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March 27, 2000

U.S. Army Corps of Engineers
Walla Walla District
Attention: Lower Snake River Study
201 North Third Avenue
Walla Walla, Washington 99362-1876

RE: *Comments of the Inland Ports and Navigation Group on: Improving Salmon Passage: DRAFT: The Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement, a draft document of the Corps of Engineers*

Dear Ladies and Gentlemen:

Schwabe, Williamson & Wyatt is pleased to submit comments on the draft report, Improving Salmon Passage: DRAFT: The Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement ("Draft EIS" or "DEIS") on behalf of the Inland Ports and Navigation Group ("IPNG"). IPNG is a group of navigation interests, primarily the Columbia and Snake River ports from Morrow, Oregon, to Lewiston, Idaho. Towboat and barge interests also are members of the IPNG.

PRELUDE

Inland navigation has been the cornerstone of the Columbia River's many uses throughout the history of the United States. Today, Corps of Engineers dams throughout the Columbia River Basin are multiple use projects. Yet, the core purpose from the earliest days of this country, has been development of navigation on the river. Later in these comments, IPNG devotes several pages discussing the unique qualities of navigation and how these rights differ from those of many other interests in the region.

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 Meriweather Lewis by President Thomas

Jefferson. In his letter to Lewis in the spring of 1803, Jefferson stressed the real 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...."¹

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) included reference to navigation and commerce. This confidential message did not spell out in detail the true goal of the Lewis and Clark 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.

CONFIDENTIAL

....

¹ Letter to Meriweather Lewis from President Thomas Jefferson, April 27, 1803, (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.

... 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 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 on notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way....²

The past one hundred years has confirmed that navigation has been a core element of development of the Columbia Basin river system. Navigation has been a centerpiece in the region throughout US history.³ IPNG calls attention to the discussion later in these comments to the Corps of the unique role that navigation plays in this region. Congress and the courts have confirmed this in numerous ways. This prelude reminds us—IPNG and Federal government officials 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. The existing inland waterway developments today link commerce beginning as far from the Pacific Ocean as the upper Midwest. Continuing along the trails first traversed by the Lewis and Clark expedition, such inland water commerce implements the

² 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

³ 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 United States.

vision of President Jefferson and Lewis and Clark. Today, the water-born commerce serving the communities of Lewiston and Clarkston embodies this vision of these American giants.

INTRODUCTION

IPNG opposes Alternative 4 of the DEIS that endorses dam breaching. IPNG opposes any combination of other Alternatives or Options that includes dam breaching that the Corps of Engineers or other Federal agencies may include in the Draft Preferred Alternative Report or the Final All-H Plan.

IPNG states in the strongest terms possible that the science today lacks a high enough certainty that breaching dams actually will restore listed species to risk the certain economic upheaval in the region that certainly will flow from breaching the four Snake River dams. Emotional appeals must not outweigh the scientific uncertainties and economic realities that should guide decision-makers to conclude that too many unknowns remain to support such a risky strategy. Instead, the region should agree on a number of steps that it could take at once to produce short-term benefits.

IPNG directs these comments to the Corps and its DEIS. These comments are submitted to the US Army Corps of Engineers and are directed specifically to their DEIS issued in December 1999. IPNG submitted separate comments to the Federal Caucus regarding the Draft Conservation of Columbia Basin Fish: Building a Conceptual Plan earlier this month. In a few instances in these comments, IPNG references the role of the Federal Caucus in shaping the broader vision of listed species recovery in the region. Because the many appendices for the "John Day Drawdown Phase I Study" (John Day Study) were not available at the Corps Portland District office until late Friday afternoon, March 11, 2000, we will submit comments on that study in April.

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.

These ports and other ports on the Columbia/Snake River system between the Port of Morrow, Oregon, and the Port of Lewiston, Idaho, are referred to collectively as Inland Ports and Navigation Group ("IPNG") for the purpose of these comments.

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"

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 case⁴ in US District Court in Portland. This case involves environment advocates led by the National Wildlife Federation who are suing 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. These dams have been the subject of considerable discussion over the past two years. We will refer later in these comments to some arguments made in that lawsuit, submitted here for consideration by the Federal Caucus in its review of the appropriate next steps for the region in aiding recovery of listed fish species.

The second task for IPNG was to review the draft documents prepared by Federal agencies and distributed for public comment regarding various fish recovery options.

⁴ National Wildlife Federation et al vs. US Army Corps of Engineers. US District Court of Oregon, No. 99-442-FR

Thereafter, IPNG prepared and submitted comments, both in oral summary form at the regional hearings held earlier in the year and in written comments that follow.

SCOPE OF THE ISSUE AND THE REGIONAL DEBATE

We encourage efforts by the Corps and by other Federal agencies to broaden the prism of this debate. More than anything else, the region should move beyond dam breaching to look for "low-hanging fruit" where the region can agree on short-term steps to help restore listed stocks. We suggest some options later in these comments. The degree to which the Corps and the Federal agencies can resist the pressures to keep dam breaching front and center will help determine whether the region can make progress on the many areas where reasoned negotiated agreements can be reached.

2 | *A broader vision for species recovery is required.* Before turning to the substance of these remarks, IPNG raises a fundamental question: why was the important work and required documentation of the Federal Caucus and its All-H Draft Plan not given the same degree of time, financial commitment, and staff resources as was given preparation of the Draft EIS? Why was the Federal Caucus not formed until 1998? Much valuable time was lost by the delay in forming the Caucus to address these larger recovery issues. Although IPNG acknowledges that the All H Draft Plan represents the best efforts of many dedicated civil servants, nevertheless, the Draft Plan was thin gruel when compared to the many very thorough related reports, such as the DEIS.

The potential scope of the All-H Plan is far reaching, however, and its potential impact on our region is significant. For that reason, IPNG suggests that it has been understaffed, underfunded and resulted from a time frame too short for its necessary workscope. Its product should equal its mandate. For a document whose recommendations may alter significantly the way the region lives and works, it fell short of the mark in several areas. We encourage the Corps to help fill in the areas if the Caucus is unwilling to do so, or rushes to judgment on issues that require more preparation and research.

3 | *The DEIS is too narrow in its focus, and asks the wrong questions. As a result, many of the issue discussions and research flowing from these questions, therefore, the answers and research fall into the trap of seeing the issue only through a narrow dam-centric approach.* The DEIS begins with a view that the question that requires answers is how much will it cost and what will result of the Snake dams are breached? What costs will result? What impacts will result, to the listed species and to the region? What added research is needed before a decision is made to breach?

If the questions represent the wrong vision needed for answers that drive workable solutions, basin-wide and full life cycle, then both answers and research are designed to fill in the blanks to the wrong questions. As such, they are too narrow. All of this is not the Corps' making, IPNG realizes, but the debate over the DEIS has become narrower, rather

3 cont.

than broader. Critics of dams have worked to narrow the decision even more. Inflated benefits and minimized costs mark some of their claims.

The DEIS has a specific focus on what IPNG believes is a critical aspect of the region's salmon recovery debate. Nevertheless, the Federal Caucus Draft Plan represents the best hope to re-frame this debate and discussion away from a dam-centric approach that has created great divisions in the region. IPNG urges the Corps to incorporate the positive elements of the All-H approach into its later work products. The Corps Alternatives that do not include dam breaching are a useful way to achieve this in the DEIS context.

If the DEIS is followed by a better and more thorough Draft Preferred Alternative Report (incorporating recommendations and suggestions IPNG offered in its comments), we believe that it can shift the debate to the bigger picture that is at the heart of this matter. We trust that the Preferred Alternative will reject dam breaching, so that energies, funds, and science can focus on adoption of other Alternatives around which the region can rally.

A thorough Draft Preferred Alternative Report from the Corps, a stronger All-H Final Plan, and refocused BPA initiatives aimed at the estuary and ocean all will play a significant role in reshaping the regional debate. IPNG realizes that this will present a challenge for the Federal agencies, but it must be met if the Final Plan and Preferred Alternative is to rally the region and not divide it further.

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IPNG calls to the attention of the Corps another useful document for consideration by the Corps in its review process, Bonneville Power Administration's Multi-Species Biological Assessment of the Federal Columbia River Power System ("BPA B/A"). Created by BPA for review by NMFS before NMFS issues its Biological Opinion, we urge that the Corps consider several points made in the BPA B/A. BPA's focus is different, yet some of its comments bear review or further study by the Corps. IPNG will refer throughout these comments to some strong points in the BPA B/A.

Conflicts within the Federal agencies, the laws they administer and the policies propose and promote create inherent problems that hasten gridlock. The complex system now in place contains inherent conflicts that confuse the public and make coordination among Federal agencies more difficult. Laws conflict with each other. The ESA and the Migratory Bird Act and the Marine Mammal Protection Act create conflicts in dealing with predators. The relationship between hatchery fish and wild fish create confusion. Later in these comments, IPNG discusses internal conflicts inside NMFS as it deals with both promoting the commercial fishing industry and enforcing the ESA on listed species. Alternatives, options and goals in the Draft All-H approach are in conflict, such as harvest and species recovery. The Final All-H Plan should discuss this conflict in considerable detail, so the region understands this basic conflict, and can make decisions based upon those fundamental choices

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Short-term projects to help species recovery received inadequate attention in the DEIS. Detracting from the various papers out for regional comment is the lack of

5 cont. prioritization among actions and options into short-term, medium-term and longer term. More importantly, this omission detracts from the region's ability to prioritize. This lack of prioritization also limits the ability of the Federal government to organize this document and the Draft Preferred Alternative Report in a manner that generates public support. BPA's B/A makes a good start at this, albeit limited, but it deserves a more prominent role.

6 Throughout these comments, as with our response to the Caucus' Draft Plan, IPNG raises questions we believe merit serious consideration and answering in the Draft Preferred Alternative Report. The Corps should answer these questions. If not, IPNG requests that the Final Federal Caucus Plan contain an addendum addressing questions raised by commenters in the region.

What steps can our region undertake now that offers the greatest chance for fish recovery that does not wreak economic havoc in the Inland Empire of the Columbia River Basin? We recognize the need for longer-term projects, but we encourage the Federal government to focus as well as some short-term unifying alternatives and options. Put another way, can our region agree on recovery steps that we can undertake now, or will we continue in a divisive debate whose future may be decided in the courthouse instead of at the spawning habitat?

7 *The critical role in fish survival played by the ocean—where listed stocks spend much of their lives—is ignored, and must be examined and explained in detail by the Corps prior to any decision regarding breaching the dams on the Lower Snake. BPA should consider funding compilation of existing research. Ocean conditions may trump expensive recovery and mitigation programs financed by the Corps and BPA.* IPNG sees a glaring hole in the current debate. The ocean plays a critical role in species recovery, yet is given lip service (if at all) in any documents now available for public comment. We realize that no one in our region—not Federal or state governments, not dam breachers nor dam retainers, not “dot-com” millionaires nor dock workers — no one can do much about the impact of the oceans on species survival rates. We all deserve better answers, though, about the ocean's critical role in fish species survival.

People in the Pacific Northwest deserve straight answers and candid talk about the risks inherent in spending more and more money on some risky recovery schemes (dam breaching is one)—without admitting that ocean conditions may erase fish species benefits from some past initiatives, and may threaten and outweigh some new and expensive new initiatives. Those people in the region who question this grant salmon recovery experiment—from whatever spot on the spectrum— deserve answers, or their support may well disappear for future controls in the absence of a clearer picture about the role of the ocean

8 We all read CRI analyses about potential survival probabilities under different alternatives and options. We also should have CRI analyses for our review that describe how ocean warming on a decade-long basis can trump many of our expensive initiatives,

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and how a naturally cooling ocean can do more to help returning stocks than many ideas proposed and supported by some advocate groups.

In sum, IPNG requests that the Federal Government, led by the Corps and BPA, devote significant attention in its final report to the impact of the High Seas—a Fifth H—on this complicated process of species recovery. We add more to this topic later in these comments.

Shortcomings in the economic analysis and associated reports in certain areas erode public confidence that the full economic impact of dam breaching was reviewed completely by the Corps. The Corps and the related groups with a role in the DEIS failed to include certain economic assumptions in its report, thus compromising its usefulness as a document setting out the scope of the results from its alternatives. IPNG questions some of the core assumptions followed, and the omission of other assumptions and other studies. Taken as a group, they make this a flawed document.

Creation and use of performance standards raised in these proposals are long overdue. Both the Federal Caucus Draft Plan and the BPA B/A raise performance standards and goals—a worthwhile task that should have been adopted by Congress, BPA, the Power Council, the Corps and others during the past decade. And yet disagreements among scientists that impact harvest and hatchery roles, for example, create barriers to setting standards and goals.

IPNG calls attention of the Corps to the discussion of performance standards in the BPA B/A. The DEIS should have included greater attention to this issue. IPNG acknowledges the review in the BPA B/A of the issue of performance standards. BPA raised useful questions in that B/A. IPNG may question some specifics throughout Section 4 of BPA's B/A, but specific differences aside, it was a useful addition to the regional dialogue on species recovery. The Corps should use that document in its review prior to issuing a Draft Preferred Alternative Report.

We suggest that it be included in the analysis of this important topic by the Corps and other agencies. IPNG appreciates the graphic depiction (Figure 4-2) on page 4-6 of the BPA B/A describing the role of performance standards. We welcome references to "climate and ocean conditions" and the link to "monitoring and research." We ask that these elements play a greater and more central role. We also inclusion of predation in the elements of performance standards. We urge predation reduction as an element also in developing survival and recovery criteria.

IPNG applauds BPA's reference in its B/A to the relationship of hydro performance standards to the need for life stage survival. IPNG agrees strongly with the appropriate role for hydro decisions within the contest of life stage. We encourage the Corps to utilize such material in its Draft Preferred Alternative Report. This will stress this relationship to other members of the Federal caucus. As BPA notes on page 4-7 of its B/A, hydro performance standards, as with other aspects of hydro, "should be viewed in the

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context of life stage survival. Information... does not always lend itself to compartmentalization across hydro, harvest, hatchery and habitat, and is more appropriately viewed in the context of life stage. Therefore, by nesting hydro performance standards in the life stages, it is more reflective of the data and thereby improves probability of recovery of the listed stocks." IPNG suggests that adding other Hs to this declaration strengthens its application. IIPNG commends this approach to the Corps and other Federal agencies.

Although included for illustrative purposes, BPA includes in its B/A important material that deserves further and more prominent review and comment, by the Corps and by all Federal agencies. On page 4-10, the BPA B/A states "... action Agencies assert that the system survival standard is the main measure of smolt survival and that project minimum standards be used as targets, but not hard limits that may result in poor investment choices. For instance, a \$100 million investment for a .02% increase to meet the project minimum standards should not take priority over a \$10 million investment at another project that improves survival from 96 to 98 percent." IPNG urges the Corps and all Federal agencies to broaden this approach to other proposed actions. We suggest that the same equation be applied to predation control.

Performance Standards, such as are set out in the BPA B/A, should have been a subject for regional discussion and debate a half-decade ago. Congress should have supported BPA in such efforts to re-frame the regional debate so that such performance standards were a central part of the science and of the funding. The region would be better off today if such analyses were part of today's debate. The Corps, the Congress, the public and all advocates would have benefited from such an approach.

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BPA B/A also discusses the useful scope of regional review. The BPA B/A was prepared for submission to NMFS. Nevertheless, it also discusses a related area of interest to IPNG. We call the attention of the Corps to BPA's B/A chart (Figure 4-1), appearing as page 4-2 in the B/A. Without going into excessive detail, we think it is a useful depiction, although it fails to cover all the necessary issues. First, we believe other Hs should be included, along with the original 4-Hs.

We urge the Corps, BPA and other agencies to see that the "Strategic Direction" of this B/A Figure should be expanded. Specifically, it should include measurement of other problems outside hydro in the lifecycle that mitigate against reaching the goals for the hydro system in-river survival within 10 years. Not surprisingly, we urge that predation and ocean impacts be included in this calculation. We repeat this ideas as it pertains to the Performance Measures section of this chart and related comments in the B/A.

GOALS FOR THE CORPS DEIS

IPNG members support several strong actions by Federal agencies to help restore salmon runs in the Pacific Northwest. We are committed to steps that will help these runs recover. Because we believe strongly that "fish versus dams" is the wrong thesis, the

wrong equation and the wrong solution, we also strongly oppose actions under consideration in all administrative proceedings that would partially breach any of the Snake River Dams. We strongly oppose DEIS Alternative 4, all related options, or any and all combinations of alternatives/options/ actions under review that include Snake River dam breaching.

IPNG supports numerous fish recovery measures. Although these written comments began with a paragraph restating what we oppose, IPNG wants to stress, instead, species recovery measures we support.

The Corps and other Federal agencies should continue to shift the discussion away from dam breaching to steps that provide reasonable short-term benefits. They should pause in the rush to longer-term measures/projects/solutions with unproven, speculative and even longer-to-emerge potential benefits. Instead, the region should dwell on short-term projects that deserve our regional support and our scarce dollars. IPNG realizes longer-term efforts are needed, but we urge the agencies to focus on steps that offer short-term progress.

The Corps should isolate such projects that most people in the region would support. They should look for practical projects and steps that are cost-effective with basin-wide support. IPNG raises some ideas in our testimony. Please also consider what medium-term alternatives also combine higher probabilities for success with reasonable costs and unified regional support.

IPNG encourages immediate actions and more focused study in several areas. These steps will benefit listed species, or give the region the knowledge base needed before we commit to expensive and restrictive recovery measures that are speculative, at best. Such research will narrow the unknowns.

- We support habitat improvements that offer good chances for fish recovery at reasonable costs. In fact, we will describe later in these remarks one example we encourage the agencies to pursue: culvert replacement
- We want tough action without delay to eradicate or reduce to manageable levels the devastating predation near the mouth of the Columbia River.
- For McNary pool and Lake Wallula specifically, the DEIS does not give sufficient attention to the potential damage from massive amounts of sediment that would come down the Snake River into Lake Wallula if the Snake dams were breached.
- As noted above, IPNG wants honest answers to questions from another of the "H"s: High seas. Our region deserves straight talk about the possible adverse impact on fish survival of shifts in ocean temperature and climate change, and how this can put at risk and undo different expensive recovery steps being

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urged on our region. We also deserve an explanation of how ocean temperature and related changes can improve fish recovery.

- We urge your review of results of water temperature analysis that challenge claims made by some critics of the Snake Dams regarding the impact on water temperature "caused" by the dams.
- We also think that a "regional" solution must include Canadian interests in harvest.
- We endorse options and alternatives under review that include greater use of transportation of juvenile fish.
- We support continuing improvements at the dam facilities that improve fish passage, and more research into other promising alternatives in this area.
- We see another "H". Hypocrisy, in groups that tell the public that their only targets for breaching are the four Snake river dams, and yet now criticize the John Day Drawdown study because they claim that drawing down John Day is critical to fish recovery efforts.
- Conflicts and divisions in responsibilities of NMFS between ESA enforcement and harvest promotion may be resolved only if NMFS is split into two agencies.
- The DEIS does not discuss in sufficient detail the significant level of environmental damage caused in portions of the Basin if the Snake dams were breached. Air pollution degradation in the Columbia River Gorge and east of the Cascades, in particular, deserves more attention. The Corps needs more research to flush out this issue.
- Inadequate transportation infrastructure review omits sufficient discussion of the seasonal nature of cargo shipment, and the resulting adverse impacts of surges in demand on inadequate rail or truck transport as replacement for barge transport.
- The DEIS gives insufficient weight to the regional damage breaching will cause in the region, and gives too much attention to the more abstract national economic model.
- IPNG believes that the special status given navigation by the US Constitution, Congress and the Courts means that Federal agencies must consider their unique role and rights as it reviews various species recovery options. This reminds all parties that various limits constrain the scope of recommendations that emerge from its review.

- IPNG believes that dam breaching substitutes emotions for sound economics, and favors uncertain scientific projections over certain economic devastation. Until dam breaching is moved off the table, too much effort on this will drain the region's efforts to reach consensus on other steps that offer more immediate help to listed species.

IPNG requests that the Corps consider seriously our comments in several functional areas—some of which are “crosscutting” measures that do not fit within a specific Alternative or Option. IPNG also offers a number of specific comments on particular points in the DEIS. IN some cases, we refer to valuable points made in the BPA B/A.

IPNG also discusses the unique role and rights of navigation under the Constitution and certain congressional actions in creating the Columbia-Snake River inland navigation channel. It reminds the Federal agencies that certain legal limits may constrain the potential scope of actions that can be taken or implemented by administrative decision.

OVERVIEW

Basin-wide problems require life-cycle solutions. We welcome the Federal Government's attempt to broaden the discussion of various recovery options. It is essential that debate shift to this framework. As these comments show, we stress this in the strongest terms.

Running 1200 miles from its headwaters in Canada to its mouth beyond Astoria, the Columbia River is the magnificent artery binding together our entire region. The 39,000 square miles in the Columbia Basin generates an outflow averaging some 198 million acres feet at the Columbia's mouth—or 275,000 cubic feet a second. That is second only to the Missouri-Mississippi system. And yet, with this enormous geographic scope, and the full range of All-H contributions to species decline, we are disappointed that one narrow element—breaching four Snake River dams—has received so much attention.

The Corps should repeat and emphasize that the All-H approach is a belated recognition that the too narrow “dams or no dams” approach would not work. That narrow view has divided the region, invited outside pressures, wasted time of Federal agencies and officials, and diverted attention away from the broader All-H vision. We remind Corps that an All-H study of the scope, length and cost of the Draft EIS—began when work on the Draft EIS and lasting and costing as much-- might have avoided much of the finger pointing and lack of true dialogue that today marks extremists on all sides of this issue.

Federal agencies should recognize and repeat that a basin-wide full salmon lifecycle approach must be at the center of real recovery efforts. We support this vision, and believe it offers the only way to reach compromises that protect the species while not devastating the economy of the Columbia Basin.

The Corps should lead efforts to expand what we know about the rest of the Hs, so that the database is equal to that already compiled about hydro. Hydro has been studied, analyzed, reported upon, and dissected. Far less is known about other factors contributing to the decline of listed species in the region. We call attention of the corps to a telling comment by BPA in its B/A. In its discussion of Anadromous Salmon, Steelhead and Trout in the B/A, BPA concluded on page 5-1 that "The level of effect of many of the factors affecting survival of anadromous stocks during their whole life cycle remains poorly documented. But the effects relating to the hydrosystem of the Columbia River System have been analyzed in numerous documents." IPNG agrees.

Work required for a strong and useful Corps Draft Preferred Alternative Report and other follow-up to the Corps DEIS may need continued Congressional appropriations to fill in its gaps before decisions can be made with increased certainty. After reviewing the workload required to develop a document around which the region can rally, IPNG may well want to support specific continued Congressional funding for ongoing work under this basin-wide full salmon life-cycle approach. If needed, and if aimed at filling in such blank spots in ocean and harvest issues, it is a matter that should unite various factions in this regional debate. Regional stakeholders with an interest in Federal appropriations should consider whether timing allows a request for FY 2001 budget additions for expanded study of the role of the ocean in salmon survival. If sufficient literature already exists in this subject, then funds may be needed for analysis of that research.

IPNG supports adequate funding for the Corps to prepare a thorough and timely Draft Preferred Alternative report and make it available for public comment. The Corps may need supplemental funding to complete its Draft Preferred Alternative and hold a public comment period on it. Shortcomings presented in these and other comments emphasize the need for a more thorough and complete job on numerous areas. In spite of four years and \$20 million dollars, more work is needed. As choices narrow, it is reasonable to believe that the same parties will have comments on the preferred alternative. This document should be submitted for public review of the science and of the policy recommendations chosen by the Federal government. If the Preferred Alternative Draft Report incorporates recommendations of serious commenters as to gaps and shortcomings in the draft, the corps will have a major task in filling out the unknowns and the overlooked areas in this DEIS. The region should support adequate funding for this document, as well as for any thorough All-H further Draft Plan that takes a more complete look at the complex life cycle issues involved in species recovery.

OUR REGION SHOULD MOVE BEYOND DAM BREACHING

IPNG opposes continuing the study of dam breaching as a recovery option. IPNG has resisted in this comment letter and in earlier comments to the Federal Caucus on the All-H Draft Plan to allow our opposition to dam breaching to dominate our comments. Because we support a number of steps to improve species recovery, our comments reflect what we support more than what we oppose. Nevertheless, we need to repeat, for this

record, that we strongly oppose dam breaching. We urge the Federal government to move beyond it as an alternative receiving continued research and study.

Critics of dams focus on this supposed "solution" and often ignore useful areas where agreement could be reached that offer promise in the short term. IPNG sees the current divisions into the simplistic "dams or no dams" as a missed opportunity. If the energy and money spent responding to this narrow issue had been directed at areas where agreements could be reached, IPNG believes the region would be in a stronger position today to help listed species recover.

16 IPNG questions the utility of the regional hearings as a mechanism for soliciting reasoned comments on its DEIS. The hearings produced more theater than reasoned comments. IPNG noted that the Federal government scheduled several hearings in Alaska, rather than more hearings in the states directly impacted. In spite of constant attempts by all Federal participants to refocus the hearings, the hearings were a forum to criticize or support the Snake River Dams. IPNG thanks Federal officials for their concerted efforts at the beginning of each hearing to broaden the scope, but dam critics had organized with one goal: keep the focus only on the Snake dams. Supporters of the dams did so, as well, and not much dialogue resulted.

CULVERT REPLACEMENT

IPNG supports habitat improvements that focus on short-term options offering the greatest potential for near-term success. IPNG suggests one step that offers the potential for considerable positive habitat results for a reasonable investment. We strongly urge the Corps to commit resources to help fund this short-range recovery step.

17, 18, 19 *Fish-killing culverts now block access to thousands of miles of spawning and rearing habitat, and their replacement with fish friendly culverts or bridges should be a high priority in the short term.* Replacing these "killer culverts" should receive more focused attention. Providing fish friendly replacement culverts or bridges should be at the heart of a short-term habitat improvement strategy. Adequate funding should be sought from appropriate Federal and state agencies to allow this program to expand.

IPNG calls attention to some compelling statistics.

Washington Governor Gary Locke's salmon team leader said that her newest statistics show Washington State has 2400 barrier culverts blocking access to 3000 miles of potential spawning and rearing habitat. She also said that, of this total, 10% of the bad culverts are on state roads, 40% are on county roads, and the remaining 50% are on private and forest roads.

In Oregon, some 2900 culverts on state and county roads block access to "thousands" of miles of spawning and rearing ground. ODF&W experts said that a person could extrapolate 2 miles above each culvert as a reasonable "guestimate" of lost habitat. Such extrapolation leads to a reasonable conclusion that on Oregon State and county roads

alone, excluding all forest and private roads, some 2900 culverts block access to more than 5000 miles of valuable habitat. This loss can be traced to culverts that do not allow upstream fish passage.

We do not have current statistics for Idaho, but we presume that they also would contain similar reports of killer culverts, and thus demonstrate opportunities for similar habitat improvements in spawning and rearing areas through culvert replacements.

The recent 1999 annual Oregon Salmon Plan Report contains some useful statistics that discuss the issue differently. The Report states that, although some 800 ODOT culverts on state roads now do not provide adequate fish passage, ODOT improved 50 culverts in 1998, allowing renewed access to 130 miles of habitat. The Report also notes that, in total, 300 culverts in Oregon were improved in 1998, opening up 200 miles of potential fish habitat. Lastly, it notes that 80% of these were on private industrial forestland and paid for by landowners. Compared to the need for more culvert replacements, this measured pace drives home our recommendation about the need for a higher priority for this issue.

Private landowners should receive favorable Federal and state tax treatment for replacing fish killer culverts. As the statistics above detail, many fish-blocking culverts are on private lands. Incentives should be sought via tax treatment and other means to encourage private landowners to replace culverts on private land. Where private landowners are involved upstream from new culverts or other structures, we believe that the Corps and other Federal agencies should recommend tax incentives for those private landowners who replace killer culverts or create/improve streamside habitat on their property. We hope the Federal Caucus will consider recommending this, or a variation, to regional Members of Congress.

IPNG believes that the USG would find considerable interest among private landowners in cooperating in both culvert replacement and streamside habitat improvement above replacement culverts. These are real-world projects and products that make streams more fish friendly, and would include clear upstream habitat improvements. If private landowners were not interested or not cooperative, the county or state could decide to replace other culverts elsewhere.

Culvert replacement would generate new construction jobs. IPNG notes that critics of the Snake Dams cite potential new construction jobs that would be created during the construction period (for breaching) if those dams ever were breached. IPNG suggests that new short-term construction jobs throughout the region also would flow from a large culvert replacement effort, with the economic bounce from those new jobs spread throughout the region.

Such smaller construction jobs would replace killer culverts in many different locations in the Pacific Northwest, for they are found throughout the region—near and far from any dams. Many different construction contracts throughout the region also would be

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more likely to go to smaller local construction companies. Thus, they would be less likely to attract a larger workforce (working only a four sites) from outside the region who might move to the region only for short-term construction jobs helping beach the dams.

Culvert replacement unites the region's various factions in this salmon-ESA debate. It should be a centerpiece of the Federal Government's short-term recommendations. In short, this is an achievable goal: replacing culverts that today kill or block fish with fish-friendly structures that would provide access to more spawning and rearing habitat. This project would unite various groups in a worthwhile common task.

PREDATOR CONTROL

The timid response by the Federal government in the past to the issue of predation near the mouth of the Columbia River disappoints most Northwesters. The Corps and other involved Federal agencies should be far more aggressive in ridding the estuary of Caspian terns—a severe source of smolt mortality. The Federal government should fund stronger eradication steps, and the Corps, as an action agency, should adopt more aggressive initiatives to cut back on this extreme predation. We believe that the damage inflicted by Caspian terns on juvenile fish is so staggering, and the number of juvenile fish eaten is so enormous, that this issue requires a stronger Federal response. IPNG hopes that most environmental advocates would join IPNG and others in supporting much stronger measures to remove Caspian terns from Rice Island and elsewhere in the lower estuary.

Without strong and tough actions to rid Rice Island of its terns, we think the region always will be reluctant to adopt tough restrictions elsewhere in the region for any of the "Hs." We believe that the lack of past tern predation control efforts mocks attempts today to stress that the public in our region should embrace tough and sweeping actions to help listed species recover. Public response in the region today will resist tough measures, until the USG shows it is serious about removing the thousands of terns from the lower river. Few groups in the region are willing to accept tough restrictions until and unless the tern problem is resolved.

Rice Island is a "killing field" for juvenile fish. We acknowledge that the Corps soon will begin a belated effort to remove 8500 pair of nesting terns from Rice Island from April to July 2000. This 230-acre island provides the home for what we call a "killing field" for smolts. A recent article in the local Astoria newspaper describing the low-cost and low-tech solution the Corps plans to use later this year also makes people ask: why in the world wasn't this done before now?

IPNG is among those who question whether the Corps actions merely will move the problem elsewhere with little reduction in predation, as opposed to eradicating or solving it. We hope we are mistaken.

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cont. The region deserves to know how this simple step took so long to initiate? Why wasn't this done several years ago? If serious steps aimed at real predator control had been taken some years ago, today we might be able to evaluate the beneficial impact of millions more juveniles entering the ocean. This is a vital element of this debate.

If Federal or state fish and wildlife officials blocked reasonable steps to control predation in past years, are those officials called on to explain such decisions? Are professional careers interrupted when the impact of past failures to curtail terns is shown? Alternatively, do the different Federal agencies treat past tern decisions as "business as usual" and allow careers to continue—even at such a huge cost to the valuable resource?

22 *Past inaction on Caspian tern predation mock efforts to rally regional support for expensive—and uncertain—recovery measures.* The Federal Government has proposed many far-reaching and costly options and tasks for our region, many at a staggering cost. At the same time, however, agencies have allowed Rice Island terns to be addressed only with Band-Aid solutions that have tiptoed around this clear cause of severe damage to migrating juvenile fish.

IPNG recognizes the need for Rice Island to continue as a site for dredged materials from the Columbia River channel dredging. We believe that still can take place, along with more aggressive forms of tern control.

23 *IPNG urges funding for more aggressive tern eradication and/or removal actions in the Lower Columbia.* At a time when BPA, for example, encourages performance standards itself, we urge that a similar rigorous examination be given to the issue of terns on Rice Island. Where has money been wasted in moving terns elsewhere? How long ago was this issue seen as a problem? What caused delays in initiating actions? What was the chance of success of last year's tentative efforts to move some of the terns? What would money successfully spent in tern eradication equal, in terms of species survival, compared with funds spent elsewhere in the system on species recovery? Is a dollar spent here the most cost-effective dollar that can be spent anywhere in the system on any aspect of the All-H recovery? If so, hat has caused the delays in implementing strong practices to rid Rice Island of predatory terns?

24, 25 *The Corps DEIS does not give predator control sufficient attention.* In the DEIS Appendix A: Anadromous Fish (page A9-5), the Corps includes a very brief discussion of the predator issue. The questions the Corps appendix terms "significant" have been asked by every schoolchild acquainted with the problem. Fewer than ten sentences deal with this serious issue, and offer no insights into the scope of the problem.

26 *Ridding the river of Caspian terns and other predator species will test the Federal government's commitment to fish recovery.* Simply put, this effort to remove terns from the estuary will demonstrate whether the Federal and state agencies will be tougher on humans than they are on terns. Of course, that equation is never presented in such stark terns, but it is a way to raise some tough questions.

SEDIMENT DAMAGE

Insufficient attention and review by the Federal Government has been given to the damage that would be caused by tens of millions of cubic yards of sediment deposits suddenly released from behind Lower Granite Dam if the Snake Dams were breached. IPNG does not believe that sufficient research has examined the detrimental impacts of this on fish survival. We acknowledge the useful Corps Appendix to the Draft EIS that covers this subject, but this issue needs to be mainstreamed. Probable results of sediment damage should be analyzed and presented as a greater part of the Alternative 4 discussion.

Furthermore, if the Snake dams were breached, the "trap" for this sediment then would shift from behind Lower Granite Dam downriver into the Columbia. We are unaware of much analysis on the impact on water withdrawals, water quality, habitat damage and other adverse impacts adjacent to McNary Dam—both for the initial surge of sediment and the annual deposition of silt behind the dam.

IPNG believes that most of the sediment deposits in Lake Wallula will occur in an area where a National Wildlife refuge, a port's dock, and the county's largest taxpayer have water-dependent facilities. It could impact the vital navigation channel to the Tri Cities ports.

The Federal agencies should review the Sediment Appendix of the Draft EIS and incorporate many of its findings and analyses into their required analyses and assessments. The public deserves clear answers to questions raised by that Appendix, as they will impact the rate at which Lower Snake River (and maintem reservoir) habitat recovers—if at all—from such extreme sedimentation. Critics charge that sediment harms spawning and rearing habitat when logging and farming cause it. Environmental groups should acknowledge the damage from severe habitat damage caused by the sudden release of sediment into the mainstem Columbia River if the Snake Dams were breached.

The useful Corps Sediment Appendix to the Draft EIS states that: "The east bank of the Columbia River between its confluence with the Snake and Walla Walla Rivers, appears to be susceptible to sediment deposition, based on qualitative analyses." This refers to Lake Wallula, the reservoir behind McNary Dam.

In the McNary pool of Lake Wallula, the gentler slope and shallower area are on the east and northeast side of the reservoir below the mouth of the Snake River. If the dams ever were breached, IPNG believes (and Corps DEIS documents and maps support) that this shallower area on the north side of the Wallula reservoir will receive a large percentage of the sudden surge of sediment. We believe it also would be the site of regular siltation deposits on an annual basis. Several severe local consequences could result if breaching occurred. The Corps research on this issue merits greater examination by other agencies and more detailed explanation of the possible effects.

32 *The large sediment buildup behind Lower Granite Dam would be deposited into McNary pool and beyond.* The Corps fact sheet describes 100 to 150 mcY of sediment currently deposited behind the four Snake dams. The Corps predicts half of that total (50 to 75mcY) would be carried down river shortly after dam breaching, with much of it deposited in Lake Wallula. Federal officials may have no frame of reference to judge the size and potential impact of this amount of material. This total amount of trapped sediment is equal to between 25 and over 30 years worth of annual maintenance dredging now done in the lower Columbia deep-draft navigation channel between Portland and Astoria, Oregon.

33 *Annual sediment deposits without the Snake Dams nearly equal the amount dredged annually for the entire Lower Columbia River Channel.* After the initial surge, annual sediment deposits would build up on a regular basis. Without the effect of the four dams to act as sediment retainers, the Corps also expects annual deposits of sediments amounting to some 3 to 4 mcY, with most of that also deposited in Lake Wallula. As noted, for some people, this is merely a number, without any relationship to amount. For reference, annual dredging done in the Lower Columbia River channel (not at the bar/mouth) has averaged about 4 to 4.5 mcY. Will environmental groups support necessary dredging to keep open channels for shipping in Lake Wallula, or will they challenge such permits as damaging to the fish environment? Lake Wallula, particularly in the shallower areas near the east and northeast shore of the river, would face serious problems from siltation.

34 *Different size dislodged sediment could damage different areas.* IPNG spoke with hydrology experts at the Corps Walla Walla office for details on the predicted amount of sediment that may settle in Lake Wallula. The Corps believes that sediment over .02 mm in diameter probably will settle in Lake Wallula, with smaller sediment staying suspended in the river current all the way to the lower river. IPNG requests that appropriate research determine whether there is any adverse impact of this smaller sediment (under .02 mm in diameter) on estuary habitat, where the water velocity slows again.

34 Sediment .02 mm diameter and larger (the size predicted to settle in Lake Wallula) represents 56% of the total sediment now behind the Snake River Dams. Calculations show that, in the first few years after Snake Dam breaching, some 28 mcY (million cubic yards) to 41 mcY of sediments are predicted to settle in Lake Wallula.

For comparison purposes, that is seven to ten times the annual amount of sediment dredged in the Lower Columbia River channel from Portland to the bar at the mouth of the Columbia River.

35 *Dredge material disposal plans would be needed.* IPNG notes that no studies have been reported to examine where the material would be placed when dredged from Lake Wallula. Dredging of this potential scope would require preparation of disposal site plans approved by different agencies. Disposal sites must be located and purchased. IPNG is not aware that such costs have been calculated in the economic costs of dam breaching.

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The Corps Sediment Appendix fact sheet states that 1 mcg of sediment would cover a square mile of land a foot deep in sediment. The Corps should report to the public the results of its calculations of how much of Lake Wallula is shallow enough to be the probable deposit site. The Corps should report on how deep that might make the short-term deposits after breaching the Lower Snake Dams, and how much and where the annual siltation would be deposited on an ongoing basis.

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The wildlife refuge habitat at the McNary National Wildlife Refuge could be damaged from siltation following any Snake River Dam breaching. IPNG specifically requests comments from USF&W, which operates the wildlife refuge on the northeast shore of Lake Wallula below the mouth of the Snake River. USF&W should report on the potential impact to this refuge of such severe siltation in the immediate aftermath of any dam removal. What species could be adversely impacted by loss of such habitat resulting from dam breaching? What would be the impact on the refuge and its hydrology from annual maintenance dredging in some nearby parts of Lake Wallula?

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Wetlands in Lake Wallula could be damaged from a surge in siltation and from increased annual siltation. IPNG suggests that this habitat issue merits greater attention. Questions deserve answers that take into account the expected adverse impact of siltation. For example, will a surge of sediment following any Snake Dam breaching adversely impact other existing wetlands along the shores of Lake Wallula? What is the ongoing impact on existing wetlands from annual silt deposits, inasmuch as such sediment will not be trapped behind Lower Granite Dam?

How much existing habitat is predicted to be lost in Lake Wallula below the mouth of the Snake River due to being buried by sediment from the Lower Snake if the dams ever were removed? What will be the impact on adults returning to spawn and on juveniles as they swim downstream?

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The impact of degraded water quality in Lake Wallula from such suspended solids deserves more examination. IPNG recognizes the useful work prepared by the Corps in its sediment Appendix for the Draft EIS. Federal agency tests should determine what the impact would be from murkier waters caused by suspended sediments will be on juvenile and returning fish. PNNG recognizes references in the Corps DEIS to the issue of turbidity, but believes they merit further work and comment. If insufficient research and analysis exists, IPNG urges such research be carried out, with results presented before any final actions are taken.

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Federal agencies should address whether or not contaminated sediments are lodged within the large sediment accumulation behind Lower Granite Dam. IPNG has no independent knowledge whether or not contaminated sediments now exist behind Lower Granite Dam, capped by clean sediment and currently not harming fish. If any such contaminated sediment is there, although safe today because it is capped with benign sediment, we worry that such contaminated sediment would dislodge and enter the water in a suspended state as it flows down the Snake into the Columbia.

On page 4.4-18 of the DEIS, reference is made to certain contaminants that may be present. The statement "Little data have been collected with respect to other contaminants, especially heavy metals and other toxic substances." Based on the limited discussion in the DEIS, pages 4.4-18-22, and the need for more certainty if dams were breached as to the potential impact, IPNG urges more research into this area if Alternative 4 remains a possible option beyond this DEIS.

Federal officials should answer public questions whether or not toxic materials are contained in the 100 to 150 mcy of deposits currently in the reservoir behind Lower Granite Dam. If so, what is the amount? Are Federal officials confident that none is present in amounts that might damage juvenile fish if disturbed and swept into the water column if Lower Granite and other Snake Dams were breached? IPNG hopes that none is present.

What is the view of Federal officials regarding re-suspension of questionable materials that now capped (we presume) by clean material behind the dam? Do Federal agencies prefer to leave such material naturally capped where it now might be located, or to stir it up by allowing it to flow unimpeded down the Snake to resettle in Lake Wallula—and perhaps further downriver?

Are any such contaminants apt to remain suspended in the water beyond McNary Dam farther downstream? Is it possible that such contaminants could remain in the water until it reaches the estuary—or to the mouth of the river?

IPNG asks if Federal officials are confident that any amounts of dioxin, DDT or manganese are so minute or non-existent that the public need not be concerned over this possibility? IPNG members hope that is the case, and that there is no cause for concern. IPNG believes that such questions should be answered, however, with scientific certainty at least equal to the degree of scientific certainty now relied on by those scientists now urging dam removal because of their belief that this action will help fish recovery.

Ongoing maintenance dredging in Lake Wallula at various port facilities may be needed to maintain open channels that allow continued export shipping. Products from IPNG ports leave the Inland Empire by barge destined for global markets. Thus, the Columbia-Snake navigation channel opens the door to world trade. Keeping those "world channels to trade" always open and dredged is critical. In a competitive world, any interruption in dredging at the wrong time of the year could send customers to other sources of supply. This uncertainty would add another variable to the equation of how Tri Cities ports can grow and continue to provide an economic engine for helping create new family-wage jobs in the area.

Regular O&M dredging might be needed if the siltation impacted channel access to the Tri-Cities port dock facilities. The channel to the Tri Cities port docks passes the mouth of the Snake as it approaches the Tri Cities. IPNG is concerned about potential conflicts between dredging needed after siltation that might conflict with a fish migration

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period. The Tri Cities deserve to know the potential impact on the viability of these port operations if siltation becomes a problem if the Snake Dams ever e breached.

Sediment deposits resulting from breaching Snake Dams could damage or impair access both to the water intake pipe and to the pier/dock at the Boise Cascade paper mill at Wallula. This Boise Cascade (BC) mill at Wallula, on the northeast already- shallow side of the reservoir. This mill is Walla Walla County's largest taxpayer, providing many family-wage jobs. It offers a case study of associated costs imposed by sediment damage and other steps required for their paper plant and fiber farm operation if the Snake dams ever were breached.

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On March 9, 2000, BC submitted to the Corps detailed comments about the potential but expected impact on its Wallula paper mill and the affiliated fiber farms if the Snake dams were breached. Under the "one comment for all Federal processes" approach, the Corps should have those detailed BC comments available to review. They illustrate what one large employer could face in an ancillary arena—sediment damage—that has not received much regional attention.

The Federal Government should answer concerns raised by Boise Cascade earlier comments on the All-H Draft Plan and detail potential adverse impacts from sediment. In addition to its large paper mill at Wallula, below the mouth of the Snake River, BC also has fiber farms where rapidly growing cottonwood trees provide the fiber required for paper mill operations. Those fiber farms draw irrigation water from the Ice Harbor Reservoir to nourish the cottonwoods. With any breaching, BC would be required to get a permit to draw water from the free-flowing Snake to keep these fiber farms productive. Any environmental group's challenge to new permit applications to draw water from the Snake at natural level will impose a long and complex permitting process.

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BC provided the Corps with estimates of the costs to cope with the damage from siltation and continue operating, if the Snake Dams ever were breached. For the fiber farms, capital costs would be between \$14 and \$23 million. That includes replacing and relocating pumping stations, and increasing filtration for those irrigation systems. The annual incremental cost increase to operate the new facilities is estimated to be \$440,000 in today's dollars.

For the paper mill itself, the required capital cost estimate is between \$1-2 million. New shallow wells may well be needed due to silt damage, and barge shipments would be interrupted, subject to dredging to the BC dock. That annual incremental cost increase for the mill is estimated at \$800,000.

BC points out a practical problem in constructing a new pumping station to draw water from a natural Snake. Irrigation to the fiber farms must continue uninterrupted. Even an interruption of less than a week can be fatal to the fast-growing cottonwood trees. Thus, construction of a new pumping station cannot wait until after the Snake lowers to its natural river stage.

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cont. The new pumping station would have to be partially built before breaching, a complex and costly task. Partial construction that took place while the Ice Harbor Dam reservoir still exists would be difficult at best, and would be limited to periods when smolts are not migrating through the pools. Permitting for such work could be difficult to obtain.

Thus, this single BC paper mill and affiliated fiber farms estimates capital costs to operate if the dams were breached at between \$15- 25 million and annual incremental cost increases of \$800,000.

51, 52 *The Port of Walla Walla sees potential adverse impacts to its tenants from siltation at its facilities at Lake Wallula.* This offers another example of the ripple effect of dam breaching. The Port of Walla Walla tenants include Cargill Grain, Cograin, Western Trading Corporation, and a growing cruise ship business. These facilities, we presume, will require regular maintenance dredging. The cruise ship business also should remind the Corps and others that a growing reservoir-based recreation business now exists in the region. Recreation is not, as some dam critics assert, only some potential new source of economic strength if dams are breached.

53, 54 *The Corps and other Federal agencies should detail all potential impacts from such sediment deposits into Lake Wallula (and downriver) and quantify the associated costs on impacted entities.* IPNG suggests that such impacts as to these examples—one large employer and one port-- from sediment damage have not received sufficient study, and that this issue deserves such review. IPNG recognizes that the Corps prepared a technical appendix addressing the issue of sediment deposition if the dams were breached. IPNG encourages that material from the Corps Sediment Appendix be included more prominently in the future Federal All-H review and analysis. IPNG believes strongly that this element should be included in the Corps' (and the Caucus') examination of regional options, and evaluated, as are other variables.

ANOTHER "H" FOR THE "ALL-H" APPROACH: HIGH SEAS

IPNG strongly urges Federal agencies to increase the importance given another H: High Seas. IPNG raised this issue in the opening sections of these comments, and in comments on the Federal Caucus All-H Draft Plan. We believe strongly that it must be addressed before major decisions must be made by other sectors in the region.

55 IPNG urges the Corps, BPA, and other Federal agencies to fund initiatives here that are needed to guide other expensive projects elsewhere in the All-H equation. Although ocean conditions might appear, at first, to be beyond the scope of the Corps, or of BPA, IPNG urges them to fund such initiatives. We believe that unpredictability in ocean conditions can negate initiatives funded elsewhere in the system by the Corps and BPA, and undo millions of dollars spent elsewhere in species recovery.

BPA should participate for two reasons. First, as mentioned, changes in ocean conditions, temperature and/or currents can wipe out benefits from expensive BPA

initiatives elsewhere in the system. IPNG urges that this be another element in Item 4 in the BPA B/A, Performance Measures. BPA funds numerous initiatives in the region. Failure to know more about how the ocean can erase other worthwhile initiatives is a fault in the existing process.

Second, BPA is the region's leading funder of fish and wildlife programs, including many related to species recovery. As such, BPA should lead in putting before the people sound science, best cost estimates, and other data showing the risks in spending money on recovery efforts elsewhere in the life cycle when ocean changes can erase them. We need such data, and BPA is a well-positioned Federal agency to fund and oversee and report on such efforts.

NMFS and other Federal agencies must be more candid about the crucial impact on fish recovery of changes in the high seas. Ocean temperature and cyclical climate shifts are beyond our control, but they can severely upset and skew the tens and hundreds of millions of dollars spent elsewhere in the basin. Numerous reports regarding salmon recovery options use various ratios and probability percentages and other measurement measures that try to quantify tasks and the chances of succeeding with them. IPNG believes similar ratios and percentages for the downside and upside from changes in ocean conditions should be put in front of our region. They form an essential element in our region's understanding of these complex issues.

Our region deserves straight talk that explains how some of our efforts and our funding may be in vain under certain ocean conditions. The region is told that normal, cyclical shifts in ocean temperature—often over a decade in length-- affect the amount of ocean food available, beginning with plankton. We are told that these changes, which we cannot control, could have a devastating impact on the results on juvenile fish entering the ocean and on returning spawning adult species.

Useful conclusions and analysis of the ocean impact on the outlook for fish species recovery is critical to our region. This is an essential element in the debates—both by Federal agencies and by the people of the Northwest. Also, the region needs mathematical formulas that reflect this examination and evaluation of the chances and/or probability that such ocean and climate changes may damage our region's recovery efforts, along with information on how the changes may contribute to a natural surge in returning fish.

WATER TEMPERATURE

Snake River Dams are not the cause of elevated summer water temperatures in their reservoirs. IPNG recognizes Corps research into this topic. IIPNG reviewed carefully court declarations prepared by the Corps and Justice Department for use in the CWA lawsuit. IPNG calls attention to analyses and conclusions that the Corps should find useful. In these comments, IPNG addresses only one aspect of this complex issue: the

impact of the Snake Dams on raising water temperatures. The record does not support such allegations by critics.

Before the dams were built, summer water temperatures in the Snake exceeded current standards. In 1963, written proceedings from a Public Health Service conference examined water temperature data from 1955-58— before the Snake Dams were built. Those findings reported that “water temperature climbed to 65 degrees F late in June and quickly exceeded 70 degrees F where it remained throughout the summer months.” Corps measurement data showed that, in 1958, temperatures peaked at about 80 degrees F, and temperatures above 68 degrees F lasted for 60 to 75 days during those four summers.

In short, this data shows that the water exceeded water temperature standards before the dams were built. The Corps should include such material in discussions of options under review by the region.

Temperature measurements above the Lower Granite pool on the Snake and Clearwater Rivers since the dams were built show temperatures exceeding water quality standards before this water even enters the Lower Granite reservoir. In other words, the water temperature on the Snake and Clearwater already exceeds the standards—due to a number of reasons, we believe— before it becomes part of the four reservoirs.

Thus, this research shows that water already exceeded the standards before the dams were built, and measurements in recent years show that water above the pool exceeded the state standards.

Colder water release from Dworshak Reservoir that began in 1991 has resulted in declining water temperature trends in the Snake River reservoirs. Cooler water in the Snake reservoirs in recent years during the hot summer months results from release of cold water from Dworshak, and the trends in summer water temperatures is downward.

Corps expert examines water temperature issues. In the Clean Water Act lawsuit⁵ in which IPNG is an intervenor, the Corps introduced a declaration of a 25-year veteran of the Corps, John McKern, in support of the US Government's cross-motion for summary judgment. His declaration dealt with water temperatures in the Snake before and after construction of the four Snake dams.

McKern's court declaration concluded on this point, “Therefore, water temperatures in the free flowing river before the dams were constructed exceeded the water temperature standards.” (Emphasis added).

Water temperature is impacted less by run-of-river reservoir than is asserted by some Snake Dam critics: In his declaration, McKern next stated that water-warming

⁵ National Wildlife Federation et al vs. The US Army Corps of Engineers, U.S. District Court for the District of Oregon, CV 99-442 FR

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characteristics that apply to storage reservoirs do not apply to run-of-river reservoirs. He quotes from the 1963 Federal Public Health Service report that stated

"Large and deep impoundments will decrease downstream water temperatures in the summer and increase them in the winter, if withdrawal levels are low; that shallow impoundments with large surface areas will increase downstream water temperatures in the summer; that water periodically withdrawn from the surface of a reservoir will increase downstream water temperatures, and that 'run-of-river' impoundments, when the surface area has not markedly increased over the normal river area, will produce only small increases in downstream water temperatures."
(Emphasis added)

McKern also notes that "Snake River reservoirs are run-of-river reservoirs that are for the most part narrow and deep."

He states that water temperature increases begin with water entering Lower Granite in early to mid-July and progress downstream through Ice Harbor by mid-July to early August. As cool water enters Lower Granite in late August or September, the cooling trend progresses through the downstream reservoirs.

The Corps' expert determines summer Snake water temperature trend is downward. Some Snake dam critics attribute warm summer reservoir temperatures to the existence of the four Snake reservoirs. McKern stated:

"I have reviewed the maximum water temperatures reached at each of the four lower Snake River dams since they became operational.... The trend lines on these graphs show that the maximum water temperatures have declined since the dams were installed." (Emphasis added)

Lower Snake reservoir summer temperature result from several factors. McKern noted in his court declaration that water temperatures vary because of climate, general level of discharge, and timing of discharge in the lower Snake River.

"During drought years, flows all year long are typically lower than normal and water temperatures in the summer are higher.... In hot, low flow summers, warmer water enters the lower Snake River from the Clearwater and Snake Rivers resulting in Lower Granite and the other water reservoirs having higher water temperatures." (Emphasis added)

Dworshak cold water releases help the downward summer water temperature trend. In his court declaration, McKern also discussed the impact of release of cold water

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from Dworshak Reservoir. This cool water release began as a test in 1991, and has been a regular part of the Corps' operation since 1995. McKern notes that the impact,

... is most dramatic at Lower Granite Dam where temperatures have been 71°F or lower for the five of the past six years. (NB: McKern declaration was in 1999.) From 1975 to 1991, maximum temperatures ranged from 72 to 78°F.

Rivers creating the Lower Granite pool are the Clearwater and the Snake. No significant streams enter the Lower Snake until below Little Goose Dam. McKern states that the Palouse and Tucannon rivers Lower Monumental Reservoir below Little Goose Dam and influence water temperatures in Lower Monumental and Ice Harbor reservoirs.

Summer water temperatures can exceed state standards above Lower Granite pool. The Clearwater and Snake Rivers enter the Lower Granite pool. Dworshak Dam is located on a branch of the Clearwater River. Above the fork of the Clearwater where Dworshak is located (and from which cool water enters the Lower Granite pool), water temperatures have been measured on both the main Clearwater and Snake Rivers.

McKern states that water temperature on the main Clearwater River reached 85°F on July 25, 1994, and 78.5°F on August 7, 1997.

On the main Snake River above the Lower Granite pool, the Anatone gauge measures water temperature from the Salmon, Grande Ronde and the Imnaha rivers, as well as the main Snake. In his declaration, McKern noted that the Snake has flowed through Hells Canyon after release from Brownlee (a storage reservoir) and Oxbow and Hells Canyon Dams (run-of-river). Temperatures at the Anatone gauge reached 78°F on August 26, 1991 and 74°F on August 6-7, 1997.

Thus, it is clear that, for a variety of reasons, water entering the Lower Granite pool already can quite warm. Summer water temperatures vary today. McKern determined that:

In summary it is my opinion this data shows that as discharges from the Snake and Clearwater rivers warms up in the summer, the lower Snake River warms up starting with Lower Granite Reservoir and working on downstream over a matter of a few days. As the weather cools, and cool water starts coming in from the Clearwater and Snake rivers, the reservoirs cool off from Lower Granite working downstream to Ice Harbor Reservoir.

Run-of-river reservoirs have no significant impact on water temperature. McKern noted in his declaration the difference between run-of-river reservoirs and storage

reservoirs—with large surface areas where temperature stratification can occur during the summer. He states that run-of-river reservoirs:

mix the water and prevent stratification even during summer low flow periods. The temperatures in run-of-river usually are within 1 to 2°F from top to bottom. This is the case with the lower Snake River reservoirs. (Emphasis added)

Analysis refutes the claim that the Snake River Dams increased the number of days the water temperatures exceeded 68 °F. In his court declaration, McKern also cited data from before and after the dams were built. He notes that the number of days of water temperature exceeding 68°F decreased after the dams were built. After citing statistics to show this, McKern states "In my opinion, trends for maximum temperatures have been downward at all four dams." (Emphasis added)

McKern also notes that at the one dam where the trend is up-- Little Goose-- gaps in data may impact this conclusion.

"... (M)aximum temperatures have been lower since 1991 in all four reservoirs due to cold water releases from Dworshak Reservoir." (Emphasis added)

Snake Dams do not cause warm summer water temperatures in lower Snake reservoirs, a Corps expert concludes. McKern finds that warming waters move down through the Lower Snake reservoirs in the summer, and the cooling pattern in the fall repeats the pattern. He said this convinces him that water moving through the system from above the reservoirs sets the pattern. He states that if reservoirs caused the temperatures to increase, it would have been seen first in Ice Harbor, where the canyon is wider and there is more surface water and the air temperature is higher. (Emphasis added)

McKern's conclusions re water temperature issues were clear. He stated:

In my opinion, the water temperatures in the reservoirs are controlled primarily by the water temperatures coming into Lower Granite reservoir from the Snake and Clearwater rivers, and into the lower two reservoirs from the Tucannon and Palouse rivers. There are no operational measures that I know of that the corps could take that would measurable reduce the temperature of the waters in the reservoirs. The Corps is making cold water releases from Dworshak Reservoir that, as I have described, make a substantial difference in lowering water temperatures in the lower Snake River. (Emphasis added)

McKern concludes his declaration in the Clean Water Act lawsuit by stating that

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... (It) is my conclusion that the water of the lower Snake River does not get as warm as it did before the dams were installed. It is also my conclusion that water temperatures are determined more by temperature of inflow from the main river and tributaries than by heating of surface waters in the run-of-river reservoirs.... It is my opinion that water temperatures are determined more by the temperature of inflow from the main river and tributaries than by heating of surface waters in run-of-river reservoirs. (Emphasis added.)

"COMBINATION H:" HIGH SEAS HARVEST

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People in the Pacific Northwest expect some burden sharing by all parties outside the four Pacific Northwest states. In examining its alternatives and options, IPNG suggests that Federal government also should add the "combination H" to its review. High seas Harvest issues include Canada fisheries—and Alaska-- as part of this complex issue. We realize that high seas harvest reductions impacts regional relations with Canada, but failure to include proportional reductions in Canadian harvest will hurt Northwest regional public support for whatever major plans the Caucus develops for our region.

IPNG recognizes that the Corps would not initiate such efforts. We urge you to support an USG-wide effort, however, led by appropriate senior UG officials.

Some 15% of the Columbia basin is in Canada—along with 415 miles of the Columbia's total of 1200-mile length. We are told that rainfall in Canada produces 25% of the Columbia's outflow volume into the Pacific.

As our region's ratepayers, farmers and ranchers, businesses and urban dwellers all shoulder some share of the burden in restoring fish runs, we need to see that our basin-wide fish recovery picture does not omit burden-sharing by Canada.

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IPNG also asserts that harvest materials and analyses available to the public are inadequate in all material, including that of the Corps. Written material available for public comment dealing with harvest is inadequate, and needs expanding prior to any far-reaching decisions on the Corps various Alternatives, or in All-H decisions. The Harvest Appendix to the All-H Draft Plan, for example, is wholly inadequate to encompass such an essential element of fish recovery. Removing the graphs and charts, and references leaves an appendix with only some 30 pages of analysis. It falls short by a great degree the quality and quantity and usefulness of material contained in the other appendices. More material regarding the management of ocean fisheries and the role Canada plays should have been included in the Draft Plan—not just in the appendix.

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IPNG urges that more information on the history of harvest of Pacific fish species—including commercial ocean and in-river and sportfishing—be incorporated into all appropriate decision documents used in the region. This includes analyses describing the international fisheries management aspect of this issue. Ocean harvest issues cannot be dismissed as difficult, complex and far-reaching. At a time when the Federal Government has under review its own series of recommendations that most people in the region would describe as complex and far-reaching, harvest must be addressed in a more complete manner.

IPNG suggests that BPA, for example, should fund an analysis of past harvest actions and how predictions on the impact of a certain catch level more out in later species health. What is the role of harvest in the decline of the listed species? We suggest that a BPA-funded effort could prepare for the region's review useful information needed before expensive restoration efforts are launched.

The brief discussion in the DEIS Appendix A: Anadromous Fish (page A9-5) of ocean conditions is inadequate. The issue merits far more detailed examination and analysis.

ANOTHER "H:" HYPOCRISY

These comments opened with various proposals that IPNG supports. These comments do not attempt to answer criticisms, claims and exaggerations from critics of Snake Dams. Some of these dam critics, however, claim that the Snake Dams are their only targets for breaching. Such environmentalist critics of the dams say that environmental groups do not seek to breach or lower dams on the mainstem Columbia. That statement has been repeated often in the region.

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The Federal government, particularly the Corps in response to the DEIS, received many postcards sent by advocates of dam removal, in the misguided idea that this was some regional plebiscite. IPNG asks the Federal agencies to realize that the goal of many environmental groups is a free-flowing river from above Lewiston to the mouth of the Columbia River. We predict that many of those postcard senders next will endorse removal of the four lower main-stem dams as well as the Snake dams—and would have done so now if they were given a postcard containing that choice.

Hypocrisy may be an added H to the All-H list. The recent response by some environmental groups to release of the John Day Drawdown Phase I Study calls into question claims of many Snake Dam critics. In fact, it raises for the region's consideration another "H": Hypocrisy. To those critics who claim that their only target are the four Snake Dams, and not the entire Snake and mainstem dams, IPNG calls attention to comments in the Oregonian after the John Day study was released.

Among those groups suggesting that that their dam breaching efforts are limited to the Snake Dams is a well-known environmental advocacy group—Save Our Wild Salmon.

In fact, the Executive Director of SOS, Pat Ford, was quoted in the Oregonian when the John Day Study was released as saying:

“A John Day drawdown, if it were to occur and if it were done properly, is the one measure in the hydrosystem that benefits every listed stock of salmon and steelhead in the basin except Willamette River fish.”⁶

Through Bob Heinith, CRITFC said the John Day drawdown is “the single most effective step that could be taken for Columbia Basin salmon.” (Emphasis added.)⁷

Oregonian reporter Jonathan Brinckman reported in that same article that “conservation groups and tribes consider modifying John Day even more important than breaching four Federal dams on the lower Snake River.” (Emphasis added)⁸

IPNG reminds Corps and BPA that many critics of the Snake Dam have a broader natural river agenda, and all parties should be candid about it. These assertions about the John Day study belie the environmental groups’ assertions that the Tri Cities would replace Lewiston as the head of navigation. They claim that the Tri Cities “would boom” after breaching the Snake Dams. Such comments as appear in this newspaper article about the importance of drawing down the John Day reservoir should shine a bright light on this. Hypocrisy is an appropriate term in this context.

We request that the Federal agencies view with great skepticism any comments from supporters of dam breaching that try to isolate these four Snake River dams from later attempts to breach or draw down McNary, John Day, The Dalles, or even Bonneville Dam. IPNG suspects such a strategy. Environmentalists tipped their hand with the quotes in the Oregonian following release of the John Day Phase I Study.

If the Snake River dams were breached, IPNG questions whether environmental groups would allow river navigation and hydropower operations to continue elsewhere on the Columbia River without challenging operation of mainstem dams. One could imagine an argument constructed along the lines of, “Now that the region has spent billions to remove the Snake dams, we must not waste that money and now must complete the job by breaching mainstem dams, for the Snake breaching alone will not save fish.”

IPNG suggests that critics of Snake River Dams should tell the Corps whether they agree or disagree that drawdown or breaching of the mainstem dams also is on their agenda. We will disagree with that position, but will respect their candor and honesty.

⁶ Portland, Oregon, Oregonian, January 27, 2000.

⁷ Ibid.

⁸ Ibid.

FISH TRANSPORTATION AND SYSTEM IMPROVEMENTS

66, 67 **IPNG supports DEIS Alternatives and related options under review that increase the role for smolt transportation. IPNG also supports initiatives that improve survival at the dams through a variety of improvements.** At a time when the science has moved away from viewing dam breaching as some silver bullet, science also tells us that barge transportation is providing greater survival successes than occurred some years ago. We also hear, unfortunately, that some scientists within USF&W still question and undervalue the role of smolt transportation. IPNG believes strongly that this proven method should continue to play a major role in regional fish recovery efforts. We also support reasonable efforts to increase survival rates even more for transported smolts.

IPNG encourages Corps reliance on data showing smolt survival has risen in recent years, as facilities/equipment/process improvements have led to higher survival rates. NMFS has stated that survival rates now equal that of the period before the Snake Dams were built. IPNG supports actions that can lead to survival rates described on page 2-10 and 2-11 of the BPA B/A.

68, 69 **Turbine and dam facility improvements have helped increase survival rates, and more work should be encouraged in this area.** Steps have been taken by the Corps to improve turbine safety, and thus improving juvenile passage rates. That is good news for the region. We believe more can be done to improve survival rates at the dams. We support such efforts, and encourage more research into cost-effective measures yet untested to improve fish passage at the dams.

IPNG urges Corps review and response to BPA's B/A examination of passage and facilities improvements. In its B/A prepared for NMFS, BPA discusses Fish Passage (pages 2-12 and 2-13), Surface Bypass (pages 3-6 and 3-7), Turbine Improvements, and Existing System Improvements (Pages 3-9 and 3-10). IPNG urges Corps examination of this material and is use to supplement existing Corps work in these important areas.

70 Even improvements that may be questioned as too modest by critics of the dams are important elements of reaching recovery targets. IPNG suggests that a discussion of the long-term impact of increasing survival rates at the dams by in-river juveniles should look at the beneficial ripple effects further in the fish life cycle. IPNG believes that more research is needed, and it supports such cost-effective initiatives.

71 **IPNG views with skepticism arguments surrounding "delayed mortality."** As noted above, smolt survival rates are up for smolts transported by barge. Because transportation smolt survival data does not support continued arguments against smolt transportation, those critics must be creative. Perhaps they should introduce a new concept: delayed mortality. A cynic might translate that term as: if the transportation statistics oppose your forgone conclusion, then you develop some new terminology that will be harder to prove or disprove, but can be used to keep the anti-barging arguments in

the mix. Sound science must back up any claims of delayed mortality, and it should require a solid, quantifiable definition.

We note the attention paid to this issue by the BPA B/A. Although we have specific questions related to those discussions, however, we believe that it merits more attention and scientific support before it is accepted without further examination by policy-makers.

IPNG believes more research into the issue of delayed mortality is needed, and cautions against a rush to embrace this standard until it has been studied more. As the BPA B/A notes on page 4-12, "These are not trivial matters to address." IPNG agrees. BPA's B/A states "When potential effects are only hypothesized or it is not feasible to develop performance standards that include the indirect effects, then research would be used to test the hypotheses to determine if they are valid or not." IPNG worries that hypotheses lacking research and testing over their potential effects not be embraced in interim performance standards until much more is known about them. . Moreover, IPNG is concerned that BPA's caution may not be heeded by some Federal agencies.

**DIVIDE NMFS?
ARE ENFORCEMENT AND PROMOTION APPROPRIATE IN A
SINGLE AGENCY WITH A SPLIT MISSION**

IPNG encourages Corps internal discussions of whether Congress should consider dividing NMFS into separate agencies that could focus on separate missions that do not conflict regularly with each other. Although IPNG recognizes benefits from coordination of and easier access to data useful to both enforcement and promotion divisions within NMFS, the fundamental conflict cannot be papered over, and may require a Congressional fix. We believe the Corps, other Federal agencies, people in the region, and the Congress, all should ask and debate the question: should we separate the fish promotion aspects from the ESA enforcement part of NMFS? Separating them should allow the ESA division of NMFS to take a more "recovery friendly" stance toward harvest issues.

IPNG suggests that NMFS' ESA section might well have taken a tougher and more thorough look at past decisions regarding the size of the allowable catch of species in the past 15 years if promotion were not part of the NMFS mission. Today, NMFS should not examine itself to determine the role that overcatching contributed to the current problem for two reasons. It would be unconvincing to do so, and it would be the wrong use of the agency's scarce species recovery resources.

IPNG suggests that Congress consider a GAO examination of how NMFS participated in setting Northwest salmon harvest limits over the past 15 years. How were conflicts between the promotion and enforcement arms of NMFS resolved during this period? In an era of scarce resources, we are constrained from urging a full-scale examination by NMFS of how ocean catch limits that were set to high may have

contributed to the current state of various fish stocks. As noted, it is not a smart use of its limited fish-recovery resources.

We believe, however, that a long-term GAO examination of the issue is appropriate. We also raise this to solicit a discussion of this issue within the Corps. A GAO analysis could examine how catch decisions were reached over the past 15 years, and also could examine the resulting impact today of those decisions. What was the basis for setting harvest limits? On what science were those decisions made? How good were the forecasts of expected returns? If the original forecasts were inaccurate and allowed overcatching, how were they improved over the period? Does the Corps think these are worthwhile questions whose answers flush out a more complete regional discussion of species recovery issues?

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Did friction between the promotion side of NMFS and the enforcement side have an impact on catch decisions over the years? Is the friction greater today than in years past, due to the pressure of the ESA listings? How were and are and will be such contradictory positions reconciled?

At the least, we urge Federal agencies to provide material for public review and comment on the decisions on catch that were based on predicted size of the harvest over the past 15 years. Granted, this is in hindsight, and there have been enough miscalculations by all parties at the table. IPNG does not intend it merely as laying the blame. Yet, we are concerned that decisions on catch size that are made within NMFS, and any problems seen after the fact, might be a problem because the promotion arm of NMFS is too close to the enforcement arm of NMFS.

If NMFS can assuage the region that this has not been a problem, it will increase confidence of the region in future years. Nonetheless, IPNG believes that it is a question that needs addressing in view of the key role NMFS plays in this complicated fish recovery equation.

INCREASED ENVIRONMENTAL DAMAGE FROM DAM BREACHING GIVEN INSUFFICIENT CONSIDERATION

Other significant environmental damage would result from dam breaching, and the Corps, with help from BPA, should pursue better answers to such questions. Critics of dams and water transportation minimize or ignore environmental damage that would occur if the Snake River dams were breached and the John Day pool were drawn down to natural river level. In the DEIS, the Corps has made a start in this direction, although more work is needed. Particularly in the energy area, BPA should take the lead in funding more complete studies as to the adverse regional impact from more air pollution that will result from losing barging as a means of transport.

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The Columbia River Gorge Scenic Area will suffer degraded air quality and increased road and rail traffic if barging disappears. We urge Federal agencies to ask the

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Columbia River Natural Scenic Area officials about the environmental degradation that would occur if river transportation were removed as a source of cargo movement through the Gorge and replaced by increased truck and rail transportation.

IPNG urges the Federal Government and the Gorge Commission to examine the added traffic on the highways or rail lines through the Gorge Scenic Area. We urge you to examine the greater wear and tear on existing infrastructure. We are told that 120,000 added rail cars and some 700,000 semi-trucks would be needed if barging disappeared and the cargo moved via these modes. The staggering number or added trucks or unit trains (100 rail cars each train) will degrade this favorite spot of many Northwesterners: the Columbia River Gorge.

Equally important, these requirements are not spread over the entire year, but respond to surges in transportation required by specific crops. Those requirements of added trucks and railcars cannot be separated into an even 12-month average, inasmuch as that this transport capacity is needed in a shorter time period. These issues related to surges in demand deserve far more study than is found in the incomplete Corps analysis in the DEIS.

IPNG believes that such traffic increases through the Gorge will be unsafe, and will degrade the experience visitors now enjoy in this unique area. Both increased traffic and loss of air quality in the Gorge will result from a loss of barge transportation for cargo

Severe adverse environmental impacts will result from curtailing barging. If the Snake Dams are breached and the John Day Dam is lowered below the level allowing navigation, environmental damage will occur. This issue merits more discussion and study than is found in the Draft Plan. For agricultural exports to reach lower river ports for loading into ocean vessels, then the cargo must travel by truck or rail. Increased air pollution is just one negative impact.

Various studies in the past illustrate the problem if barging disappears as a transportation option. One 3500-ton barge equals the cargo capacity of 35 jumbo hopper rail cars or 134 loads varied by one large semi-truck (910 bushels). One barge tow (of several individual barges) equals 1.4 unit trains (100 rail cars each) or 538 semi trucks. Each Panamax vessel calling at a lower river port takes 60,000 tons of grain. That is 4-5 barge tows, or 6500 rail cars, or 2400 semi trucks.

Barges now serving river grain shippers fulfil a unique requirement, one that neither rail nor trucks can replace. IPNG refers again to the seasonal nature in transport that causes surges in demand for transport equipment. These increased rail and truck requirements cannot be averaged into a 12-month year, as they are needed when the crop must be moved into international markets. Barges used on the river have been built specifically for this market, and so are not shifted elsewhere between downriver demands driven by seasonal surges in deliveries to upriver ports and grain elevators. Rail hopper cars and large semi trucks are not built specifically for this trade, and cannot be kept on a

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year-around basis (as are most barges today) so they will be available promptly when the surge in upriver cargo arrives at the river's edge. To repeat, Columbia River barges are built for this trade, and are not used elsewhere in the US during lulls between seasonal peak demands. Railcars and trucks would leave the region after a surge in demand, and not be available when the seasonal needs were greatest to move cargo down the Columbia.

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Barges are far more fuel-efficient than these other modes. Degraded air quality will result from the less fuel-efficient movement of cargo. A ton of commodities can move 524 miles by barge on a gallon of fuel. The same product can move only 59 miles by truck on a gallon of fuel, or 202 miles per gallon by rail. Water transportation results in 1/4 to 1/3 the emissions of rail or truck. Some critics fail to evaluate the decreased efficiency in barges over rail. IPNG requests that more detail be made available explaining how it reached its conclusions about the rail and truck impact if barging was lost. IPNG believes that the numbers used underestimate the true impact.

IPNG specifically asks the Federal agencies to solicit views from the Columbia River Gorge Commission on the potential adverse impact on the gorge of such increased rail or truck traffic as would be required if the slackwater barge transportation was not available above Bonneville and The Dalles Dams. The Corps and BPA have heard from others how barge transportation uses less energy and creates less pollution than rail or truck. If needed, it should undertake research that validates these findings.

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IPNG believes that the lower river transportation logistics systems are not equipped to handle this shift in modes without a significant capital investment. Securing adequate rail cars anywhere in the Pacific Northwest always is difficult. IPNG urges the Corps to call upon MARAD and USDOT for assistance in evaluating the impact on such a shift from barge to rail or truck. A dramatic shift from barge to truck, for example, could overwhelm transfer facilities at lower river ports.

The Federal agencies also should draw on expertise within the USDOT/National Highway Administration, and with state highways departments in Idaho, Washington and Oregon. They should examine and report on the adverse impact on highway wear and tear and on traffic congestion and safety-- from Lewiston through the Gorge Scenic Area to Lower Columbia River ports.

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EPA and State DEQs should examine degradation of air quality from increased truck and rail pollution. Experts on river transportation and logistics issues know the energy and freight statistics. It is easy to grasp how highways would be clogged and unsafe if trucks substituted completely for barges in carrying regional cargo to lower river ports for export. Yet, this issue has received insufficient attention.

Led by BPA, Federal agencies also should study the worsened air quality from greater pollution resulting from gas turbine energy plants needed to make up for energy production lost if the dams were breached. BPA is uniquely qualified to do this. The hydropower produced by the four Snake River dams produces enough energy to provide

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for all of Seattle's energy needs, or to meet the energy needs of the entire states of Idaho and Montana. If the dams ever were breached, that power loss must be made up here in the region. Some critics of dams ignore this potential result, asserting that energy savings will not require construction of such new plants. IPNG disputes such interpretation, in spite of the benefits of past energy saving initiatives promoted in the region. More generating capacity, we believe, will be needed—with or without effective energy savings initiatives.

Studies to date that deal with this issue, in our opinion, are incomplete and deserve more focused research.

COLUMBIA-SNAKE RIVER SYSTEM NAVIGATION

Navigation interests are unique and merit separate status from many other parties in the region. Ports have certain characteristics separating them from many commenters in this process. As such, a review of some of these distinguishing characteristics is useful. The range of alternatives and options now under review by the Federal agencies and discussed in the Draft EIS, and the All-H Draft Plan include some choices which would have a direct impact on navigation on the Columbia Snake River system. IPNG refers specifically to DEIS Alternative 4 and its related options: dam breaching.

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It is important that the Federal agencies examine the unique role navigation plays, and the special rights to which it is entitled. 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 to the Corps, however, should imply that IPNG does not recognize the central role the Endangered Species Act also plays in the region and in this specific issue.

IPNG offers these observations for review by the Federal Government for two reasons. First, the right of navigation is a complex issue, and some within the US Government may not have reviewed the statutory and case law basis supporting navigation's unique position. Second, this review reminds critics of upriver navigation about the fundamental rights enjoyed by navigation.

Some Federal agency recommendations also could conflict with navigation's well-known (and well-litigated) rights under existing law. At a time when zealous advocates push the Corps and the Federal Caucus from all sides, IPNG offers comments in this section as a reminder of factors that make navigation unique.

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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.⁹

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

⁹ Rivers and Harbors Act of 1945, §2 (1945).

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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.¹⁰

Thus, IPNG has a clear interest in maintaining the legally protected navigation channel depth. IPNG also has a direct interest in decisions made by the Corps, 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. . . .

¹⁰U.S. Code Cong. Serv. 2311-12 (1950).

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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;....¹¹

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. As IPNG noted in its opening comments in this paper, this nation has considered the development of its inland navigation system a national priority since Lewis and Clark led the Corps of Discovery to the mouth of the Columbia. IPNG suggests to all those who invoke the names of Lewis and Clark in this debate to recall that a central purpose of that mission was to seek the Northwest Passage—a navigable waterway connecting the Mississippi-Missouri to the Pacific Ocean.

Nothing has altered this commitment to navigation by the President or by Congress. In addition, Congress has not waived its sovereign immunity with respect to claims against

¹¹Flood Control Act of 1962, § 203, P.L. 87-874, 76 STAT. 1173, 1962 Code Cong. and Admin. News 1385, 1400.

the four lower Snake River dams – each must be operated to provide a navigation channel of 14 feet as mandated by federal law. 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.

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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 noted in IPNG's earlier discussion of water temperature, lower Snake dams are run-of-river dams. Two dams operate within a three-foot range, and two dams operate within a five-foot range. The lowest level is the navigational minimum. Because of that, any decisions made regarding dam operations must include the navigational component. To challenge river operations which would require levels below MOP is simply a challenge of the Corps' authority to maintain the navigational channel as mandated by Congress.

The assertion by some critics that the reservoirs themselves have raised the water temperature of the river simply cannot survive the protection afforded to navigation, in addition to failing the examination made by Corps experts who examined the impact on temperature by those four specific run-of-river dams. MOP is required to maintain navigation. Spill below MOP will impair navigation.

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.

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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).¹²

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).¹³

¹²United 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).

¹³U.S. v. Cherokee Nation of Oklahoma, 480 U.S. at 706-707, 107 S. Ct. at 1491.

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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, 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).

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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. The 14-foot navigation channel on the Columbia and Snake River is mandated by several acts of Congress.

Congressionally authorized navigation rights to Lewiston, Idaho, limit actions that any Federal agency can take to those which do not curtail navigation. As the Corps 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 Congressional authorization.

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In keeping with the tone of these comments focusing on fish recovery actions IPNG supports, and on flaws and strengths in the Draft EIS, these comments will not contain a “lawyer’s brief” repeating to the Corps the specific Endangered Species Act standards within which the Federal government recommendations will fall.

We wish to incorporate by reference 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 Federal agencies in proposing administrative actions to implement various species recovery programs. The legal “sideboards” of those laws will guide Federal agencies as to what they can implement and what they merely can recommend.

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Nonetheless, those legal limitations need to be on the table as part of this comment process for review by the Corps and other agencies.

LIMITS TO CLEAN WATER ACT

Navigation rights limit application of Clean Water Act. IPNG currently is an intervener in a lawsuit¹⁴ 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 in the various Federal agency documents 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."¹⁵

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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 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."¹⁶

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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

¹⁴ National Wildlife Federation et al v. US Army Corps of Engineers, US District Court for the District of Oregon, No. CV 99-442 FR.

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

¹⁶ S. Rep. 92-414, 1972 U.S. Code Cong. & Admin. News, 3751.

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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).

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BPA’s B/A repeats this idea of integrating ESA and CWA, but does not acknowledge its lack of public review and/or comment. IPNG calls attention of the Corps to comments in the BPA B/A related to this issue. Page 3-2 of the BPA B/A states that “Forthcoming decisions about Columbia River configuration and operation for the protection of listed species represent an opportunity to take a comprehensive, system-wide approach to integrate ESA/Clean Water Act based ecosystem improvements that will also facilitate attainment of state and tribal water quality standards.”

IPNG members support many of the CWA goals and methods, yet this sweeping scope of this may well create problems that has not been reviewed as part of this public process. IPNG requests the Corps to stress to other Federal agencies that both CWA and ESA have legal sideboards that limit their scope. These limits must be maintained and not 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.”¹⁷

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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.

¹⁷ 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."¹⁸

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.¹⁹

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).²⁰

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

¹⁸ WAC 173-201A-070(1)

¹⁹ 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).

²⁰ 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).

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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 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.

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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.

CONCLUSION

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IPNG hopes our comments demonstrate several points worth serious consideration by the Corps. It is unfortunate that too much of the DEIS dwells on the simplistic question: "Breaching the dams: Yes or No." The DEIS wasted valuable resources by using a narrow perspective in developing this work product, after some four years and \$20 million. Instead, our region should commit to a series of steps that focus on habitat, harvest and hatchery reform. The Federal Caucus, supported by the Corps and other agencies, should take the lead through the All-H process.

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Senior Corps officials were part of the Federal press conference releasing these documents for public comment in December 1999. From the first, IPNG welcomed statements noting how dam breaching was but a small part of the larger species recovery question. IPNG members have heard Corps officials throughout the regional hearings repeat a variation of comments by NMFS Regional Director Will Stelle at the All-Agency press conference in Portland, Oregon on December 17, 1999. Paraphrasing Mr. Stelle, he said, "Sure, fish would be in better shape with no dams. They also would be in better

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shape if there was no irrigation, and no building on flood plains, and if we all moved back East.”

People of the Pacific Coast know that only four species of the 32 listed or proposed fish are Snake River stocks—only 1/8 of the total. They support a basin-wide and full life-cycle approach as the only path to real fish recovery.

Comments at regional hearings by Federal officials have emphasized the need to step back from the simplistic issue of dam breaching. We thank all officials for such comments, and we urge that it continue. We urge the Corps to incorporate such comments and commitments into its upcoming reports and analyses and public processes—specifically the Draft Preferred Alternative Report. Dam breaching should be “put to bed,” so our region can get on with the complex issues to help listed species recover.

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IPNG does not ignore Hydro in its comments. We favor continued improvements at Federal dams that improve fish passage and reduce damage to juveniles passing the dams on their way downstream. We support increased transportation as an adjunct to dam operations. We support improvements at dam facilities that help fish passage, and we endorse further research into promising improvements to help fish passage survival even more.

IPNG believes that short-term solutions such as culvert replacements offer the chance to “pick the low-hanging fruit” and provide the basis for species to recover through habitat improvement. We urge a far stronger program of predator control—in the estuary and at the dams. We urge straight talk about why the fifth H—High seas—might wipe out much of what costly and risky steps we are urged to take within the basin.

The All-H paper demonstrates that the Federal government is moving from the simplistic dams or salmon equation. IPNG applauds this shift, and we urge that his message be repeated in every public forum and in written reports and analyses prepared by the Corps henceforth. We wish the DEIS had seized the opportunity to broaden the focus, rather than relying on the All-H report to do so. Too much energy was spent in the DEIS addressing the how and why of breaching. Compared with the other Hs, hydro has such complete answers as to dwarf other Hs and their role and impacts from those alternatives.

IPNG welcomes the belated recognition by all Federal parties—including the corps—that breaching is not the answer. We supported comments of Federal Caucus members explaining the role of Fall-H versus the possible benefits of dam breaching during the several regional recent rounds of hearings. We trust that will continue.

The Inland Ports and Navigation Group is committed, as a group and as individual ports and towing companies, to finding ways that the region can cooperate in restoring listed species. We recognize the commitment of time and energy by officials within the Corps and other Federal agencies in developing these documents for public comment.

Among the agencies, the Corps deserves credit for the effort involved in preparing its documents and many appendices covering many issues. As noted above, we only wish these reports and studies had been in response to better questions. Nevertheless, as civil servants themselves, IPNG members know there is no overtime for the extra efforts made to educate the region as to the scope, the costs, the options and the hazards that lie ahead.

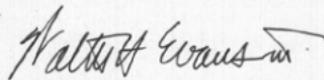
In closing, we thank you all for your commitment to leading the region toward solutions that match our spirit. Although IPNG disagrees with both the scope and some specific points in the DEIS, we close with our thanks for the extra effort that Corps officials made in its development.

The Inland Ports and Navigation Group thanks the Corps of Engineers for the opportunity to present written comments on its Draft EIS and for its consideration of these views.

Sincerely,

SCHWABE WILLIAMSON & WYATT

by



Walter H. Evans, III

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Attachments:

- Letter to Meriweather Lewis from President Jefferson
- Communication with Congress from President Jefferson

PRESIDENT JEFFERSON'S INSTRUCTIONS TO MERIWEATHER LEWIS

WASHINGTON, April 27, 1803.

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"DEAR SIR,—Yours of the 20th from Lancaster was received the night before last. Not having heard from you since the time of my leaving Washington I had written to you on the 23d and lodged it in Philadelphia. You will therefore probably receive that & this together. I inclose you a copy of the rough draft of instructions I have prepared for you, that you may have time to consider them, & to propose any modifications which may occur to yourself as useful. Your destination being known to Mr. Patterson, Doctr's Wistar, Rush & Barton, these instructions may be submitted to their perusal. A considerable portion of them being within the field of the Philosophical society, which once undertook the same mission, I think it my duty to consult some of its members limiting the communication by the necessity of secrecy in a good degree. These gentlemen will suggest any additions they will think useful, as has been before asked of them. We have received information that Connor cultivates in the first degree the patronage of the British government; to which he values ours as only secondary. As it is possible however that his passion for the expedition may overrule that for the British, and as I do not see that the British agents will necessarily be disposed to counteract us, I think Connor's qualifications make it desirable to engage him, and that the communication to him will be as useful, as it was certainly proper under our former impression of him. The idea that you are going to explore the Mississippi has been generally given out. It satisfies public curiosity, and masks sufficiently the real destination. I shall be glad to hear from you, as soon after your arrival at Philadelphia as you can form an idea when you will leave, and when be here. Accept assurances of my constant & sincere affection." "To Merryweather Lewis, Esq., Captain of the 1st Regiment of Infantry of the United States of America.

"Your situation as Secretary of the President of the United States has made you acquainted with the objects of my confidential message of Jan. 18, 1803, to the legislature. You have seen the act they passed, which, tho' expressed in general terms, was meant to sanction those objects, and you are appointed to carry them into execution.

"Instruments for ascertaining by celestial observations the geography of the country thro' which you will pass, have been already provided. Light articles for barter, & presents among the Indians, arms for your attendants, say for from 10 to 12 men, boats, tents, & other travelling apparatus, with ammunition, medicine, surgical instruments & provision you will have prepared with such aids as the Secretary at War can yield in his department; & from him also you will receive authority to engage among our troops, by voluntary agreement, the number of attendants above mentioned, over whom you, as their commanding officer are invested with all the powers the laws give in such a case.

"As your movements while within the limits of the U. S. will be better directed by occasional communications, adapted to circumstances as they arise, they will not be

noticed here. What follows will respect your proceedings after your departure from the U. S.

"Your mission has been communicated to the Ministers here from France, Spain, & Great Britain, and through them to their governments: and such assurances given them as to it's objects as we trust will satisfy them. The country of Louisiana having been ceded by Spain to France, the passport you have from the Minister of France, the representative of the present sovereign of the country, will be a protection with all it's subjects: And that from the Minister of England will entitle you to the friendly aid of any traders of that allegiance with whom you may happen to meet.

"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.

"Beginning at the mouth of the Missouri, you will take observations of latitude and longitude at all remarkable points on the river, & especially at the mouths of rivers, at rapids, at islands & other places & objects distinguished by such natural marks & characters of a durable kind, as that they may with certainty be recognized hereafter. The courses of the river between these points of observation may be supplied by the compass, the log-line & by time, corrected by the observations themselves. The variations of the compass too, in different places should be noticed.

"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.

"Your observations are to be taken with great pains & accuracy to be entered distinctly, & intelligibly for others as well as yourself, to comprehend all the elements necessary, with the aid of the usual tables to fix the latitude & longitude of the places at which they were taken, & are to be rendered to the war office, for the purpose of having the calculations made concurrently by proper persons within the U. S. Several copies of these as well as of your other notes, should be made at leisure times & put into the care of the most trustworthy of your attendants, to guard by multiplying them against the accidental losses to which they will be exposed. A further guard would be that one of these copies be written on the paper of the birch, as less liable to injury from damp than common paper.

"The commerce which may be carried on with the people inhabiting the line you will pursue, renders a knolege of these people important. You will therefore endeavor to make yourself acquainted, as far as a diligent pursuit of your journey shall admit,

with the names of the nations & their numbers; the extent & limits of their possessions: their relations with other tribes or nations; their language, traditions, monuments; their ordinary occupations in agriculture, fishing, hunting, war, arts, & the implements for

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these; their food, clothing, & domestic accommodations; the diseases prevalent among them, & the remedies they use; moral and physical circumstance which distinguish them from the tribes they know; peculiarities in their laws, customs & dispositions; and articles of commerce they may need or furnish & to what extent.

"And considering the interest which every nation has in extending & strengthening the authority of reason & justice among the people around them, it will be useful to acquire what knowledge you can of the state of morality, religion & information among them, as it may better enable those who endeavor to civilize & instruct them, to adapt their measures to the existing notions & practices of those on whom they are to operate.

"Other objects worthy of notice will be

the soil & face of the country, its growth & vegetable productions especially those not of the U. S.

the animals of the country generally, & especially those not known in the U. S. The remains & accounts of any which may be deemed rare or extinct;

the mineral productions of every kind; but more particularly metals, limestone, pit coal & saltpetre; salines & mineral waters, noting the temperature of the last & such circumstances as may indicate their character; volcanic appearances; climate as characterized by the thermometer, by the proportion of rainy, cloudy & clear days, by lightening, hail, snow, ice, by the access & recess of frost, by the winds, prevailing at different seasons, the dates at which particular plants put forth or lose their flowers, or leaf, times of appearance of particular birds, reptiles or insects.

"Altho' your route will be along the channel of the Missouri, yet you will endeavor to inform yourself by inquiry, of the character and extent of the country watered by its branches, and especially on it's southern side. The north river or Rio Bravo which runs into the gulph of Mexico, and the north river, or Rio Colorado, which runs into the gulph of California, are understood to be the principal streams heading opposite to the waters of the Missouri, & running Southwardly. Whether the dividing grounds between the Missouri & them are mountains or flatlands, what are their distance from the Missouri, the character of the intermediate country, & the people inhabiting it, are worthy of particular enquiry. The northern waters of the Missouri are less to be enquired after, because they have been ascertained to a considerable degree, and are still in a course of ascertainment by English traders & travellers. But if you can learn anything certain of the most northern source of the Mississippi, & of it's position relative to the lake of the woods, it will be interesting to us. Some account too of the path of the Canadian traders from the Mississippi at the mouth of the Ouiconsin river, to where it strikes the Missouri and of the soil and rivers in it's course, is desirable.

"In all your intercourse with the natives treat them in the most friendly & conciliatory manner which their own conduct will admit; allay all jealousies as to the object of your journey, satisfy them of it's innocence, make them acquainted with the position, extent,

character, peaceable & commercial dispositions of the U. S., of our wish to be neighborly, friendly & useful to them, & of our dispositions to a commercial intercourse with them; confer with them on the points most convenient as mutual emporiums, & the articles of most desirable interchange for them & us. If a few of their influential chiefs, within practicable distance, wish to visit us, arrange such a visit with them, and furnish them with authority to call on our officers, on their entering the U. S. to have them conveyed to this place at the public expense. If any of them should wish to have some of their young people brought up with us, & taught such arts as may be useful to them, we will receive, instruct & take care of them. Such a mission, whether of influential chiefs, or of young people, would give some security to your own party. Carry with you some matter of the kine-pox, inform those of them with whom you may be of it's efficacy as a preservative from the small-pox; and instruct & encourage them in the use of it. This may be especially done wherever you may winter.

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"As it is impossible for us to foresee in what manner you will be received by those people, whether with hospitality or hostility, so is it impossible to prescribe the exact degree of perseverance with which you are to pursue your journey. We value too much the lives of citizens to offer them to probably destruction. Your numbers will be sufficient to secure you against the unauthorized opposition of individuals, or of small parties: but if a superior force, authorized or not authorized, by a nation, should be arrayed against your further passage, & inflexibly determined to arrest it, you must decline it's further pursuit, & return. In the loss of yourselves, we should lose also the information you will have acquired. By returning safely with that, you may enable us to renew the essay with better calculated means. To your own discretion therefore must be left the degree of danger you may risk, & the point at which you should decline, only saying we wish you to err on the side of your safety, & to bring back your party safe, even if it be with less information.

"As far up the Missouri as the white settlements extend, an intercourse will probably be found to exist between them and the Spanish posts at St. Louis, opposite Cahokia, or Ste. Genevieve opposite Kaskaskia. From still farther up the river, the traders may furnish a conveyance for letters. Beyond that you may perhaps be able to engage Indians to bring letters for the government to Cahokia or Kaskaskia on promising that they shall there receive such special compensation as you shall have stipulated with them. Avail yourself of these means to communicate to us at seasonable intervals a copy of your journal, notes & observations of every kind, putting into cipher whatever might do injury if betrayed.

"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.

"On your arrival on that coast endeavor to learn if there be any port within your reach frequented by the sea-vessels of any nation, and to send two of your trusted people back by sea, in such way as shall appear practicable, with a copy of your notes. And should you be of opinion that the return of your party by the way they went will be eminently dangerous, then ship the whole, & return by sea by way of Cape Horn or the Cape of Good Hope, as you shall be able. As you will be without money, clothes or provisions, you must endeavor to use the credit of the U. S. to obtain them; for which purpose open letters of credit shall be furnished you authorizing you to draw on the Executive of the U. S. or any of its officers in any part of the world, in which drafts can be disposed of, and to apply with our recommendations to the consuls, agents, merchants or citizens of any nation with which we have intercourse, assuring them in our name that any aids they may furnish you, shall be honorably repaid and on demand. Our consuls Thomas Howes at Batavia in Java, William Buchanan of the Isles of France and Bourbon & John Elmslie at the Cape of Good Hope will be able to supply your necessities by drafts on us.

"Should you find it safe to return by the way you go, after sending two of your party round by sea, or with your whole party, if no conveyance by sea can be found, do so; making such observations on your return as may serve to supply, correct or confirm those made on your outward journey.

"In re-entering the U. S. and reaching a place of safety, discharge any of your attendants who may desire & deserve it: procuring for them immediate payment of all arrears of pay & cloathing which may have incurred since their departure & assure them that they shall be recommended to the liberality of the Legislature for the grant of a souldier's portion of land each, as proposed in my message to Congress: & repair yourself with your papers to the seat of government,

"To provide, on the accident of your death, against anarchy, dispersion & the consequent danger to your party, and total failure of the enterprise, you are hereby authorized by an instrument signed & written in your own hand to name the person among them who shall succeed to the command on your decease, & by like instruments to change the nomination from time to time, as further experience of the characters accompanying you shall point out superior fitness: and all the powers & authorities given to yourself are, in the event of your death transferred to & vested in the successor so named, with further power to him, & his successors in like manner to name each his successor, who, on the death of his predecessor shall be invested with all the powers & authorities given to yourself.

"Given under my hand at the city of Washington, this 20th day of June, 1803."

The Essential Documents of American History was compiled by Norman P. Desmarais and James H. McGovern of Providence College.

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MONDAY, JANUARY 17, 1803.

The convention between his Catholic Majesty and the United States, concluded at Madrid, August 11th, 1802, was read the third time, as in Committee of the Whole.

A motion was made, that it be

“Resolved, (two-thirds of the Senators present concurring therein,) That the Senate do advise and consent to the ratification of the convention between his Catholic Majesty and the United States of America, concluded at Madrid, August 11th, 1802.”

Ordered, That this motion lie for consideration.

On motion,

Ordered, That the injunction of secrecy, in respect to treaties laid before the Senate for ratification, be taken off, so far as relates to the treaty made between the Seneca nation of Indians, and Oliver Phelps, and others, June 30th, 1802.

The Senate took into consideration the message of the President of the United States, of the 11th instant, nominating Rufus King, and others.

Resolved, That they do consent and advise to the appointments, agreeably to the nominations respectively; except to those of Joseph Farly, Joseph Wilson, Ralph Cross, Alexander Scott, William White, Francis Armistead, Henry Tooley, James Anderson, Thomas Archer, and John Eason, referred to Mr. Clinton, Mr. Nicholas, and Mr. Stone, to consider and report thereon.

TUESDAY, JANUARY 18, 1803.

The convention between the United States and His Catholic Majesty was considered; and, on the question, will the Senate consent and advise to the ratification of this convention?

It was determined in the affirmative, { Yeas, 18,
Nay, 1.

Those who voted in the affirmative, are—Messrs. Anderson, Baldwin, Bradley, Breckinridge, Clinton, Cooke, Ellory, T. Foster, D. W. Foster, Franklin, Jackson, Logan, Nicholas, Olcott, Plumer, Sumpter, Tracy, and Wells.

Mr. Morris voted in the negative.

So it was

“Resolved, (two-thirds of the Senators present concurring therein,) That the Senate do advise and consent to the ratification of the convention between his Catholic Majesty and the United States of America, concluded at Madrid, August 11th, 1802.”

On motion to re-consider this resolution, it was determined in the affirmative.

On motion,

Ordered, That the further consideration of this convention be postponed

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& CLARK

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Resolved, That the further consideration of this convention be postponed to Tuesday next.

The following confidential message was received from the President of the United States, by Mr. Lewis, his Secretary:

[CONFIDENTIAL-]

Gentlemen of the Senate, and of the House of Representatives:

As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided

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mc in the execution of that act, in order that you may decide on the policy of continuing it, in the present or any other form, or discontinue it altogether, if that shall, on the whole, seem most for the public good.

The Indian tribes residing within the limits of the United States, have, for a considerable time, been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales: and the policy has long been gaining strength with them, of refusing absolutely all further sale, on any conditions; inasmuch that, at this time, it hazards their friendship, and excites dangerous jealousies and perturbations in their minds to make any overture for the purchase of the smallest portions of their land. A very few tribes only are not yet obstinate in these dispositions. In order peaceably to counteract this policy of theirs, and to provide an extension of territory, which the rapid increase of our numbers will call for, two measures are deemed expedient. First: to encourage them to abandon hunting, to apply to the raising stock, to agriculture and domestic manufacture, and thereby prove to themselves that less land and labor will maintain them in this, better than in their former mode of living. The extensive forests necessary in the hunting life, will then become useless, and they will see advantage in exchanging them for the means of improving their farms, and of increasing their domestic comforts. Secondly: to multiply trading houses among them, and place within their reach those things which will contribute more to their domestic comfort, than the possession of extensive, but uncultivated wilds. Experience and reflection will develop to them the wisdom of exchanging what they can spare and we want, for what we can spare and they want. In leading them thus to agriculture, to manufactures, and civilization; in bringing together their and our settlements, and in preparing them ultimately to participate in the benefits of our government, I trust and believe we are acting for their greatest good. At these trading houses we have pursued the principles of the act of Congress, which directs that the commerce shall be carried on liberally, and requires only that the capital stock shall not be diminished. We consequently undersell private traders, foreign and domestic, drive them from the competition; and thus, with the good will of the Indians, rid ourselves of a description of men who are constantly endeavoring to excite in the Indian mind suspicions, fears, and irritations towards us. A letter now enclosed, shows the effect of our competition on the operations of the traders, while the Indians, perceiving the advantage of purchasing from us, are soliciting generally, our establishment of trading houses among them. In one quarter this is particularly interesting. The Legislature, reflecting on the late occurrences on the Mississippi, must be sensible how desirable it is to possess a respectable breadth of country on that river, from our Southern limit to the Illinois at least; so that we may present as firm a front on that as on our Eastern border. We possess what is below the Yazoo, and can probably acquire a certain breadth from the Illinois and Wabash to the Ohio; but between the Ohio and Yazoo, the country all belongs to the Chickasaws. the

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most friendly tribe within our limits, but the most decided against the alienation of lands. The portion of their country most important for us is exactly that which they do not inhabit. Their settlements are not on the Mississippi, but in the interior country. They have lately shown a desire to become agricultural; and this leads to the desire of buying implements and comforts. In the strengthening and gratifying of these wants, I see the only prospect of planting on the Mississippi itself, the means of its own safe-

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ty. Duty has required me to submit these views to the judgment of the Legislature; but as their disclosure might embarrass and defeat their effect, they are committed to the special confidence of the two Houses.

While the extension of the public commerce among the Indian tribes, may deprive of that source of profit such of our citizens as are engaged in it, it might be worthy the attention of Congress, in their care of individual, as well as of the general interest, to point, in another direction, the enterprise of these citizens, as profitably for themselves, and more usefully for the public. The river Missouri, and the Indians inhabiting it, are not as well known as is rendered desirable by their connexion with the Mississippi, and consequently with us. It is, however, understood, that the country on that river is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude, through an infinite number of portages and lakes, shut up by ice through a long season. The commerce on that line could bear 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. An intelligent officer, with ten or twelve chosen men, fit for the enterprise, and willing to undertake it, taken from our posts, where they may be spared without inconvenience, might explore the whole line, even to the Western Ocean, have conferences with the natives on the subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense. Their pay would be going on, whether here or there. While other civilized nations have encountered great expense to enlarge the boundaries of knowledge, by undertaking voyages of discovery, and 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 nation claiming the territory, regarding this as a literary pursuit, which it is in the habit of permitting within its dominions, would not be disposed

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to view it with jealousy, even if the expiring state of its interests there did not render it a matter of indifference. The appropriation of two thousand five hundred dollars, 'for the purpose of extending the external 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.

TH: JEFFERSON.

January 18th, 1803.

The message was read.

Ordered, That it lie for consideration.

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