

# **MEMORANDUM OF UNDERSTANDING**

## **MYSTIC LAKE PROJECT 2301**

Fisheries and aquatic habitats protection, mitigation and enhancement  
resource stewardship program

December 29, 2023

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## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into by and between NORTHWESTERN CORPORATION, a Delaware Corporation, d/b/a NorthWestern Energy (“NorthWestern”) and the MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS (“MFWP”), MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY (“MDEQ”), and the UNITED STATES FOREST SERVICE (“USFS”) collectively referred to herein as “TAC Agencies”.

### WITNESSETH:

WHEREAS, PPL Montana, filed an application with the Federal Regulatory Commission (“FERC”) on December 15, 2006 for a new license for its Mystic Lake hydroelectric facility, P-2301 (the “Mystic Lake Project”); and

WHEREAS, the FERC issued an Environmental Assessment August 17, 2007 and an Order Issuing New License on December 17, 2007, for the Mystic Lake Project as subsequently amended (the “FERC License”), and

WHEREAS, PPL Montana received the FERC approval on March 25, 2014 to transfer and on November 18, 2014 transferred its FERC License for the Mystic Lake Project to NorthWestern; and

WHEREAS, as the parties hereto acknowledge that the FERC License for the Mystic Lake Project may be revised on rehearing and may be further revised from time to time over the term of this MOU; and

WHEREAS, the FERC License provides that NorthWestern will have responsibilities for protection, mitigation and enhancement (PM&E) of the fisheries and aquatic habitats in relation to the FERC License; and

WHEREAS, NorthWestern and the TAC Agencies have been successfully implementing the Mystic Lake Project's PM&E measures since 2007; and

WHEREAS, in the FERC License requires PM&E measures that should be performed by NorthWestern in consultation with agencies; and

WHEREAS, NorthWestern, as licensee for the Mystic Lake Project accepts the obligations imposed by the FERC License and understands that implementation of PM&E measures contained in the FERC License (or under this MOU) shall occur in collaboration with agencies responsible for resource management; and

WHEREAS, the PM&E measures in the FERC License were developed in consultation with agencies and other stakeholders and address comprehensive measures for resource management, however unforeseen circumstances may arise that necessitate change; and

WHEREAS, this MOU addresses the implementation of PM&E measures for a ten-year period beginning January 1, 2024 through December 31, 2033; and

WHEREAS, the parties to this MOU agree to seek cooperation leading to more efficient and effective resource management than could be achieved individually; and

WHEREAS, having agreed to enter into this MOU, the parties hereby acknowledge that they do not intend this MOU to create contractual obligations in conflict with the Mystic Lake Project's FERC License.

NOW, THEREFORE, the parties agree as follows:

I. Purpose.

A. The purpose of this MOU is to establish the terms and conditions for collaboration between NorthWestern and TAC Agencies in NorthWestern's implementation of PM&E measures for fisheries and aquatic habitats resources specified in the FERC License (or under this MOU).

B. This MOU provides for the operation of the Mystic Lake Fisheries, Aquatic Habitats and Water Quality Technical Advisory Committee (the "TAC") made up of representatives of NorthWestern and TAC Agencies. The TAC shall function as the means for collaboration on the expenditure of mitigation funds and the implementation of PM&E measures for fisheries, aquatic habitats and water quality as specified in the FERC License (or under this MOU).

C. This MOU provides for anticipated allocation of annual TAC funds provided by NorthWestern. NorthWestern will bear ultimate responsibility for ensuring that the FERC License conditions and PM&E measures are implemented in a manner consistent with requirements of the FERC License.

D. To the extent consistent with the FERC License, this MOU sets out provisions for adaptive implementation of PM&E measures that may be appropriate due to advancement in technology, project experience that dictates alternative methods of PM&E implementation, and adequate response to unforeseen circumstances or discoveries during the term of the FERC License.

## II. Definitions.

A. Resource Management - The term "resource management" used herein shall refer to management of fisheries and aquatic habitats.

B. Adaptive Management (AM) – Adaptive Management is embodied by this MOU through prior consultation with state and federal agencies in preparation of the Mystic Lake Project License Application. Adaptive management is natural resource management where decisions are made as part of an ongoing science-based process. Results are used to modify future management methods and policy. As improved conservation technologies and science become available or new management priorities are collaboratively established, PM&E funds may be redirected to accommodate the changing technology and needs of the resource and society within the requirements of the FERC License. The adaptive management process emphasizes collaboration but still places ultimate responsibility upon NorthWestern to comply with the FERC License and other applicable laws. NorthWestern believes that this management approach is entirely consistent with the spirit of the Federal Power Act and the public interest as expressed directly through TAC Agencies.

C. Technical Advisory Committees (TAC) – The TAC is made up of representatives from NorthWestern and TAC Agencies in particular, MFWP, MDEQ, and USFS. Representatives of TAC Agencies and their replacements shall be determined by each participating TAC Agency. Initial members of the TAC are listed in Exhibit "A". At their discretion, TAC Agencies may replace their respective representatives from time to time.

D. Steering Committee –The Mystic Lake Project Steering Committee consists of representatives of NorthWestern listed in Exhibit "A". At its discretion, NorthWestern may replace its representatives from time to time.

E. Adaptive Management Funding Accounts (AMFA) – The TAC will apply the concept of adaptive management where applicable, when determining PM&E priorities and schedules for funds to be paid out of the AMFA.

F. Protection, Mitigation and Enhancement (PM&E) Measures – PM&E measures referred to herein are a specific reference to those PM&E measures tentatively agreed to by NorthWestern and agencies and otherwise required by the FERC License.

### III. Authority.

#### A. Authority to enter into MOU.

1. NorthWestern is authorized to enter this MOU by its execution by its authorized representative signing below.
2. MFWP is authorized to enter into this MOU pursuant to Montana Code Annotated Sections 23-1-102, 23-1-107, and 87-1-201.
3. MDEQ is authorized to enter into this MOU pursuant to Montana Code Annotated 75-20-204.
4. USFS is authorized to enter into this MOU pursuant to the Federal Power Act (FPA, P.L. 66-280, 6/5/20), Sec. 4(e); Granger-Thye Act (G-T, P.L. 81-478, 4/24/50), Sec. 5(b); and Federal Land Policy and Management Act of 1976 (FLMPA, P.L. 94-579, 10/21/76) Title III, Sec. 302, Title V.

B. Funding, authority, and operating limitations. It is understood that operating plans, procedures, schedules and agreements may be developed, as needed, by the participants to implement the specific objectives of this MOU. Nothing in this MOU or subsequent plans, procedures, or agreements will be construed as affecting the authorities of NorthWestern or participants as binding beyond their respective authorities or prerogatives for decision-making, or to require any of the participants to obligate or expend funds in excess of appropriated funds.

C. Limitations. Nothing herein shall be construed as obligating any Federal agency to expend or as involving the United States in any contract or other obligations for the future payment of money in excess of appropriations authorized by law and administratively allocated for any work under this MOU.

D. If one or more of the TAC Agencies fails to fulfill any of its commitments made pursuant to this MOU, NorthWestern reserves the right to withdraw from this MOU or to renegotiate the terms set forth herein.

#### IV. TAC Operations.

A. NorthWestern Responsibility. NorthWestern will be responsible for managing PM&E adaptive management funding accounts and providing technical input related to the implementation of PM&E measures for fisheries and aquatic habitats for the Mystic lake Project. NorthWestern will also be responsible for seeing that PM&E funds are authorized and spent for appropriate projects that comply with the intent and scope of the FERC License and this MOU. In consultation with TAC members, NorthWestern will convene, facilitate and chair TAC meetings to fulfill implementation of this MOU, and, with regular disclosure to TAC members, manage TAC Adaptive Management Funding Accounts. NorthWestern shall chair the TAC.



B. NorthWestern will provide for implementation of PM&E measures in the schedule and amounts estimated in the attached Exhibit B. Annual funds that are not spent by a TAC in one year will be carried over to a TAC Reserve Account for use by the TAC for the same purpose as annual funds. NorthWestern will allow a maximum of \$25,000 to accrue in the TAC Reserve Account. All dollar amounts are expressed in terms of January 1, 2024 dollars. Annual payments will be escalated each year beginning in January 2025 by 2.5% annually. All funding accounts will be managed by NorthWestern as internal work order accounts. However, no AMFA funds will be spent without prior approval from the appropriate TAC.

1. Annual and One-time payments. For the purpose of this MOU, NorthWestern anticipates that funding for implementation of PM&E measures in the FERC License and this MOU will be provided within the schedule and amounts described in Exhibit "B". Proposed funding levels are estimated by NorthWestern to be adequate to implement PM&E measures in the FERC License (or under this MOU) during the 10 year MOU period. However, increases or decreases in MOU funding, provided by NorthWestern, to comply with FERC-mandated PM&E measures in the FERC License can be addressed within provisions of this MOU. Factors such as monitoring or study results, changing technology, or other needs of the resource may necessitate changes in funding amounts and schedules over time. This MOU is not intended to relieve NorthWestern of the obligation to make such funding changes. NorthWestern further anticipates that this MOU may be renewed or revised after 10 years (i.e. in 2033) of License implementation. MOU renewal (after 2033) with appropriate PM&E funding level commitments will be based on NorthWestern's remaining compliance requirements within the FERC License (or under this MOU).

2. NorthWestern Steering Committee Funds. NorthWestern will manage responsibilities on the TAC, coordinate implementation of all PM&E measures, and for consultation with the FERC, state and federal agencies, and NGO's. NorthWestern will be responsible for supporting these positions to provide assistance as needed and required

for adequate project management. The TAC will be responsible for advising NorthWestern should NorthWestern not fulfill its responsibilities in this regard.

3. NorthWestern administrative and other support. NorthWestern will provide reasonable administrative, clerical and support facilities for the TAC.

C. Meetings and Voting. The TAC will meet on a regularly scheduled basis to develop annual work plans, prioritize the implementation of the FERC License and MOU PM&E measures, and discuss the annual accounting of how funds have been used to implement PM&E measures. A member of the NorthWestern Steering Committee shall chair such TAC meetings. Decisions of the TAC require a quorum to be present in person or by written proxy. A quorum is herein defined as at least one TAC representative from NorthWestern, MFWP, MDEQ, and USFS.

D. Meeting participation. All TAC meetings are open to the general public. Subcommittees and working groups may be organized as appropriate. Subcommittees and working groups may include staff personnel of NorthWestern, TAC Agencies, outside consultants or others. Any such subcommittees or working groups will be advisory to their respective TAC.

E. TAC decision-making. NorthWestern will bear ultimate responsibility for ensuring that the FERC License conditions and PM&E measures are implemented and funded in a manner consistent with requirements of the FERC License and this MOU; in the event of any conflict between the FERC License and this MOU, the FERC License shall control. NorthWestern will seek to attain consensus among the members of each TAC in implementing PM&E measures. Multiple representatives of NorthWestern and TAC Agencies may actively participate in TAC meetings. However, NorthWestern and each TAC agency will designate one person to officially represent their organization (vote) at each TAC meeting. All parties commit to a good-faith effort to resolve any

differences in a timely and cooperative manner. In the event a consensus cannot be achieved, TAC may elect to enter voluntary dispute resolution as set forth below:

Any dispute that arises in the implementation of this MOU and any of the PM&E measures, or in any committees formed under this MOU, shall, in the first instance, be the subject of informal negotiations between the affected parties. If negotiations fail, a party or parties may refer a dispute to the TAC, along with a written statement outlining the dispute and any areas where the parties are in agreement. The TAC concerned with the particular dispute shall be convened by NorthWestern and, will develop consensus recommendations for the resolution of the dispute. During this informal dispute resolution period, any party may request the Director of FERC's Office of Dispute Resolution, or the Director's Designee, to participate in the negotiations to assist in resolving the dispute. If no resolution is reached during the informal process, the disputing party or parties shall have thirty (30) days following the notice of the TAC recommendations to refer the dispute to FERC for expedited dispute resolution. All disputes taken to FERC under this MOU shall be governed by the alternate means of dispute resolution contained in FERC's Rules of Practice and Procedure, 18 C.F.R. Section 385.604, as amended from time to time or any succeeding FERC regulations governing alternative means of dispute resolution. The proposed TAC recommendations and all supporting documents, may be submitted to the FERC. If a disputing party does not refer a dispute to the FERC within the thirty-day (30) time period, the TAC recommendations will become binding on all parties.

F. Conduct of Meetings. Guidelines for the conduct of TAC meetings are attached in Exhibit "C" as may be amended from time to time by mutual consent of NorthWestern and TAC agencies.

V. General provisions.

A. Re-openers – The parties to this MOU generally agree they will not invoke or rely upon any re-opener clause contained in the FERC License with respect to any matter covered by this MOU unless the party determines that new information reasonably demonstrates that applicable provisions of this MOU are inconsistent with the public interest and affords the TAC, at least ninety (90) days to consider the new information and that party's position through the procedures established under IV.D.

Said party shall not be required to comply with this ninety (90) day notice provision if it believes an emergency situation exists, or is necessary to comply with the Endangered Species Act. Notwithstanding the provision of this paragraph, the parties agree that a TAC Agency may seek re-opening of the FERC License as necessary to comply with any state or federal law and implementing regulations not pre-empted by the Federal Power Act, but this provision shall not be deemed to represent NorthWestern's or other parties consent to any such request by a TAC agency. In addition, the USFWS may seek re-opening of the FERC License pursuant to its authority under Section 18 of the Federal Power Act, but this provision shall not be deemed to represent NorthWestern's or other parties consent to any such request by the USFWS. If an aquatic species impacted by the Mystic License were to be listed, or petitioned for listing under the Endangered Species Act the USFWS would be consulted by NorthWestern to become a TAC member.

B. Cooperate in Studies – The parties to this MOU agree to cooperate in conducting studies and monitoring activities implemented pursuant to the FERC License and in providing reasonable assistance in any approval or permitting process that may be required for implementation of specific PM&E measures; provided that any of TAC

Agencies are not, by this commitment compromising or relinquishing any legal authority they may have in those situations where they may be the permitting agency.

C. Separate agreements. For each PM&E measure implemented pursuant to this License, the parties understand and agree that separate agreements between NorthWestern and participating agencies may be executed as necessary to complete that project.

D. Term.

1. Duration. This MOU shall be effective as of January 1, 2024 and shall remain in effect until the earlier of:

- a. December 31, 2033
- b. Termination of the Mystic Project License.

2. Renewal of MOU. MOU may be renewed by mutual consent of NorthWestern and TAC Agencies prior to, or after January 1, 2033.

E. Termination of the MOU. This MOU may be terminated at any time by mutual written agreement of all parties.

F. Binding effect. As set forth herein, this MOU shall inure to the benefit of, and shall be binding upon the respective successors and permitted assigns of the parties hereto.

G. Assignment. The parties hereto may not assign this MOU without consent of other parties; provided that such consent will not be unreasonably withheld and provided that NorthWestern may assign its rights and obligations hereunder to any other entity that becomes licensee of the Mystic Lake Project under the FERC License.

H. Modification. This MOU may be modified only in writing by mutual agreement of all the parties.

I. Execution in counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be one and the same instrument.

J. Precedent. Parties to this MOU understand and agree that this MOU establishes no principles or precedence with regard to any issue addressed herein or with regard to any party's participation in any future proceeding and that none of the parties to this agreement will cite either this MOU as establishing any principles or precedents except with respect to matters to which the parties have herein agreed.

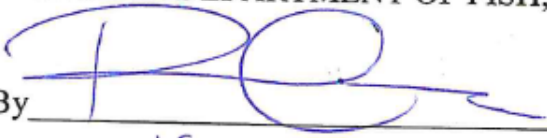
K. NorthWestern will keep the TAC reasonably informed of the status of License compliance filings and, in the event that any such filing is disputed, NorthWestern shall notify all parties of the dispute and make copies of its filing available to all parties.

IN WITNESS WHEREOF, the parties have executed this Mystic Lake Project MOU on the dates indicated below.

NORTHWESTERN CORPORATION

By  Mary Gail Sullivan  
Its Director, Environmental & Lands  
Permitting & Compliance  
Date 12/19/2023

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By   
Its Chief of Staff (Acting)  
Date 12/20/23

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

By Keenan Storrar Keenan Storrar  
Its 401 WQC coordinator  
Date December 29, 2023

UNITED STATES FOREST SERVICE

By Mary Erickson  
Its MARY Digitally signed by MARY  
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**EXHIBIT “A”**

Initial members of the Steering and Technical Advisory Committee (TAC):

Mystic Lake NorthWestern Steering Committee

Andy Welch (NorthWestern)

Jon Hanson (NorthWestern)

Jordan Tollefson (NorthWestern)

Mystic Lake Fisheries and Aquatic Habitats TAC (designated representative of)

NorthWestern

MFWP

MDEQ

USFS



**EXHIBIT “B”**

Adaptive Management Fund Accounts  
NorthWestern 10 Year (year 2024-2033) Commitment

Mystic MOU TAC funding 2024 thru 2033  
(2.5% increase in annual funding post 2024)  
MOU TAC funding begins January 1, 2024

	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>	<b>2032</b>	<b>2033</b>
<b>Mystic Fisheries Budget</b>	\$25,000	\$25,625	\$26,265	\$26,922	\$27,595	\$28,285	\$28,992	\$29,717	\$30,460	\$31,221

## EXHIBIT "C"

### CONDUCT OF TAC MEETINGS

- I. Agendas. Agendas for TAC meetings will be developed by NorthWestern in consultation with agency TAC members.
- II. Meeting Summaries. NorthWestern may prepare TAC meeting summaries. The summaries will identify action items and decisions reached by the TAC. Summaries will be sent to TAC members as a mechanism for information exchange and coordination.
- III. Open Meetings. Non-TAC members (general public) can attend and participate in Mystic Lake TAC meetings. However, only TAC members have voting status per quorum provisions in Section IV.B of this MOU.
- IV. Caucus. Any TAC member may declare a caucus break. Caucus members will be asked to conclude their discussions in a timely manner so as not to unduly restrict the completion of the scheduled meeting agenda. Caucusing may continue as needed outside of and independent of TAC meetings.
- V. Good Faith. TAC members agree to act in good faith with respect to the concerns of the others to reach an agreement within this consultation process. Proposals, positions taken, written statements, and materials used will not be considered as TAC commitments unless TAC agreement is achieved. TAC members agree to participate in a free, open, and mutually respectful exchange of ideas, views, and information in attempting to achieve agreement. Personal attacks and prejudicial statements will not be tolerated. All TAC participants will be given an equal opportunity to be heard.
- VI. Public Statements. TAC members may describe proposals under discussion and develop positions in consultation with constituencies as required by respective agency process. With the exception of information shared in confidence, a participant may make such public statements, including to the press, describing topics under discussion and their own views about these topics. No TAC member will describe or characterize the

position of any other party in public statements or in the discussions with the press. As an exception, in any statements that a TAC member makes in an open public meeting to inform its governing entity, that member may describe the position of other participants. In doing so, participants shall consult those other participants and make a good faith effort to accurately describe their positions. All members agree not to divulge information shared by others in confidence nor will any party seek to place blame on any other party, even if that party withdraws from the process or the process is discontinued.

VII. Rights in Other Forums. Participation in a TAC does not limit the right or obligations of any individual or organization. Members will make a good faith effort to notify one another in advance, if litigation, or other action outside the committee process will be initiated, which will affect the terms of agreements or actions being taken by the committee.

VIII. Meeting Process. TAC meetings will be chaired and facilitated by NorthWestern. NorthWestern may also provide a meeting facilitator to conduct the meetings. NorthWestern or facilitator will work to insure that the TAC consultation process runs smoothly. The role of NorthWestern (or its designated facilitator) includes developing agendas, chairing meetings, working with TAC members both at and between meetings to resolve questions and to encourage and assist progress in accomplishing TAC goals, resolving any impasses that may arise, preparing meeting summaries, assisting in the location and circulation of background materials and materials prepared by participants, and other functions at the request of TAC members. In the event an outside facilitator is used, NorthWestern will pay for facilitation services with Steering Committee funds.

IX. FERC Communication Process. NorthWestern will, in consultation with TAC agencies, maintain appropriate correspondence and consultation with FERC staff and make required written filings with the FERC regarding implementation of, and any amendments to, the FERC License. TAC agencies also have an equal right to consult with FERC on Mystic Lake Project issues within the discretion of their respective agency and FERC rules governing consultation.

X. Public Participation. Each TAC meeting agenda will provide a specific time period for public comment. Members of the public will be able to observe TAC meetings in progress and offer comments during a specified public comment period at the invitation of TAC member(s). TAC may form subgroups to work on specific PM&E items and may choose to include members of the public in the subgroup process. TAC members representing public agencies will be expected to reflect, take actions, and represent positions that reflect their respective public involvement responsibilities. Further, TAC members will assume responsibility as appropriate for directing public comment and public participation through appropriate forums within their respective agencies.