

1 564 F.3d 1115,1120 (9th Cir. 2009), to show “a significant change either in factual
2 conditions or in the law warranting modification of the decree.” ECF No. 139; *see*
3 *United States v. Asarco, Inc.*, 430 F.3d 972, 979 (9th Cir. 2005). The Court also
4 determined that federal law applies to modification of the Consent Decrees. ECF
5 No. 139. In this Order, the Court addresses whether the parties’ proposed
6 modifications are “suitably tailored to resolve the problems created by the changed
7 . . . conditions.” *Labor/Cnty. Strategy Ctr.*, 564 F.3d at 1120 (quoting *Asarco*, 430
8 F.3d at 979); *see Rufo*, 502 U.S. at 383-93.

9 **BACKGROUND**

10 The Court incorporates by reference its first Order Regarding Motions to
11 Amend Consent Decrees, ECF No. 139, which contains the factual and procedural
12 background of this case.

13 **DISCUSSION**

14 **A. Standard of Review**

15 A consent decree, though contractual in nature, is “an agreement that the
16 parties desire and expect will be reflected in, and be enforceable as, a judicial
17 decree that is subject to the rules generally applicable to other judgments and
18 decrees.” *Rufo*, 502 U.S. at 378. A district court has inherent authority to amend a
19 consent decree pursuant to Federal Rule of Civil Procedure 60, which permits
20 modification when it is “no longer equitable” to apply the order or decree
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1 prospectively. Fed. R. Civ. P. 60(b)(5); *Rufo*, 502 U.S. at 378 (holding that Rule
2 60 applies to consent decrees).

3 A consent decree is a product of compromise and “embodies as much of
4 those opposing purposes as the respective parties have the bargaining power and
5 skill to achieve.” *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971).

6 Thus, modification of a consent decree is not appropriate simply because “it is no
7 longer convenient to live with” its terms. *Rufo*, 502 U.S. at 383 (quoting Fed. R.
8 Civ. P. 60(b)(5)). To obtain modification of a consent decree, the moving party
9 bears the burden to show the following four elements: (1) “a significant change
10 either in factual conditions or in the law occurred after execution of the decree”;
11 (2) “the change was not anticipated at the time it entered into the decree”; (3) “the
12 changed factual circumstance makes compliance with the consent decree more
13 onerous, unworkable, or detrimental to the public interest”; and (4) the proposed
14 modification is “suitably tailored to resolve the problems created by the changed . .
15 . conditions.” *Labor/Cnty. Strategy Ctr.*, 564 F.3d at 1120 (quoting *Asarco*, 430
16 F.3d at 979); *see Rufo*, 502 U.S. at 383-93. The Court previously determined that
17 all parties have established the first three elements. ECF No. 139. The Court
18 analyzes the fourth element in this Order.

19 When determining whether a proposed modification is suitably tailored to
20 resolve the problems created by changed circumstances, courts interpret consent
21 decrees according to principles of contract interpretation. *Asarco*, 430 F.3d at 980.

1 “A consent decree, like a contract, must be discerned within its four corners,
2 extrinsic evidence being relevant only to resolve ambiguity in the decree.” *Id.*
3 This principle applies to consent decree modifications “because modification of a
4 consent decree invariably hinges on interpretation of the very terms of the decree.”
5 *Id.* at 981. “Only if the decree’s terms are ambiguous . . . do [courts] consider
6 extrinsic evidence.” *Id.*

7 A consent decree modification should “retain the essential features and
8 further the primary goals” of the decree, “while taking into account what is
9 realistically achievable by the parties.” *Keith v. Volpe*, 784 F.2d 1457, 1460 (9th
10 Cir. 1986). A modifying court should focus on “whether the proposed
11 modification is tailored to resolve the problems created by the change in
12 circumstances. A court should do no more, for a consent decree is a final judgment
13 that may be reopened only to the extent that equity requires.” *Rufo*, 502 U.S. at
14 391.

15 **B. Performance Objectives Under the Consent Decrees**

16 As contained within the four corners of the Consent Decree between
17 Washington and DOE, the following three performance objectives comprise the
18 “primary goals” of the Decree: (1) constructing and achieving initial operation of
19 the Waste Treatment Plant (“WTP”); (2) retrieving nineteen single-shell tanks
20 (“SSTs”); and (3) holding DOE accountable by requiring reporting on DOE’s
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1 progress or delays in achieving the first two objectives.¹ The “primary goal” of
2 Oregon’s Consent Decree with DOE is the same accountability and reporting
3 objective comprising the third goal of Washington’s Consent Decree with DOE.
4 The Court confirmed during oral argument that the parties agree with the Court’s
5 distillation of the Consent Decrees’ primary goals.

6 Any modifications to the Consent Decrees must further DOE’s performance
7 of the aforementioned three objectives. Although DOE’s failure to adhere to the
8 milestones in the Consent Decrees may affect DOE’s ability to meet deadlines
9 established in the overarching Hanford Federal Facility Agreement and Consent
10 Order (“HFFACO”), this Court does not have express jurisdiction over the
11 HFFACO and will not consider extrinsic evidence of concerns affecting that
12 Consent Order.

13
14 _____
15 ¹ Under Section IV of the Decree, titled “Work to be Performed and Schedule,”
16 there are four subsections: subsection A covers “Waste Treatment Plant (WTP)
17 Construction and Startup”; subsection B covers “Single-shell Tank (SST) Waste
18 Retrievals”; subsection C requires DOE to submit reports regarding its progress on
19 the work described in subsections A and B; and subsection D requires the parties to
20 obtain the requisite permits etc. in order to perform the work in subsections A and
21 B. ECF No. 59, § IV.

1 **C. Problems Created by the Changed Conditions**

2 The Court previously recognized several factual conditions that have
3 changed since the Consent Decrees were entered in 2010. ECF No. 139.
4 Specifically, the Court recognized the following changed conditions cited by
5 Washington: (1) the extent of DOE's failure to comply with the Consent Decree
6 terms;² (2) DOE's unilateral decision to cease construction of the WTP; and (3) a
7 leak in a double-shell tank ("DST"). ECF No. 139.

8 The Court also recognized the following new technical concerns cited by
9 DOE as bases for modifying the Decree provisions that pertain to constructing and
10 achieving initial operations of the WTP: (1) preventing potential hydrogen build-
11 up; (2) preventing criticality, which is the build-up of plutonium particles; (3)
12 ensuring control of the pulse jet mixers; (4) protecting against possible erosion and
13 corrosion of the system parts; and (5) ensuring ventilation balancing to protect
14 workers once the WTP is operational. ECF No. 139.

15 Regarding the Decree provisions that pertain to retrieving nineteen SSTs, the
16 Court recognized the following changed conditions cited by DOE: (1) funding and
17 manpower shortages caused by sequestration and furlough; (2) a new technical
18 concern over the accumulation of sludge above a certain height in the DSTs; and

19 _____
20 ² Any reference in this Order to "the Consent Decree" refers to the Consent Decree
21 between Washington and DOE, unless the Court specifies otherwise.

1 (3) delay caused by the failure of the sluicing equipment DOE installed to retrieve
2 SST C-111. ECF No. 139.

3 The Court finds that all of the changed conditions recognized by the Court
4 have impacted DOE's adherence to the schedule established under the Consent
5 Decree and have resulted in the current Consent Decree milestone schedule being
6 unworkable or substantially more onerous. ECF No. 139; *see Rufo*, 502 U.S. at
7 383-93. Additionally, the extent of DOE's noncompliance with the Consent
8 Decree and its unilateral cessation of construction of the WTP demonstrate that the
9 reporting requirements contained in the Consent Decree are insufficient to achieve
10 the third objective of holding DOE accountable. Therefore, any modification to
11 the Decrees must be suitably tailored to create a new, attainable schedule that will
12 hold DOE accountable to constructing the WTP and retrieving nineteen SSTs.

13 **D. Overview of the Parties' Proposed Modifications**

14 All parties seek to make substantive and substantial changes to the Decrees.
15 The Court first will address some points on which the parties agree.

16 *i. Points of Agreement*

17 First, Washington and DOE agree that the current Consent Decree schedule
18 is now unattainable and that the Consent Decree should be modified to create new,
19 attainable milestones for achieving the Consent Decree's performance objectives.

20 *Compare* ECF No. 75 at 30-31, *with* ECF No. 76 at 28.

1 Additionally, both Washington and DOE agree that the technical issues
2 plaguing the construction of the Pretreatment System and the High-Level Waste
3 (“HLW”) Facility must be resolved prior to resuming construction of those two
4 facilities. *Compare* ECF No. 102 at 1, *with* ECF No. 76 at 53-56. Both parties
5 have proposed new milestones for resolving these technical issues, as well as
6 modifications to old milestones governing the construction of the WTP and the
7 retrieval of nineteen SSTs. ECF No.108-1; ECF No. 76-1 at 7-9.

8 Washington and DOE also agree that a new design approach providing for
9 the treatment of Low-Activity Waste (“LAW”) prior to the completion of the
10 Pretreatment System and the HLW Facility is appropriate. *Compare* ECF No. 108-
11 1 at 2-3, *with* ECF No. 76 at 56-57. The parties appear to agree on the new design,
12 called Direct Feed LAW. This approach requires that DOE build another
13 pretreatment facility, specifically for LAW, which would be used in lieu of the
14 Pretreatment System, at least until the Pretreatment System is constructed and
15 operating. Thus, instead of waiting for all five facilities to begin operating
16 simultaneously, DOE would be able to feed LAW directly into the LAW
17 Pretreatment Facility, and then into the LAW Facility, enabling LAW to be treated
18 as soon as these facilities are constructed.

19 *ii. Points of Disagreement*

20 DOE proposes a complete overhaul of all existing Consent Decree
21 milestones. Instead of establishing new deadlines for already-agreed upon

1 milestones, DOE proposes replacing the current milestone schedule with a list of
2 tasks, some of which have associated hard deadlines, and some of which have
3 designated windows in which DOE must propose a new deadline, which would be
4 triggered only after DOE has accomplished the previous task at an undetermined
5 time. ECF No. 76-1. DOE's proposal requires the Court to approve each new
6 milestone once the parties agree to it and enables the Court to adjudicate disputes
7 over proposed milestones. ECF No. 76-1 at 10. DOE contends that this approach
8 will enable it to make informed decisions with current data at the time that the
9 milestone is established and after the triggering task is completed. ECF No. 76 at
10 57-58.

11 DOE also proposes that milestones for all remaining tasks be formulated
12 based on DOE's internal operating procedures. For example, DOE proposes
13 creating a new milestone within sixty days of "a critical decision on alternative
14 selection and cost range," or proposing a milestone for "the critical decision on a
15 Performance Baseline." ECF No. 76-1. Washington objects to the use of DOE's
16 internal operating procedures as a benchmark for milestones primarily because the
17 internal operating procedures have no internal deadlines themselves. ECF No. 102
18 at 20-21 ("[T]he Decree will have no deadlines until they are established through
19 Energy's internal process, and Energy will have no deadlines for completing that
20 internal process.").

1 In contrast, Washington proposes a new milestone schedule with
2 predetermined deadlines. ECF No. 108-1. For the same reasons that DOE argues
3 in favor of its phased approach, DOE argues against Washington's proposed
4 schedule with predetermined deadlines, calling these deadlines "arbitrary and
5 unworkable." ECF No. 106 at 19, § II.A header ("The State's Proposed Schedule
6 is Unachievable, Unrealistic, and Fails to Account for the Significant Uncertainties
7 Facing the WTP Project."). DOE contests most of the deadlines that Washington
8 has proposed, including those for the Direct Feed LAW approach. ECF No. 106.

9 In addition to promoting the Direct Feed LAW approach, Washington also
10 proposes that DOE implement a Direct Feed approach for HLW. ECF No. 108-1.
11 Although Washington does not discuss this additional project in its brief, it does
12 outline a schedule for it in its proposed modification. ECF No. 108-1, Milestones
13 A-70, A-78. Washington also proposes requiring DOE construct four additional
14 DSTs. ECF No. 75 at 52-54; ECF No. 108-1, Milestones D-4 - D-9. DOE opposes
15 Washington's proposed Direct Feed HLW and the proposed requirement that DOE
16 build additional DSTs as outside the scope of the Consent Decree and as
17 impermissible impositions into DOE's exclusive discretion under the AEA. ECF
18 No. 106 at 27-36.

19 Both parties propose additional reporting requirements, although the parties
20 do not agree as to what those reporting requirements should be. *Compare* ECF No.
21 75 at 54-56, *with* ECF No. 76-1 at 10-11. Both parties also propose a report

1 outlining a recovery plan after DOE has provided notice of a serious risk that it
2 may not meet a milestone. Additionally, DOE proposes an annual status report,
3 while Washington proposes an annual “Funding Needed” report. *Compare* ECF
4 No. 108 at 7-8, *with* ECF No. 76-1 at 10-11.

5 Oregon supports Washington’s proposed amendment to the Consent Decree
6 including most major components: a ten-year extension to the milestones for
7 achieving initial operations of the WTP and for retrieving nineteen SSTs; the
8 requirement that DOE build additional DSTs; and the additional reporting
9 requirements that Washington proposes. ECF No. 99. However, Oregon makes no
10 mention in its briefs of the Direct Feed LAW or the Direct Feed HLW proposals.
11 *See* ECF No. 99.

12 Oregon proposes that the Court amend the Consent Decree between Oregon
13 and DOE to contain all of the proposed reporting requirements that Washington
14 has suggested be added to its own Consent Decree with DOE. ECF No. 99-1.
15 Oregon states that the purpose of these modified terms “is to allow Oregon to
16 continue to protect its interests and participate in, and attempt to influence, the
17 cleanup of the Hanford Site.” ECF No. 99 at 23.

18 **E. Issues before the Court**

19 In this Order, the Court considers whether the following proposed
20 modifications are suitably tailored: (1) DOE’s proposed elimination of many of
21 the hard deadlines associated with certain milestones in favor of a phased approach

1 to complete the Consent Decree's objectives; (2) Washington's and DOE's
2 proposed implementation of the Direct Feed LAW approach; (3) Washington's
3 proposed implementation of a Direct Feed HLW approach; (4) Washington's
4 proposed requirement that DOE build additional DSTs; and (5) Washington's
5 proposed "Funding Needed" report.

6 **F. Enforceable Deadlines**

7 DOE proposes eliminating most enforceable deadlines from the Consent
8 Decree and replacing them with triggering events for creating new milestone
9 deadlines. DOE further proposes having the Court review every milestone
10 deadline that the parties create pursuant to these triggering events from now until
11 the termination of the Consent Decree. DOE argues that its proposal "would
12 generate practicable milestones based on meaningful project data," rather than
13 "setting arbitrary milestones that cannot be met and would virtually ensure dozens
14 of future Consent Decree modification proceedings." ECF No. 113 at 2.

15 Washington opposes this phased approach to setting milestone deadlines as
16 "strip[ping] the Decree of the specificity, accountability, and enforceability the
17 State bargained for." ECF No. 102 at 2. DOE argues that its approach does not
18 lack accountability, because its proposal also requires DOE to submit a report to
19 Washington after twelve months detailing its progress and outlining its planned
20 steps over the next twenty-four months. ECF No. 76 at 53-54.

1 DOE provides no legal support demonstrating that any other court has
2 modified a decree that originally contained enforceable deadlines to one that
3 contains a phased approach to setting future deadlines in a piecemeal fashion.
4 Instead, DOE relies on *Keith v. Volpe*, a Ninth Circuit case in which the court
5 stated that a consent decree modification must “tak[e] into account what is
6 realistically achievable by the parties.” *Keith*, 784 F.2d at 1460. However, the
7 court in *Keith* also stated that a consent decree modification should “retain the
8 essential features and further the primary goals” of the decree, and that in making
9 modifications, the court “should consider the original expectations of the parties.”
10 *Id.* at 1460, 1462. Beyond its reliance on *Keith*, DOE fails to cite to any other legal
11 authority supporting its proposal to eliminate the majority of the Consent Decree’s
12 enforceable deadlines, which the Court finds were material terms in the Consent
13 Decree.

14 Instead, DOE argues that the Court should give deference to its proposal
15 over Washington’s proposal because Congress entrusted nuclear-safety-related
16 judgments exclusively to the federal government. ECF No. 76 at 60-61. DOE
17 argues that Washington’s “proposed construction schedule would allow the State
18 to usurp DOE’s role as the exclusive regulator of nuclear hazards at Hanford,” and
19 further complains that Washington’s proposed schedule “would require DOE to
20 resolve these nuclear safety issues by a date certain or risk noncompliance with the
21 Consent Decree.” ECF No. 106 at 49-50.

1 DOE's arguments are not persuasive. DOE's position is disingenuous in
2 light of the pre-existing Consent Decree that DOE voluntarily entered into, in
3 which DOE agreed to be held accountable to achieve certain milestones by specific
4 dates, and in which DOE's failure to do so constitutes noncompliance with the
5 Consent Decree. ECF No. 59.

6 Nor is the Court persuaded by DOE's arguments regarding sovereign
7 immunity and federal preemption. DOE already entered into a Consent Decree
8 with Washington and agreed to meet predetermined and enforceable deadlines.
9 DOE also agreed in the Consent Decree to engage the Court, as the parties have
10 done in the current action, if the parties could not reach an agreement on modifying
11 the Consent Decree. DOE has waived its argument that enforceable deadlines
12 somehow violate the sovereignty of the federal government. DOE's arguments
13 about sovereign immunity also conflict with Congress' intent in enacting the
14 Federal Facilities Compliance Act ("FFCA"), which "waived sovereign immunity
15 for the operation of federal facilities and clarified that states could impose civil
16 fines on federal facilities for violations of RCRA." *Washington v. Chu*, 558 F.3d
17 1036, 1040 (9th Cir. 2009); 42 U.S.C. § 6961.

18 A Consent Decree modification that lacks predetermined enforceable
19 deadlines undermines the purpose of the Consent Decree, as described within its
20 four corners: "This Decree applies to and is binding upon the United States
21 Department of Energy, the State of Washington, Department of Ecology, and their

1 successors. DOE remains obligated by this Decree regardless of whether it carries
2 out the terms through agents, contractors, and/or consultants.” ECF No. 59, § III.
3 Later, the Consent Decree states: “Each milestone set forth in Appendix A shall be
4 completed by the specified date for that milestone in Appendix A.” ECF No. 59, §
5 IV(A). The Consent Decree then identifies a defense which DOE may raise “[i]n
6 the event that the State seeks to enforce an interim milestone in Appendix A.”
7 ECF No. 59, § IV(A).

8 The Ninth Circuit has noted that the deadlines established in a consent
9 decree “are crucial in order to give full effect to the twin purposes of the Decree:
10 finality and avoidance of protracted delay.” *Kraszewski v. State Farm General Ins.*
11 *Co.*, No. 91-15765, 968 F.2d 1221 (9th Cir. Jul. 1, 1992). Additionally, other
12 circuit courts of appeal have been critical of consent decrees that do not contain
13 predetermined deadlines. *See, e.g., United States v. Wheeling-Pittsburgh Steel*
14 *Corp.*, 818 F.2d 1077, 1081 (3rd Cir. 1987) (stating that a district court that
15 amended a Consent Decree paragraph that contained compliance deadlines with a
16 new paragraph “containing no specific dates for compliance” had “indefinitely
17 relieved” the party of its obligations under the Decree); *Ensley Branch, N.A.A.C.P.*
18 *v. Seibels*, 31 F.3d 1548, 1571 (11th Cir. 1994) (“Although the decree ordered the
19 Board to comply with Title VII by developing valid tests, it provided no deadlines
20 or formal review mechanism to ensure that the Board actually did so. That
21 omission turned out to be a serious flaw.”).

1 DOE contends that its proposal is suitably tailored to resolve the problems
2 created by the changed conditions. The Court disagrees. The current Consent
3 Decree is unworkable due to the imminent nature of some of its deadlines.
4 Modifying the Consent Decree to eliminate set deadlines would make the
5 modifications less likely than the current Consent Decree to resolve the problem of
6 the changed conditions or to achieve the third objective of accountability.
7 Eliminating predetermined and enforceable deadlines from the Consent Decree
8 would create a vacuum in which DOE would be free to proceed at its own rate
9 without any safeguards for Washington or enforcement by the Court. Washington
10 cannot seek Court-enforcement of deadlines that do not exist, nor can it fine DOE
11 for failure to meet non-existent deadlines. DOE's assurances to this Court that it
12 will perform its obligations under the Consent Decree despite an absence of
13 predetermined, enforceable deadlines lacks credibility given the current state of
14 DOE's lack of compliance with the current Consent Decree schedule and DOE's
15 unilateral cessation of WTP construction.

16 The Consent Decree, like a contract, is a legally-enforceable agreement. In
17 entering this Decree, the parties agreed to certain deadlines that they intended to be
18 legally-enforceable. Those enforceable deadlines were part of the bargain that
19 Washington and DOE struck, and they are an "essential feature" of the Consent
20 Decree that the Court must retain. *See Keith*, 784 F.2d at 1460. Therefore, any
21

1 modification to the Consent Decree will contain predetermined, enforceable
2 deadlines.

3 **G. New Performance Obligations**

4 *i. Implementation of the Direct Feed LAW Approach*

5 All parties encourage the Court to modify the Consent Decree between DOE
6 and Washington to include the construction of a new facility, the LAW
7 Pretreatment Facility, for treating LAW under the Direct Feed LAW approach.
8 The parties argue that implementing the Direct Feed LAW approach helps to
9 resolve the delay in DOE's treatment of Hanford's waste that was caused by the
10 technical obstacles and funding and manpower shortages that the Court previously
11 recognized as changed conditions. However, the construction of the LAW
12 Pretreatment Facility or the implementation of the Direct Feed LAW approach
13 does not appear to "further[] the primary goals" of the Consent Decree to construct
14 and achieve initial operations of the WTP, to retrieve nineteen SSTs, and to hold
15 DOE accountable to performing those tasks. *Keith*, 784 F.2d at 1460. Therefore,
16 the Court finds that incorporating construction of the Direct Feed LAW approach
17 would not be consistent with a Consent Decree modification.

18 The Consent Decree Introduction recounts that the HFFACO "established
19 milestones for DOE to, among other matters, construct and operate a Waste
20 Treatment Plant (WTP) to treat (vitrify) all Hanford tank waste by December 31,
21 2028, and to complete waste retrieval from 149 single-shell tanks (SSTs) by

1 September 30, 2018.” ECF No. 59 at 1-2. In contrast, the Consent Decree at issue
2 before this Court states that it was “filed to resolve litigation, solely for the matters
3 covered by this Decree, between the State and DOE *regarding certain milestones*
4 in the HFFACO and alleged violations of those portions of the regulations which
5 underlie these milestones and portions of milestones in the HFFACO.” ECF No.
6 59 at 3 (emphasis added). The plain language of the Consent Decree establishes
7 milestones for the construction of the WTP while the broader project of treating
8 Hanford’s waste falls under the HFFACO.

9 When asked during oral argument how the Direct Feed LAW approach
10 furthered the primary goals of the Consent Decree, DOE’s counsel stated that
11 implementing Direct Feed LAW “will allow DOE to complete the low-activity
12 waste facility and get it up and running, and it will also advance the objective of
13 the Consent Decree to vitrify waste as soon as possible here, and it would be by
14 2022, under DOE’s proposal.” Tr. at 18.

15 There is no evidence that DOE cannot build the LAW Facility now
16 regardless of whether the Court modifies the Consent Decree to incorporate the
17 Direct Feed LAW approach. The LAW Facility must be built under the terms of
18 the current Consent Decree. Although the Consent Decree requires that DOE
19 achieve initial operations of the WTP by 2022 and therefore indirectly requires that
20 DOE begin treating LAW by 2022, treating LAW is not a stated objective of the
21 Consent Decree.

1 Washington argued that the 2022 deadline for achieving initial operations of
2 the WTP is a material term in the Decree that requires DOE to take remedial
3 measures now that technical issues have stalled construction of the WTP.
4 Washington suggests that Direct Feed LAW and Direct Feed HLW constitute such
5 remedial measures.

6 The Court agrees that the 2022 deadline is a material term of the Decree, but
7 disagrees about what DOE was required to achieve by that deadline. The Decree
8 states that DOE will “achieve initial plant operations for the Waste Treatment
9 Plant” by 2022. ECF No. 59, Appendix A, Milestone A-1. “Initial plant
10 operations” is defined in the Decree as “over a rolling period of at least 3 months
11 leading to the milestone date, operating the WTP to produce high-level waste glass
12 at an average rate of at least 4.2 Metric Tons of Glass (MTG)/day, and low-activity
13 waste glass at an average rate of at least 21 MTG/day.” ECF No. 59, § IV.3. The
14 Consent Decree does not state that DOE must begin treating waste by 2022
15 regardless of the method used. Instead, DOE must treat waste for a rolling period
16 of three months using the WTP.

17 The Direct Feed LAW approach, if successful, likely furthers the goals of
18 the HFFACO to treat all of Hanford’s tank waste as expeditiously as possible, and
19 the Court appreciates that is a worthwhile goal that the parties should voluntarily
20 agree to perform. However, the HFFACO is extrinsic to the Consent Decree at
21 issue and outside the scope of the Court’s jurisdiction in the current matter. ECF

1 No. 59 at 23 (“While the provisions of Section[] . . . IX [governing Resolution of
2 Disputes] . . . may affect certain matters under the HFFACO, the Decree shall not
3 give the court jurisdiction over the HFFACO or otherwise govern the HFFACO or
4 its enforcement (which shall be determined by the HFFACO in accordance with its
5 own terms).”).

6 The HFFACO is the dominant agreement governing the cleanup at the
7 Hanford site. It binds DOE to build the WTP and treat all of Hanford’s tank waste.
8 The Consent Decree at issue here has a narrower scope and was specifically
9 entered “to resolve litigation, solely for the matters covered by this Decree,
10 between the State and DOE regarding certain milestones in the HFFACO.” ECF
11 No. 59 at 3. If this Court, in modifying the Consent Decree, were to substantially
12 modify the parties’ obligations and the essential nature of the treatment plan for
13 Hanford’s tank waste, this Court would be acting outside the scope of its authority
14 to modify the Consent Decree “no more” than necessary to resolve the problems
15 created by the changed circumstances. *Rufo*, 502 U.S. at 391.

16 Additionally, one party to the HFFACO, the Environmental Protection
17 Agency (“EPA”) is not a party in this case. EPA has an interest in the treatment
18 plan established in the HFFACO. HFFACO, Article I, Jurisdiction, available at
19 <http://www.hanford.gov/page.cfm/TriParty>. It would be inappropriate for this
20 Court to alter the fundamental nature of that treatment plan in litigation to which
21

1 EPA is not a party, especially given the limited scope of the Court's authority to
2 modify the Consent Decree in this case.

3 Neither the Direct Feed LAW approach nor the construction of a LAW
4 Pretreatment Facility are suitably tailored to creating a new, attainable schedule
5 that will keep DOE on track and accountable to constructing the WTP and
6 retrieving nineteen SSTs. If the parties determine that Direct Feed LAW is the
7 appropriate method for treating Hanford's low-activity waste, then the parties
8 should enter into a separate agreement or must seek a modification of the
9 HFFACO through the procedures provided in that agreement. The Court will not
10 prohibit DOE from moving forward with the Direct Feed LAW approach at this
11 time; the Court simply declines to modify the Consent Decree to include
12 milestones in this Consent Decree for achieving that objective.

13 *ii. Implementation of the Direct Feed HLW Approach*

14 Washington also seeks to require DOE to implement a Direct Feed HLW
15 approach. For the same reasons that the Court has rejected the parties' Direct Feed
16 LAW approach, the Court rejects Washington's Direct Feed HLW approach.
17 Washington admitted during oral argument that it could not represent that the
18 Direct Feed HLW approach is necessary to retrieve nineteen SSTs. Tr. at 67.
19 There is no evidence that a Direct Feed HLW approach will further the objectives
20 of the Consent Decree or resolve the problems created by the changed factual
21 conditions identified in the Court's prior Order, ECF 139.

1 *iii. Construction of New Double-Shell Tanks*

2 Washington proposes that DOE construct four additional DSTs. ECF No.
3 75. Washington refers to this proposal as “mitigation for WTP delays in order to
4 maintain the benefit of the bargain provided by the 2010 decree.” ECF No. 75 at
5 42. Washington further states that the HFFACO amendment contains milestones
6 for the retrieval of additional SSTs after DOE completes retrieval of the first
7 nineteen SSTs under the Consent Decree. ECF No. 75 at 42. The HFFACO
8 amendment milestones “were based on the key promise that Energy would comply
9 with the Consent Decree.” ECF No. 75 at 42-43. DOE’s failure to meet the
10 Consent Decree milestones may mean that DOE is unable to meet the milestones
11 set forth in the HFFACO amendment. ECF No. 75 at 43.

12 As previously stated, the HFFACO schedule is outside the scope of this
13 Court’s review. *Supra* Part B and Part G.i. The Consent Decree specifically
14 contemplates that a Consent Decree modification might affect DOE’s ability to
15 meet a HFFACO milestone, and yet the parties agreed, and the Consent Decree
16 expressly states, that the HFFACO is outside of this Court’s jurisdiction. ECF No.
17 59, § XI. In addition, the Court already has ruled that it will not consider extrinsic
18 evidence outside of the four corners of the Consent Decree when determining the
19 suitability of any particular modification proposal, which prohibits the Court from
20 considering the HFFACO amendments or any alleged settlement benefits obtained
21 from other agreements. ECF No. 139 at 66.

1 Washington argues that DOE's ability to retrieve nineteen SSTs by 2022, as
2 currently required under the Consent Decree, is questionable. DOE's plan to treat
3 Hanford's waste requires that waste be "retrieved" from the SSTs and transferred
4 to DSTs for temporary storage. ECF No. 94 at 12-3. DOE's plan to create
5 sufficient space in existing DSTs to retrieve nineteen SSTs involves the use of the
6 Evaporator, a machine that evaporates liquid out of the waste in the tanks to reduce
7 the total volume of waste that needs to be stored.

8 DOE represents that it is "on track to complete all of the 19 retrievals
9 required by the current Consent Decree by the original milestone end date of
10 September 30, 2022," without building additional DSTs. ECF No. 94 at 32.

11 DOE's expert states:

12 DOE's existing inventory of double-shell tanks at Hanford, and DOE's
13 planned continued use of Evaporator 242-A, will provide adequate
14 space to safely complete the tank retrievals required by the Consent
15 Decree by September 30, 2022. This calculation accounts for other
16 demands on the Hanford's [sic] double-shell tank space, chiefly: (a)
17 maintaining appropriate levels of contingent double-shell tank space to
18 address emergencies that may arise, and (b) DOE's plan to retrieve the
19 contents of double-shell tank AY-102, which DOE identified as leaking
20 waste into the space between the tank's inner and outer shells (the
21 annulus).

Fletcher Supp. Decl., ECF No. 106-4 at 14. *See* Fourth Fletcher Supp. Decl., ECF
No. 153 at 2 ("[T]he construction of new double-shell tanks ("DSTs") is not
necessary to complete the tank retrievals required by the Consent Decree, even
considering the potential loss of the storage capacity provided by AY-102, the DST

1 with the internal leak.”). However, since Mr. Fletcher’s Declaration was filed,
2 DOE has submitted a revised Consent Decree modification proposal that extends
3 the deadline for retrieving the nineteen SSTs to 2023. ECF No. 149.³

4 Washington argues that DOE’s plan to retrieve all nineteen SSTs by the
5 2022 deadline is “predicated on unrealistic expectations regarding 242-A
6 [E]vaporator performance.” ECF No. 150 at 4. Washington states that DOE’s
7 projected use of the evaporator has “no precedent in the Evaporator’s recent
8 history of operation,” and thus is unlikely to work as successfully as DOE
9 represents. ECF No. 150 at 5.

10 DOE’s expert, Mr. Fletcher, disagrees. He states that “DOE has reasonably
11 assessed the capability of the 242-A evaporator to increase DST storage capacity.”
12 ECF No. 153 at 5. He acknowledges that the evaporator campaigns planned over
13 the coming years do represent an increase in the number of campaigns per year, but
14 argues that such an increase is still “well within the facility’s capability.” ECF No.
15 153 at 5. Mr. Fletcher also notes that DOE has made multiple updates and
16 upgrades to the evaporator between 2010 and 2014 that have ensured that the

17
18 ³ The additional year is allegedly necessary due to decreased worker productivity
19 caused by the use of worker safety equipment. ECF No. 148. The Court has not
20 decided yet whether a 2022 or 2023 deadline for retrieving the nineteen SSTs is
21 appropriate.

1 facility is “mechanically sound.” ECF No. 153 at 5. Finally, Mr. Fletcher states
2 that DOE’s planned usage of the evaporator accounts for “contingencies, such as
3 operational and mechanical issues and other potential causes of delay.” ECF No.
4 153 at 7. “DOE assumes that the Evaporator will be in use less than 50% of the
5 time, which allows a reasonable cushion for foreseeable delay factors.” ECF No.
6 153 at 7. Although the parties dispute the reliability of the Evaporator, DOE
7 continues to represent that it is technically capable of retrieving nineteen SSTs by
8 2022 or 2023.

9 Washington argues that DOE’s history of noncompliance with the Consent
10 Decree milestones and repeated delay retrieving Hanford’s SSTs provides
11 justification for requiring DOE to build additional DSTs now as a precaution in the
12 event that the Evaporator campaign is not as successful as DOE represents. DOE
13 contends that constructing additional DSTs cannot be suitably tailored to serve
14 even an alternative function because, under Washington’s proposed modification,
15 any new DSTs would not be constructed until 2022, the same year that SST
16 retrievals should be complete. *See* ECF No. 108-1.

17 Courts are reluctant to impose new obligations on a defendant beyond those
18 required by the terms of the original decree. The Supreme Court has stated:

19 Because the defendant has, by the decree, waived his right to litigate
20 the issues raised, a right guaranteed to him by the Due Process Clause,
21 the conditions upon which he has given that waiver must be respected,
and the instrument must be construed as it is written, and not as it might

1 have been written had the plaintiff established his factual claims and
2 legal theories in litigation.

3 *Armour*, 402 U.S. at 681-82.

4 The Ninth Circuit and other circuits agree. *Keith*, 784 F.2d at 1460 (“When
5 a decree is silent on a substantive issue, courts are reluctant to impose additional
6 burdens, because the parties could have bargained for and included an absent
7 provision if they had so desired.”); *Lorain NAACP v. Lorain Bd. Of Educ.*, 979
8 F.2d 1141, 1150 (6th Cir. 1992) (“[W]hile a proposed interpretation of a consent
9 decree might better effectuate the basic purposes of the statutes the government
10 sought to enforce, ‘it does not warrant our substantially changing the terms of the
11 decree to which the parties consented without any adjudication of the issues.’”)
12 (quoting *United States v. Atlantic Ref. Co.*, 360 U.S. 19, 23 (1959)); *Walker v. U.S.*
13 *Dep’t of Housing and Urban Dev.*, 912 F.2d 819, 826 (5th Cir. 1990) (“However,
14 ‘[m]odification of a consent decree is not a remedy to be lightly awarded,’
15 especially where the design is not to relieve a party of obligations but to impose
16 new responsibilities.”) (quoting *Ruiz v. Lynaugh*, 811 F.2d 856, 860 (5th Cir. 1987)
17 (per curiam)); *Fox v. U.S. Dep’t of Housing and Urban Dev.*, 680 F.2d 315, 323
18 (3d Cir. 1982) (“Although we do not doubt the power of a court to modify an
19 injunctive order entered by consent, we think that in the usual case a court may not
20 impose additional duties upon a defendant party to a consent decree without an
21 adjudication or admission that the defendant violated the plaintiff’s legal rights

1 reflected in the consent decree and that modification is essential to remedy the
2 violation.”).

3 However, the Court does have authority to modify a consent decree to
4 resolve problems created by changed circumstances. If the Evaporator fails to
5 prove as successful as DOE represents, resulting in further delay of the retrieval of
6 nineteen SSTs, the Court would be acting within its authority to require DOE to
7 build additional DSTs to provide sufficient storage space for the waste retrieved
8 from the nineteen SSTs, an express objective of the Consent Decree. Such a
9 modification would be suitably tailored to resolve the delay in SST retrievals
10 caused by the Evaporator’s failure to perform as planned. Therefore, the Court
11 will modify the Consent Decree to require DOE to construct additional DSTs
12 contingent on DOE’s failure to achieve certain SST retrieval milestones.

13 Given DOE’s history of delay and noncompliance, the Court finds that it is
14 appropriate to make DOE’s noncompliance with certain SST retrieval milestones a
15 condition precedent to constructing additional DSTs. If DOE fails to meet certain
16 SST retrieval milestones or to reduce a predetermined amount of waste through
17 Evaporator campaigns by a given date, then DOE will be required to begin
18 constructing one or more additional DSTs. The triggering milestones as well as
19 the quantity of reduced waste and DSTs that DOE will be required to build will be
20 determined at a later date after further briefing by the parties.

1 H. New Reporting Requirements

2 The Consent Decree contains three reporting requirements. First, DOE is
3 required to submit to Washington semi-annual reports “documenting WTP
4 construction and startup activities and tank retrieval activities that occurred during
5 the period covered by the report.” ECF No. 59. § IV(C)(1). Second, DOE must
6 submit to Washington monthly reports, approximating ten to fifteen pages in
7 length, documenting “the cost and schedule performance . . . for each major
8 activity,” “significant accomplishments during the prior month,” and “significant
9 planned activities for the next month.” ECF No. 59. § IV(C)(2). Third, DOE must
10 notify Washington “in a timely manner” if DOE “determines that a serious risk has
11 arisen that DOE may be unable to meet a schedule” or milestone. ECF No. 59, §
12 IV(C)(3).

13 DOE proposes that the Court modify the Consent Decree to require DOE to
14 file a status report with the Court on an annual basis detailing DOE’s progress on
15 the Consent Decree milestones. ECF No. 76-1 at 10-11. DOE also proposes that it
16 be required within ninety days of giving Washington notification of a serious risk
17 that it may not meet a milestone to provide Washington “an explanation of the
18 reasons” why it has determined that a serious risk has arisen that DOE may be
19 unable to meet a particular milestone and the steps that DOE is taking to address
20 the issue. ECF No. 76-1 at 11.

1 Washington proposes additional reporting requirements. Washington
2 proposes that DOE file quarterly status reports with the Court and Washington
3 listing all of the tasks that DOE intends to accomplish in the upcoming quarter,
4 DOE's progress on work already undertaken, any emerging technical issues, any
5 procurement issues that arose in the last quarter, and DOE's compliance with
6 milestones that came due within the last quarter. ECF No. 108-1 at 3-5.
7 Washington may then file comments with the Court within forty-five days of
8 receiving the quarterly report, and may request that DOE provide additional
9 information. ECF No. 108-1 at 5. Washington's proposal also requires DOE to
10 give to Washington "copies of written directives given by Energy to contractors for
11 work required under" the Decree. ECF No. 108-1 at 5.

12 Additionally, Washington sets out specific tasks to be undertaken by DOE in
13 the event that DOE identifies a serious risk that it may be unable to meet a
14 milestone. DOE must notify Washington and the Court within fourteen days of
15 determining that there is a serious risk of noncompliance with a specific milestone,
16 and provide a "detailed explanation" of the cause of the risk and DOE's efforts to
17 address it. ECF No. 108-1 at 6-7. Within forty-five days of providing notice of the
18 serious risk, DOE must submit a recovery plan to Washington and the Court. ECF
19 No. 108-1 at 7.

20 Washington also proposes that DOE be required annually to submit a seven-
21 year "funding needed report" to Washington and the Court by March 1. The report

1 will detail “the total funding needed to achieve compliance with all requirements
2 of the Court’s order” over the next seven years, separating out the funding needed
3 for each milestone. ECF No. 108-1 at 7-8.

4 Thus, DOE and Washington both agree that DOE should be required to
5 submit additional documentation explaining why it has determined that a serious
6 risk has arisen that it may not be able to meet a milestone, and a proposed recovery
7 plan for resolving the serious risk. However, the parties disagree on the timeline,
8 with DOE proposing that the report be submitted within ninety days of determining
9 that there is a serious risk of noncompliance with a specific milestone, and
10 Washington proposing that the report be submitted within forty-five days.
11 Washington proposes quarterly status reports compared to DOE’s proposed annual
12 reports, and DOE does not suggest any report comparable to Washington’s
13 proposed “funding needed” report.

14 DOE objects that Washington’s quarterly status reports and funding needed
15 reports are “overly intrusive and counterproductive,” arguing that DOE will be
16 caught in an endless cycle of reporting. ECF No. 106 at 36-38. DOE also makes
17 several arguments in opposition to Washington’s funding needed reports: (1) that
18 the reports are not suitably tailored to resolve the problems created by the changed
19 circumstances; (2) that the reports are not necessary because Washington already
20 has access to the Executive branch’s appropriation requests as well as funding
21 information that DOE is required to provide to Washington under the terms of the

1 HFFACO; (3) that, to the extent Washington seeks the reports to determine
2 whether a particular funding issue is within DOE's control, such a purpose falls
3 outside the scope of the Consent Decree; and, finally (4) that the reports request
4 information that is protected by the deliberative process privilege and thus are
5 barred by intergovernmental and sovereign immunity. ECF No. 106 at 39-40.

6 Washington contends that the funding needed reports will encourage
7 budgetary transparency and thus are suitably tailored to resolve the lack of
8 accountability illustrated by DOE's noncompliance with the Consent Decree.

9 Washington also argues that DOE's funding information is not protected by the
10 deliberative process privilege because DOE already is providing similar
11 information under the HFFACO terms.

12 Although accountability is an essential component of the Decree and DOE
13 claimed sequestration and lack of funding as unanticipated changed circumstances,
14 Washington's proposal that DOE disclose its budget requests to Congress is not
15 suitably tailored to resolve the problem of increasing accountability or providing
16 adequate funding. Regardless of any funding needed reports, Washington would
17 not have the power to change DOE's budget requests or obtain more money from
18 Congress. Therefore, the Court finds that requiring DOE to submit funding needed
19 reports to Washington is not suitably tailored to resolve the problems created by
20 the changed circumstances.

1 However, the Court agrees that DOE must be accountable to achieving the
2 milestones that it has committed to achieve in the Consent Decree. Additional
3 reporting requirements regarding DOE's progress toward completing those
4 milestones, as well as explaining why DOE cannot meet a certain milestone and
5 how it is remedying the delay, are important means of holding DOE accountable to
6 its obligations. The Court will determine the details and frequency of those
7 additional reports in the upcoming stage of these proceedings and will incorporate
8 the additional reporting requirements into the modified Consent Decree between
9 Oregon and DOE.

10 **I. Next Phase in the Proceedings**

11 In light of this Order, the parties may submit new modification proposals no
12 later than ninety (90) days from the date of this Order to address the following: (1)
13 specific milestone deadlines for constructing and achieving initial operations of the
14 WTP; (2) specific milestone deadlines for completing the retrieval of nineteen
15 SSTs; (3) specific deadlines and milestones regarding the use of the Evaporator to
16 serve as conditions precedent to requiring DOE to build additional DSTs, and the
17 number of and deadlines for construction of such DST construction; and (4)
18 specific reporting requirements to include reports containing an explanation of
19 reasons why DOE has determined that there is a serious risk that it may not meet a
20 milestone, and its proposed recovery plan for resolving the risk. The parties'
21 proposals may not incorporate any additional tasks not previously submitted to the

1 Court. The Court will not revisit any of the first three *Rufo* elements after this
2 stage in the proceedings.

3 Washington and DOE also may submit supplemental briefing, not to exceed
4 **forty pages** each, exclusive of exhibits, discussing the suitability of each
5 milestone, deadline, and reporting requirement that they propose that the Court
6 incorporate into the new modified Consent Decree. Oregon may submit
7 supplemental briefing, not to exceed **20 pages**. Washington and DOE may submit
8 response memoranda, not to exceed **20 pages** each, and Oregon may submit a
9 response brief not exceeding **10 pages**.

10 As the Court stated during oral argument and pursuant to *Ass'n of Mexican-*
11 *American Educators v. California*, 231 F.3d 572, 590 (9th Cir. 2000) (en banc), the
12 Court will appoint a panel of three experts as technical advisors, to “organize,
13 advise on, and help the [C]ourt understand relevant scientific evidence” and the
14 engineering and project management issues relevant to this case. *Fed. Trade*
15 *Comm'n v. Enforma Natural Products, Inc.*, 362 F.3d 1204, 1213 (9th Cir. 2004).
16 The Court will implement several procedural safeguards suggested by Judge
17 Tashima in his dissenting opinion in *Assoc. of Mexican-American Educators*, 231
18 F.3d at 590 (Tashima, J., dissenting). Specifically, the Court will:

19 (1) Utilize a fair and open procedure for appointing [] neutral technical
20 advisor[s]; (2) address any allegations of bias, partiality, or lack of
21 duties; (4) make clear to the technical advisor[s] that any advice [they]
give[] to the court cannot be based on any extra-record information; and

1 (5) make explicit . . . the nature and content of the technical advisor[s']
2 advice.

3 *Assoc. of Mexican-American Educators*, 231 F.3d at 590 (Tashima, J., dissenting).

4 The specific duties of the panel will be delineated in a
5 forthcoming Order of Appointment, after the members have been selected, but the
6 panel's duties will include review of both Washington and Oregon's Consent
7 Decrees with DOE as well as all of the parties' briefing in the current Modification
8 of the Consent Decree action beginning on June 17, 2014; the Court's previous
9 orders in this case; and consultation with the Court and the other advisory panel
10 members, which may be accomplished via video or telephone conference
11 meetings. The panel's duties will continue until the Order Modifying the Consent
12 Decree is entered or until the Court discharges the panel, whichever occurs first.⁴
13 Additionally, the technical advisors may not "assume the role of [expert witnesses]
14 by supplying new evidence," nor may they "usurp" the role of the Court by making
15 findings of fact or conclusions of law. *Enforma*, 362 F.3d at 1213. Federal Rule
16 of Evidence 706 will not apply to the three-member technical advisor panel. *Id.*

17 _____
18 ⁴ The Court cannot predict an exact date when the parties' briefing and the Court's
19 deliberations will conclude. However, the Court is aware that time is of the
20 essence and seeks to enter the Order Modifying the Consent Decree as
21 expeditiously as possible.

1 Both Washington and DOE may individually propose one expert to serve on
2 the panel and both Washington and DOE may agree on the third expert. If the
3 parties cannot agree on the third expert, the Court will select the third expert from
4 names submitted by the parties or discovered by the Court's own initiative.⁵ All
5 selected and proposed experts must be filed no later than **September 4, 2015**.

6 Each list of suggested experts submitted by the parties must include a disclosure of
7 any potential grounds for bias or prejudice.

8 The parties may file formal objections to each other's proposed experts no
9 later than **September 18, 2015**. The parties may request oral argument on their
10 objections by telephonic conference if deemed necessary. The parties may select
11 current or former employees to serve as that party's proposed technical advisor,
12 however, the third mutually-selected advisor may not be a current or former
13 employee of either Washington or DOE or any of its contractors. The parties may
14 object to any selection on the basis of bias. The Court will take any objections into
15 consideration when determining whether to accept or reject a party's proposed
16 expert.

17
18

⁵ The Court has declined to permit Oregon to select an expert to serve on the panel
19 because Oregon's Consent Decree with DOE only imposes reporting requirements
20 on DOE. Oregon has no authority over the cleanup at the Hanford site.

1 The technical advisors' compensation will be set forth in the Order of
2 Appointment. The parties may propose an appropriate compensation rate on
3 September 4, 2015, at the same that the parties submit their proposed experts'
4 names. The payment for the technical advisors' compensation will be set by the
5 Court after consideration of any objections by the parties and all costs will be
6 divided evenly between Washington and DOE.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Joint Motion for Clarification, **ECF No. 168**, is **GRANTED**.
- 9 2. Washington and DOE may each propose one expert to serve as a
10 technical advisor to the Court and file the name and curriculum vita of
11 that expert with the Court no later than **September 4, 2015**. The expert's
12 contact information must be submitted to the Court as an attachment
13 **under seal**.
- 14 3. Washington and DOE may mutually propose a third expert to serve as a
15 technical advisor, or alternatively, may each propose three experts from
16 which the Court may select the third technical advisor, no later than
17 **September 4, 2015**. The parties must provide the name(s) and
18 curriculum vitae of each expert to the Court. Each proposed expert's
19 contact information may be filed **under seal**.
- 20 4. All parties must submit revised Consent Decree modifications consistent
21 with the rulings in this Order no later than November 13, 2015.

- 1 5. Washington and DOE may submit supplemental briefing as described
- 2 above, not to exceed 40 pages, no later than November 13, 2015.
- 3 6. Oregon may submit supplemental briefing as described above, not to
- 4 exceed **20 pages**, no later than November 13, 2015,
- 5 7. Washington and DOE may submit response memoranda as described
- 6 above, not to exceed **20 pages**, no later than December 14, 2015.
- 7 8. Oregon may submit a response brief as described above, not to exceed **10**
- 8 **pages**, no later than December 14, 2015.
- 9 9. After all three members of the panel have been selected, the Court will
- 10 issue an Order of Appointment detailing the technical advisors' duties
- 11 and setting the rate of compensation to be paid.

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

14 **DATED** this 13th day of August 2015.

15
16 *s/ Rosanna Malouf Peterson*
17 ROSANNA MALOUF PETERSON
18 Chief United States District Court Judge
19
20
21