

MAY 03 2000

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May 1, 2000

Department of the Army
Walla Walla District Corps of Engineers
201 Third Avenue
Walla, Walla, WA 99362-1876

Attention: Lower Snake River Study

On April 30, 2000 I submitted via fax the attached comments for the record on the Corps' *Draft Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement*.

Minor editing errors in the faxed version have been corrected [as noted with strike-overs and italics] in the attached version. Please substitute this version for the April 30, 2000 faxed version.

Sincerely,

Ed Chaney,
Director

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Ed Chaney
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COMMENTS ON U.S. ARMY CORPS OF ENGINEERS
*DRAFT LOWER SNAKE RIVER JUVENILE SALMON MIGRATION
FEASIBILITY REPORT/ENVIRONMENTAL IMPACT STATEMENT*

ED CHANEY, DIRECTOR
NORTHWEST RESOURCE INFORMATION CENTER, INC.

APRIL 30, 2000

GENERAL COMMENT

1 The Corps DEIS is fatally flawed. Bias and disinformation are systemic. This cannot be cured in the transition from this DEIS to a final environmental impact statement. A new beginning, e.g., at minimum, a supplemental DEIS, is required.

If the burden of honestly evaluating alternative means of remedying its own error in failing to properly design the four lower Snake River dams is too great a burden, as the present DEIS starkly testifies, the Corps should recuse itself and stand down. The President then should instruct the Bureau of Reclamation to relieve the Corps of that burden.¹

SPECIFIC COMMENTS

As noted in the above general comments, the bias in the DEIS is systemic. The resulting deception of the public and decision makers is pervasive. This DEIS can't be repaired. It must be replaced, e.g., with a new or supplemental DEIS. Following are examples of major existing problems that must be remedied.

The bottom line: The Corps must accept responsibility for remedying its failure to properly design the lower Snake River dams to meet the fish-protection intent of Congress and the letter of fish protection laws. All else follows.

Notwithstanding the fish protection intent of Congress and letter of the law, and notwithstanding pre-construction warnings from the U.S. Fish & Wildlife Service,² the Corps failed to make any provision for passage of downstream migrant anadromous fish in its design and construction of the four lower Snake River projects.

After the four lower Snake River dams were built, the Corps started tacking on facilities to aid juvenile fish passage. Decades of effort and hundreds of millions of dollars were unable to overcome inherent design flaws. Juvenile fish mortalities eventually threatened extinction for what once were among the world's largest populations of chinook and steelhead and for dependent Native American Indian and non-Indian economies.

¹ Reclamation demonstrated in the Umatilla Basin Project that it is capable of acknowledging and accepting responsibility for remedying its past error. The Bureau did so in a way that was morally and ethically based, and which will produce enormous future net social and economic benefits to the region and nation. This is in stark contrast to the Corps which, in its increasingly desperate effort to evade responsibility for its own errors, is driven—as here in the DEIS—to shamefully pit citizens against one another in zero-sum conflict in hopes the resulting political gridlock will preserve the status quo.

² "... It is the oft repeated thesis of the Fish and Wildlife Service that the losses imposed by successive dams are cumulative to salmon both upstream and downstream.

"If we are successful in passing the fish over the proposed new dams on the mainstem of the Columbia, we will do so with an indeterminate but significant loss. If these survivors are then confronted with a series of four dams on the Snake there is the strongest doubt that these added obstacles can be overcome.

"There is virtual assurances that only a fraction of existing runs could be gotten to the spawning grounds in the Snake River system, and that the progeny of this fraction would suffer further loss in its return movement to the sea." Director, U.S. Fish and Wildlife Service, 1946.

The Corps, in effect, finally declared that in the lower Snake River dams it had created a salmon doomsday machine, i.e., it couldn't be fixed and was so deadly that either a) all juvenile fish had to be removed from the river and barged and trucked to the estuary, or b) the dams had to be breached.

That's the bottom line. The Corps erred in its design of the four lower Snake River dams. It is the Corps' duty to remedy its error. And to pay for doing so.

In the DEIS, however, the Corps labors to minimize and cover up its error, seeks to evade its duty to correct it by more of the same failed collection and transportation snake oil, and to pass off the cost of what will work—breaching—to innocent citizens and the region.

Recommendation

In a new or supplemental DEIS the Corps should explicitly accept responsibility for remedying its failure to properly design the lower Snake River dams to meet the fish-protection intent of Congress and the letter of fish protection laws.

It follows then, that in its evaluation of the breaching alternative, the Corps also accept responsibility for mitigating the environmental, social and economic effects of implementing this alternative. As noted later in these comments, this will require formulation of a new alternative that contains specific measures—to be funded by the U.S. Treasury—to mitigate the adverse effects of breaching on affected citizens and the region.

As noted in the following discussion of the DEIS's flawed economic analysis and conclusions, such an alternative would produce enormous economic benefits to the region and, not incidentally, stop inciting to political riot current beneficiaries of the pork barrel largess provided by the lower Snake River dams.

The Corps must state clearly the legal standards against which DEIS alternatives are evaluated.

The Corps DEIS is evasive about and, therefore, deceptive in presenting the legal standards against which alternatives must be measured. The DEIS provides a litany of legal authorities and requirements, but no insight necessary to determine the relative effectiveness of each alternative in fulfilling those authorities and requirements. Following are examples on point.

—The Sawtooth National Recreation Area and the Frank Church River of No Return Wilderness Area are both upstream of the lower Snake River dams. Both areas were established with an explicit stated purpose of protecting the anadromous fish populations now threatened with extinction by the Corps dams. The DEIS does not mention these areas nor does it evaluate the relative consistency of DEIS alternatives with the fish protection intent and letter of the laws establishing them.

2

Recommendation

In a new or supplementary DEIS the Corps should provide information in sufficient detail to allow the public and decision makers to make an informed comparison of each alternative's *relative* consistency with other laws designed to protect anadromous fish populations threatened with extinction by the lower Snake River dams.

—The DEIS dodges the Corps' duty under the Clean Water Act. Actually, the Corps does more than attempt to dodge its duty, it characteristically attempts to cook the books with what the U.S. Environmental Protection Agency called "selective use of data and selective use of modeling results."³

The cost of a non-breaching solution to water pollution is estimated at \$460-\$900 million. As noted the following discussion on economics, the Corps neglected to include this amount in its DEIS calculation of the cost of the non-breaching alternative. The Corps also neglected to include the projected additional cost of up a million acre feet of water from storage in Idaho to augment stream flows to dilute pollution under a non-breaching alternative.

EPA stated that breaching was the best solution to both the water pollution and fish slaughter problems at and between the dams.

Recommendation

In a new or supplementary DEIS the Corps should provide information in sufficient detail to allow the public and decision makers to make an informed comparison of the relative efficacy and economic cost of each alternative in meeting Clean Water Act standards. This should include, but not be limited to, any projected need for and cost of using stored water to dilute pollution under any non-breaching alternative(s).

—Another, and notable, example of the legal standards any DEIS alternative must be tested against are those established by the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

- The Corps DEIS focuses on the requirements of the Endangered Species Act. The DEIS gives lip service to the National Marine Fisheries Service 1995 Biological Opinion, as required by law, but then appears to seek refuge in the less rigorous "standard" recently offered up by NMFS' Cumulative Risk Initiative which is at best a flawed work in progress. Thus the Corps—in consort with NMFS—seeks to lower the bar on the ESA standard DEIS alternatives are tested against.⁴

The Corps' preoccupation with cooking up an ESA standard that even barging salmon can meet is misplaced. The Corps should focus on the far higher standards explicit in the intent and letter of the Northwest Power Act.

For example, it is a specific purpose of the Act:

To protect, mitigate, and enhance the fish and wildlife, including related *spawning grounds and habitat*, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on *suitable environmental conditions* substantially obtainable from

³ U.S. Environmental Protection Agency comments on Corps DEIS. EPA's comments in their entirety are hereby incorporated by reference into these comments.

⁴ *A technical review of the National Marine Fisheries Service Leslie matrix model of Snake River spring and summer chinook populations*, prepared by state, tribal, and U.S. fisheries agencies, April 28, 2000 is hereby incorporated into these comments by reference.

the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.⁵ [Emphasis supplied]

Note the lack of reference to removing the fish from their natural habitat and ~~submitting~~ *substituting* the environmental conditions of trucks and barges.

Recommendation

In a new or supplementary DEIS the Corps should make explicit that the intent and letter of the Northwest Power Act requires substantial *restoration*—not merely prevention of extinction—of anadromous fish populations adversely impacted by the four lower Snake River dams.

In addition, the Corps should provide information in sufficient detail to allow the public and decision makers to make an informed comparison of the relative efficacy of each alternative in meeting the explicit requirement of law to protect, mitigate and enhance "spawning grounds and habitat" and provide "suitable environmental conditions" for anadromous fish at and between the lower Snake River dams.

- The Act also provided for establishing the Northwest Power Planning Council and charged it with developing a fish and wildlife program which must, among other things:

Provide for improved survival of anadromous fish at hydroelectric facilities; and

Provide for flows of sufficient quantity and quality between these facilities to improve the production, migration, and survival of anadromous fish as necessary to meet sound biological objectives.⁶

Under the Act the Corps must manage, operate, or regulate the four lower Snake River dams in a way that takes the Council's program into account "to the fullest extent practicable . . . at each relevant stage of [the] decisionmaking process."

Recommendation

In a new or supplemental DEIS the Corps should provide information in sufficient detail to allow the public and decision makers to make an informed evaluation of the Corps' compliance or noncompliance with the above mandate as it applies to the lower Snake River dams.

- The Act confers on the Corps the duty—independent of the Council's program— "to adequately protect, mitigate and enhance fish and wildlife, including related spawning grounds and habitat" affected by its dams "in a manner that provides equitable treatment" to anadromous fish.⁷

⁵ Regional Power Act, Pub. L. No 96-501, § 4(h)(7), 94 Stat. 2697, 2709 (1980).

⁶ Regional Power Act, Pub. L. No 96-501, § 4(h)(5), 94 Stat. 2697, 2709 (1980).

⁷ Regional Power Act, Pub. L. No 96-501, § 4(h)(1)(A)(I), 94 Stat. 2710 (1980).

5
cont. It is ~~unconverted~~ *uncontroverted* in the legislative history of the Act that this provision of law "is aimed at placing fish and wildlife on a par with . . . other purposes and providing a means by which [covered agencies] will act to protect, mitigate, and enhance fish and wildlife."⁸

The United States Court of Appeals, Ninth Circuit has affirmed this independent duty. In addition, the court ruled that each agency covered by this provision of the Act, which includes the Corps, must "develop a mechanism for fulfilling its obligation" under this provision of the Act, and "will be required to demonstrate, by means that allow for meaningful review, that it has treated fish and wildlife equitably."⁹

Recommendation

In the new or supplemental DEIS, the Corps [any all relevant collaborating agencies] should provide a mechanism by which it can demonstrate for meaningful review by decision makers and the public that it is providing anadromous fish "equitable treatment" "on a par" with other uses of the hydrosystem.

6 This should include a risk analysis and management protocol which addresses all uses of the system. It should discuss the needs of each respective use of the system, the likelihood those needs will not be met, the factors that threaten or make it less likely that identified needs will not be met, and how the Corps will manage the system so that the risk a use's needs will not be met ~~are~~ is equitably apportioned among all major users (including at least irrigation, recreation, power, navigation, fish and flows for fish, and meeting the federal government's special obligations to Indian tribes).

For example, the Corps should provide a comparison between the likelihood of meeting the minimum flows set out by NMFS in its 1995 BiOp and the likelihood of meeting firm power loads.

Per the Ninth Circuit decision, the Corps must provide a mechanism by which it can demonstrate to a court, in a way which allows for meaningful review, that the Corps is in fact providing fish with equitable treatment in running the system.

Each DEIS alternative should be evaluated for its relative consistency with the equitable treatment mandate of the Power Act.

7, 8 The Corps DEIS tortures biological data to make it confess what the Corps wants to hear. I.e., in effect, that removing fish from their lower Snake River habitat and transporting them in trucks and barges to the estuary is good for the affected populations. And, that breaching the dams and, thereby, restoring the fishes' natural habitat, would be bad for fish.

The Corps' arguments and implications are tortured. And telling.

⁸ 126 Cong. Rec. H10,683 (daily ed. Nov. 17, 1980) (remarks of Rep. Dingell).

⁹ 1997 WL 359821 (9th Cir.)

Fishery resource agencies have extensively documented the Corps' and, to its eternal shame, NMFS', strained efforts to inflate the biological benefits of non-breaching alternatives and understate the biological benefits of the breaching alternative. We incorporate these comments by reference.¹⁰

Recommendation

In a new or supplemental DEIS the Corps must at minimum explicate the differences between its [and NMFS'] and fishery agencies' views of the relative biological benefits of breaching and non-breaching alternatives in sufficient detail that decision makers and the public can make informed judgements on whom to give credence.

This presentation should include, but not be limited to, fully explicating precisely how the Corps and NMFS propose—in lieu of breaching—to "improve the habitat" in wilderness areas and other areas of substantially pristine habitat. The Corps also should explicate the likely effect on fish produced in these substantially pristine areas of substituting "habitat improvements" in less pristine areas in lieu of breaching.

In addition, it should include quantified projections of the increased amount of juvenile production from "improved habitat"—and the associated economic cost—necessary to off-set juvenile mortalities at the lower Snake River dams sufficiently to *restore* the subject populations and dependent economies as required by the Northwest Power Act, treaties with Native American Indian tribes, and with other applicable laws.

The Corps DEIS uses double standards of economic analysis, preposterous assumptions, and other clumsy slight-of-hand in a desperate attempt to hide the economic cost of the non-breaching alternatives and to inflate the cost and hide the economic benefits of the breaching alternative.

The Corps DEIS projects average annual NED costs/benefits of -\$246,474,000 for the breaching option. As the following examples illustrate, this result is accomplished by introducing systematic bias into the analysis.

—The Corps DEIS projects a \$271,000,000 annual cost to replace electricity that would be lost from implementing the breaching option. Then projects the impact on Northwest ratepayers. However, the underlying [DREW] analysis acknowledges that given deregulation of wholesale electricity markets, replacement power from other sources is available at competitive rates. The DEIS then, is arguing that

¹⁰ *Comments on the National Marine Fisheries Service's "An Assessment of Lower Snake River Hydrsystem Alternatives on Survival and Recovery of Snake River Salmonids" (Draft Anadromous Fish Appendix)*, Idaho Department of Fish and Game. August 30, 1999.

Technical Comments on the scientific analyses used for the Federal Cautions Draft All-H Paper, Idaho Department of Fish and Game (as part of the State of Idaho's comments on the Draft All-H Paper). March 27, 2000.

Technical Comments on NMFS' draft Anadromous Fish Appendix, Idaho Department of Fish and Game. April 28, 2000.

A technical review of the National Marine Fisheries Service Leslie matrix model of Snake River spring and summer chinook populations, prepared by state, tribal, and U.S. fisheries agencies, April 28, 2000.

Comments of the Oregon Department of Fish and Wildlife on the Draft Lower Snake River Juvenile Salmon Migration Feasibility Report and Environmental Impact Statement, Oregon Department of Fish and Wildlife, April 28, 2000.

rates would have to go up not to provide consumers electric power at competitive rates, but in order to cover the loss of revenue to Bonneville Power Administration, i.e., to enable BPA to pay off its past nuclear power plant gambling debts.

9
cont. Recommendation

In a new or supplemental DEIS the Corps should explain in detail the above relationships, and eliminate the projected \$271 million annual cost of replacement power [replacement revenue for BPA]. This change alone would give the breaching alternative a positive cost/benefit ratio.

10 —The Corps DEIS acknowledges the economic value of restoring ~140 linear miles of free flowing Snake River via the breaching alternative, but does not include the estimated value of \$420 million per year in its calculation of benefits for the breaching alternative. This makes no economic or common sense and results in dramatic underestimation of benefits for the breaching alternative.

Recommendation

In a new or supplemental DEIS the Corps should include the \$420 million/year passive values for the breaching option, and assign proportionate costs to non-breaching alternatives.

11 —The Corps DEIS does not include any costs of complying with Clean Water Act requirements for non-breaching alternatives—roughly estimated at \$460 million-\$900 million, not including a mid-point estimate of another \$171 million per year for an additional 1 million acre feet of stored water to dilute pollution under non-breaching options.

Recommendation

In a new or supplemental DEIS the Corps should include the cost of Clean Water Act compliance, including the cost of additional stored water, for non-breaching alternatives. Proportionate benefits should be assigned to the breaching alternative.

12 —The Corps DEIS makes preposterous assumptions—assumptions that do not comport with empirical evidence—about the economic benefits of recreational fishing that would occur as the result of the breaching option.

These include an assumption that recreational fishing trips over the next 95 years would be limited by the availability of developed facilities to about 14,000 trips per year. According to Idaho Department of Fish and Game, a 1997 few-day season on hatchery spring chinook in a very limited geographic area in Idaho produced 14,714 trips.

Recommendation

In a new or supplemental DEIS the Corps should revisit and make transparent to decision makers and the public its assumptions—and contrasting views—on the recreational fishing benefits of the breaching option compared to the recreational fishing benefits of non-breaching options.

13 —The Corps DEIS applies a discount rate of 6.875 percent to the fish restoration benefits of the breaching alternative. It makes no economic sense to estimate future benefits of restoring for future

generations fish populations decimated by the Corps' error in designing the lower Snake River dam as if we were estimating the future value of a capital purchase today. This increasingly is recognized by economists.

As everyone knows, however, there are cases, especially on the benefit (or damage) side, when discounting at anything like the market interest rates implies conclusions that common sense cannot accept. Even large damages, if they happen 200 years from now, discount back to peanuts.¹¹

Recommendation

In a new or supplemental DEIS the Corps should use a 0 discount rate in estimating the economic benefits of restoring Snake River salmon and steelhead decimated by the Corps' error in failing to properly design the four lower Snake River dams.

The Corps DEIS improperly projects significant sector costs to the region including losses of income and employment due to the breaching option.

As noted at the beginning of these comments, the Corps erred in failing to properly design the four lower Snake River dams to meet the fish protection intent and letter of the law. The Corps, not the current beneficiaries of the lower Snake River status quo, should bear the cost of remedying the Corps' error.

Recommendation

In a new or supplemental DEIS the Corps should formulate and evaluate a new alternative that combines breaching with measures—funded by the U.S. Treasury—to fully mitigate the resulting adverse effects on affected citizens and the region.

The economic cost to the Treasury and the economic benefits to the region of such an alternative should be fully explicated in the new DEIS and new Summary document.

¹¹ Robert M. Solow, Nobel Laureate in Economic Science, Massachusetts Institute of Technology, in *Discounting and Intergenerational Equity*, Edited by Paul R. Portney and John P. Weyant, Resources for the Future.