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US Withdraws from Columbia River ESA Settlement

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A multi-year effort that temporarily settled the country's longest-running natural resource litigation is unraveling. The case, involving the effects of Columbia River Hydropower System operations (CRSO) on various salmon stocks listed under the Endangered Species Act (ESA), pits Washington and Oregon, along with several Indian Tribes and environmental groups, against the U.S. Army Corps of Engineers and Bureau of Reclamation, parties who rely on the hydropower and other benefits the 14 dams that make up the system provide, and the states of Idaho and Montana.¹ In 2023 the Biden Administration reached a Memorandum of Understanding (MOU) with Plaintiffs in the case called the "Resilient Columbia Basin Agreement" (RCBA) under which the United States committed to invest \$1 billion toward salmon restoration and related efforts in exchange for up to a ten-year stay of the litigation.² On June 12, 2025, however, President Trump ordered federal agencies with jurisdiction over CRSO and marketing of the hydropower it generates

¹ *National Wildlife Federation v. National Marine Fisheries Service*, 3:01-cv-640-SI (D. Or.).

² Memorandum of Understanding (Dec. 14, 2023) (available at <https://critfc.org/wp-content/uploads/2024/02/CBRI-MOU.pdf>). Under the terms of the MOU, the pending five-year stay is subject to renewal for another five-year increment if all parties to the MOU believe adequate progress is being made to work in partnership on Columbia River Basin restoration pursuant to the RCBA and no parties withdraw from the MOU.

to withdraw from the RCBA.³ The upshot of the U.S. withdrawal from the MOU is that the 25-year-old litigation will likely be reactivated after nearly a four-year hiatus,⁴ although no action has been taken in the case to lift the pending stay as yet.

The crux of the RCBA consists of a series of 10-year commitments the United States made in response to the “Columbia Basin Restoration Initiative” (CBRI)⁵ that Oregon, Washington, and four tribal nations developed as a proposed comprehensive strategy to restore fish populations affected by CRSO. These commitments include more than \$1 billion in investments for various facets of salmon recovery as well as multiple studies to explore potential options for replacement of the hydropower and other valuable resources that would be forgone if the four Lower Snake dams that form a part of the system were breached. The principal rationale the President offered for withdrawing from the MOU is its commitment to an in-depth exploration of breaching the Lower Snake dams and the negative effects he cited that would result from such action.⁶

Background of Resilient Columbia Basin Agreement

Litigation involving impacts of CRSO on ESA-listed salmonids dates back more than three decades, since shortly after the first stocks affected by system operations were listed under the ESA in 1991. The current case, the initial phase of which challenged a long-since superseded Biological Opinion of the National Marine Fisheries Service (NMFS) on the effects of CRSO on listed salmonids, has been pending nearly a quarter-century, since 2001.

The most recent round⁷ of active litigation in the current case involved consolidated challenges a series of environmental groups, Oregon, Washington, and several tribal nations

³ The White House, “Stopping Radical Environmentalism to Generate Power for the Columbia River Basin,” Pres. Memo. (June 12, 2025) (available at <https://www.whitehouse.gov/presidential-actions/2025/06/stopping-radical-environmentalism-to-generate-power-for-the-columbia-river-basin/>).

⁴ T. Schick, “Trump upends historic Columbia River Basin agreement, bringing uncertainty to salmon recovery efforts,” Oregon Public Broadcasting website (June 12, 2025)(quoting Plaintiffs’ counsel as stating that basis for stay no longer exists) (available at <https://www.opb.org/article/2025/06/12/trump-upends-columbia-river-basin-agreement/>).

⁵ <https://critfc.org/wp-content/uploads/2024/02/CBRI-overview.pdf>.

⁶ In Aug. 2022, Sen. Patty Murray and Washington Gov. Inslee published a report summarizing their views as to what would be required to replace the benefits the Lower Snake Dams provide to the region (available at https://governor.wa.gov/sites/default/files/2022-11/LSRD%20Benefit%20Replacement%20Final%20Report_August%202022.pdf).

⁷ All told, including the current round there have been five rounds of litigation in the pending case alone focusing principally on the validity of the various Biological Opinions NMFS has issued over the past 24 years to evaluate CRSO’s effects on listed salmonid stocks for compliance with the ESA. The courts have found every one of those previous Biological Opinions (BiOps) legally deficient in one or more particulars. *NWF v. NMFS*, 254 F. Supp. 2d 1196 (D. Or. 2003) (2000 BiOp); *NWF v. NMFS*, 2005 WL 1278878 (May 26, 2005), *aff’d*, 524 F.3d 917 (9th Cir. 2008) (2004 BiOp); *NWF v. NMFS*, 839 F. Supp. 2d 1117 (D. Or.2011) (2010 Supplemental BiOp to 2008 BiOp); *NWF v. NMFS*, 184 F. Supp. 3d 861 (D. Or. 2016), *appeal dismissed*, 2016 WL 9631334 (9th Cir. Dec. 20, 2016) (2014 BiOp).

brought against decisions the U.S. Army Corps of Engineers and Bureau of Reclamation made to govern CRSO at the tail end of President Trump's first term. Plaintiffs' claims attacked the validity of the Environmental Impact Statement those agencies prepared to analyze the environmental effects of their CRSO decisions under the National Environmental Policy Act (NEPA) as well as the Biological Opinions the U.S. Fish & Wildlife Service and NMFS issued on such operations. The EIS was groundbreaking in several respects, first because it was the first one federal agencies had prepared to evaluate CRSO and also because it analyzed in detail an alternative to breach the Lower Snake dams.⁸ Shortly after Plaintiffs filed a motion for preliminary injunction, the district court granted the first of a series of motions seeking episodic stays of the proceedings to allow the parties to pursue mediated discussions designed to resolve Plaintiffs' claims.

As the last of these shorter-term stays neared expiration, several developments unfolded that led to development and execution of the RCBA:

- In Sept. 2023, the U.S. entered into an agreement with the Coeur d'Alene Tribe, Confederated Tribes of the Colville Reservation, and Spokane Tribe of Indians to support a Tribal-led effort to restore salmon to their long-blocked habitat in the Upper Columbia River Basin above Chief Joseph and Grand Coulee Dams, including BPA's commitment to devote \$200 million over a 20-year period to help fund a salmon reintroduction plan of the Upper Columbia United Tribes;⁹
- Also in Sept. 2023, President Biden issued his own Presidential Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin.¹⁰ It directed relevant federal agencies to work collaboratively with Congress and Tribal Nations, states, local governments, and stakeholders to, among other things, restore healthy and abundant salmon, steelhead, and other native fish populations to the Basin;
- In the fall of 2023, the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the

⁸ For more details on the EIS, see Marten's previous newsletter article, "Final Columbia River EIS Considers Breaching Four Lower Snake River Dams" (Sept. 18, 2020)

(https://martenlaw.com/news/final_columbia_river_eis_considers_breaching_four_lower_snake_river_dams).

⁹ USDOJ Media Release, "Biden-Harris Administration, Tribes Reach Historic Agreement Supporting Efforts to Restore Healthy and Abundant Salmon Populations to Upper Columbia River Basin" (Sept. 21, 2023) (archived version at <https://www.doi.gov/pressreleases/biden-harris-administration-tribes-reach-historic-agreement-supporting-efforts-restore#:~:text=WASHINGTON%20%E2%80%94%20The%20Biden-Harris%20administration,the%20Upper%20Columbia%20River%20Basin>).

¹⁰ The White House, "Presidential Memorandum on Restoring Healthy and Abundant Salmon, Steelhead, & Other Native Fish Populations in the Columbia River Basin" (Sept. 27, 2023) (available at <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2023/09/27/memorandum-on-restoring-healthy-and-abundant-salmon-steelhead-and-other-native-fish-populations-in-the-columbia-river-basin/>).

Warm Springs Reservation of Oregon, Nez Perce Tribe, and the States of Oregon and Washington (the self-styled “Six Sovereigns”) provided the CBRI to the U.S. as a proposal for restoring salmon runs in the basin that explicitly calls for breaching the four Lower Snake dams;

- The U.S. responded to the CBRI by issuing its Commitments in Support of the CBRI (USG Commitments),¹¹ which includes a 10-year interim operations strategy (covering 2024-2033) for the four lower Snake River and four lower Columbia River dams, the pursuit of more than \$1 billion in funding for various salmon recovery projects, and a series of proactive efforts to identify replacement resources for the hydropower and other benefits that would be lost to the region if the Lower Snake dams were breached;
- In Dec. 2023, predicated on the USG Commitments, Plaintiffs in *NWF v. NMFS* entered into an MOU with the federal government pursuant to which Federal Defendants agreed to implement those commitments in exchange for Plaintiffs’ agreement to forgo litigating their claims for up to ten years, to be effectuated via two successive motions to stay the case for five-year increments;
- The parties to the MOU followed up by moving for the first of the five-year stays seeking to stay the litigation through the end of 2028, which the Court granted over the objections of several parties who were not privy to or involved in development of the CBRI, MOU, or RCBA, including the states of Idaho and Montana, the Public Power Council, Inland Navigation Ports Group, and Northwest River Partners.

The order granting the stay directed the moving parties to update the district court annually on their progress in implementing the USG Commitments consistent with the MOU, the first of which they filed in January of this year. In that Joint Status Report, the moving parties simply reported that they were continuing to implement those commitments as reflected on a webpage that offers updates on MOU implementation.¹²

Shortly before President Biden left office, the Army Corps of Engineers and Bureau of Reclamation issued a Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) to update the CRSO EIS issued in Sept. 2020 to account for the RCBA and other developments that have occurred in the interim.¹³

¹¹ U.S. Government Commitments in Support of the “Columbia Basin Restoration Initiative” and in Partnership with the Six Sovereigns (available at <https://critfc.org/wp-content/uploads/2024/02/USG-Commitments-toCBRI.pdf>).

¹² <https://salmonrecovery.gov/crtf.html>.

¹³ U.S. Army Corps of Engineers & Bureau of Reclamation, Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Columbia River System Operations, 89 Fed. Reg. 102,869 (Dec. 18, 2024) (available at <https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29936.pdf>).

Presidential Memorandum Withdrawing from RCBA & Reversing Its Implementation

The MOU contains a provision authorizing any party to withdraw from the agreement after providing written notice to other parties under one of three conditions: (1) after exhausting dispute resolution processes prescribed in the MOU; (2) after conferring with the other parties during a 90-day conferral window leading up to the expiration of the first five-year stay period; or (3) in the event of litigation either seeking to revive Plaintiffs' stayed claims in the current litigation, or challenging environmental compliance for CRSO actions taken to implement the USG Commitments. The first criterion appears to be the only one of the three the United States would presently be able to invoke to pursue withdrawal from the RCBA MOU. That dispute resolution criterion first requires raising a formal "point of disagreement" that initiates the prescribed dispute resolution processes. Ultimately, however, if any party to the MOU provides notice to the others that formal dispute resolution has been unsuccessful, or the parties unanimously agree to bypass all or part of the specified formal dispute resolution procedures, a party ultimately has authority to withdraw from the MOU, including the United States.

The new Presidential Memorandum calls for the relevant federal agencies to "take all appropriate steps to withdraw" from the MOU within 15 days, or by June 27, 2025. It further directs such agencies to rescind the December 2024 Notice of Intent to prepare the SEIS the Biden Administration announced the action agencies would prepare. In its place, the Secretaries are directed to craft a schedule for completion of a differently focused SEIS in accordance with the recent NEPA developments that have occurred under the new Administration. The Secretaries are to submit that schedule to the Chair of the Council on Environmental Quality (CEQ) as well as reports on (1) any actions relevant federal agencies have taken pursuant to the CRSO-related Presidential Memorandum President Biden issued in Sept. 2023; (2) the status of all commitments made pursuant to that presidential memorandum; (3) any steps that may be taken to rescind federal funds obligated to implement the RCBA MOU; and (4) the actions that are being taken to withdraw from the MOU. These reports are due to be submitted by July 12, 2025.

The new Presidential Memorandum can thus be seen primarily as an attempt to undo the architecture and funding the Biden Administration developed and committed to effectuate and to instead restore CRSO to the strategy adopted in Sept. 2020 during the Trump Administration's first term. This can be expected to revive the litigation over those operations that have already occupied more than three decades.

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SCOTUS Limits Judicial Review of Agency NEPA Analyses

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In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court announced what it described as a “course correction” in judicial oversight of environmental reviews under the National Environmental Policy Act (NEPA), holding that the scope of NEPA reviews may be limited to the specific “proposed action” at issue and only those impacts within the regulatory authority of the agency.

The Court made clear that agency deference remains available in judicial review of discretion-laden, fact-infused issues like how to define the proposed action for any given NEPA analysis. At the same time, the Court stated that it is the role of the judiciary, not agencies, “to say what the law is” in interpreting NEPA’s statutory language.¹

Although differing about the rationale, a unanimous court reversed the D.C. Circuit, which had ruled that the Surface Transportation Board (STB) violated NEPA by failing to adequately evaluate both “upstream” and “downstream” effects from subsequent actions projected to follow from the decision to approve a rail line. But the decision will strongly influence future NEPA decisions in all courts, with the Court providing a major boost to efforts to limit required environmental reviews—and accelerate the timeline for federal action on a wide range of infrastructure projects.

Agency Action at Issue and Decision Below

In *Seven County*, the Seven County Infrastructure Coalition (Coalition) and Uinta Basin Railway (Railway) sought approval from STB to build an 88-mile railroad line to transport “waxy crude” oil deposits in the remote Uinta Basin (Basin) to the national rail network. From there, the crude can be transported to refineries on the Gulf Coast for conversion into various petroleum products and eventual entry into the stream of commerce. The relatively short rail link is critical to expanding development of Uinta Basin crude, because the only way producers can access the national rail network today is via truck hauling on narrow mountainous roads.

The STB has authority to regulate construction and operation of the nation’s railroad lines. Central to its consideration of Petitioners’ request was the “common carrier” obligation that requires U.S. railroads to accept all commodities for transport upon reasonable request and

¹ S. Ct. no. 23-945, 2025 WL 1520964 (May 29, 2025).

without discrimination. In response to the request, STB prepared an Environmental Impact Statement (EIS) spanning some 3,600 pages to analyze the proposed action's reasonably foreseeable environmental effects.

The EIS defined both the scope of STB's authority in considering the proposed rail line and the proposed action's reasonably foreseeable environmental effects. Given the common carrier mandate, STB determined that it lacked any authority to consider or regulate what it acknowledged were the "upstream effects" of substantially increased oil development in the Basin likely to result from the new rail link, or the likely "downstream effects" arising from the refining of such oil or eventual utilization of those refined products. The Board declined to engage in a detailed analysis of either those potential upstream or downstream effects, opting instead to focus its EIS on effects of the proposed 88-mile rail line itself.

On a petition for review of STB's approval, the D.C. Circuit held that STB's EIS violated NEPA by failing to adequately assess both what it found were reasonably foreseeable upstream effects of the proposed rail line arising from the expected increase in oil drilling in the Basin and oil-train rail traffic, as well as reasonably foreseeable downstream effects of increased oil refining on environmental justice communities on the Gulf Coast.

The Coalition petitioned for certiorari on the question of whether NEPA "requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority."²

Supreme Court's Opinion on the Merits

The Supreme Court unanimously reversed the D.C. Circuit's judgment across a majority and concurring opinion. The Court's majority opinion determined that a major "course correction" was due and held that reversal was warranted on two independent grounds: (1) the D.C. Circuit's failure to afford STB the substantial judicial deference the Supreme Court has long held is required in NEPA cases; and (2) the D.C. Circuit's erroneous statutory interpretation in ruling that STB had a duty under NEPA to consider the effects of upstream and downstream projects separate in time and place from the rail line and outside STB's statutory authority.

In explaining its first ground for reversal, the Court offered a broadly framed reproof of much NEPA jurisprudence since its last NEPA decision 11 years ago.³ The Court engaged in a lengthy review of the major principles governing judicial review in NEPA cases

² Petition for A Writ of Certiorari at i, *Seven County Infrastructure Coal. v. Eagle Cnty.*, 2025 WL 1520964, S. Ct. no. 23-975.

³ *Id.* at **6-9. Before *Seven County*, the Court's last NEPA decision was *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010).

challenging the adequacy of environmental reviews, which the Court summed up in one word: deference. Finding an overly aggressive judicial review of NEPA analyses, the Court explained that a course correction is necessary “to bring judicial review under NEPA back in line with the statutory text and common sense.”⁴

On the second ground for reversal, the Court held that the required scope of analysis under NEPA extends only to effects of the “proposed action” itself and not to those of any “separate projects.”⁵ The Court relied on the statutory text in NEPA that directs agencies, in analyzing proposed major Federal actions with significant environmental effects, to address the “reasonably foreseeable environmental effects of *the proposed agency action*.”⁶ The Court emphasized that anything that depends upon some further act of human agency qualifies as a separate project, even if it is a foreseeable outgrowth of the proposed action under consideration and would not occur “but for” the proposed action, explaining that the need for some independent human action serves to break the chain of “proximate causation” in the context of defining reasonably foreseeable effects.⁷

The Court distinguished between “indirect effects” of the proposed action that materialize outside its immediate geographic or temporal bounds, which may need to be included in a NEPA analysis, and the effects of a “separate project,” which do not.⁸ The import of the Court’s legal standard is pronounced given two additional elements of its opinion: (1) its indication that even interrelated projects close in time and space to the proposed action generally do not count as effects of the proposed action unless interrelated projects fall “within the authority of the agency in question”; and (2) its emphasis that courts also need to extend significant deference to agencies in defining the “proposed action” subject to NEPA review.⁹

Future of Deference to Agencies on Judicial Review in Light of *Seven County* and *Loper Bright*

On the surface, the Court’s opinions in *Seven County* and *Loper Bright*¹⁰ may appear to be in tension regarding agency deference. The opinions can be read in concert, however, by distinguishing between the core issues at the heart of each case. In *Loper Bright*, the primary issue was one of statutory interpretation, a question of law, which the Court reaffirmed lies firmly in the judiciary’s expertise, both under judicial review delineated in the

⁴ *Id.* at *9.

⁵ *Id.*

⁶ *Id.* at *10 (citing 42 U.S.C. § 4332(2)(C)) (emphasis supplied).

⁷ *Id.* at **10-11.

⁸ *Id.* at *7, 9.

⁹ *Id.* at *12.

¹⁰ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

Administrative Procedure Act (APA),¹¹ and as a matter of constitutional law hearkening back to *Marbury v. Madison*. The portion of its *Seven County* decision admonishing courts to extend deference to agency decisions, on the other hand, turns on technical expertise and a series of fine-grained, fact-dependent, and policy-laden judgments that NEPA effectively affords agencies broad discretion to make.¹²

For pure questions of law such as statutory interpretation, a court owes no deference to an agency's position beyond whatever persuasive authority the court may conclude it carries, as the Supreme Court ruled in *Loper Bright*. But for issues suffused with factual findings or drawing on agency expertise, such as where to draw the innumerable lines agencies are called upon to demarcate in NEPA analyses, federal judges are to defer to agency decision-making. *Seven County* and *Loper Bright* therefore collectively can be seen as reaffirming the historic respective "lanes" the Executive and Judicial Branches have occupied, within which each deserves primacy.¹³

Potentially Significant Implications of *Seven County* for NEPA Practice and Litigation

It is worth noting a few potentially significant implications of the paring back of judicial review of NEPA effects analysis that the Court prescribed in *Seven County*.

First, pursuant to Executive Order (E.O.) 14154, *Unleashing American Energy*,¹⁴ the Council on Environmental Quality (CEQ) rescinded its NEPA implementing regulations effective as of April 11, 2025,¹⁵ and issued guidance for agencies to revise their agency-specific NEPA regulations within 12 months.¹⁶ In crafting these regulations, agencies will need to account for the new thrust governing the scope of NEPA effects the Court espoused in *Seven County*.

Second, the duty for agencies to consider cumulative effects in future NEPA analyses may have been significantly changed. This stems from the Court's declaration that "reasonably

¹¹ 5 U.S.C. § 706(2)(A)-(F).

¹² Indeed, the statutory basis for EISes is extremely broadly framed and comprises a single subparagraph in NEPA. 42 U.S.C. § 4332(2)(C).

¹³ An example from *Seven County* itself demonstrates that this distinction may not be as neat or simple as it may first appear, however. In broadly discussing the level of detail required in NEPA analysis, the Court begins by noting that the meaning of "detailed" in NEPA in the context of its requirement for agencies to produce a "detailed" EIS "is a question of law to be decided by a court." *Id.* at *12. It goes on, however, to explain that, where the rubber meets the road—in defining what details actually need to be included in an EIS—considerable agency discretion is required and thus, such determinations "should not be excessively second-guessed by a court." *Id.*

¹⁴ E.O. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025).

¹⁵ CEQ, Interim Final Rule, Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025).

¹⁶ CEQ, Memorandum for Heads of Federal Depts. & Agencies re: Implementation of NEPA (Feb. 19, 2025).

foreseeable effects of a proposed agency action” do not include the effects of separate projects, which often have been the primary grist for agencies’ cumulative impacts analyses.

Third, the Court went out of its way to emphasize that even if a NEPA analysis is determined to be deficient in some way, that determination does not compel the reviewing court to vacate the underlying agency action, “at least absent reason to believe that the agency might disapprove the project if it added more to the EIS.”¹⁷

This [article originally published](#) on June 16, 2025.

¹⁷ *Seven County*, 2025 WL 1520964 at *9.