RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-023
RECEIPT DATE: AUG 30 2001

Curtis Magee
38034 Stenhammer Dr.
Fremont, CA 94536

Bonneville Power Administration,

Quoting from The Fish and Wildlife Implementation Plan Draft EIS (DEIS) "Despite the efforts of the BPA and other regional entities in the Pacific Northwest, some species of fish and wildlife continue to decline." I want to see the new direction of policy for the BPA to be based on the Weak Stock Focus. I want to see the weakest fish populations saved first. Emphasis should be placed upon breaching the four Lower Snake dams allowing a natural current to carry salmon smolts to the Pacific Ocean. The 4 or 5% of generation capacity these dams provide the BPA could easily be made up with conservation measures. The four lower Snake dams are in violation of the Clean Water Act. Over 3 billion dollars has been spent on failed recovery measures. Extinction is not an option, apply and follow the Weak Stock Policy.

#1
#2
#3
#4

Sincerely yours,

Curtis M. Magee

Curtis Magee

BOARD OF COUNTY COMMISSIONERS

LINCOLN COUNTY

STATE OF MONTANA

RITA R. WINDOM, Commissioner
DISTRICT NO. 1, LIBBY

JOHN C. KONZEN, Commissioner
DISTRICT NO. 2, TROY

MARIANNE B. ROOSE, Commissioner
DISTRICT NO. 3, EUREKA

CORAL M. CUMMINGS
CLERK OF THE BOARD AND COUNTY RECORDER

RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-024
RECEIVED:
AUG 30 2001

August 23, 2001

Communications
Bonneville Power Administration-KC-7
P O Box 12999
Portland, OR 97212

RE: BPA Fish & Wildlife Implementation Plan Draft EIS

Thank you for providing me with a copy of the Plan. I have spent some time in the document. I also attended the recent meeting of the Northwest Power Planning Council in Polson specifically to hear the presentation by BPA on the Draft EIS.

To my dismay and disgust, I believe I have squandered a great deal of my time and the taxpayer's money on both endeavors. The plan as presented is a waste of ratepayer's money. What I see here is a dusting off of an old plan and presenting it with a new look. The premise hasn't changed however. **It is the same old stuff!** I could take the time to comment on many areas but, once again, I have done that before many times. #1

Rather than comment on what is in this plan, I am going to comment on what isn't here. Since the focus or emphasis is on *anadromous fish, especially ESA-listed species,* what isn't here is a thorough discussion of the issues regarding resident fish, particularly in the headwaters. Where is the discussion on bull trout, sturgeon, cutthroat, ling, etc? Where is the discussion on prioritizing current needs of fish and making provision for changing priorities to accommodate resident fish? Where is the measurement for success for resident fish? #2

Where is the discussion on flow augmentation effects on the Kootenai River and the residents along the river? Where is the review of the reservoir elevations complete with statistics on harm to aquatic life, resident fisheries, economic concerns, and health issues resultant to dust? Where is the discussion on VAR-Q for Libby and Hungry Horse? The VAR-Q concept is called for under both of the BIOPs yet this EIS fail to examine it. #3 #4 #5

Tribal rights are discussed regarding anadromous fish, but where is the discussion of tribal fishing rights and non-tribal fishing opportunities for resident fish? The Flathead and the Kootenai fishing opportunities are part of our custom, culture, and economic base. #6

In essence, this document treats each of the Libby and Hungry Horse dams as a storage tank with a nice big faucet to be turned on for downstream interests. **Nothing new.**

Sincerely,

Rita R. Windom

Rita R. Windom, Chairman

Cc: Stan Grace, NWPPC

512 CALIFORNIA AVENUE
LIBBY, MONTANA 59923
(406) 293-7781 • (406) 293-8577 Fax
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WASHINGTON STATE DEPARTMENT OF
Natural Resources

DOUG SUTHERLAND
Commissioner of Public Lands

RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-025
RECEIPT DATE: AUG 31 2001

August 31, 2001

Charles Alton, Project Manager KEC-4
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

Subject: Fish and Wildlife Implementation Plan Draft EIS
Bonneville Power Administration

Dear Mr. Alton:

Thank you for the opportunity to review and comment on your Fish and Wildlife Implementation Plan Draft EIS, dated May 2001. The purpose of this document is to provide a comprehensive and consistent approach to fish and wildlife mitigation and recovery efforts associated with Bonneville Power Administration (BPA) management activities in ten Western States and British Columbia.

Non-federal, forested lands within Washington State are covered by the Department of Natural Resources Forest Practices Act (RCW 76.09), which affords protection to forest soils, fisheries, wildlife, water quality and quantity, air quality, recreation, and scenic beauty while maintaining a viable forest products industry (76.09.010 RCW). The first Washington State Forest Practices rules were adopted in 1976 and have been revised many times over the years. In May 2001, the Washington State Forest Practices Board adopted permanent rules implementing the "Forests and Fish Report" passed by the Legislature two years ago. The rules are designed to provide protection for aquatic resources and to ensure compliance with the Endangered Species Act and the Clean Water Act.

The proposed Fish and Wildlife Implementation Plan Final EIS and any associated Biological Opinions should address how Washington State Forest Practices rules will be incorporated into future plans conducted in Washington State. #1 While it is clear that the alternatives described in the EIS are designed to provide general guidance for future BPA operations, it should also be made clear that future site-specific plans on all non-federal forested lands in Washington State will be consistent with Washington State Forest Practices rules, specifically those sites where easements on private and state forested lands in Washington are obtained. We strongly encourage you to require the equivalent or higher protection for salmonids from BPA as provided by the Forests and Fish report #2

FOREST PRACTICES ▮ 1111 WASHINGTON ST SE ▮ PO BOX 47012 ▮ OLYMPIA, WA 98504-7012
FAX: (360) 902-1789 ▮ TTY: (360) 902-1125 ▮ TEL: (360) 902-1400
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RECYCLED PAPER

in order to promote consistent and effective salmon recovery efforts by the federal services in the Northwest. #2

The Forests and Fish report dated April 29, 1999 is available on the Washington State Department of Natural Resources web site at: http://www.wa.gov/dnr/ , and the revised Forest Practices Rules are currently available on-line at: http://wsl.leg.wa.gov/pub/wac ; printed copies should be available in mid-September from Patricia Anderson at (360) 902-1413. If you have any questions concerning the Washington Department of Natural Resources comments, please feel free to contact me at (360) 902-1849.

Sincerely,

Prue Hathaway By Kim Sellers

Prue Hathaway
Project Administrator

kas

cc. Ashley DeMoss, Assistant Manager
Gretchen Robinson, Project Coordinator

Attachment

Kuehn, Ginny -KC-7

RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-026
RECEIVED: AUG 31 2001

'om: Edward B. Sinclair [edsiii@easystreet.com]
ent: Friday, August 31, 2001 9:43 AM
: comment@bpa.gov
ubject: Removal of the Snake River Dams

I support the removal of the Snake River Dams to save the wild runs of Salmon and Steelhead that are going to be extinct if your timetable for dam
removal is adopted.

They need to be taken out immediately.

#1

Edward B. Sinclair
365 SW Breeze Court
Portland, OR 97225
503-203-8255
edsiii@easystreet.com

Columbia-Snake River Irrigators Association
Policy Memorandum

RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-027
RECEIVED: AUG 31 2001

COMMENT NOTICE

DATE: August 30, 2001

TO: Attention: Charles Alton, Environmental Project Manager, BPA

FROM: Tom Mackay, President, CSRIA
Darryll Olsen, Ph.D., PNP, CSRIA Board Representative

SUBJECT: Comments on DRAFT EIS, BPA Fish and Wildlife Implementation Plan

---

As comment to the BPA Draft EIS for its Fish and Wildlife Implementation Plan, the CSRIA submits to you a copy of the CSRIA proposed amendment to the Northwest Power Planning Council, for the mainstem hydro operations. The BPA is requested to review this amendment and reconsider major operations on the mainstem hydro system relative to the provisions outlined within the proposed amendment.

Specifically, the CSRIA is proposing that the NPPC and region adopt a New Water Management Alternative for the Columbia River Basin. This proposal would: 1) substantially change the current NMFS BIOP flow targets/augmentation program and hydropower operations; 2) provide for an improved funding mechanism to support new water projects—for fish and economic needs--within the tributaries and watersheds; and 3) involve the tribes as equity partners in the development of new water projects.

The CSRIA recommends that BPA managers review the New Water Management Alternative (proposed amendment now being considered by the NPPC) before making final decisions on the agency's implementation plan. There is an opportunity for BPA, working with others, to make significant changes to the existing operating regime to improve hydropower generation and fish and wildlife benefits within the region. #1

The BPA management should be willing to consider major changes to the status quo, now largely being imposed by NMFS. The BPA must be willing to help lead this effort.

Columbia-Snake River Irrigators Association
3030 W. Clearwater, Suite 205-A, Kennewick, Washington, 99336
509-783-1623, FAX 509-735-3140

RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-028
RECEI. E:
AUG 3 1 2001

Charles J. Ferranti
2173 NW Everett St., Apt. #3
Portland, OR 97210
(503) 243-2892

August 31, 2001

BPA
Fish & Wildlife Implementation Plan DEIS
Charles Alton Project Manager – KEC-4
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208

The Fish & Wildlife DEIS is a large and complex document that tries to bring to light the varied pieces of the Columbia Basin fish and wildlife puzzle. My comments will be restricted to only a minor piece of that puzzle, "other federal agencies," and will consequently I will not be recommending one alternative rather than another. My comments will focus on the role of forestry, specifically the role of public forestland. Forestlands can play a pivotal role in creating the habitat necessary for a vibrant and diverse native wildlife population. Protection of public forestland is legally feasible, supported by both rural/urban and bi-partisan constituencies and has a low economic impact. No matter what alternative is chosen by the Agency, incorporating increased public forest protection will be the most cost effective method for protecting fish and wildlife. #1

There is a history of observable effects from logging on fish and wildlife populations such as noted on page 22 of the DEIS "1880s-1890s: Effects of mining, logging, farming, and fishing become apparent in declining salmon runs."

Public Forest Land and Fish&Wildlife

Public forestland provides an important piece of the fish and wildlife protection puzzle. Public forestlands provide both quantity and quality riparian habitat as well as holding potential for increasing the amount of water in the Columbia Basin system.

Forestlands play a vital role in creating sustainable native wild populations of both anadromous and resident fish.

- Figures 5.2 – 5.7 show that forestlands play a vital role in creating and sustaining native wild populations of both fish (anadromous and resident) and wildlife (grouse, bald eagle, migratory nesting waterfowl, deer and elk).
- Healthy forestlands provide high quality riparian habitat and instream habitat; increase the quantity of high quality riparian habitat; and contribute to greater overall watershed hydrologic balance (role of road building and logging in destabilizing landforms is well known and recognized).

The cumulative affect of these factors is to increase the availability of food, shelter and breeding habitat.

Healthy riparian forestlands will increase the inflows of water to the Columbia Basin as a whole.

- Healthy forests reduce the amount of moisture lost to evaporation increasing the inflow of water to the Basin.
- Healthy forests retain more moisture and slowly release that moisture throughout the hot dry summer leading to increased inflow of water into the Basin.
- Healthy forests reduce the amount of water lost during catastrophic rain-on-snow run-off events by distributing the snow on forest canopy and forest floor, distributing the impact of the rain on both forest canopy and forest floor, and finally by providing both mechanical blockage and absorbency of the peak water flows. This accumulated water will be slowly distributed during the spring, raising the amount of water continuously flowing into the Basin's streams while moderating "peak" flows.
- Healthy forests will transpire water through leaf and needle pores during the summer months; this increased humidity will translate into increased water for the Basin from more frequent summer rain events.

Healthy forestland reduces sedimentation.

- Reducing the rain-on-snow event impact reduces sedimentation within Basin streams.
- Reducing the number of roads within a watershed will reduce the sedimentation within Basin streams.
- Reducing the amount of "managed" forestland will reduce the amount of sedimentation with the Basin streams.
- Healthy forestland reduces the impact of rain events by moderating peak flows, reducing channel-widening events.

Healthy forestland minimized instream temperature swings.

- Healthy forest and riparian areas act to keep instream temperatures cool in the summer months.
- Healthy forest and riparian areas, with their channels kept deep (not widened by peak flows) keep water temperatures cooler in the summer months.
- Healthy forest and riparian areas act to reduce the chilling impact of rain-on-snow events by moderating those events.
- Healthy forest and riparian areas act to moderate the chilling impact of melting snows by lengthening the time between snow melts and melt-water entering Basin streams.

Legal, Political and Monetary Effects

The court system supports greater protection of public forestland. The general public supports greater protection of forestland. Greater protection of public forestland will save money.

Increased protection of public forestland has already been mandated by the Federal court system.

- A quick survey of the last decade's major federal forestland lawsuits (original ESA Spotted Owl lawsuit, Survey and Manage lawsuit against the U.S. Forest Service, PCFFA salmon lawsuit against the National Marine Fisheries, the current spotted owl lawsuit against the U.S. Fish and Wildlife Service) definitively demonstrates that the court system backing increasingly stringent forest protection measures.

- There is no reason to believe the same legal factors (ESA, Clean Water Act etc.) won't soon force state forest land into the same level of compliance demanded of federal forest lands. The current lawsuit against the State of Oregon's forestry practices involves both the ESA and the warning supplied by NMFS (who lost the very similar PCFFA lawsuit).

Increased protection of public forestland enjoys broad public support.

- The USFS Roadless Initiative generated the largest body of public comment with over one million comments.
- Public opinion polling (for both the Roadless Initiative and for old growth protection) has shown large public support for increased protection across the urban/rural and Democrat/Republican divides.

Increased protection of public forestland will save the taxpayers money.

- The USFS admits to losing $4 million in the Mt. Hood National Forest.
- Taxpayers for Common Sense's audit of the 1998 USFS budget reveal $100 million lost in Oregon's National Forests, $43 million lost in Washington's, $32 million in Idaho's and $22 million in Montana's due to commercial logging activity.
- The USFS has failed both recent USFS and USDA audits.
- The USFS admits to an $8 billion dollar road maintenance backlog.
- The General Account Office found the USFS lost $2.5 billion from 1992-1997.
- There is no reason to believe that the federal dollar loses due to subsidized logging aren't being mimic on the state level.

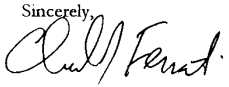
According to the USDA, the entire National Forest system in 1998 only provided 4% of the nation's wood products. While the Columbia Basin may contribute a large share of that 4%, it can only be a fraction of that 4%.

While a decrease in subsidized logging revenue does impact certain rural counties, the 2000 Wyden-Craig rural school funding bill was passed last year in order to mitigate impacts of reduced logging in federal forest land. The bi-partisan nature of this bill demonstrated that the political climate does currently exist for continued mitigation of public forest protection impacts on rural counties.

Mitigation on protected public forestland can be initially passive while active forest restoration/riparian habitat restoration remains an alternative dependant only on funding and public/legal demand.

Protection of public forestland provides the most cost effective method for fish and wildlife protection that the Agency can support.

Sincerely,



Charles J. Ferranti

SCHWABE, WILLIAMSON & WYATT, P.C.
ATTORNEYS AT LAW

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RECEIVED BY BPA
PUBLIC INVOLVEMENT
LOG#: FWIP-039
RECEIPT DATE: SEP 04 2001

August 31, 2001

Mr. Charles C. Alton
Environmental Project Manager
Bonneville Power Administration
Communications—KC-7
P.O. Box 12999
905 NE 11th Avenue
Portland, Oregon 97212

Dear Mr. Alton:

The Inland Ports and Navigation Group (IPNG) thanks the Bonneville Power Administration (BPA) for the opportunity to comment on *BPA's Draft Environmental Impact Statement: Fish and Wildlife Implementation Plan* (the Draft EIS). BPA plays a critical and constructive role in the region's efforts to provide energy to a growing population while providing a fish and wildlife program fostering recovery and strengthening of both ESA-listed species and unlisted species in the region.

This draft document is important in the region's ESA fish species recovery debate in the way it presents various options and alternatives, and discusses primary and some other potential and probable resulting impacts from choices made by the region. BPA deserves the strong acknowledgment within the region for this Herculean effort.

Commenters on this document undoubtedly will disagree strongly about parts of the Draft EIS, yet we hope groups across the spectrum salute the effort made by BPA to develop this useful analytical tool. US Government civil servants who worked on this BPA Draft EIS deserve the thanks of the region for their work.

IPNG believes that this draft EIS represents the sort of thinking and analysis that has been lacking in the region over the past decade. Please consider how much farther along the region would be on fashioning and implementing winning strategies if this Draft EIS—even if presented in another format than an EIS—had been developed a decade ago.

In applauding the fine work by BPA and other Federal officials who labored to produce this important report, IPNG, nevertheless and not surprisingly, finds fault with certain ideas as they impact navigation. Our criticism, owever, does not detract from the fundamental benefit from this Draft EIS: it represents a new approach—new thinking "outside the box." In candor, such thinking and the resulting analysis from the Federal

Caucus has been too infrequent, if at all, in so many of the tired and predictable linear models examined by the region and its leaders in past years.

IPNG is a group of public ports stretching up the Columbia and Snake Rivers from the Port of Morrow, Oregon, including ports in the Tri-Cities and Walla Walla Washington, and continuing up the Snake River, including those ports to the Port of Lewiston, Idaho. Towing interests, as well, are a part of IPNG.

IPNG has reviewed the entire 537-page document, plus the accompanying reports, summaries and workplans. Most of our specific comments address the special role of navigation on the Columbia Snake system.

Some proposals within the Draft EIS would put navigation in jeopardy; other ideas would curtail it specifically. In sum, IPNG strongly urges BPA to reject any and all analyses or options, recommendations or initiatives that could limit river navigation from the mouth of the Columbia to Lewiston, Idaho. #1

We believe strongly that fish species recovery can take place without breaching the Snake River Dams, and while continuing to operate the navigation channel at minimum operating pool (MOP). IPNG has submitted detailed comments summarizing our ideas and recommendations to BPA and the other Federal for a where public input was requested.

As BPA may recall from IPNG's previous administrative submission, we have endorsed a variety of fish species recovery measures, submitting a number of specific recovery measures and implementation programs that we believe will contribute to recovery of listed fish species. IPNG has supported recovery measures that address both short and medium term requirements. #2

In responding to BPA's request for comments about your Draft EIS, we are not repeating each specific idea, comment or recommendation that we presented earlier. As a result, IPNG may emphasize in this submission what we oppose, rather than our more balanced comments in past submissions to different Federal agencies. Although IPNG discusses worthwhile recommendations at several points in the comments that follow, we do not wish to leave the impression that we are against more than we are for in species recovery.

If BPA officials and staffers are interested in reviewing the full comments submitted by IPNG to different administrative fora, including a lengthy review of measures IPNG supports, please let us know. We would be pleased to meet with you to discuss our ideas in detail.

IPNG member ports are public entities, created by each Northwest State. The Port of Lewiston, Idaho, is a port district created pursuant to the statutes of the State of Idaho. The Ports of Whitman County, Washington, and other Washington public ports located on the Columbia and Snake Rivers, are municipal corporations of the State of

Washington pursuant to Wash. Rev. Code Title 53. The Port of Morrow, Oregon, is a municipal corporation of the State of Oregon pursuant to Or. Rev. Stat. §777.

IPNG ports are specifically authorized by their respective states to promote navigation and economic development. These powers are granted to the Washington ports pursuant to Wash. Rev. Code § 85.100. The Oregon ports are governed by Or. Rev. Stat. § 777.003, *et seq.*, and specifically Or. Rev. Stat. § 777.120. This statute confers upon the Port of Morrow, Oregon, a municipal corporation of the State of Oregon, the power to regulate navigation "in the best interests of the maritime shipping and commercial interests of the port ...." #3

The Port of Lewiston has been granted broad powers by the State of Idaho including the power to acquire property and to develop facilities and other improvements "relating to industry and manufacturing and to commercial transportation." Idaho Code, §70-1501. As public bodies of their respective states, each of these ports has expended public funds to develop its port facilities.

Each of these public ports is legislatively authorized, and has developed and constructed commercial port facilities designed to load, store, or discharge waterborne commerce on the inland river system on the Columbia and Snake Rivers. These public entities have used public funds to develop these port facilities. Each of these inland ports is a direct and intended beneficiary of the inland waterway system created by Congress. Each port provides cargo handling facilities or services to the tug and barges that carry cargo on the Columbia/Snake River system. Cargo from these ports enters interstate and foreign commerce, and is exported to numerous different foreign countries.

IPNG includes a private towboat and barge company as a member and in these comments. IPNG member Shaver Transportation Company owns and operates tugs and barges on the inland waterway system and conducts operations within and between the port districts of the Columbia/Snake River system. Shaver Transportation Company is also an intended and direct beneficiary of the inland waterway system. Shaver family members currently operating the company are the fifth generation of their family to provide water-related towing services on the Columbia River system.

The Inland Ports and Navigation Group IPNG was formed for two purposes. The first was to intervene in the "Clean Water Act Lawsuit" a case[1] in US District Court in Portland. This case involves environment advocates led by the National Wildlife Federation who sued the Corps of Engineers alleging a violation of the State of Washington's Clean Water Act regulations regarding water temperature and dissolved gas standards at the four lower Snake River dams. In granting IPNG's motion to intervene, the Federal Judge in Portland agreed that IPNG members were "direct and intended beneficiaries" of the Federal dams on the Lower Snake River

[1] National Wildlife Federation et al vs. US Army Corps of Engineers. US District Court of Oregon, No. 99-442-FR

The second IPNG task was to review the various draft documents prepared by Federal agencies and NWPPC and distributed for public comment regarding various fish recovery options. Thereafter, IPNG prepared and submitted comments, both in written comments before various government processes and reviews in the region, and in oral summary form at the regional public hearings.

GENERAL IPNG COMMENTS ABOUT THE FORM AND STRUCTURE OF DRAFT EIS

IPNG finds considerable value in BPA's approach in developing this Draft EIS. IPNG recommends the introductory and summary materials presented in its lengthy analysis as a tightly written summary of where the region finds itself. IPNG applauds the statement in the Draft EIS Forward:

"BPA believes that the present course (Status Quo) could be improved by following a comprehensive, coordinated, consistent regional policy that would enhance the efficiencies for fish and wildlife mitigation and recovery."[2]

More importantly, although other Federal entities have paid lip service to such a goal for its specific process/product, this BPA Draft EIS does its best to meet this goal. The Draft EIS develops its options in a way that offers people of the Northwest the opportunity to integrate various specific options into a broader recovery "plan" and to evaluate their impact within the context of other specific options.

IPNG is disappointed by the failure of BPA to address the role of the ocean in shaping for better or worse the survival of listed species. IPNG notes that "ocean" is not even a category listed in the index of the Draft EIS. IPNG notes the chart[3] that describes in bullet form the impacts on the juvenile transformation to adult in the ocean. IPNG suggests that the list of adverse impacts is more extensive than shown on this chart. In addition, much less is known about the impact and timeline of such ocean impacts. The decadal shifts in ocean temperature, for example, has beens cited in past weeks in explaining why the 2001 returning level is the largest ever recorded for certain species since Bonneville Dam was built. #4

BPA spent most of its species recovery money and focus strictly within its service territory and with a narrow view of its workscope. IPNG is pleased that this viewpoint has been replaced by a more holistic "All-H" view. IPNG urges that another H: High Seas, be added to the workscope and funding programs of BPA.

[2] Bonneville Power Administration Fish and Wildlife Implementation Plan Draft EIS, page Draft ii. Italics in original (Document hereafter referred to as Draft EIS.)

[3] Figure 5-2, Examples of Major Environmental Effects Anadromous Fish Life Cycle, Ibid., un-numbered page following page Draft 168.

BPA may spend countless millions on future projects, yet see good news (as in returning adults in August 2001, for example) overwhelm its specific projects, with the good news tied mainly to ocean changes. Conversely, a clearer discussion led by BPA in the region about how adverse ocean conditions can erode recovery successes and erase short-term recovery gains would provide a more sober outlook as to assess future successes and initiatives. #4

In order to generate and maintain local support for its recommendations, BPA also needs to incorporate worthwhile steps and planning by local fish recovery groups. IPNG recognizes that this draft EIS is a Federal document, not a local guidebook. And yet, a chapter that addresses how local recovery efforts are important in reaching any and all of these goals would have been welcome.

IPNG members have heard, from time to time, anecdotal Federal and/or state criticism of some local fish recovery efforts, both from a technical standpoint regarding work quality, and from what has been termed their less sophisticated approach. IPNG disagrees with such characterization. #5

Broad local support is required for a successful regional species recovery. Inadequate resources hinder many local fish recovery planning initiatives, yet committed local groups continue to work hard at real world on-the-ground solutions. BPA should encourage such regional and local efforts by folding them into BPA recommendations.

IPNG NAVIGATION COMMENTS PER DRAFT EIS CHAPTER

IPNG will address its specific comments within the context of recovering listed species while protecting navigation to Lewiston, Idaho. We provide our specific comments using the format of the Draft EIS, from Chapter 1 to Chapter 7.

CHAPTER 1: PURPOSE AND NEED FOR ACTION

IPNG agrees with BPA's evaluation of current situation. We agree with the lack of management coordination. We think that the comment that less progress to date stems, in part from, **"Conflicting directives and jurisdictions of regional authorities have meant that funds dedicated to the fish and wildlife mitigation and recovery efforts have often been used less efficiently and effectively than they other wise could have been."**[4]

IPNG suggests that putting the lack of progress into the context of money spent since passage of the Regional Act would be a useful addition to this paper at this point. The size of ratepayer contributions to regional recovery actions is staggering, compared #6

[4] Draft EIS, page Draft 3. (Bold in original)

with the results. Not only have the efforts been overly hydro-centric, BPA-funded projects (via the NWPPC) sometimes responded to outside circumstances rather than the chance to advance species recovery in the most cost-effective way. IPNG recommends including in the Final EIS a discussion of the lack of accountability and measurement standards that, only recently, now are being developed and implemented. IPNG believes that stronger performance standards and higher initial standards in awarding various proposals over the years would have made better use of scarce regional resources. At the same time, IPNG recognizes that many worthwhile projects funded by BPA/NWPPC have resulted in a river system that is fish friendlier in many of the "Hs" categories. #7

IPNG also suggests that an examination of how narrower thinking within the various regional groups resulted in such a hydro-centric use of funds for nearly 20 years. If harvests had been curtailed more, if habitat restoration had been a higher priority and if hatchery issues had received more attention, we suggest that the region might well have been farther along in recovery efforts. #8

We believe that the tiered approach for implementing actions is a worthy attempt to being some structure to the implementation phase. Tiered RODs may well allow the public to grasp the scope and the ramifications of matters under review and how they intersect with implementation actions elsewhere within the federal family. #9

CHAPTER 2: POLICY HISTORY AND AFFECTED ENVIRONMENT

Although outside the specific scope of this Draft EIS, IPNG attaches as an Appendix to its comments a discussion that helps provide context to Draft EIS comments about the Lewis and Clark Expedition. IPNG demonstrates that this was an exploration driven by President Jefferson's search for a navigation route linking the major river systems of the east with the Columbia Snake.

Original documents, particularly the private letter from Jefferson to Lewis, serve to remind policy-makers of the reasons for the Expedition.

IPNG provides this to BPA as Appendix A to these comments for inclusion in any expanded discussion of the Lewis and Clark Expedition in the final EIS.

Second, IPNG provides extensive documentation later in these comments of the statutory basis and case law basis for development of navigation upriver from Portland, Oregon to Lewiston, Idaho. IPNG requests that appropriate references and material be included in the final EIS that acknowledges the unique position navigation holds in development of the Columbia Snake River system. IPNG also encourages BPA review of IPNG's discussion of the intesectoin of navigatoin with the Clean Water Act, as we describe later in these comments.

IPNG notes the discussion in Chapter 2[5] of flood Control. Given the centerpiece role of navigation in developing the current Columbia Snake hydro system, IPNG suggests that a paragraph should be included in the final EIS describing the role of navigation akin to that of Flood Control. #10

IPNG calls attention to the statement in the draft EIS[6] stating that (in WRDA 1990) environmental protection was a "primary mission" of the Corps: "However, Congress also stated that environmental protection should not interfere with the Corps preexisting duties of navigation improvements and flood control (33U.S.C. Sec 2316(b))." IPNG requests that this reference be included in BPA's final EIS. #11

CHAPTER 3: COMPARISON OF ALTERNATIVES

IPNG agrees with BPA's general description of key regional issues, as described in the table in Chapter 3.[7] IPNG suggests that a missing issue within major issue s 5 through 8 is protection of rural and smaller community economic health. Perhaps a new issue titled 'rural economies" would describe it. It should be broader than BPA's Sub-issue 6-1: "industrial development," as it encompasses a wider set of impacts. We encourage BPA to include this in its final EIS. #12

Figure 3-3 provides a useful tool to the public to see how decisions by BPA integrate with decisions of others, governmental and the public.

Section 3.2.1 Status Quo Policy Direction: IPNG notes that, although it recognizes flaws in continuing the status quo, it would protect navigation by operating reservoirs at MOP and allowing continued economic vitality to the rural and smaller communities east of the Cascades. IPNG believes that the hydro system must be operated in a way that protects navigation as an authorized purpose when the projects were developed, and that administrative actions may not curtail Federal agencies from meeting this requirement. #13

Section 3.2.2 Natural Focus: The devastating impact described in this alternative of "Remov(ing) six dams: McNary, John Day, Lower Granite, Lower Monumental, Little Goose and Ice Harbor" makes any serious discussion of this focus merely an academic one. This is not needed, is counterproductive, and would create a range of environmental disasters without any measure of assurance that it would revive listed species. At a time when BPA is straining under an uncertain energy market, IPNG believes that this focus should be discarded, so that reasonable evaluations of others can be reviewed. #14

IPNG supports decreased commercial and sport fishing harvest as this focus calls for, and puts tribal harvest in a preferred category.

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[5] Ibid., page Draft 35.

[6] Ibid., page Draft 46. Emphasis added.

[7] Ibid., page Draft 104.

Section 3.2.3: Weak Stock Focus: IPNG opposes the element in this 'focus" that calls for "remov(al) of four dams to revive weak stocks." The four Snake dams only even impact a limited number of listed stocks in our river system, and BPA should not narrow its scope to focus on these four species, nor should it be the entity that reignites the dam breaching debate. At a time when energy price increases have hurt every community in BPA's service area, BPA must not ignore its energy responsibilities in providing energy to the region. As has been noted by BPA and others, the four Snake River Dams that this "Focus" would remove provide equivalent energy as that needed by a city the size of Seattle.

IPNG supports decreased commercial and sport fishing harvest as this focus calls for, and puts tribal harvest in a preferred category.

Section 3.2.4: Sustainable Use Focus: Because IPNG believes that fish recovery can be accomplished without the requirement of removing the four Snake River dams, even, as this focus says "including dam removal as a last resort if other measures fail to recover populations." Including this sets up a false equation. In addition, those advocates for dam removal may be less supportive of other worthwhile elements in this Focus if they believe that all it needs is failure, in order to force dam breaching. Everyone in the region will work as hard as possible for different recovery options with increased vigor when dam breaching no longer is on the table.

IPNG does not support increased harvest, as called for in this focus, with the exception for tribal harvest, which it believes should be separated from sport and commercial harvest.

Section 3.2.5: Strong Stock Focus: IPNG hopes that this Focus receives a thorough airing before both policymakers and the public of the Northwest. It represents some fresh thinking. It adheres to one of the principles that IPNG has urged be adopted by the Federal Caucus: where can the region get the greatest bang-for-the-buck in the shortest time in the most efficient way? It suggests that, in chasing weak stock recovery, the government should adopt a philosophy that puts an emphasis on strengthening strong stocks. IPNG suggests that greater attention to this "focus" will produce a welcome debate over how much of the region's money should be spent on recovery of weak stocks versus strengthening the stronger stocks. That is a debate that the region should embrace, particularly in view of the region's limited funds.

IPNG supports this strong stock change of "increasing tribal harvest while maintaining strong stocks." IPNG believes that "decreasing hydro restrictions on hydro operations not effecting strong stocks" is a worthwhile element in a recovery plan.

Section 3.2.6: Commerce Focus: Many aspects of this Focus are ones that IPNG has supported in the past. Yet, even the name "Commerce" evokes a lack of balance that makes this Focus a target to some people. A clearer name is: "Cost-Effective Measures

Focus." IPNG suggests rewriting this section to emphasize its strengths in species recovery.

Section 3.2.7: Hybrid Policy Directions: IPNG supports habitat restoration, as urged by various Focus Policies set out in Chapter 3. IPNG also supports a variety of other recovery measures that it had presented in detail in other administrative submissions (culvert replacement, for example) that it is prepared to discuss in detail with BPA officials if they are interested.

REVIEW OF IMPLEMENTATION ACTIONS

Status Quo Focus: IPNG supports such dam modification measures (4-1)[8] as are shown to be cost-effective and contribute to improved fish passage. Under Reservoir Levels (4-5)[9] measures, IPNG opposes any operation of dams on the navigation channel below MOP. It is unclear whether BPA means lowering reservoirs to MOP or below MOP. IPNG believes that existing laws restrict any such effort to lower the pools below MOP. IPNG requests that clarifying the scope of the measure precede any further discussion of this item: lower only to MOP.

Under the next item, Water Quality (4-6), IPNG supports continued release of cold water form Dworshak to lower temperatures in the Snake Reservoirs during hot summer months. IPNG supports the Navigation and Barging element (7-1) of the Status Quo Focus. IPNG urges that this element be expanded to remind readers that exports from the Columbia Basin compete in world markets primarily because of the efficient water transportation system that has made them attractive for many years in world markets. #15

Natural Focus: IPNG urges in strong terms that this Focus be abandoned without further consideration. The list of sample implementation actions that focus on removing and/or breaching mainstem and Lower Snake dams serves little purpose. It also exceeds any administrative authority in every action that impairs, curtails, or terminates navigation to Lewiston. The options listed under the Hydro section[10] are a wish list of some environmental groups that believe that such risky schemes, somehow, will be the silver bullet that reasonable people acknowledge does not exist. #16

Sections on Dam Modifications and Facilities, Hydro Operation, Spill, flow, Water Quality, Juvenile Fish Passage and Transportation, Flood Control all contain various far fetched ideas that will divide the region and promote discord, not species recovery.

The Commerce, Power Generation (5-1) section shows BPA a red flag when it acknowledges that "Natural river operations would eliminate the system's load-shaping

[8] Ibid., Status Quo Measures, page 5.

[9] Ibid., page 6

[10] Ibid., Natural focus, pages 8-14.

and reduce average energy by taking turbines out of service."[11] The next sentence, in light of current energy prices, should be give a toxic shock to anyone at BPA who seriously considers such an extreme measure: "Provide support for increased electrical costs." That is impractical and a foolish pipe-dream of some more extreme advocates who appear to have little understanding of how Congress makes its spending decisions. Alternatively, they believe that BPA ratepayers will accept further rate increases for such support. Such sophistry deserves no more serious review in this Draft EIS context.

If BPA does not reject this Focus, IPNG urges consultation with the Maritime Administration, whose studies rebut the assertion under Transportation, Trucking and Railroads (7-1)[12]urging "Provide support for alternative forms of transportation of agricultural and other products including improved rail service." This would throw good money after bad. #17

One MarAd analysis[13] demonstrated that one barge can move a ton of goods on one gallon of fuel 514 miles. A railroad can move that amount of cargo only 202 miles, and a truck can move a ton of cargo only 59 miles on one gallon of fuel. The MarAd report also says that the average BTU expended per ton-mile equals 433 for water transport and 696 for rail transport.

To move the same amount of cargo as one barge would require 15 rail cars or 60 semi-trucks. A single 15-barge tow (normal for the Mississippi system) would require a freight train 2 ¾ miles long or a line of trucks more than 35 miles long.

The average Columbia River standard tow is four barges. One can either divide the Mississippi total by 4 or multiply the single barge totals by 4 to see that severe regional environmental damage will occur if any attempts were made to transfer cargo movement to rail or truck. BPA may want to interview officials of the Columbia River Gorge Commission to see how they would view the impact on highways and rail facilities from such a move.

In addition, as the MarAd report states, barge movement of cargo produces less air pollution than does rail or truck, thus helping preserve air quality in the region. Even noise is less from barge movement than it is for truck or rail, as barges operate well away from shore in the middle of the channel. Rail and truck transportation routes pass through densely populated areas.

Weak Stock Focus Actions: The Habitat section of this Focus contains a number of worthwhile sample implementation actions worthy of further study and implementation.

[11] Ibid., page 14.

[12] Ibid., page 16.

[13] Environmental Advantages of Inland Barge Transportation, Maritime Administration (publication date not available).

In addition, the sample actions under Predators of Anadromous Fish (1-5)[14] contain a number of ideas that mirror past IPNG recommendations. IPNG has said that effective predator control is a precondition for any effort to get the region to undertake major habitat measures. Too many people know the stories of tern and pikeminnow predation. The Public expects that such predation be controlled before it will consider seriously costly added initiatives that periodically face the region. Without effective predation control, the region risks erosion of the common support for listed species recovery. IPNG has written specifically of tern and pikeminnow predation recommendations and urges that the most effective methods given in this section of the sample actions be implemented without delay. #18

IPNG recognizes that estuary habitation restoration offers hope for species recovery and urges that cost-effective and proven plans be developed, reviewed and implemented. IPNG believes that deep draft dredging can occur under appropriate environmental constraints. IPNG believes that deepening the channel, when combined with mitigation and restoration activities now under discussion, will make the lower Columbia a cleaner and fish friendlier river than it is today. #19

Harvest reductions set out under Item 2 of this section deserve implementation in various forms so as to help weak stocks recover. Where harvest is possible, IPNG believes that tribal harvest has priority over sport and commercial lower river fishing. #20 #21

The Hydro Section(4) of the Weak Stock Focus opens with "emphasiz(ing) breaching Lower Snake Dams (sample Action)." In so doing, it raises the stakes for further discord and delay, while eroding support and money that is better used for on-the-ground species recovery steps that help recovery efforts. In addition, under the section on Dam Modification and Facilities (4-1)[15], as well as later under 4-2, Hydro Operations, one alternative suggested would be to lower the John Day Reservoir to spillway height, which IPNG also strongly opposes. IPNG would be happy to provide BPA with a copy of its submission to the corps considering moving to Phase II of John Day Drawdown Study. In those comments, IPNG makes a string and compelling case in warning of adverse effects from such a move. #22

IPNG further suggests that assertions in this Focus section regarding the impact of temperature on Water Quality may be different than what supporters of dam breaching predict. Considerable evidence, some of anecdotal we realize, suggests that summer water temperature in the lower Snake canyon prior to the four Snake Dams was hot, far exceeding in its natural state the CWA temperature standards. #23

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[14] BPA Draft EIS, Weak Stock Focus, pages 5-6.

[15] Ibid., Weak Stocks Focus, page 20

Later, in its discussion of Element 7, Transportation[16] contains in both the navigation section (7-1) and Trucking and Railroads (7-2) the suggested action of eliminating barge transportation to Lewiston, Idaho:

> "Maintain(ing) shipments from Port of Lewiston by moving to rail transportation. If rail capacity is inadequate, expand capacity to needed level to replace shipping capacity lost through shutdown of Lower Snake barge transportation. Maintain barge transportation open through the drawdown of John Day Dam by using shallow draft vessels to the Tri-Cities area. (Framework Concept Paper 7B).

#24

This idea does not withstand any reasonable real-world scrutiny, and never would take place. First, the costs of upgrading rail facilities are too great. (As noted, any rail increase would represent cost and environmental problems, as well.) Second, there are inadequate facilities down-river to transfer all the existing cargo to ocean carriers at downriver ports, so further upgrade there would be required. The ability to fund such infrastructure is not apparent to most observers, and public financing runs counter to many discussions of the government's role in rail transportation.

Reference to "support" we presume, means financial support for the other trucking idea of "provide support for alternate forms of transportation of agricultural and other products including improved rail service (Framework Concept Paper 5). We again call the attention of BPA policymakers to IPNG comments earlier in this document about the adverse fuel costs (higher charges) and adverse environmental consequences of any shift from barge to rail. Lastly, IPNG is baffled what "shallow draft" barges Bpa is mentioning. Is the existing shallow draft barges, unsuitable for use in a pool drawn down well below MOP? Or is it some new mini shallow barges, drawing far less than current shallow draft barges—but impractical and too costly for use on the river. #25

In addition, any discussion of alternative transportation modes ignores another reality: increased costs will kill some cargo movement from the upriver ports. If costs from alternative modes rise higher than any profit margin, the sales simply will not be made. The lower costs of barge transportation make many PNW export products competitive, and this competitive advantage would contract or erode completely if the goods were forced onto more expensive rail or trucks for transportation. #26

IPNG supports some of the ideas in item 9, Commercial Harvest that would reduce commercial harvest of weak stocks.

IPNG encourages BPA to fund an examination of a one concerning aspect of the use of commercial netting for harvesting. Is the use of netting for commercial harvest a guarantee of weaker stocks after a decade where the <u>larger</u> fish are harvested, and only the <u>smaller</u> fish escape the nets? Could one advance the argument with scientific basis that #27

[16] Ibid., page 38 and 39.

harvesting the bigger, stronger (?) fish leaving only smaller and weaker (?) fish to continue upstream. IPNG does not recall reviewing any scientific arguments that support or challenge this question. We encourage BPA to provide funding to examine this question.

Sustainable Use Focus: Sample Actions: IPNG includes by reference it earlier arguments about the benefits of habitat restoration, the absolute requirement for Federal agencies to control predation by terns and pikeminnows, and its arguments made in detail in other written submissions urging culvert replacement receive a higher priority than it has been given. Many of the habitat ideas merit implementation. They emphasize the need to step up efforts in this area, and to look for ways that make the most of limited funding. The metaphor of low-hanging fruit and the cliché of bang-for-the-buck both should guide implementation within this Focus. #28

IPNG supports cost-effective dam modifications in the list of suggested ideas in item 4-1, Dam Modifications and Facilities.[17] Taking steps to improve fish passage at dame on the Columbia and Snake has been a good use of funds, and should continue to receive appropriations from Congress to implement the smart choices still available. In the section on Hydro operation (4-2)[18], IPNG opposes use of any drawdowns below MOP to achieve the goal of increased velocity for fish passage through the reservoirs. #29

In the section on Transportation (7), the sample actions include "compensate for navigation and barging losses in the event that hydro operations need to be modified to address threatened and endangered species."[19] IPNG opposes this, and has referred to discussion of compensation schemes as "burial payments." So-called compensation schemes also almost always help a few parties and ignore the secondary and tertiary impact of a loss of this essential service. BPA payment plans during the energy price crisis over past months provided some direct payments to impacted workers who lost their jobs. Yet, IPNG has heard considerable anecdotal evidence that secondary and related job losses were not covered in any payment plans of BPA or by the company shutting its doors. IPNG worries that the same narrow scope of relief would be applied here, ignoring the ripple effect in the community from loss of barge transportation. IPNG believes that BPA cannot impose any such modification of the navigation channel as to result in a loss such as described in this section. #30

Strong Stock Focus: Sample Implementation Actions: IPNG is pleased that this Focus contains no support for altering the existing upriver transportation navigation system.

IPNG also supports many of the habitat actions described I the lengthy conilation under this Focus. In particular, the discussion of Anadromous Fish (1-1) contains some reasonable and thoughtful suggestions that merit further public discussion.

[17] Ibid., Sustainable use Focus Sample Implementation, page 18.

[18] Ibid., page 21.

[19] Ibid., page 36.

The later discussion of Predators of Anadromous Fish (1-5) is weak and incomplete. IPNG believes that predation control is an overarching action item that must be a centerpiece for any and all implementation plans. Failure to address predation effectively will erode public support for other costlier recovery plans, and will hamper even strong fish stocks in the future. Calls for more and better riparian vegetation, without much stronger attacks on devastation caused by terns and pikeminnows, falls far short in this Focus. #31

Commerce Focus: Sample Implementation Actions: IPNG supports the commitment of this Focus that embraces continued navigation, but repeats its earlier concern that this Focus suffers from a lack of commitment to species recovery, which IPNG supports. #32

The Dam Modifications and Facilities (4-1)[20], however, sets out a number of reasonable improvements that IPNG hopes receive support from BPA. Fish passage, turbine design, and other changes at the dams all merit careful review. IPNG also supports the sample action under Hydro operation[21] that maintains navigation, and prioritizes research funding to document project-specific effects in anadromous fish, and use best quantification in making project decisions. Because of its proven successes, IPNG supports juvenile transportation, and so it also supports many of the items described in Juvenile Fish Passage and Transportation.[22] Aimed at improving fish transportation through the dam system. #33

IPNG also notes the inclusion under the discussion of sample actions under Flood control (4-9)[23] repeating the importance of the multi-purpose nature of these dams. Also, in the section of the Focus on Transportation (7), IPNG supports the commitment to navigation in keeping with the Federal government's statutory requirements and court decisions. We were pleased to see these ideas included within several parts of the region's framework Concept Paper.

CHAPTER 4: IMPLEMENTATION AND RESPONSES TO CHANGE

IPNG calls attention to Table 4-2-1 that sets out Roles and Responsibilities of specific Federal agencies, noting the references to the Corps of Engineers. IPNG believes that the Draft EIS language describing the Corps role regarding multiple purpose projects might be strengthened. #34

The discussion by BPA of possible reserve options adds to the understanding of this as a continuing process.

[20] Ibid., Commerce Focus, page 10.

[21] Ibid.

[22] Ibid., page 12.

[23] Ibid., page 14.

CHAPTER 5: ENVIRONMENTAL CONSEQUENCES

In its description of "associated environmental effects" as part of its useful and clear introduction to Chapter 5, the issue of increased sedimentation is discussed briefly as an associated impact due to increased flow. IPNG urges a more complete discussion of this issue. IPNG also requests that BPA integrates into its discussion of such examples the consequences on sedimentation from breaching the Lower Snake Dams.

IPNG examined this issue in some detail in its earlier review of the Corps of Engineers Appendices that examined Snake Dam operation choices. If the Lower snake dams were breached, the devastating impact on Lake Wallula in several ways merits a more thorough examination. Sediment trapped behind the Snake dams would be released to settle in Lake Wallula, creating havoc for the paper mill that is among Walla Walla County's largest taxpayers. Dramatic increases in sedimentation would result, with some of the sedimentation probably damaging and certainly impacting the Wildlife Refuge at the junction of the snake and Columbia Rivers. #35

A second sedimentation impact meriting greater scrutiny by BPA is breaching is not off the table is the potential release of possibly hazardous material that now are encased in the silt behind the Snake Dams. IPNG discussed this matter in some detail in earlier submissions, and is ready to engage BPA officials win a more complete discussion of this issue. We call the attention of BPA to a short discussion by the Corps in an appendix of its examination of its Snake River dams options. #36

IPNG's makes the point that many more examples of associated environmental effects exist that should be put before the public as examining these options.

Later in this chapter, IPNG agrees with the initial sentence[24] and further paragraph[25]warning of the impact of potential introduction of zebra mussels into the Columbia Basin streams. In the opinion of IPNG, this brief discussion does not adequately warn how such introduction could put at risk all basin-wide recovery efforts for species recovery. Although the water quality discussion here is useful, the impact on the food chain of the zebra mussel and its impact on intake pipes, piers and docks and any other structures is severe. #37

Instead of mapping species recovery action items, the region—and BPA—would spend its time and effort to rid our river system of this dangerous invasive species. The catastrophic impact in the Great Lakes must be prevented from occurring in our river system. The expected arrival of thousands of boat trailers of people retracing the water segments of the Lewis and Clark expedition will offer the chance for zebra mussel transit from infected waters east of the Rocky Mountains into our river system if the region is not diligent. IPNG is concerned that not enough attention is being paid to this growing threat.

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[24] Ibid., page Draft 161.

[25] Ibid., page Draft 165-166.

IPNG opposes efforts to reduce gas supersaturation by dam removal or lowering reservoir levels as described in this chapter.[26] Although IPNG realizes that BPA is not urging this as an action item, and is only discussing it as one way to reduce gas damage to fish, we wish to maintain our opposition to this action wherever it appears in the document. Sediment, IPNG also notes, can be reduced by keeping the lower Snake Dams, inasmuch as breaching them will create severe sedimentation for a considerable period in Lake Wallula and farther downstream (with finer suspended sediments). #38

IPNG urges that further discussion[27] of temperature extremes also discuss high water temperatures in the Lower Snake Canyon prior to construction of the four Lower Snake Dams. It would remind people of the region that dam removal is not a silver bullet that will lower water temperatures to a level meeting CWA standards. #39

Along with such invasive species as zebra mussels, BPA is wise to raise[28] the adverse impact of non-native plants and animals and their adverse impact on the river system. [29]

As IPNG has said throughout this paper, it believes that reduced harvest by commercial and slower river sport fishers provides a way to strengthen listed species. Although exaggerating for effect, if the US had allowed a limited bald eagle hunt, and had raised some 'domestic" bald eagles that had intermingled, so that some shooting of wild eagles was permitted up to some set percentage levels, the idea of working to strengthen commercial fishing while recovery measures are in effect makes little sense. After species have recovered and are removed from the ESA lists, then commercial and lower river sport fishing could return. Human activities that describe harvest reduction are actions that point out the rippling effects of permitting commercial and lower river sport fishing in a way that impedes the speed of species recovery. #40

IPNG thanks BPA for its summary discussion of major environmental consequences for humans from common fish and wildlife actions.[30] IPNG examined in some detail the air quality impact in its submission to the Corps regarding the proposed John Day Pool Drawdown. The BPA discussion[31] is not extensive enough to caution the region about the variety of adverse environmental impacts the region would face as a result of certain actions—most of them supposedly pro-species recovery. BPA's brief discussion of mitigation measures is cursory and ignores severe adverse impacts that would result. #41

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[26] Ibid., page Draft 162.

[27] Ibid., page Draft 165

[28] Ibid., page Draft 167.

[29] Ibid.

[31] Ibid., page Draft 171

The discussion of power generation and transmission, likewise, is welcome in that it raises issues, but its sort discussion merits useful details that offer practical comments about the probable outcome of those actions. #42

IPNG reviewed with careful attention the all-too-brief discussion of the adverse impact from human actions—dam breaching/drawdown—in this chapter.[32] Although IPNG agrees with the points made in the bullet points and in the brief discussion following it, IPNG believes that this cursory report overlooks many adverse impacts. The Daft EIS, for example, looks at a few direct impacts, but overlooks secondary and tertiary impacts from dam breaching. We are disappointed that transportation and the complex series of interrelated adverse impacts are not accorded greater attention in this Draft EIS. IPNG is ready to provide added information if BPA wishes. #43

In the discussion of agriculture and forestry and the adverse impact, BPA also gives short shrift to the widespread impact from the loss of water transportation. "Higher costs" may be how an economist sees this issue, but ports and farmers on the ground know that higher costs mean lost sales, as the higher transportation costs cut out the entire profit. IN other words, one cannot assume that only a percentage reduction of each sale will take place if rail or truck imposes steep increases in transportation costs for ag or forest products. The higher transportation cost kills the entire shipment. It is not a process whereby a farmer merely can impose a transportation cost increase—a surcharge-- as a computer-maker might add to the shipping cost paid by a distant computer buyer. #44

IPNG notes with concern that BPA appears to look at secondary impacts from curtailing of commercial fishing in its discussion of human actions:

> **"In buy-outs or other payment to stop commercial fishing, the owner of the fishing 'right' is fully compensated. However, deckhands, other labor, and coastal communities may still be adversely affected."[33]**

IPNG is disappointed that this same concern for the farming communities and inland communities did not strike BPA drafters of the EIS as meriting equal consideration as coastal communities and commercial fishing boat deckhands. IPNG also could make a similar argument about the concerns BPA expressed for "Adverse effects on reduced fish populations are decreased revenues, net revenues, and decreased ability to cover costs."[34] IPNG suggests that people east of the Cascades facing disruption caused by dam breaching face a similar set of financial problems, yet IPNG found no equivalent concerns expressed for the impact on them or their communities in this document, nor for towboat and barge operators who face similar financial issues. #45

[32] Ibid., page Draft 179.

[33] Ibid., page Draft 184. Emphasis added.

[34] Ibid., page Draft 185.

As if to call attention to the points above about attention to the secondary impacts of commercial fishing, IPNG calls attention to the next topic for review in the Draft EIS: recreation. IPNG notes that the recreation discussion that examines the impact from breaching contains no discussion of the impact of the people whose marinas are made useless by drawdowns or breaching—as was shown in the comments about the secondary and community impact on commercial fishers and their towns. IPNG suggests to BPA that any discussion of such impacts on fishers be extended to those businesses and towboat and barge companies who face similar economic impact from breaching as would face commercial fishers if all harvesting were halted. #46

IPNG suggests that BPA's discussion of impacts on the pulp and paper industry (among others) focus specific attention on the Boise Cascade plant in Wallula, Washington, and the range of adverse environmental impacts it would face if the Snake Dams were breached. IPNG has commented on this in past submissions, and can provide BPA with details about siltation that the Boise Cascade plant would face. #47

IPNG questions the value of "non-consumptive use"—observing fish and wildlife without also adding to it a description of all those people who enjoy viewing fields of amber waves of grain that would be lost without water and transportation. That is but one example, but it makes the point that this is a slippery issue: "existence values," "option values," and "bequest values" all raise legitimate questions regarding "moral, ethical or religious responsibility toward other living things,"[35] as the Draft EIS describes. Yet this is such a subjective issue that it allows for innocent misinterpretation or deliberate manipulation, and should be of less value and importance in a process attempting to impose standards on itself for future public examination and Congressional reporting. That is not to say these are not shared values by all people of the region, as demonstrated by the high level of interest and commitment to helping listed species recover. #48

IPNG agrees that the adverse effects of drawdowns on cultural resources would include those set out in this chapter.[36] Protection of cultural resources would take more than planning. The sharply increased costs associated with protecting cultural resources exposed by a drawdown should be among those elements added to this by BPA. #49

PNG disagrees strongly with the Hydro-oriented action chart, Figure 5-11. Under possible adverse impacts on land,[37] BPA lists "constrained transportation and navigation." BPA then includes under the mitigation measures "Efficient transportation practices." IPNG challenges BPA to show that any transportation is "efficient" when compared to barge transportation. #50

[35] Ibid., page Draft 201.

[36] Ibid., page Draft 203.

[37] Ibid., Unnumbered page, the 4th page following page Draft 204.

Replacement transportation would be more environmentally damaging, less fuel efficient, and require costly new infrastructure. In addition, it certainly would damage the "non-consumptive use" values of the Columbia Gorge by imposing hundreds of long trains or thousands upon thousands of trucks down the Gorge to urban and export markets—and returning up the Gorge highway or rail line for more such cargo. Trying to locate and site adequate rail cars for a limited harvest time use would be a logistical nightmare.

If IPNG understands the point of the charts that show direction differences for the Status quo beginning with Figure 5-21,[38] Figure 5-21 appears to incorrectly depict the impact from the Natural Focus on navigation. In Figure 5-21, navigation is depicted as having "Lesser Magnitude/Intensity", whereas trucking and railroad are shown as having a "Greater Magnitude/Intensity." If we understand these figures correctly, it is baffling. How can dam breaching called for under this Focus be of a lesser magnitude/impact, and how can truck and rail impacts be greater? IPNG believes that any impacts from breaching will be immense. If some other valuation is used that depicts it accurately as having a minor magnitude and intensity, why has it been the center of such a controversy for so long? #51

IPNG requests clarification of the role of navigation in Natural Focus and in Weak Stocks (which also calls for breaching). In the weak Stock Figure 5-22, it measures the impact as less than that for Natural, but this Focus calls for breaching the Lower Snake Dams as an option. IPNG believes that, if it understands the depiction correctly, the Weak Stock depiction is of equal magnitude/intensity as the Natural Focus depiction. #52

To make these issues more confusing, it appears in Table 5.3B "more" means "worse" in one description and "less" means "worse" in all the others. Later, Chart 5.4-1, uses "more" to equal "better" in some illustrations and "worse" in others.[39] This is confusing and should be redone. #53

CHAPTER 6: GOVERNANCE

IPNG respects the effort to produce a coherent discussion of governance issues in the context of this Draft EIS. It is a tall task. IPNG agrees with the highlighted sentence in the Draft EIS, "The form that governance takes is less important to the outcome than the degree to which the governing parties are able to act in concert."[40] IPNG welcomes the Table 6.1-1 that shows distribution of population and water percentages among the Northwest states. It also helps explain part of Idaho's position on many water-centric issues.

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[38] Ibid., unnumbered page, the 1st page following page Draft 218.

[39] Ibid., page Draft 260.

[40] Ibid., page Draft 267.

CHAPTER 7: CONSULTATION, REVIEW AND PERMIT REQUIREMENTS

IPNG thanks BPA for its work in compiling the listing and description of the statutes, executive orders and regulations impacting proposed policy directions. The 20 or so serve as a reminder of the difficulties facing the Federal Caucus in reaching consensus and implementing the types of actions required if the region is to succeed in species recovery efforts. It also is fitting to include it at the conclusion of the Draft EIS, as a sobering reminder of the hurdles, or the statutory and regulatory templates—with which the region's efforts must conform. It also serves to highlight the high professionalism of the federal civil servants and their dedication to push any agreed-upon actions past these statutory and regulatory shoals.

COLUMBIA-SNAKE RIVER SYSTEM NAVIGATION

Turning from the Draft EIS itself, ING wishes to engage BPA in a consideration of the rights of navigation to assist in its preparation of a final EIS for its fish and Wildlife Implementation Plan. Navigation has certain unique protections provided by the US Supreme Court, other Federal courts and by the congress. Understanding these should enable BPA to stay within its legal "sideboards: as it crafts its Final EIS. #54

Navigation interests are unique and merit separate status from many other parties in the region. Ports have certain characteristics separating them from many entities in the region from which BPA has heard during this mainstem process. In this context, IPNG does not mean the economic or environmental benefits of navigation, but the statutory basis for its unique status. This sets navigation apart somewhat from other economic interests in the region. Nothing in these comments, however, should imply that IPNG does not recognize the central role the Endangered Species Act and your own authorization also play in the region and in this specific issue.

The Columbia/Snake River inland waterway system was developed by Congressional action with navigation as its centerpiece, pursuant to its powers granted under the commerce clause of the United States Constitution. Congress may pass legislation that not only protects rights of navigation, but it may enlarge them through river and harbor improvements. The power to develop the navigable capacity of the Columbia and Snake Rivers is found under the commerce clause of the United States Constitution. *See, e.g., The Daniel Ball*, 10 Wall. 577, 77 U.S. 557 (1870); *Wisconsin v. Duluth*, 96 U.S. 379 (1877).

After completion of the Bonneville Dam in 1937, the United States Army Corps of Engineers issued a report addressing development of the Columbia and Snake Rivers to Lewiston, Idaho for slack water navigation, flood control and other purposes. H.R. 704,

75th Cong., 3d Sess. 8-11 (1938) (report of the Board of Engineers for Rivers and Harbors). Development of an inland navigation system to Lewiston, Idaho was later approved by Congress. In 1945, Congress not only authorized construction of the McNary Dam, it also authorized the development of an inland navigation system on the Snake River:

> ... Snake River, Oregon, Washington and Idaho: The construction of such dams as are necessary, and open channel improvements for purposes of providing slack water navigation and irrigation in accordance with the plans submitted in House Document Numbered 704, Seventy-Fifth Congress, with such modifications as do not change the requirement to provide slack-water navigation as the Secretary of War may find advisable after consultation with the Secretary of the Interior and such other agencies as may be concerned.[41]

Construction of the Columbia/Snake River inland waterway system was a central part of a federal policy to develop inland ports and navigation. For example, five years later, Congress authorized construction of the John Day and The Dalles Dams, pursuant to Section 204 of the Rivers and Harbors Act of 1950. These dams were authorized "for the benefit of navigation and the control of destructive flood waters . . ." Senate Report No. 1143, issued by the Committee on Public Works in support of the legislation, addressed the importance of the inland water way system:

> The Federal program for the improvement of the Nation's rivers and harbors is now in its one hundred twenty-fifth year. During the entire history of this all-important Federal undertaking, the work involved in this program has been under the supervision of the Corps of Engineers, United States Army. The program has produced the best system of inland waterways to be found anywhere in the world and in addition has opened for all forms of navigation ....
>
> .... The importance of the system of inland waterways is indicated by the vast annual increase in the tonnage and in the variety of commodities that move over these waterways. For each ton of freight that uses the improved inland waterways, there is return to the Nation as a general benefit a saving in transportation costs. While these savings may be considered as a prime factor in the use of the system of inland waterways, another factor just as important is that the improved waterways have to a large extent been responsible for the growth and the development of the interior sections of the country. Low-cost water transportation, on one hand, has enabled a movement of products from the mines, forests, and the farms to a widespread consuming area. On the other hand, it has enabled the distribution, at low cost, of semi-finished and finished products from industrial communities that have been established on these waterways to the consumers spread over almost the entire Nation.[42]

[41] Rivers and Harbors Act of 1945, §2 (1945).

[42] U.S. Code Cong. Serv. 2311-12 (1950).

Thus, IPNG has a clear interest in maintaining the legally protected navigation channel depth. IPNG also has a direct interest in BPA decisions, specifically as they may impact navigation from the mouth of the Columbia River to Lewiston, Idaho.

Congress mandated the inland navigation channel at 14 feet. Congress specifically authorized the channel in the Columbia/Snake River "barge navigation project" at 14 feet, at minimum regulated flow, pursuant to Section 203 of the Flood Control Act of 1962:

> "Sec. 203. The following works of improvements for the benefit of navigation and the control of destructive floodwaters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of the Army and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein: Provided, that the necessary plans, specifications, and preliminary work may be prosecuted on any project authorized in this title with funds from appropriations hereafter made for flood control so as to be ready for rapid inauguration of a construction program. *Provided further*, that the projects authorized herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements: *And provided further*, that penstocks and other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam authorized in this Act for construction by the Department of the Army when approved by the Secretary of the Army on the recommendation of the Chief of Engineers and the Federal Power Commission....
>
> **COLUMBIA RIVER BASIN**
>
> The projects and plans for the Columbia River Basin, including the Willamette River Basin, authorized by the Flood Control Act of June 28, 1938, and subsequent Acts of Congress, including the Flood Control Acts of May 17, 1950, September 3, 1954, July 3, 1958 and July 14, 1960, are hereby modified to include the projects listed below for flood control and other purposes in the Columbia River Basin (including the Willamette River Basin) substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 403, Eighty-seventh Congress: *Provided*, that the depth and width of the authorized channel in the Columbia-Snake River barge navigation project shall be established as fourteen feet and two hundred and fifty feet, respectively, at minimum regulated flow.
>
> Asotin Dam, Snake River, Idaho and Washington;
> Bruces Eddy Dam and Reservoir, North Fork, Clearwater River, Idaho;....[43]

[43] Flood Control Act of 1962, § 203, P.L. 87-874, 76 STAT. 1173, 1962 Code Cong. and Admin. News 1385, 1400.

The Corps of Engineers is required, therefore, to maintain the level of the reservoirs behind each dam consistent with this Congressional mandate. This entails keeping a 14-15-foot clearance over the top of the lock to permit tug and barge traffic to pass through the dam. 33 C.F.R. § 207.718(e). A minimum navigation channel behind each navigation lock is known as the "Minimum Operating Pool" (MOP). Port facilities have been constructed to accommodate the river levels that are based on this 14-foot mandate.

During the salmon migration the four lower Snake River dams are operated at or near minimum operating pool levels. Thus, the system is operated at its lowest level permitted by federal law. Congress has not authorized any reduction in the navigational minimums for the Columbia and Snake River Inland Navigation Channel. Operation of the Channel at less than 14 feet will impair navigation.

Congress has not waived its sovereign immunity to permit claims resulting in modification of the 14-foot navigational channel. The US Constitution protects the Congressionally mandated Columbia/Snake River inland navigation system and the exercise by Congress of the navigational servitude pursuant to the Commerce Clause. As such, only Congress has the power to order a change or modification to the 14-foot navigation channel. Any administrative recommendation adversely affecting the operation and maintenance of that channel conflicts with this mandate.

Raising the water level of the Snake River by creating reservoirs was required to develop navigation to the extent desired by Congress. None of the Lower Snake dams has any appreciable storage capacity. As BPA is aware, lower Snake dams are run-of-river dams. Two dams usually operate within a three-foot range, and two dams operate within a five-foot range, with the lowest level as the navigational minimum. To challenge river operations which would require levels below MOP is simply to challenge the Corps' authority to maintain the navigational channel as mandated by Congress.

All navigable waters of the United States are subject to a federal navigational servitude, which is superior to rights possessed by the States, Indian nations, or private parties. The nature and scope of the navigational servitude was recently discussed by the United States Supreme Court in United States v. Cherokee Nation of Oklahoma, 480 U.S. 700; 107 S. Ct. 1487; 94 L.Ed.2d 704 (1987). In that case, the Court reviewed a claim by the Cherokee Nation for damage to its fee simple title to certain portions of the riverbed of the Arkansas River in Oklahoma. In 1971 the construction of a federally authorized navigation channel was completed from the mouth of the Arkansas River to Catoosa, Oklahoma (the McClellan-Kerr Project). This Project was approved by Congress in 1946, Act of July 24, 1946, ch. 594, 60 Stat. 634, 635-636.

In that case, the Cherokee Nation claimed that the construction of this navigation channel damaged its proprietary interest in the riverbed of the Arkansas River granted to it earlier by the United States of America, and that it was entitled to just compensation. The Supreme Court refuted this claim:

> "[T]he interference with in-stream interests results from an exercise of the Government's power to regulate navigational uses of "the deep streams which penetrate our country in every direction." Gibbons v. Ogden, 9 Wheat. 1, 195 (1824). Though this Court has never held that the navigational servitude creates a blanket exception to the Takings Clause whenever Congress exercises its Commerce Clause authority to promote navigation," Kaiser Aetna v. United States, 444 U.S. 164, 172 (1979), there can be no doubt that "the Commerce Clause confers a unique position upon the Government in connection with navigable waters." United States v. Rands, 389 U.S. 121, 122 (1967). It gives to the Federal Government "a 'dominant servitude,' FPC v. Niagara Mohawk Power Corps, 347 U.S. 239, 249 (1954), which extends to the entire stream and the steam bed below ordinary high-watermark. The proper exercise of this power is not an invasion of any private property rights in the stream or the lands underlying it, for the damage sustained does not result from taking property from riparian owners within the meaning of the Fifth Amendment but from the lawful exercise of a power to which the interest of riparian owners have always been subject." Rands, supra, at 123. n.3. See also United States v. Kansas City Life Ins. Co., 339 U.S. 799, 808 (1950); Scranton v. Wheeler, 179 U.S. 141, 163 (1900).[44]

In ruling against the claim for compensation, the Court also stated that the navigational servitude was superior to that of a state's own sovereign interest in its navigable waters.

> "Indeed, even when the sovereign States gain "the absolute right to all their navigable waters and the soils under them for their own common use" by operation of the equal-footing doctrine, Martin v. Waddell, 16 PET. 367, 410 (1842), this "absolute right" is unquestionably subject to the "paramount power of the United States to ensure that such waters remain free to interstate and foreign commerce." Montana v. United States, supra, at 551. If the states themselves are subject to this servitude, we cannot conclude that respondent - - through granted a degree of sovereignty over tribal lands - - gained an exemption from the servitude simply because it received title to the riverbed interest. Such a waiver of sovereign authority will not be implied, but instead must be "'surrendered in unmistakable terms.'" Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41, 52 (1986), quoting Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 148 (1982).[45]

The integrity of a navigable channel is protected further by the Rivers and Harbors Act of 1899, 33 U.S.C. § 401, et seq. That Act protects navigable rivers from unauthorized obstructions. Section 401 prohibits the construction of bridges, causeways,

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[44] United States v. Cherokee Nation of Oklahoma, 480 U.S. at 703-704, 107 S. Ct. at 1489-1490. As discussed in Cherokee Nation, the navigational servitude has been enforced even where dredging damaged privately held oyster beds. Lewis Blue Point Oyster Cultivation Co. v. Briggs, 229 U.S. 82 (1913).

[45] U.S. v. Cherokee Nation of Oklahoma, 480 U.S. at 706-707, 107 S. Ct. at 1491.

dams, dikes and the like over any navigable water of the United States without the consent of Congress and unless plans have been submitted to and approved by the Corps of Engineers. Section 403 of the same title protects the navigable capacity of the navigable waters of the United States.

> "The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited . . ." Section 403 applies to federal agencies and states agencies, as well as to private individuals. United States v. State of Arizona, 296 U.S. 174, 55 S. Ct. 666 (1934).

The four lower Snake River dams provide irrigation and hydropower as well as navigation. The fact that the dams are multiple use dams, however, does not impair the integrity of the navigational servitude. See, U.S. v. Grand River Dam Authority, 363 U.S. 229, 232-233, 80 S. Ct. 1134, 1136-37, 4 L.Ed.2d 1186 (1960), quoting State of Oklahoma ex rel. Phillips v. Guy F. Atkinson Co., 313 U.S. 508, 527-534, 61 S. Ct. 1050, 1060-1063, 85 L.Ed. 1487 (1941).

Congressional intent is clear. The lower Snake River dams were specifically authorized and constructed to create a barge navigation channel. The intent of Congress is clear – these four dams are an intended part of the inland navigation system created by Congress. The 14-foot navigation channel and the operation of the dams, therefore, are protected by the exercise of the navigational servitude by Congress.

Congressionally authorized navigation rights to Lewiston, Idaho, limit actions that any Federal agency can take to those which do not curtail navigation. As BPA is aware, the Federal government will face certain limits as to what it can recommend involving navigation as part of the region's species recovery plan, absent specific Congressional authorization.

In keeping with the tone of these comments focusing on recommendations to BPA regarding its 2000 Mainstem Plan, IPNG's comments are not a "lawyer's brief" repeating to BPA the specific legal standards within which its program must fall.

IPNG wishes to incorporate by reference, however, the applicable laws that define the limits and scope of the ESA, CWA, and such other statutes and implementing regulations that may be relied upon by BPA in proposing administrative actions to implement its Mainstem Plan. The legal "sideboards" of those laws will guide BPA as to what it can implement and what it merely can recommend. Nonetheless, those legal limitations need to be on the table as part of this comment process for review by BPA.

LIMITS TO CLEAN WATER ACT

IPNG also is aware of the importance BPA gives to the Clean Water Act in this Draft EIS. Just examining the index shows 20 separate references throughout the

document, some in passing and some in more detail. IPNG wishes to call to the attention of BPA the unique way that navigation intersects with the Clean Water Act. We hope that the discussion that follows will help guide GBPA officials in drafting the Clean Water Act aspect of the Final EIS in a way that comports with existing limits to CWA. #55

Navigation rights limit application of Clean Water Act. In view of efforts by some parties to integrate the Endangered Species Act and the Clean Water Act, IPNG wishes to bring to BPA's attention certain facts and court holdings addressing navigation's relationship with the CWA.

IPNG currently is an intervener in a lawsuit[46] in which the scope of the Clean Water Act (CWA) is at issue. Among the issues raised by IPNG was the limit on the CWA when applied to navigation rights. In view of references from some commenters to BPA in this process regarding integration of CWA into ESA-related recovery measures, it is useful to review this one distinct area.

The Clean Water Act recognizes a special role for navigation. At no time during this ESA-salmon process that has engaged the Pacific Northwest for several years has sovereign authority over navigable waters been "surrendered in unmistakable terms." Certainly, the Clean Water Act contains no specific surrender of the navigational servitude. On the contrary, the Clean Water Act specifically states that the "Act shall not be construed as . . . affecting or impairing the authority of the Secretary of the Army to maintain navigation."[47]

This expression of congressional intent has two ramifications. By its terms, the authority of the Corps of Engineers to maintain navigation is not to be impaired by any provision contained in the "chapter," that being Chapter 26 of Title 33 of the United States Code.

This provision also clearly provides that there has been no waiver of sovereign immunity in circumstances that would impair the authority of the Corps to maintain navigation. Nothing in Chapter 26 – i.e. 33 USC §1251- 1376 impairs that "authority." This provision of the Clean Water Act is clear and unambiguous, thus making reference to legislative history unnecessary. (A review of that legislative history, nonetheless, confirms the clear mandate of the provision: "Specifically, the authority of the Secretary of the Army to maintain navigation and under the River and Harbors Act of 1899 is preserved."[48])

[46] National Wildlife Federation et al v. US Army Corps of Engineers, US District Court for the District of Oregon, No. CV 99-442 FR.

[47] 33 U.S.C. § 1371(a)(2)(A). See also 33 U.S.C. § 1344(t). (Emphasis added)

[48] S. Rep. 92-414, 1972 U.S. Code Cong. & Admin. News, 3751.

Congress did not intend that the Clean Water Act be used to affect or impair operations undertaken for the maintenance of navigation. Congress lawfully authorized these structures pursuant to its Commerce Clause powers. These dams are used to maintain a 14-foot navigational channel. Operations of these dams must protect that channel. For example, state certification for private activities cannot be given where "in the judgment of the Secretary of Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigational waters would be substantially impaired thereby." 33 USC §1342(b)(6).

IPNG members support many of the CWA goals, yet the scope of this initiative may well create problems that have not been reviewed as part of the public process within the region. IPNG requests BPA to examine the legal sideboards to both the ESA and CWA that limit their scope. These limits must be maintained and not be blurred in an attempt to broaden the reach of either or both by this proposed integration.

Washington State CWA regulations acknowledge navigation's unique status. Some commenters may suggest that Washington State CWA regulations require some modification of the operation of the Lower four Snake River dams located within the state of Washington.

Washington regulations provide for protection of the Snake River navigation channel, specifically providing that "commerce and navigation" are uses that are to be maintained on all navigable waters of the State of Washington. A characteristic use of Class A Waters specifically includes "commerce and navigation."[49]

The State of Washington recognized these commerce and navigation interests are identified as a "characteristic use" for all classes of surface waters within the state of Washington pursuant to Wash. Admin. Code § 173-201A-030. IPNG has a direct interest in seeing that Washington regulations are applied properly and are interpreted to protect the characteristic use of the surface waters of the state of Washington.

The Washington State anti-degradation regulation, Wash. Admin. Code §173-201A-070, clearly provides that existing beneficial uses "shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed." That same regulation provides that where the natural condition of surface waters are of a lower quality than the criteria assigned, the "natural conditions shall constitute the water quality criteria." In addition, Wash. Admin. Code §173-201A-060 provides a special exemption for fish passage on the Snake and Columbia Rivers.

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[49] WAC 173-201A-030(2)(b)(vi)

Commerce and navigation also are protected by the anti-degradation policy of the same Washington regulation (WAC 173-201A-070). No degradation "which would interfere with or become injurious to existing beneficial uses shall be allowed."[50]

The Washington anti-degradation policy was reviewed by the United States Supreme Court in PUD No. 1 v. Washington Department of Ecology. In holding that the State of Washington could condition a §1341 certification for construction of a dam on minimum stream flows in order to protect fisheries, the Court noted that water quantity was part of the state's water quality anti-degradation policy.

> Petitioners also assert more generally that the Clean Water Act only is concerned with water "quality," and does not allow the regulation of water "quantity." This is an artificial distinction. In many cases, water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation, or here as a fishery.[51]

Various provisions in the water quality standards of the State of Washington also provide for relief from strict imposition of numerical standards. The anti-degradation regulation provides:

> "Whenever the natural conditions of said waters are of a lower quality than the criteria assigned, the natural conditions shall constitute the water quality criteria." WAC 173-201A-070(2).[52]

Pursuant to WAC 173-201A-060(4)(a), total dissolved gas standards do not apply "when the stream flow exceeds the 7-day, 10-year frequency flood". When considering the dissolved gas criteria for a fish passage over dams, a complete understanding requires review of WAC 173-201A-060(4)(b) ("the elevated total dissolved gas levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage"), the special fish passage exemption for sections of the Snake and Columbia Rivers stated therein, and subparagraph (c) "nothing in these special conditions

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[50] WAC 173-201A-070(1)

[51] PUD No. 1 v. Washington Department of Ecology, 511 U.S. at 719, 114 S. Ct. 1900, at 1912-13, 128 L.Ed.2d 716, (1994) (emphasis added).

[52] In Oregon Natural Desert Association v. Dombeck, supra, the District Court examined whether the term "discharge" under § 401 of the Clean Water Act includes releases from both point and nonpoint-sources. In concluding that it did, the District Court looked at § 502 of the Act which defines the term "discharge." In overruling of the District Court, the Ninth Circuit relied on §§ 502(12) and 502(16) holding that the term "discharge" includes only point-source pollution and that the nonpoint-source pollution is not regulated by the Act. Water quality limitations can be imposed by a state on intrastate waters once the existence of a discharge has been satisfied. PUD No. 1 v. Washington Department of Ecology, 511 U.S. 700, 128 L.Ed.2d 716, 114 S. Ct. 1900 (1994).

allows an impact to existing and characteristic uses." Finally, the Washington regulations provide for short-term modifications to both criteria and special conditions pursuant to WAC 173-201A-110.

In addition, the interpretation of the Washington surface water regulations does not establish any violations of those standards by the Corps of Engineers. The State of Washington mandates that commerce and navigation, as designated existing uses of the lower Snake River, be protected by the water quality standards. The 14-foot navigation channel therefore constitutes a limit on the power of the state to further impair commerce and navigation; a sufficient quantity of water to provide a 14-foot navigation channel at minimum regulated flows must be provided at all times.

Navigation rights limit application of the CWA. As this discussion illustrates, various limits constrain a potential Federal goal that is raised throughout several documents in the region by members of the Federal Caucus. These pertain to how CWA and ESA should be "integrated" in implementing species recovery programs.

These references in the various documents and appendices produced by Federal agencies discussed benefits from "integrating" into ESA recovery plans certain CWA-related activities. IPNG asserts that the Federal Government may not use the Clean Water Act to undermine either the existence of dams already protected under the Commerce Clause, or operations necessary to maintain navigation.

IPNG repeats that it appreciates the opportunity to comment on the important work of BPA in developing its Final EIS for its Fish and Wildlife Implementation Plan. Please contact IPNG members or me if BPA officials have any questions.

IPNG attaches as Appendix A to these comments a discussion of how the Lewis and Clark Expedition was viewed by President Jefferson as one with clear commercial goals' Jefferson repeated how the Expedition's goal was to find a water-centric transportation route linking the two costs. Jefferson wrote of opening the country to water navigation "perhaps with a single portage" to link the Columbia to the Missouri and on to a number of East Coast navigable rivers. We call it to the attention of BPA officials. #50

Sincerely,

Walter H. Evans, III

WHE:
Attachment A: President Jefferson and the Lewis and Clark Expedition

APPENDIX A

COMMERCE AND NAVIGATION: CENTERPIECES FOR THE COLUMBIA AND SNAKE RIVERS SINCE LEWIS AND CLARK

Inland navigation has been the cornerstone of the Columbia River's many uses throughout the history of the United States. Today, BPA's activities cover a wide area, defined roughly by Columbia River Basin. Corps of Engineers dams throughout the Basin are multiple use projects. Yet, the core purpose from the earliest days of this country, has been development of navigation on the river system.

Navigation was the first and most important reason for the Lewis and Clark expedition. Many forces from the 19th century shaped the Pacific Northwest, beginning with reports from the Corps of Discovery's expedition that traversed the Snake and Columbia Rivers to and from the Pacific Ocean. The Corps of Discovery had as its core responsibility a water/portage/water link between the Missouri and Mississippi in the East and the Columbia in the West. Water transportation linking these two magnificent rivers was the initial task for the Expedition given to Meriwether Lewis by President Thomas Jefferson. Public statements at the time were broader and more general. In his personal letter to Lewis in the spring of 1803, however, Jefferson stressed the true purpose of the proposed expedition:

> .... **"The object of your mission is to explore the Missouri river, & such principal stream of it, as, by it's course & communication with the water of the Pacific Ocean may offer the most direct & practicable water communication across this continent, for the purposes of commerce....**
>
> **"The interesting points of the portage between the heads of the Missouri & the water offering the best communication with the Pacific Ocean should be fixed by observation & the course of that water to the ocean, in the same manner as that of the Missouri....**
>
> **"Should you reach the Pacific Ocean inform yourself of the circumstances which may decide whether the furs of those parts may not be collected as advantageously at the head of the Missouri (convenient as is supposed to the waters of the Colorado & Oregon or Columbia) as at Nootka Sound or any other point of that coast; & that trade be consequently conducted through the Missouri & U. S. more beneficially than by the circumnavigation now practiced....** [53]

[53] Letter to Meriwether Lewis from President Thomas Jefferson, April 27, 1803,

Navigation also was an essential part of Jefferson's request to Congress in support of the Lewis and Clark Corps of Discovery. Even the confidential message transmitted to Congress by President Jefferson in January 1803 urging Congressional approval for the mission and its cost ($2500) referred to navigation and commerce.

This confidential message did not spell out in detail the true goal of the Lewis and Clark expedition. Other documents attribute this to Jefferson's concerns that this confidential document might be leaked tot the British government, and Jefferson did not want the British to know the true purpose of the Expedition.

Much of this document of January 18, 1803, dealt with matters on the borders of the existing US territories. Nevertheless, President Jefferson explained to Congress about the role of navigation and commerce in requesting Congressional approval of the Expedition:

> The following confidential message was received from the President of the United States, by Mr. Lewis, his Secretary[54].
>
> CONFIDENTIAL
>
> ....
>
> .... It is, however, understood, that the country on that river (Missouri) is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation (i.e.: Great Britain), carried on in a high latitude through an infinite number of portages and lakes, shut up by ice through a long season (i.e.: across Canada).
>
> .... The commerce on that (i.e.: Canadian) line could hear no competition with that of the Missouri, traversing a moderate climate, offering, according to the best accounts, a continued navigation from its source, and possibly with a single portage, from the Western Ocean, and finding to the Atlantic a choice of channels through the Illinois, or Wabash, the lakes and Hudson, through the Ohio and Susquehanna, or Potomac or James rivers, and through the Tennessee and Savannah rivers....
>
> .... While other civilized nations have encountered great expense to enlarge the boundaries of knowledge, by undertaking voyages of discovery, and

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(June 20, 1803). The Essential Documents of American History, compiled by Norman P. Desmarais and James McGovern, Providence College. (Emphasis added.) *NB*: Full text of letter attached at end of comments.

[54] This reference to "Mr. Lewis" in the Congressional report of the day was to Jefferson's Secretary, Meriwether Lewis. In current White House parlance, Lewis would have been called Jefferson's Chief of Staff.

> for other literary purposes, in various parts and directions, our nation seems to owe to the same object, as well as to its own interests, to explore this, the only line of easy communication across the continent, and so directly traversing our own part of it, The interests of commerce place the principal object within the constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our own continent, cannot but be an additional gratification....
>
> .... The appropriation of two thousand five hundred dollars, for the purpose of extending the commerce of the United States, while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way....[55]

Other documents indicate that the more

The past one hundred years has confirmed that navigation has been the core element of development of the Columbia Basin river system. Navigation has been a centerpiece in the region throughout US history.[56] This discussion reminds everyone—IPNG, BPA officials and staff, and others in the region-- that the Corps of Discovery set out to determine how commerce between the east coast and the undiscovered west coast could be developed via a water route (and portage) linking the two great river systems.

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[55] Journal of the Executive Proceedings of the Senate of the United States of America, 1789-1873. Proceedings of January 18, 1803, page 439. (Emphasis and explanations added.) *NB:* Full text of communication attached at end of comments

[56] IPNG acknowledges the historical role in the Columbia River Basin of Native Americans, and realizes that its historical references are to the history of the Unites States.