

## **Appendix E – Applicable Laws, Executive Orders and Policies**

### **E.1 Federal Laws and Treaties**

Relevant laws of the United States that might apply to the implementation of the land-use alternatives on the Monument are discussed in the sections that follow.

#### ***E.1.1 Treaties of the United States with American Indian Tribes of the Hanford Region***

In May and June of 1855, at Wai-I-lat-pu (near present-day Walla Walla, Washington), leaders of various Columbia Plateau American Indian tribes and bands negotiated treaties with representatives of the United States. The negotiations resulted in three treaties, one with the fourteen tribes and bands of what would become the Yakama Nation, one with the three tribes that would become the CTUIR, and one with the Nez Perce Tribe. The treaties were ratified by the United States Senate in 1859. The negotiated treaties are:

- Treaty with the Walla Walla, Cayuse, etc. (June 9, 1855; 12 Stat. 945)
- Treaty with the Yakama (June 9, 1855; 12 Stat. 951)
- Treaty with the Nez Perce (June 11, 1855; 12 Stat. 957)

The terms of all three treaties are essentially the same. Each of the three tribal organizations agreed to cede large blocks of land to the United States. The tribes retained certain lands for their exclusive use (the three reservations) and also retained the rights to continue traditional activities outside the reservations. These reserved rights include the right to fish (and erect fish-curing facilities) at usual and accustomed places. These rights also include rights to hunt, gather foods and medicines, and pasture livestock on open and unclaimed lands.

The act of treaty-making between the United States and an Indian tribe has many legal consequences for both entities. The United States recognizes the existence of the tribe as a sovereign and initiates a government-to-government relationship with the tribe. At the same time, the tribe loses some aspects of its sovereignty, such as the right to negotiate (independently of the United States) with other foreign powers. In return, the United States and the tribe enter into a trust relationship, whereby the United States assumes the responsibility to preserve the rights and resources of the tribe from incursions by private entities, states, or the federal government itself. One aspect of this trust duty is

the need to consult with the tribes concerning decisions made by the federal government that could affect tribal rights or resources. In addition to these general legal consequences of treaty-making, the individual treaty itself defines particular new roles and responsibilities of the two governments, within the terms of the new legal relationship created by the treaty.

Every federal agency that makes decisions potentially affecting the rights or resources of federally recognized American Indian tribes shares in the trust responsibility duties of the federal government. This trust responsibility includes the duty to consult with those tribes concerning the potential impacts of agency decisions. As a result, the FWS regularly consults with the CTUIR, the Yakama Nation, and the Nez Perce Tribe concerning decisions being made by the FWS on the Monument that might affect tribal rights or resources.

## ***E.1.2 International Treaties of the United States***

### *E.1.2.1 Boundary Water Treaty of 1909*

The Boundary Water Treaty (and the International Joint Commission) govern flow releases on the Kootenai River. Signed in 1909, it provides the principles and mechanisms to help resolve disputes and to prevent future ones, primarily those concerning water quantity and water quality along the boundary between Canada and the United States.

### *E.1.2.2 Columbia River Treaty of 1961*

In 1961, the United States and Canada signed the Columbia River Treaty; it was ratified in 1964. The treaty provided for building four storage dams—three in Canada (Mica, Keenleyside and Duncan) and one in the United States (Libby). The reservoirs built and operated under the treaty represent almost half the water storage capacity on the Columbia River system. The treaty, however, addresses only hydropower generation and flood control; it contains no provisions related to environmental concerns, specifically the needs of salmon.

The three Canadian storage dams provide regulated flows that enable hydroelectric projects downstream in the United States to produce additional power benefits. The treaty requires the United States to deliver to Canada one-half of these downstream power benefits—the Canadian Entitlement. The United States' obligation to deliver the Canadian Entitlement extends to 2024, the first year the treaty can be terminated with ten years notice. The Canadian Entitlement Allocation Agreements (CEAA), also executed in 1964, established how the Canadian Entitlement was to be attributed to the six federal and five non-federal downstream hydroelectric projects. The CEAs have been extended until 2024.

### *E.1.2.3 Migratory Bird Treaty Act of 1918*

The Migratory Bird Treaty Act of 1918, as amended, is intended to protect birds that have common migration patterns between the United States and Canada, Mexico, Japan and Russia. The law regulates the harvest of migratory birds by specifying factors such as the mode of harvest, hunting seasons, and bag limits. This act stipulates that, except as permitted by regulations, it is unlawful at any time, by any means, or in any manner to “kill . . . any migratory bird.” The FWS is the lead agency in implementation and enforcement of this act; other agencies consult with the FWS regarding impacts to migratory birds and to evaluate ways to avoid or minimize impacts in accordance with the FWS migration policy.

### *E.1.2.4 Pacific Salmon Treaty Act of 1985*

The Pacific Salmon Treaty Act of 1985 ratified a treaty between the United States and Canada concerning Pacific salmon. The law is intended to protect and maintain Pacific salmon fisheries by regulating the fishing season. The law establishes panels with jurisdiction over certain areas. Associated regulations close the panel area to sockeye and pink salmon fishing unless opened by panel regulations or by in season orders of the Secretary of Commerce that give the effect to panel orders.

## ***E.1.3 Federal Natural Resource Management, Cultural Resource Laws, Water Management, and Pollution Control***

### *E.1.3.1 American Antiquities Preservation Act of 1906*

The American Antiquities Preservation Act of 1906, as amended, protects historic and prehistoric ruins, monuments, and antiquities, including paleontological resources, on federally controlled lands.

### *E.1.3.2 American Indian Religious Freedom Act of 1978*

The American Indian Religious Freedom Act of 1978 reaffirms American Indians’ religious freedom under the First Amendment and sets United States policy to protect and preserve the inherent and constitutional right of American Indian tribes to believe, express and exercise traditional religions. This act also requires that federal agencies avoid interfering with access to sacred locations and traditional resources that are integral to the practice of religion.

### *E.1.3.3 Archeological and Historic Preservation Act of 1974*

The Archeological and Historic Preservation Act of 1974, as amended, protects sites that have historic and prehistoric importance.

### *E.1.3.4 Archaeological Resources Protection Act of 1979*

The Archaeological Resources Protection Act of 1979, as amended, requires a permit for any excavation or removal of archaeological resources from federal or Indian lands. Excavations must be undertaken for the purpose of furthering archaeological knowledge in the public interest, and resources removed are to remain the property of the United States. Consent must be obtained from the Indian tribe or the federal agency having authority over the land on which a resource is located before issuance of a permit; the permit must contain terms and conditions requested by the tribe or federal agency.

### *E.1.3.5 Atomic Energy Act of 1954*

The Atomic Energy Act of 1954, as amended, authorizes the DOE to establish standards to protect health or minimize dangers to life or property with respect to activities under DOE jurisdiction. The DOE has used a series of departmental orders to establish an extensive system of standards and requirements to ensure safe operation of DOE facilities.

### *E.1.3.6 Bald and Golden Eagle Protection Act of 1972*

The Bald and Golden Eagle Protection Act of 1972, as amended, makes it unlawful to take, pursue, molest, or disturb bald and golden eagles, their nests, or their eggs anywhere in the United States. A permit must be obtained from the DOI to relocate a nest that interferes with resource development or recovery operations.

### *E.1.3.7 Clean Air Act of 1970*

The Clean Air Act of 1970, as amended, is intended to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” Section 118 of the act requires each federal agency with jurisdiction over properties or facilities engaged in any activity that might result in the discharge of air pollutants to comply with all federal, state, interstate, and local requirements with regard to the control and abatement of air pollution.

### *E.1.3.8 Clean Water Act of 1977*

The Clean Water Act of 1977, as amended, was enacted to “restore and maintain the chemical, physical and biological integrity of the Nation’s water.” The CWA prohibits “discharge of toxic pollutants in toxic amounts” to navigable waters of the United States. Section 313 of the CWA requires all branches of the federal government with jurisdiction over properties or facilities engaged in any activity that might result in a discharge or runoff of pollutants to surface waters, to comply with federal, state, interstate, and local requirements. Section 404 of the CWA authorizes the ACOE to regulate, through permits, the discharge of dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 authorizes the ACOE to regulate, through permits, structures and work in navigable waters of the United States.

### *E.1.3.9 Comprehensive Conservation Study of the Hanford Reach of the Columbia River Act 1988*

Public Law 100-605, passed by Congress on November 4, 1988, authorized a study of the Hanford Reach of the Columbia River to identify the outstanding features of the Hanford Reach and its immediate environment (including fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values), and to examine alternatives for their preservation. In addition to authorizing the study, the act protected the Hanford Reach from certain development for a period of eight years. In 1996, Section 404 of Public Law 104-333, the Omnibus Parks and Public Lands Management Act of 1996, amended this from an eight year period to permanent protection from certain types of development and mitigation of other actions.

Public Law 100-605, as amended, states:

- No federal agency may construct any dam, channel, or navigation project.
- All other new federal and non-federal projects and activities shall, to the greatest extent practicable: 1) be planned, designed, located and constructed to minimize direct and adverse effects on the values for which the river is under study; and 2) utilize existing structures and facilities including, but not limited to, pipes, pipelines, transmission towers, water conduits, powerhouses, and reservoirs to accomplish the purposes of the project or activity.
- Federal and non-federal entities planning new projects or activities in the study area shall consult and coordinate with the Secretary [of the Interior] to minimize and provide mitigation for any direct and adverse effects on the values for which the river is under study.

- Upon receiving notice from the entity planning the new project or activity, the Secretary [of the Interior] shall . . . : 1) review the proposed project or activity and make a determination as to whether there will be a direct and adverse effect on the values for which the river segment is under study; and 2) review proposals to mitigate such effects and make such recommendations for mitigation as he deems necessary. If the Secretary determines that there will be a direct and adverse effect that has not been adequately mitigated, he shall notify the sponsoring entity and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate of his determination and any proposed recommendations.
- All existing projects that affect the study area shall be operated and maintained to minimize any direct and adverse effects on the values for which the river is under study, taking into account any existing and relevant license, permit, or agreement affecting the project.

The DOI, through the NPS, found the river eligible and suitable for designation as a national wild and scenic river. As such, federal agencies must comply with Section 5(d) of the Wild and Scenic Rivers Act and a 1979 Presidential Directive on avoiding or mitigating impacts to river eligible for designation into the National Wild and Scenic Rivers System.

#### *E.1.3.10 Electric Consumers Protection Act of 1986*

The Electric Consumers Protection Act amended the Federal Power Act (see Section C.1.3.13 below) to provide additional environmental protections in the licensing of hydroelectric projects. Each license is to include conditions to protect, mitigate and enhance fish and wildlife affected by the project. These conditions are to be based on recommendations received from the FWS, NOAA-Fisheries, federal land managers on whose land the project sits, and state fish and wildlife agencies (16 U.S.C. § 803(j)(1)). The FERC is empowered to resolve any instances in which such recommendations are viewed as inconsistent while according “due weight to the recommendations, expertise and statutory responsibilities” of the resource agencies.

#### *E.1.3.11 Endangered Species Act of 1973*

The Endangered Species Act of 1973, as amended, is intended to prevent the further decline of endangered and threatened species and to restore those species and their habitats. This act is jointly administered by the Departments of Commerce and Interior. Section 7 of this act requires agencies to consult with the FWS or the National Oceanic and Atmospheric Administration-Fisheries. This consultation determines whether endangered and threatened species or critical habitats are known to

be in the vicinity of a proposed action and whether an action will adversely affect listed species or designated critical habitats.

#### *E.1.3.12 Federal Insecticide, Fungicide, and Rodenticide Act of 1972*

The Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, governs the storage, use, and disposal of pesticides through product labeling, registration, and user certification.

#### *E.1.3.13 Federal Power Act of 1920*

The original Federal Power Act provides for cooperation between the FERC and other federal agencies, including resource agencies, in the licensing of hydropower projects. The FERC is authorized to issue licenses to construct, operate and maintain dams, water conduits, reservoirs and transmission lines to improve navigation and to develop power from any streams or other bodies of water over which it has jurisdiction. Following 1986 amendments (see Section C.1.3.10 above, Electric Consumer Protection Act), in deciding whether to issue a license, the FERC is required to give “equal consideration” to the following purposes—power and development; energy conservation; protection, mitigation of damage to, and enhancement of, fish and wildlife (including spawning grounds and habitat); protection of recreational opportunities; and preservation of other aspects of environmental quality.

#### *E.1.3.14 Federal Water Pollution Control Act Amendments of 1972*

The Federal Water Pollution Control Act Amendments of 1972 is the predecessor federal statute to the Clean Water Act of 1977.

#### *E.1.3.15 Fish and Wildlife Conservation Act of 1980*

The Fish and Wildlife Conservation Act of 1980, as amended, encourages all federal entities (in cooperation with the public) to protect and conserve the nation’s fish and wildlife.

#### *E.1.3.16 Fish and Wildlife Coordination Act of 1934*

The Fish and Wildlife Coordination Act of 1934, as amended, promotes more effectual planning and cooperation between federal, state, public, and private agencies for the conservation and rehabilitation of the nation’s fish and wildlife and authorizes the DOI to provide assistance.

### *E.1.3.17 Flood Control Act of 1944*

The Flood Control Act, as amended and supplemented by other flood control acts and river and harbor acts, authorizes various ACOE water development projects. This statute expressed congressional intent to limit the authorization and construction of navigation, flood control, and other water projects to those having significant benefits for navigation and which could be operated consistent with other river uses. The act authorized the construction of numerous dams and modifications to previously existing dams. The Secretary of the Interior was authorized to construct, operate and maintain irrigation projects at ACOE reservoirs and dams, in accordance with existing reclamation laws, if authorized by Congress. Surplus power from reservoir projects was to be provided to the Secretary of the Interior to be transmitted for use at the “lowest possible rates.”

### *E.1.3.18 Historic Sites, Buildings, and Antiquities Act of 1965*

The Historic Sites, Buildings, and Antiquities Act of 1965 sets national policy to preserve historic sites, buildings, and antiquities for the inspiration and benefit of United States’ citizens.

### *E.1.3.19 National Environmental Policy Act of 1969*

The National Environmental Policy Act of 1969 (NEPA), as amended, establishes a national policy that encourages awareness of the environmental consequences of human activities and promotes consideration of those environmental consequences during the planning and implementing stages of a project. Under the NEPA, federal agencies are required to prepare detailed statements to address the environmental effects of proposed major federal actions that might significantly affect the quality of the human environment.

### *E.1.3.20 National Historic Preservation Act of 1966*

The National Historic Preservation Act of 1966, as amended, provides for nomination for placement of sites with significant national historic value on the National Register of Historic Places (NPS 1988). Permits and certifications are not required under this act; however, consultation with the Advisory Council on Historic Preservation is required if a federal undertaking might impact a historic property resource. This consultation generally results in a memorandum of agreement that includes stipulations to minimize adverse impacts to the historic resource. Coordination with the State Historic Preservation Office is undertaken to ensure that potentially significant sites are properly identified and appropriate mitigation measures are implemented.

### *E.1.3.21 National Wildlife Refuge System Administration Act of 1966 (Amended by the National Wildlife Refuge System Improvement Act of 1997)*

The National Wildlife Refuge System Administration Act of 1966, as amended, provides guidelines and directives for the administration and management of all lands within the system, including “wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.” The Secretary of the Interior is authorized to permit by regulations the use of any area within the system provided “such uses are compatible with the major purposes for which such areas were established.”

### *E.1.3.22 Native American Graves Protection and Repatriation Act of 1990*

The NAGPRA directs the Secretary of the Interior to guide federal agencies in the repatriation of federal archaeological collections and collections affiliated culturally to American Indian tribes, which are currently held by museums receiving federal funding. This act established statutory provisions for the treatment of inadvertent discoveries of American Indians’ remains and cultural objects. Specifically, when discoveries are made during ground disturbing activities, the following must take place: 1) activity in the area of the discovery must cease immediately; 2) reasonable efforts must be made to protect the items discovered; 3) notice of discovery must be given to the FWS Director and the appropriate tribes; and 4) a period of 30 days must be set aside following notification for negotiations regarding the appropriate disposition of these items.

### *E.1.3.23 Occupational Safety and Health Act of 1970*

The Occupational Safety and Health Act of 1970, as amended, establishes standards to enhance safe and healthy working conditions in places of employment throughout the United States. The act is administered and enforced by the Occupational Safety and Health Administration (OSHA), an agency of the United States Department of Labor. Although the OSHA and the EPA both have a mandate to limit exposures to toxic substances, the jurisdiction of the OSHA is limited to safety and health conditions in the workplace. In general, each employer is required to furnish a place of employment free of recognized hazards likely to cause death or serious physical harm to all employees. The OSHA regulations establish specific standards telling employers what must be done to achieve a safe and healthy working environment. Employees have a duty to comply with these standards and with all rules, regulations, and orders issued by OSHA.

### *E.1.3.24 Pacific Northwest Electric Power Planning and Conservation Act of 1980*

The Pacific Northwest Electric Power Planning and Conservation Act created the Northwest Power and Conservation Council (Council)—an interstate compact agency—and directed the Council to put fish and wildlife mitigation and enhancement on a par with hydroelectric power generation in the operation of the Federal Columbia River Power System. The goals of the act include: 1) ensuring an adequate, efficient, economical and reliable power supply; and 2) protecting, mitigating and enhancing fish and wildlife harmed by hydroelectric projects. The Council is responsible for promulgating a Regional Power Plan and a Fish and Wildlife Program. When developing its Fish and Wildlife Program, the Council defers to the recommendations of fish and wildlife managers, i.e., agencies and the tribes.

The act includes a duty for federal agencies that manage, operate, or regulate hydroelectric facilities in the Columbia Basin to provide “equitable treatment” for fish and wildlife with the other purposes for which the hydropower facilities are managed and operated. The Council describes equitable treatment as “meet[ing] the needs of salmon with a level of certainty comparable to that accorded the other operational purposes.”

### *E.1.3.25 Wild and Scenic Rivers Act of 1968*

The Wild and Scenic Rivers Act of 1968, as amended, protects selected national rivers possessing outstanding scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values. These rivers are to be preserved in a free-flowing condition to protect water quality and for other vital national conservation purposes. This act also instituted a National Wild and Scenic Rivers System, designated the initial rivers within the system, and developed standards for the addition of new rivers in the future.

## **E.2 State Laws**

State and local statutes also apply to activities on the Monument when federal law delegates enforcement or implementation authority to state or local agencies. In general, state laws do not apply to the federal government based on the National Supremacy Clause that reads, “This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding” (Article 4, U.S. Constitution).

### ***E.2.1 Growth Management Act of 1989***

Most planning by local governments falls under the State of Washington Growth Management Act (GMA), which established a state-wide planning framework and created roles and responsibilities for planning at the local, regional, and state levels. The GMA required the largest and fastest growing counties (counties with more than 50,000 people or with a population growth of more than twenty percent in the past ten years) and cities within those counties to develop new comprehensive plans. Counties not required to plan may elect to do so. Benton, Franklin, and Grant Counties, along with the city of Richland, have elected to plan under the GMA requirements. Jurisdictions under GMA must prepare comprehensive plans that project growth for a minimum of twenty years.

### ***E.2.2 Shoreline Management Act of 1971***

The Shoreline Management Act of 1971 uses authority passed to the state by the federal Rivers and Harbors Act of 1899. Section 10 of the Rivers and Harbors Act prohibits the unauthorized obstruction or alteration of any navigable waters of the United States. Examples of activities requiring a United States Army Corps of Engineers permit include constructing a structure in or over any waters of the United States, excavation or deposit of material in such waters, and various types of work performed in such waters, including fill and stream channelization. The state is considered the owner of all navigable waterways within its boundaries.

The state has passed regulatory responsibility for the Shoreline Management Act to the affected county. Counties in Washington State regulate the shoreline (i.e., from the high-water mark to the low-water mark) through each county's Shoreline Management Master Plan and a shoreline permit system consistent with WDOE guidelines.

### ***E.2.3 State Environmental Policy Act of 1971***

The Washington State legislature enacted the State Environmental Policy Act of 1971 (SEPA). The statute was amended in 1983, and new implementing regulations (the SEPA rules) were adopted and codified by the WDOE in 1984 as Washington Administrative Code 197-11. The purpose and policy sections of the statute are extremely broad, including recognition by the legislature that “each person has a fundamental and inalienable right to a healthful environment. . . .” SEPA contains a substantive mandate that “policies, regulations, and laws of the State of Washington shall be interpreted and administered in accordance with the policies set forth.”

The SEPA applies to all branches of state government, including state agencies, municipal and public corporations, and counties. It requires each agency to develop procedures implementing and supplementing SEPA requirements and rules. Although the SEPA does not apply directly to federal actions, the term “government action” with respect to state agencies is defined to include the issuance

of licenses, permits, and approvals. Thus, as in the NEPA, proposals (federal, state, or private) are evaluated, and may be conditioned or denied through the permit process, based on environmental considerations. The SEPA does not create an independent permit requirement, but overlays all existing agency permitting activities.

## **E.3 Executive Orders**

This section identifies Presidential Executive Orders that clarify issues of national policy and provide guidelines relevant to Monument land-use planning.

### ***E.3.1 Executive Order 11593, Protection and Enhancement of the Cultural Environment***

Executive Order 11593 requires federal agencies to direct their policies, plans, and programs in a way that preserves, restores, and maintains federally owned sites, structures, and objects of historical or archaeological significance.

### ***E.3.2 Executive Order 11988, Floodplain Management***

Executive Order 11988 directs Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for actions undertaken in a floodplain. This order further directs that floodplain impacts are to be avoided to the extent practicable.

### ***E.3.3 Executive Order 11990, Protection of Wetlands***

Governmental agencies are directed by Executive Order 11990 to avoid, to the extent practicable, any short- and long-term adverse impacts on wetlands wherever there is a practicable alternative.

### ***E.3.4 Executive Order 12372, Intergovernmental Review of Federal Programs***

Executive Order 12372 applies to state review of NEPA documents and to the coordination of state and federal NEPA processes. The goal of this Executive Order is to foster an intergovernmental partnership and a strengthened coordination and consultation process.

### ***E.3.5 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations***

Executive Order 12898 directs all federal agencies, to the greatest extent practicable and permitted by law, to achieve environmental justice by identifying and addressing disproportionately high and adverse human health or environmental effects of agency programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions. This order directs each federal agency, to the extent permitted by existing law, to develop strategies to identify and address environmental justice concerns. The order further directs each federal agency, to the extent permitted by existing law, to collect, maintain, analyze, and make available information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations. This action is required when these facilities or sites become the subject of a substantial federal environmental administrative or judicial action.

### ***E.3.6 Executive Order 13007, Indian Sacred Sites***

Executive Order 13007 directs federal agencies to take measures to protect and preserve American Indian tribes' religious practices. Federal agencies shall, to the extent practicable and permitted by law, and when consistent with essential agency functions, accommodate access to and ceremonial uses of sacred sites by American Indian tribes' religious practitioners. Further, the Executive Order states that federal agencies will comply with presidential direction to maintain government-to-government relations with tribal governments.

### ***E.3.7 Executive Order 13112, Invasive Species***

Issued on February 11, 1999, Executive Order 13112 is intended to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause. The Executive Order established an Invasive Species Council which created a National Invasive Species Management Plan detailing and recommending

performance-oriented goals, objectives and specific measures of success for federal agencies concerned about invasive species.

### ***E.3.8 Executive Order 13175, Consultation and Coordination with Indian Tribal Governments***

Executive Order 13175 further ensures that federal government agencies recognize the unique legal relationship the United States has with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, other Executive Orders, and court decisions. It once again recognizes the right of Indian tribes to self-government and to “exercise inherent sovereign powers over their members and territory.” It directs federal agencies to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

## **E.4 Presidential and Executive Branch Policies**

President Clinton issued a memorandum to the heads of executive departments and agencies regarding government-to-government relations with tribal governments on April 29, 1994. This memorandum directed executive departments and agencies to implement activities that affect tribal rights in a “knowledgeable, sensitive manner respectful of tribal sovereignty.” The memorandum outlined principles for executive departments and agencies to follow in their interactions with tribal governments and clarified the responsibility of the federal government to operate within a government-to-government relationship with federally recognized American Indian tribes.

The United States Department of Justice reaffirmed a long-standing policy regarding the relationship between the federal government and American Indian tribes (61 FR 29424). The policy states that the United States recognizes the sovereign status of Indian tribes as “domestic dependent nations” from its earliest days. The Constitution recognizes Indian sovereignty by classifying Indian treaties among the “supreme Law of the Land,” and establishes Indian affairs as a unique area of federal concern.

The FWS American Indian policy commits the FWS to working with tribal governments on a government-to-government basis, recognizes the federal trust relationship with tribes and tribal members’ treaty rights, and commits the FWS to consultation with tribes regarding agency activities that could potentially affect the tribes.

## **E.5 Federal and State Laws and Executive Orders That May Apply to the Department of Energy**

As the underlying land owner, the DOE is a joint manager of the Monument. There are numerous other laws and orders that apply to the DOE, especially with regard to environmental cleanup of hazardous wastes.<sup>191</sup> These include:

- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Federal)
- Emergency Planning and Community Right-to-Know Act of 1986 (Federal)
- Federal Urban Land-Use Act of 1949 (Federal)
- Hazardous Waste Management Act of 1976 (State)
- Model Toxics Control Act of 1989 (State)
- National Defense Authorization Act of 2002 (Federal)
- Noise Control Act of 1972 (Federal)
- Nuclear Waste Policy Act of 1982 (Federal)
- Pollution Prevention Act of 1990 (Federal)
- Resource Conservation and Recovery Act of 1976 (Federal)
- Safe Drinking Water Act of 1974 (Federal)
- Toxic Substances Control Act of 1976 (Federal)
- Washington Clean Air Act of 1991 (State)
- Water Pollution Control Act of 1945 (State)
- Executive Order 12088, Federal Compliance with Pollution Control Standards
- Executive Order 12580, Superfund Implementation
- Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements
- Executive Order 12866, Regulatory Planning and Review
- Executive Order 12875, Enhancing the Intergovernmental Partnership
- Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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<sup>191</sup> These laws and orders also apply to the FWS. However, due to the differing missions of the FWS and the DOE, these laws and orders impact the DOE to a greater extent.

## **E.6 International Agreements**

### ***E.6.1 Pacific Northwest Coordination Agreement with United States Utilities***

The Pacific Northwest Coordination Agreement (PNCA) is a direct outgrowth of the Columbia River Treaty. The PNCA, also signed in 1964, is a complex contract that provides for coordination of electric power production on the Columbia River to maximize reliability and power production and accommodates non-power objectives.

### ***E.6.2 Non-Treaty Storage Agreement with Canada***

This agreement governs the coordination and use of 4.5 million acre-feet of water storage behind Mica and Arrow Dams in British Columbia.