UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, and STATE OF OREGON, Plaintiff-Intervenor, v. ERNEST MONIZ, Secretary of the United States Department of Energy, and the UNITED STATES DEPARTMENT OF ENERGY, Defendants.	NO: 2:08-CV-5085-RMP AMENDED CONSENT DECREE BETWEEN DEPARTMENT OF ENERGY AND STATE OF OREGON

BEFORE THE COURT are the Department of Energy's and the State of Oregon's Motions to Amend Consent Decree, **ECF Nos. 76 and 99**. For the reasons set forth in the corresponding Opinion, the Court hereby orders that the Consent Decree between the Department of Energy and the State of Oregon, **ECF No. 60**, be modified as follows:

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I. Paragraph 3

Paragraph 3 of the Consent Decree, ECF No. 60 at 2–3, is hereby **VACATED** and is **SUPERSEDED** by the following:

3. DOE shall, on a quarterly basis, submit to Oregon, on the same day that it submits to Ecology,[1] a written report documenting waste treatment plant (WTP) construction and startup activities and tank retrieval activities at Hanford that occurred during the period covered by the report. This written report shall provide the status of progress made during the reporting period and shall include:
    a. A brief description of project accomplishments and project issues encountered during the reporting period and/or expected in the next three (3) months;
    b. A definitive statement describing whether or not DOE has complied with milestones that have already come due as of the date of the

[1] The State of Washington is also referred to as "Ecology," shorthand for the Washington State Department of Ecology, throughout the following Consent Decree modifications. The Court refers to the State of Washington as "Ecology" in order for the modifications to remain consistent with the remaining, unmodified Consent Decree sections. *See* ECF No. 60. This footnote is for explanatory purposes only, and does not constitute part of the modified Consent Decree.

report, and how any missed milestones may affect compliance with other milestones;

c. Where applicable, a description of actions initiated or otherwise taken to address any schedule slippage;

d. Budget/cost status;

e. Copies of written directives given by DOE to the contractors for work required by the Decree entered in this case between DOE and Ecology, if requested by Oregon.

f. A description of progress made towards resolving the five outstanding WTP technical issues; and

g. An accounting of total labor hours expended on SST retrieval, specifying the total percentage of hours worked utilizing self-contained breathing apparatus.

h. The Consent Decree entered between DOE and Ecology permits Ecology to request a hearing should Ecology demonstrate good cause that DOE has not been forthcoming as pertains to the quarterly reports. Ecology will serve Oregon with any request for a hearing, and Oregon representatives may attend and participate in such a hearing. Such permission to attend shall not vest Oregon with any rights as a party to those proceedings. Oregon's unavailability after reasonable notice shall not require the delay or rescheduling of such

hearings.

II. Paragraph 5

Paragraph 5 of the Consent Decree, ECF No. 60 at 3, is hereby **VACATED** and is **SUPERSEDED** by the following:

5. In the event DOE determines that a serious risk has arisen that DOE may be unable to meet a schedule as required in Section IV of the Consent Decree entered in this case between DOE and Ecology, DOE shall notify Oregon, on the same day that it notifies Ecology.

    a. The Consent Decree entered between DOE and Ecology permits Ecology to request a meeting and/or a hearing should Ecology demonstrate good cause that DOE has not been forthcoming as pertains to the "serious risk." Ecology will serve Oregon with any request for a meeting or hearing, and Oregon representatives may attend and participate in such a meeting or hearing. Such permission to attend shall not vest Oregon with any rights as a party to those proceedings. Oregon's unavailability after reasonable notice shall not require the delay or rescheduling of such meetings or hearings.

III. Paragraph 5A

A new Paragraph 5A is added to the Consent Decree as follows:

5A. Applicability of Federal Rule of Evidence 408. Federal Rule of Evidence 408 does not apply to the above reporting requirements as the

reports are not an offer of compromise but comprise a mandatory element of an agreed-to and concluded compromise in the form of this Consent Decree.

a. The Consent Decree entered between DOE and Ecology permits Ecology to request a hearing should Ecology find that DOE has asserted Rule 408. Ecology will serve Oregon with any request for a hearing, and Oregon representatives may attend and participate in such a hearing. Such permission to attend shall not vest Oregon with any rights as a party to those proceedings. Oregon's unavailability after reasonable notice shall not require the delay or rescheduling of such hearings.

IT IS SO ORDERED.

The District Court Clerk is directed to enter this Order and provide copies to counsel.

DATED this 11th day of March 2016.

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