (“a party seeking modification of a consent decree must establish that a  
17 significant change in facts or law warrants revision of the decree and that the  
18 proposed modification is suitably tailored to the changed circumstance”).

19 *A. The Proposed Modifications Are Timely.*

20 The Consent Decree specifies that “[t]o be timely, a request must be  
21 submitted to the other party as expeditiously as practicable within a reasonable  
22 time from when the party learns that underlying facts give rise to the need for  
23 the schedule amendment.” Consent Decree Section VII.C (ECF No. 59 at 12).  
24 The Parties developed the modifications jointly proposed here through a long-  
25 term mediation process, rather than through unilateral proposals. As such, this  
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1 timeliness requirement is inapplicable. To the extent that the Section VII-C  
2 timeliness requirement applies in this circumstance, however, the Parties agree  
3 that each other’s proposals during mediation were timely. The modifications we  
4 jointly propose here are product of those timely proposals.

5 *B. There Is “Good Cause” for the Proposed Modifications.*

6 The Consent Decree specifies that “good cause” for schedule amendment  
7 exists “when the schedule cannot be met due to circumstances or events either  
8 (1) unanticipated in the development of the schedule in Section IV of [the]  
9 Consent Decree, or (2) anticipated in the development of the schedule, but  
10 which have a greater impact on the schedule than was predicted or assumed at  
11 the time the schedule was developed.” Consent Decree Section VII.D.1 (ECF  
12 No. 59 at 12–13). Those criteria are not directly applicable here, where the  
13 proposed modifications do not alter any existing deadlines. The proposed  
14 modifications are schedule-related (i.e., they modify Section IV “Work to Be  
15 Performed and Schedule” and the deadline tables in Appendices A and B), but  
16 the Parties propose to add *new* interim milestones during the years preceding the  
17 as-yet-unchanged December 2036 milestone for WTP initial operations.<sup>6</sup> The  
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20 <sup>6</sup> As described above, the Parties “have agreed to retain the Decree’s existing  
21 milestones for construction and initial operations of the WTP, including the  
22 milestones for the Pretreatment and High-Level Waste Facilities that DOE has  
23 identified as being at ‘serious risk’ and which remain so.” [Proposed] Order at 2  
24 n.1. The Parties “anticipate that modifications to these at-risk milestones and  
25 potentially other aspects of the Decree will be necessary based on information  
26 developed or decisions made related to ongoing evaluations of the program of

1 same is true of the proposed modifications regarding tank retrievals, which add a  
2 new milestone for two of the nine tanks remaining to be retrieved by the May  
3 2028 milestone (or their substitutes) but do not alter that deadline for the other  
4 seven tanks.

5 Nor does the relatively narrow “good cause” definition for schedule  
6 modifications provide a useful standard for evaluating jointly proposed  
7 modifications that were developed through mediation—particularly where, as  
8 here, mediation encompassed a wide-ranging slate of issues under not only the  
9 Decree but also the Tri-Party Agreement. Although the mediation was distinct  
10 from the “joint three year reviews” required by Section VI of the Decree, those  
11 provisions contemplate that the Parties also “may agree” to meet at “other  
12 times” “to review the requirements of the Consent Decree and to discuss the best  
13 available information and any circumstances that may necessitate the  
14 reconsideration of and/or modification to the outstanding requirements” of the  
15 Decree. Consent Decree Section VI (ECF No. 59 at 10). That provision better  
16 captures the roots of these proposed modifications. “Good cause” in that  
17 context is much broader than for schedule amendments, encompassing “*any*  
18 good cause reasons for modifications.” *Id.* (emphasis added). The Decree  
19 emphasizes that the Parties shall make “every effort . . . to seek agreement to  
20 any [such] modifications to the Consent Decree,” thus indicating that mutually  
21 proposed modifications should be readily granted. *Id.* (ECF No. 59 at 10-11).

22 The circumstances identified in DOE’s 2019 “serious risk” notice,  
23 including the cost and schedule analyses cited therein, were the primary impetus  
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25 record for treatment of high-level waste at Hanford,” but are not currently  
26 seeking any such changes. *Id.* at 14 (asterisk).

1 for the proposed modifications. By engaging in a “holistic” mediation, the  
2 Parties were able to avoid litigation on those and other issues. Inversely, the  
3 enduring potential for litigation in the *absence* of the proposed modifications  
4 likewise underscores why good cause exists. Without entry of the proposed  
5 modifications, the Parties forecast a high likelihood for litigation regarding, at a  
6 minimum, the at-risk WTP milestones. Such a scenario would also pose a high  
7 risk of unravelling the Parties’ concurrently-negotiated compromises on several  
8 Tri-Party Agreement issues. Having dedicated years of effort to reach  
9 agreement on the proposed modifications, the Parties urge the Court to credit  
10 their joint representation that good cause exists.

11  
12 C. *The Proposed WTP Modifications Are Consistent with the Supreme  
13 Court’s Standard for Modifying Consent Decrees.*

14 In addition to being in accord with the Consent Decree’s Section VI and  
15 VII modification provisions, the proposed modifications are also appropriate  
16 under *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992).<sup>7</sup> Under  
17 *Rufo*, “a party seeking modification of a consent decree must establish that a  
18 significant change in facts or law warrants revision of the decree and that the  
19 proposed modification is suitably tailored to the changed circumstance.” *Id.* at  
20 393; *see Lab./Cnty. Strategy Ctr. v. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d  
21 1115, 1120 (9th Cir. 2009). In addition, a consent decree modification should  
22 “retain the essential features and further the primary goals” of the decree, “while

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23 <sup>7</sup> The Parties’ proposed modification to add a new tank retrieval milestone is  
24 effectively a schedule modification for which a *Rufo* analysis is unnecessary.  
25 *See* ECF No. 221 at 28 (“[T]he parties do not need to petition the Court to apply  
26 the *Rufo* standards for modification of [schedules in] the Consent Decree.”).

1 taking into account what is realistically achievable by the parties.” *Keith v.*  
2 *Volpe*, 784 F.2d 1457, 1460 (9th Cir. 1986).

3 The proposed WTP modifications satisfy the *Rufo* standard because they  
4 are suitably tailored to address the unanticipated, dramatic increase in the  
5 expected costs of the PT Facility that has made meeting the current PT and full  
6 WTP operations milestones unachievable. By establishing an orderly,  
7 collaborative process to evaluate re-configuring the WTP to directly feed waste  
8 to the HLW Facility, rather than through the PT Facility as currently configured,  
9 the proposed modifications reflect a realistic path to meet the Consent Decree’s  
10 “primary goal” of “constructing and achieving initial operation of the WTP.”<sup>8</sup>

11 The proposed modifications are driven by a significant factual change—  
12 the dramatic increase in the expected costs of constructing the PT Facility as a  
13 component of the WTP. When entering into the original Consent Decree, the  
14 Parties had a good faith belief that the PT Facility was viable and would help  
15 facilitate the successful operation of the WTP by pretreating waste before it was  
16 sent to the HLW Facility. During contested proceedings leading up to the  
17 Court’s March 2016 Order modifying the Consent Decree, however, DOE  
18 identified several significant concerns with the PT Facility that would impact  
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21  
22 <sup>8</sup> The Court previously recognized the following three performance objectives as  
23 the “primary goals” of the Consent Decree: “(1) constructing and achieving  
24 initial operation of the WTP; (2) retrieving nineteen SSTs; and (3) holding DOE  
25 accountable by requiring reporting on DOE’s progress or delays in achieving the  
26 first two objectives.” ECF No. 221 at 12.

1 DOE’s ability to achieve WTP initial operations by the date originally  
2 prescribed.

3 After the Court modified the Decree, the Corps’ Report in 2018 raised  
4 concerns about DOE’s ability to meet the Consent Decree’s milestones for the  
5 PT and HLW Facilities due to the expected costs of the PT Facility. In  
6 response, as described above, DOE took steps to evaluate potential alternatives  
7 for completing the HLW tank waste treatment mission, including initiating the  
8 AoA and issuing a serious risk notice to the State under Section IV.C.3 of the  
9 Amended Consent Decree. The Parties ultimately agreed to enter mediation  
10 regarding those and numerous other issues, and the State participated in the AoA  
11 evaluation. The proposed modifications are the product of over four years of  
12 alternatives analysis and in-depth negotiations.

13 The proposed modifications are designed to enable continued decision-  
14 making processes and future negotiations regarding the need for the PT Facility  
15 in its current configuration while still furthering the Consent Decree’s “primary  
16 goal” of “constructing and achieving initial operation of” a WTP capable of  
17 vitrifying both low-activity waste and high-level waste. ECF No. 221 at 12.

18 To facilitate this potential re-configuration, the Parties would revise the  
19 current program of record through new milestones A-22 through A-28 in  
20 Appendix A. These revisions would, among other things, require DOE to: (1)  
21 operate the HLW Facility in a two-melter configuration; (2) construct and  
22 commission a Waste Transfer Vault and a High-Level Effluent Management  
23 Facility; and (3) implement additional pretreatment capabilities (including  
24 sludge washing) that the parties determine are appropriate after hot  
25 commissioning the HLW Facility is complete. This alternative path to achieving  
26

1 a functioning HLW Facility is similar to the direct feed approach DOE is  
2 continuing to implement for the LAW Facility.<sup>9</sup>

3 These proposed modifications are suitably tailored to resolving the  
4 changed circumstances related to the PT Facility because they retain the WTP's  
5 essential requirements. For example, DOE would continue to be required to:

- 6 • Construct and achieve initial operation of the HLW Facility by the  
7 current milestone dates (though those dates are subject to potential  
8 future revision as the Parties gain more information through the  
9 required, on-going planning processes);
- 10 • Operate the HLW Facility to produce high-level waste glass at an  
11 average rate of at least 4.2 MTG/day, over a rolling average of at  
12 least 3-months (and meet a new average waste loading of 175  
13 gallons/day over the same rolling 3-month period);
- 14 • Continue operating the LAW Facility.

15 In short, the proposed modifications represent a realistic and achievable  
16 path to achieving a WTP that is capable of vitrifying both low-activity and high-  
17 level waste. The proposed modifications are also consistent with the Consent  
18 Decree's recognition that constructing and operating the WTP is a long-term,  
19 highly complex project that necessarily requires the Parties to incorporate new  
20 information and adapt to changing circumstances. *See, e.g.*, ECF No. 59,  
21 Appendix A. Finally, the proposed modifications—which are being jointly  
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23 <sup>9</sup> On November 21, 2024, DOE notified Ecology that the Department had  
24 successfully completed Consent Decree Milestone A-8, "Start LAW Facility  
25 Cold Commissioning," in advance of the milestone that the Court recently  
26 extended to November 29, 2024. ECF No. 264.

1 proposed after more than four years of in-depth negotiations—reflect the  
2 Parties’ good faith efforts to abide by the Court’s encouragement that the Parties  
3 “depart from the current litigation posture and return in a cooperative fashion to  
4 the task at hand: cleaning up the radioactive waste at the Hanford Site.” ECF  
5 221 at 101.

6 **II. DOE Has Made All Required Notifications.**

7 The separate Consent Decree between DOE and the State of Oregon in  
8 this matter requires, absent exigent circumstances, that DOE provide notice to  
9 Oregon at least ten days prior to filing a motion to modify the Consent Decree  
10 between DOE and the State of Washington. *See* ECF No. 60 (Oregon Consent  
11 Decree) ¶ 6. The Parties provided a briefing to the Oregon Department of  
12 Energy regarding the proposed modifications on April 25, 2024, before issuing  
13 them for public comment. Undersigned counsel for DOE provided advance  
14 notice to Oregon specifically regarding this joint motion on December 20, 2024.

15 The United States Environmental Protection Agency, Region 10,  
16 participated in the holistic mediation in which the parties negotiated the  
17 proposed Consent Decree modifications, and thus already has notice. *See*  
18 Consent Decree Section VII.G.3 (ECF No. 59 at 19) (“[n]otice of any proposal  
19 to amend shall also be provided to the United States Environmental Protection  
20 Agency, Region 10.”).

**CONCLUSION**

The Parties respectfully request that the Court enter the proposed modifications to the Consent Decree by signing the proposed Order accompanying this joint motion.

DATED: January 07, 2025

Respectfully Submitted,

TODD KIM  
Assistant Attorney General  
Environment & Natural Resources  
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CERTIFICATE OF SERVICE

I hereby certify that on January 07, 2025, I electronically filed the foregoing  
JOINT MOTION TO MODIFY CONSENT DECREE with the Clerk of the Court  
using the CM/ECF system, which will send notice of such filing to all counsel of  
record in this matter.

s/ Austin D. Saylor  
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Senior Attorney  
U.S. Department of Justice

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