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July 31, 2001

Mr. Mark Walker
Director of Public Affairs
Northwest Power Planning Council
Suite 1100
851 SW 6th Ave.
Portland, Oregon 97204

Dear Mr. Walker:

The Inland Ports and Navigation Group (IPNG) thanks the Northwest Power Planning Council for the opportunity to comment on the recommendations submitted by various public and private regional entities regarding development of a Mainstem Plan for the Council's 2000 Fish and Wildlife Program. The Council has played a constructive role for many years in the region's efforts to provide energy to a growing population while providing a fish and wildlife program fostering recovery and strengthening of both ESA-listed species and unlisted species in the region.

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

IPNG has reviewed all the recommendations received by the Council. Most of our specific comments address the special role of navigation on the Columbia Snake system. Some recommendations to the Council would put navigation in jeopardy, if not curtail it specifically. In sum, IPNG strongly urges the Council to reject any and all recommendations that could limit river navigation from the mouth of the Columbia to Lewiston, Idaho.

As the Council recalls from IPNG's previous administrative submissions, IPNG has endorsed a variety of fish species recovery measures. It has submitted a number of specific recovery measures and implementation programs that it believes will contribute to recovery of listed fish species. It has supported recovery measures that address both short and medium term requirements. In responding to the Council's request for comments about the specific recommendations it received from the different groups, IPNG's own responses to these recommendations focus narrowly on this task. In this effort, we may emphasize—only in this submission—what we oppose in our comments, rather than our

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more balanced comments in past submissions. Although IPNG discusses worthwhile recommendations at several points, we do not wish to leave the impression that we are against more than we are for in species recovery. If Council members or staffers are interested in reviewing the full comments submitted by IPNG to different administrative fora, and that include a lengthy review of measures IPNG supports, please let us know.

IPNG member ports are public entities, created by each Northwest State. The Port of Lewiston, Idaho, is a port district created pursuant to the statutes of the State of Idaho. The Ports of Whitman County, Washington, and other Washington public ports located on the Columbia and Snake Rivers, are municipal corporations of the State of Washington pursuant to Wash. Rev. Code Title 53. The Port of Morrow, Oregon, is a municipal corporation of the State of Oregon pursuant to Or. Rev. Stat. §777.

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

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.



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The Inland Ports and Navigation Group IPNG was formed for two purposes. The first was to intervene in the “Clean Water Act Lawsuit” a case¹ in US District Court in Portland. This case involves environment advocates led by the National Wildlife Federation who sued the Corps of Engineers alleging a violation of the State of Washington’s Clean Water Act regulations regarding water temperature and dissolved gas standards at the four lower Snake River dams. In granting IPNG’s motion to intervene, the Federal Judge in Portland agreed that IPNG members were “direct and intended beneficiaries” of the Federal dams on the Lower Snake River

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

SPECIFIC IPNG COMMENTS ON RECOMMENDATIONS FROM REGIONAL ENTITIES TO COUNCIL FOR ITS MAINSTEM PLAN RECOMMENDATIONS

IPNG addresses these comments concerning recommendations to the Council from different regional entities in the same alphabetical order as they appear in Council letter document 2001-15.

Bonneville Power Administration-- Rec. 04

IPNG thanks BPA for its constructive comments in its Enclosure 1 illustrating the existing integration between the 2000 Biological Opinion (BiOp) and the Council’s 2000 Program Amendments. The overlap shows that progress toward unified species recovery efforts can be made with a minimum of duplication of efforts and energies by different Federal and state entities and by the public.

BPA’s Enclosure 2 (with BPA’s specific recommendations) contains a useful opening summary of the public purpose that should be at the center of the region’s efforts to help species recover. At the top of page 4 of Enclosure 2, BPA discusses structural improvements at Federal dams that will aid fish survival at these facilities. IPNG supports such measures as discussed by BPA in Enclosure 2.

IPNG also agrees with BPA that a strong research, monitoring and evaluation (RM&E) will be a critical element as the region decides how best to invest its limited resources in recovery measures that will offer the greatest probability of species recovery, and will not cause catastrophic economic upheaval in the region.

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



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IPNG supports BPA's comments about the need for "adequate, efficient economical and reliable" power supply in the region. In view of the Power Act delineation of responsibility to the Council, we believe that the Council will not lose sight of these important requirements. IPNG also supports BPA comments as to the importance of the estuary in the broader recovery efforts, both in habitat creation and in predation control. IPNG believes that estuary habitat creation can be accomplished in harmony with and in conjunction with deepening the lower river channel.

Although IPNG has not reviewed the specific issue of Ocean Plume (BPA specific recommendations, page 8), we agree that more research is needed into the impact that the plume plays in the life cycle of impacted species. More importantly, we encourage the Council to support research into the impact on listed species while in the ocean, both in its own Council programs and in support for programs of other entities. IPNG has argued that not enough is known about how the ocean impacts fish mortality, and that better information is needed about decadal temperature cycles, food supplies, and other ocean impacts on listed fish species. IPNG urges strong Council engagement in the issue of the role of the ocean in anadromous species recovery and survival

Columbia Basin Fish and Wildlife Authority—Rec. 09

IPNG questions the attention CBFWA puts on the importance of spill. Nevertheless, CBFWA's discussion of the Council's responsibility to look beyond listed species to assist non-listed species is a worthwhile reminder—to Council and the public alike—of the scope of the Council's mandate. IPNG welcomes greater attention to conservation technologies, as CBF&W urges in its recommendation "b", but the Council must not lose sight of the need to not erode its funding support for short term measures that help species recover in the critical shorter term—while acknowledging the clear long-term benefits from improved conservation technologies.

Columbia River Inter-Tribal Fish Commission—Rec. 01

IPNG finds certain CRITFC recommendations very useful, but sees in others the potential to restart the divisive debate over Snake Dam breaching that will divert the region away from concrete steps that will help listed species recover. IPNG, for example, supports the 2000 BiOp, while CFITFC opposes it.

Specifically, on page 1 of CRITFC's summary responses, IPNG strongly urges the Council to resist putting dam breaching back into the regional debate as part of any recommendations for its Mainstem Plan. Such action would guarantee further stalemate between dam preaching proponents and opponents at the very time when the region needs united support for "low hanging fruit"—those species recovery measures that offer the greatest short-term bang-for-the-buck. IPNG urges the Council to make clear that this process is not the venue or process to restart this debate.



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IPNG supports CRITFC's goal of restoring listed species to levels that support tribal fisheries. IPNG suggests that non-tribal commercial fishing in the lower river and ocean be curtailed further where it can be shown that this would translate into increased tribal fishing at the tribes' usual and accustomed sites on the Columbia and its tributaries.

IPNG agrees with CRITFC comments about the need to plan to avert future adverse impacts on tribal economies from future regional energy cost increases, and that better planning to avoid them is required. Tribes should not be left vulnerable, as CRITFC says, to "emergency power operations that further erode the natural resources they rely on."

IPNG also welcomes a more robust discussion of how tribes can meet their own future energy needs and can contribute to regional energy solutions within the appropriate Council process. In addition, IPNG hopes that a more complete discussion of distributed generation, as described on page 5 of CRITFC's summary paper, would contribute to the region's understanding of options available to it to respond to future energy emergencies. At the same time, IPNG urges the Council to explore more completely such suggestions to BPA as CRITFC sets out on page 6 in its recommendation 3, "Power Pricing."

In sum, IPNG hopes that the CRITFC recommendations pertaining to energy serve as a discussion document for further regional consideration than they do as an action document to trigger concrete recommendations in the Council's Mainstem Plan. They represent some fresh ideas that should stimulate further discussion and evaluation throughout the region by all interested parties.

CRITFC's lengthy and dense technical supporting document provides a wide range of material to the Council for its possible use, some of which IPNG strongly urges the Council to reject and avoid completely. Other comments in that document merit further review and evaluation by impacted parties in the region. The discussion of flood control in the early pages of the supporting material, for example, should be evaluated to determine if CRITFC's observations merit detailed consideration by the action agencies.

IPNG opposes adoption of CRITFC's suggested performance standards for the Corps (on page 20) for strict adherence to the CWA temperature standards during summer months. As one example, IPNG calls the attention of the Council that reports that the natural river temperatures before construction of the Lower Snake Dams often exceeded the current CWA standards.

On page 31, CRITFC proposes an experimental drawdown of Lower Granite Reservoir to elevation 723. IPNG opposes this because of its devastating impact on navigation. On the next page, IPNG suggests that the CRITFC comments about the impact on habitat on power peaking merit further discussion.

Under Spill Management (beginning on page 33), CRITFC makes a number of recommendations. Among those, IPNG strongly supports the call for greater predation reduction and abatement, and urges that this be among the core elements recommended by



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the Council. IPNG also supports CRITFC's call for improved turbine technology and efficiency.

On page 33, CRITFC calls for drawing down below minimum operating pool (MOP) the John Day reservoir. IPNG strongly opposes any such actions, and urges the Council to refrain from encouraging this alternative. IPNG can make available to the Council its lengthy submission to the Corps of Engineers during the comment period for the proposed Corps John Day Drawdown Study. In it, IPNG argued against continuing that study for a variety of compelling environmental and economic reasons.

Later, on page 57, CRITFC begins its six-page discussion of its arguments supporting a drawdown strategy (Item 5.3: "SNAKE RIVER RESERVOIR DRAWDOWN STRATEGY"). IPNG opposes any serious consideration by the Council of this material. In the opinion of IPNG, any action by the Council to embrace drawdown planning would prove counterproductive. On page 95, CRITFC repeats its drawdown arguments in again calling for seasonal drawdowns of Lower Granite Reservoir.

Because of the lengthy discussions of drawdown issues in these comments and in those from a few other commenters, IPNG calls attention to its discussion of the legal rights of navigation, which follows these specific comments.

Idaho Department of Fish & Game- Rec. 14

IPNG agrees with the IPNG contention that a primary focus on short-term measures should be a central theme for the Council recommendations—and for the region. IDFG comments on page 2 about the relationship between mainstem habitat and survival are constructive. IPNG supports clarification of the point IDFG makes (page 2) of the apparently contradictory statement in Council Document 2001-4 concerning mainstem versus sub-basin recovery objectives.

IDFG also calls attention to the "Four Governors 2000" document that set out their regional approach to species recovery. IPNG urges the Council to reexamine that document and to integrate its message into the Council's mainstem planning. Without assessing each specific recommendation, it was a very worthwhile document that deserves ongoing consideration and discussion, and integration into other Council activities. IPNG also calls attention to the thoughtful comments on page 5 of IDFG comments concerning risk assessment, and its seven recommended recovery strategies.

Among the specific recommendations, IPNG wholeheartedly endorses IDFG comments regarding seabird predation associated with mainstem operations (pages 8-9). Throughout the entire public comment process before a number of public entities over a lengthy period, IPNG has stressed the need for all parties to redress serious predation that now savages juvenile fish migration to the ocean.

As long as Caspian tern, cormorant, or pikeminnow predation remains high, public support for any difficult recovery options will remain severely curtailed. The public will



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not accept difficult and costly recovery measures that impact their lives and pocketbooks as long as they see serious predation near the mouth and below certain dams. They believe it simply must be curtailed before risky fish recovery schemes are considered. IPNG urges the Council to adopt the IDFG language as its own recommendation.

IPNG agrees with IDFG's comments at the bottom of page 9 regarding mainstem operations: "Idaho's goal for this (short term) time period is to provide optimal survival conditions for wild Snake River salmon and steelhead within the context of operation lower Snake River dams." IPNG agrees, and recommends that the Council adopt a similar position for both the short and medium term.

IPNG suggests that the point IDFG makes on page 12 concerning adult passage and potential benefits of Bonneville fish ladder modification might be a small but useful change to evaluate. If beneficial, then the Council could facilitate such modification at Bonneville and elsewhere. IPNG supports IDFG suggestions concerning spillway deflectors and other modifications to reduce TDG levels.

In its Appendix A, IDFG raises useful arguments concerning the inadequacy of the Corps of Engineers budget to make necessary improvements to enhance fish passage at the mainstem hydro facilities. IPNG urges Council review of these comments (which repeat IDFG's 2000 BiOp comments) and discussion with regional Members of Congress to assess how these needed funds can be obtained. IPNG supports comments on page 20 of Appendix A by IDFG regarding smolt transportation past the lower Snake River dams as well as past the Columbia hydropower facilities. IPNG believes that IDFG makes worthwhile contributions in its lengthy discussion of project modification which benefit species survival. IPNG encourages the Council to consider these carefully in preparing its recommendations.

Idaho Water Users Association and Committee of Nine—Rec. 19

IPNG believes that IWU/9 make some valid points in their discussion of flow's impact on certain species recovery. In any areas where recommended flow augmentation considered by the Council could adversely impact Lower Granite reservoir levels to take them below MOP, however, IPNG opposes such actions.

Montana Department of Fish Wildlife and Parks—Rec 12

Inasmuch as the MDFWP comments dwelled on recommendations impacting native fish issues in the Columbia headwaters, IPNG refrains from offering specific comments about MDFWP comments.

National Marine Fisheries Service—Rec. 08

IPNG wishes that NMFS had offered a more complete set of comments, particularly where they apply to the estuary and river plume. IPNG believes that much more research and collaboration is needed about the adverse ocean impact on fish during



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the critical part of their life cycle. It would have been constructive for NMFS to offer a more detailed discussion for public review.

IPNG notes, with irony, that NMFS calls for the Council to expand its horizons beyond the mouth of the Columbia. This repeats an argument made by IPNG to NMFS in the past. In fact, IPNG believes that NMFS should devote increased attention itself to this task. NMFS calling for greater Council acknowledgment, while useful, is something that should be directed—word for word from NMFS statement in its recommendation 8—right back toward NMFS itself.

Northwest Energy Coalition—Rec 11

IPNG welcomes the comments of the NWEC as ones that stretch and challenge the region. Ideas outside the norm add yeast to the debate over steps to address current energy problems and anticipate future ones. Before turning to specific comments, IPNG hopes that NWEC ideas are examined in detail and discussed outside this current Council recommendation process, as some NWEC ideas go well beyond it. IPNG questions whether these NWEC recommendations are appropriate to include in any final Council recommendations, yet they merit further discussion among all parties in the region.

Northwest Resources Information Center—Ed Cheney, Director—Rec 21

Mr. Cheney repeats his arguments made for a long time about failures of the past regional efforts to address species recovery in a way he supports. IPNG disagrees with Mr. Cheney's assertion that, "Faced with the stark results of 21 years of failure, i.e., concurrent regional salmon and energy crises, the Council has been reduced to providing political cover for Bonneville and the (Corps) to operate the FCRPS to maximize energy revenue so Bonneville can pay its nuclear power plant gambling debts at the expense of endangered Snake River salmon." Putting aside consideration of his comments about the issue of nuclear investments, open to criticism or debate from a variety of fronts, Mr. Cheney's broader assertion about the Council is ill advised.

In spite of Mr. Cheney's call to disband the Council within 3 years if its fails to have a working salmon recovery plan, most people in the region recognize that the Council plays a useful role in pushing the region toward unified support for species recovery. The process may be slow and plodding, but the region is better off today because of the Council than the region would be today without it.

IPNG disagrees strongly with Mr. Cheney's concluding call for the Council to amend its program to direct the Corps to breach the four lower Snake River dams. Mitigation to parties in the region impacted by dam breaching (as he urges), many in the impacted region believe, is the equivalent of a burial payment. As such, many parties in the impacted region decline it.



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Oregon Department of Fish and Wildlife—Rec. 05

ODFW makes a one-sentence recommendation in its short cover paper that mentions its support for necessary planning and evaluation undertaken now by Federal agencies, so these plans would be ready to implement if no n-breach alternatives fail to meet the Power Act and ESA requirements. IPNG strongly disagrees, and recommends that the Council reject any such recommendations.

A more thorough, but no more compelling, discussion by the State of dam breaching appears on page 43 and 44, and includes its Measure 14: “Conduct necessary planning and evaluations to ensure that alternative actions including dam breaching can be implemented on a timely basis if non-breach alternatives fail to meet performance standards.” IPNG disagrees strongly, and believes that those dollars should be spent in short-term measures that can provide short-term benefits to the region.

IPNG opposes the State’s recommendation of “a more aggressive mid-point evaluation (3 years v 5-8 years) than the BiOp because extinction risks are high. Be ready to implement alternative actions after 3-5 years.” IPNG urges the Council to reject such recommendation. IPNG provided detailed comments to the Corps during its evaluation of alternatives for species recovery. Any Council member who wishes a copy of that lengthy discussion should contact us.

IPNG opposes the State’s further recommendation to “Assess the likelihood of survival and recovery under alternative actions including dam breaching, assess the lead time for implementing alternative actions, and prescribe steps that must be taken now to have alternative actions ready to go in the near term.” IPNG disagrees. The region should not replay in the next few years the divisive debate over dam breaching, along with the attendant litigation risks that it carries. Instead, the region should look for areas of common agreement to help species recover. IPNG is disappointed that the State appears to endorse more paperwork at the expense of real recovery measures that offer on the ground, in the water recovery opportunities.

IPNG supports ODFW’s recommendation that better ways to share power and fish impacts in low-water years should be developed. IPNG thinks it merits further study and evaluation.

Accompanying the more benign opening cover statement of ODFW is a 64-page detailed recommendations of the State of Oregon. In addition to a variety of arguments regarding preparations for breaching, the State of Oregon paper also calls for strict adherence with CWA standards.

As a result of this discussion by the State of CWA, IPNG calls attention to the discussion included at the conclusion of these comments addressing the relationship of



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navigation to the CWA. It urges close review by the Council of these arguments before embracing any CWA prescription offered by the State of Oregon.

As with others, IPNG supports the State's attention to short-term recovery measures to improve species survival. The region needs some short-term successes to build support for the costlier, more difficult medium and longer-term recovery strategies.

Because IPNG supports juvenile fish transportation, it opposes lowering the transportation to 50% as part of the State's "share the risk" strategy (page 2). Beginning on page 41, this issue is discussed more completely. IPNG believes that transportation has been a critical tool in increasing juvenile survival. As such, IPNG questions the State's recommendation to reduce the percentage of juvenile fish transported through the Snake River projects to 50%. It appears to reduce juvenile survival rates at a time when the region should pursue strategies that increase survival rates. IPNG opposes such risky schemes with the potential to lower the survival rate.

On page 2, the State of Oregon includes in its summary "7. Planning for alternative actions if non-breaching options fail to meet ESA requirements—conduct necessary planning and evaluations to ensure that alternative actions including breaching of Snake River dams can be implemented on a timely basis in (sic) non-breaching alternatives fail to meet performance standards."

IPNG believes that such actions now would waste limited resources. In a perfect world with unlimited financial resources, a case might be made for spending all money, all the time, on study and paperwork projects such as this.

In today's period of limited funds, however, each dollar spent (or wasted in the eyes of some regions of the Northwest) for such planning equates to a dollar less that is available for culvert replacement, predation abatement, habitat restoration, or other worthwhile initiative with the prospect of short-term success. IPNG urges the Council to confine its recommendations to those where short-term benefits are clear and will not provoke a reopening of regional divisions over pros and cons of dam breaching.

IPNG does not agree with the State's contention on page 8 that "To meet the long-term objectives of the Program will require bold alternative strategies to the BiOp including consideration of breaching of Snake River dams or other alternatives to significantly increase mainstem survival."

IPNG also does not agree with the State of Oregon summary recommendation on page 5 (water quality #2) concerning temperature control, if measures to meet the CWA entail potential lowering of the lower Snake dam reservoirs below MOP. Later, beginning on page 38, the State discusses CWA temperature issues in more detail. IPNG supports measures that do not adversely impact the MOP in the Snake Reservoirs and that the Corps of Engineers believes are cost effective in lowering water temperatures. IPNG knows of considerable anecdotal evidence of warm water temperatures in the lower Snake River



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canyon before the lower Snake River dams were built, and suggests that summer natural river temperatures often exceeded CWA standards.

IPNG does not agree with any recommendations set out in the State's discussion of flow objectives that might adversely impact operation of the lower Snake River reservoirs at less than MOP.

IPNG also suggests that the recommendation on page 16 that "The Program should include enforcement principles of the state's regulatory laws to protect flows to benefit fish...." deserves more public review and discussion as to use and scope before including it in any Council recommendation.

The recommendation and measure of the State of "improving in-river survival by reducing predation-caused mortality" is one IPNG strongly endorses. As noted earlier, IPNG consistently has urged a higher priority be given by all entities to reduce in-river predation.

The State's discussion on pages 29 to 32 reviews worthwhile actions that would accomplish these two important goals. One, they are necessary to increase in-river survival, and thus, are critical in achieving recovery goals. Second, they are visible actions to address this problem where the public has faulted the lack of commitment in the past.

Stories of pikeminnow, pinniped, tern, gull and cormorant predation of juvenile fish are well known to people in this region. Yet the public will not accept major tough and difficult efforts recommended by the Council until they see concerted and committed actions that reduce predation. It should be at the top of the Council recommendations.

IPNG also agrees with the State's attention in its comments to improving riparian/riverine habitat in the mainstem hydrosystem, whether or not IPNG supports individual recovery measures recommended by the State. The full range of measures to improve habitat deserves discussion among the interested parties in the region.

PNGC Power—Rec. 15

PNGC's constructive comments provide the Council with worthwhile recommendations that merit adoption by the Council, or further review in other processes or fora. IPNG agrees with PNGC Recommendation 1 that the Council Mainstem Plan should not be over-prescriptive, but should create methods enabling the Council to evaluate effectively its range of options. IPNG believes that existing legal directives from the Power Act should result in the Council adopting Recommendation 2 to evaluate ideas to assess their energy impact before adopting them. IPNG also agrees that the Council has made useful steps in this direction during the past year of high-energy prices and uncertain supply.

Because IPNG consistently has urged regional governmental bodies to adopt cost-benefit studies to assess fish mitigation measures, it agrees with PNGC Recommendation



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3. Also, IPNG agrees with measuring fish recovery programs by their impact on energy “essentials” under the Act: adequate, efficient, economical and reliable. Although “unduly impacting” (PNGC’s term) is subject to interpretation, some numerical and cost equivalent would enrich the debate over various recovery measures.

Although IPNG has not studied the issue in detail, it suggests that PNGC Recommendation 5 regarding making the “regional forum” more effective should be a goal, albeit less important in the short term. Cooperation among the tribes, the states and the Federal government is critical, but it remains to be seen that the forum, as now constituted, is an effective mechanism to advance issues toward resolution.

IPNG agrees with PNGC’s discussion under its Recommendation 6 that addresses the inconsistency of promoting species recovery while, at the same time, “increasing harvest wherever possible.” Specifically, IPNG applies this objection to commercial ocean and river harvest, not tribal harvest. IPNG hopes for species recovery robust enough to allow increased tribal fishing.

PNGC Recommendation 7 proposes a review of spill and flow mandates in the 2000 BiOp. In general, IPNG supports such a review. IPNG worries, however, that, as with breaching, debate over these issues and their contribution to species recovery should not be at the expense of concrete recovery steps. IPNG repeats that divisive issues should be avoided where practical. IPNG acknowledges arguments over the costs of spill and flow relative to their merits, although advocates make a case for benefits from both during limited windows

Public Power Council—Rec. 02

PPC’s constructive recommendations merit their use as a Council framework to proceed with developing its recommendations. PPC’s useful “big picture” scope is important, if the council recommendations are to have public acceptance outside the small group of ESA-energy-species recovery process devotees. IPNG recommends Council review of the PPC material as a worthwhile prelude to drafting its recommendations.

IPNG calls particular attention to the discussion of PPC’s Recommendation II-B: “Include clear statements of biological and power system goals, objectives and performance standards.” The brief explanation that follows is a useful review for all parties to this discussion.

In sum, IPNG recommends the four-page explanation by PPC as a very useful summary of how to approach developing its recommendations. Those outside the Council would be well served to review it as well.

Save Our Wild Salmon—Rec 03

SOWS has led efforts nationally to breach the Snake Dams now, tomorrow and forever. Wherever their recommendations address dam breaching, or the prep work SOWS



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wants to begin at once, IPNG disagrees with them. IPNG urges the Council to resist their recommendations.

IPNG has made clear in other comments in this paper some of the reasons it believes that dam breaching should not be back on the table to divide the region. IPNG recognizes that SOWS is committed to dam breaching.

As IPNG examines SOWS recommendations pertaining to flow augmentation, maximizing spill, and reducing juvenile transportation it sees no areas where it agrees with SOWS. IPNG's views on dam breaching advocated by SOWS have been set out earlier in these comments and in other detailed documents submitted to other public agencies in the region. IPNG is happy to provide copies to interested Council members for their review

US Army Corps of Engineers—Rec 22

IPNG would have preferred a more detailed presentation by the Corps of Engineers that explained why it reached some of the conclusion it did for mainstem issues. IPNG understands why the Corps adopted the mainstem aspects of the BiOp as its recommendations to the Council. Nonetheless, IPNG would have welcomed comments from the Corps about how the Council could best serve the interests of species recovery in the Council's recommendations.

IPNG will welcome the 2002 implementation plan of the Corps as a document that moves the region toward recovery of various listed species and toward unified support for short-term recovery measures.

Washington Department of Fish and Wildlife—Rec 06

IPNG is disappointed that WDFW did not submit detailed recommendations and comments, as did other state agencies. IPNG is not aware whether or not the Council agreed to WDFW's request to extend their comment period until the end of July. IPNG has not seen a copy of more complete WDFW comments.

Absent the opportunity to comment on their specific recommendations in this document, IPNG asks the Council to either extend the comment period to allow public comments on any detailed submission by the State of Washington—whenever it is submitted—or not to allow those WDFW comments to be considered by the Council. Of course, a public comment period is preferred, and IPNG urges the Council to provide it.

Although lacking in many specifics, the more general comments by WDFW are useful and constructive.

IPNG calls attention to the more specific comments on page 2 of WDFW relating to incorporating regional and local planning efforts. IPNG agrees strongly with this point, and notes that it should have received more attention.



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In order to generate and maintain local support for its recommendations, the Council needs to incorporate worthwhile steps and planning by local fish recovery groups. IPNG members have heard, from time to time, anecdotal criticism of some of the local efforts, both from a technical standpoint regarding work quality, and from what has been termed their less sophisticated approach. IPNG disagrees with such characterization. Broad local support is required for a successful regional species recovery. Inadequate resources hinder many local fish recovery planning initiatives, yet committed local groups continue to work hard at real world on-the-ground solutions. The Council should encourage such regional and local efforts by folding them into the Council recommendations.

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 entities in the region from whom the Council has heard during this mainstem process. In this context, IPNG does not mean the economic or environmental benefits of navigation, but the statutory basis for its unique status. This sets navigation apart somewhat from other economic interests in the region. Nothing in these comments, however, should imply that IPNG does not recognize the central role the Endangered Species Act and your own authorization also play in the region and in this specific issue.

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

After completion of the Bonneville Dam in 1937, the United States Army Corps of Engineers issued a report addressing development of the Columbia and Snake Rivers to Lewiston, Idaho for slack water navigation, flood control and other purposes. H.R. 704, 75th Cong., 3d Sess. 8-11 (1938) (report of the Board of Engineers for Rivers and Harbors). Development of an inland navigation system to Lewiston, Idaho was later approved by Congress. In 1945, Congress not only authorized construction of the McNary Dam, it also authorized the development of an inland navigation system on the Snake River:

... Snake River, Oregon, Washington and Idaho: The construction of such dams as are necessary, and open channel improvements for purposes of providing slack water navigation and irrigation in accordance with the plans submitted in House Document Numbered 704, Seventy-Fifth Congress, with such modifications as do not change the requirement to provide slack-water navigation as the Secretary of War



may find advisable after consultation with the Secretary of the Interior and such other agencies as may be concerned.²

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

The Federal program for the improvement of the Nation’s rivers and harbors is now in its one hundred twenty-fifth year. During the entire history of this all-important Federal undertaking, the work involved in this program has been under the supervision of the Corps of Engineers, United States Army. The program has produced the best system of inland waterways to be found anywhere in the world and in addition has opened for all forms of navigation

.... The importance of the system of inland waterways is indicated by the vast annual increase in the tonnage and in the variety of commodities that move over these waterways. For each ton of freight that uses the improved inland waterways, there is return to the Nation as a general benefit a saving in transportation costs. While these savings may be considered as a prime factor in the use of the system of inland waterways, another factor just as important is that the improved waterways have to a large extent been responsible for the growth and the development of the interior sections of the country. Low-cost water transportation, on one hand, has enabled a movement of products from the mines, forests, and the farms to a widespread consuming area. On the other hand, it has enabled the distribution, at low cost, of semi-finished and finished products from industrial communities that have been established on these waterways to the consumers spread over almost the entire Nation.³

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

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

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

³ U.S. Code Cong. Serv. 2311-12 (1950).



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“Sec. 203. The following works of improvements for the benefit of navigation and the control of destructive floodwaters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of the Army and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein: Provided, that the necessary plans, specifications, and preliminary work may be prosecuted on any project authorized in this title with funds from appropriations hereafter made for flood control so as to be ready for rapid inauguration of a construction program. *Provided further*, that the projects authorized herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements: *And provided further*, that penstocks and other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam authorized in this Act for construction by the Department of the Army when approved by the Secretary of the Army on the recommendation of the Chief of Engineers and the Federal Power Commission....

COLUMBIA RIVER BASIN

The projects and plans for the Columbia River Basin, including the Willamette River Basin, authorized by the Flood Control Act of June 28, 1938, and subsequent Acts of Congress, including the Flood Control Acts of May 17, 1950, September 3, 1954, July 3, 1958 and July 14, 1960, are hereby modified to include the projects listed below for flood control and other purposes in the Columbia River Basin (including the Willamette River Basin) substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 403, Eighty-seventh Congress: *Provided*, that the depth and width of the authorized channel in the Columbia-Snake River barge navigation project shall be established as fourteen feet and two hundred and fifty feet, respectively, at minimum regulated flow.

Asotin Dam, Snake River, Idaho and Washington;
Bruces Eddy Dam and Reservoir, North Fork, Clearwater River,
Idaho;....⁴

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

⁴Flood Control Act of 1962, § 203, P.L. 87-874, 76 STAT. 1173, 1962 Code Cong. and Admin. News 1385, 1400.



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permitted by federal law. Congress has not authorized any reduction in the navigational minimums for the Columbia and Snake River Inland Navigation Channel. Operation of the Channel at less than 14 feet will impair navigation.

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

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

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

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

"[T]he interference with in-stream interests results from an exercise of the Government's power to regulate navigational uses of "the deep streams which penetrate our country in every direction." Gibbons v. Ogden, 9 Wheat. 1, 195 (1824). Though this Court has never held that the navigational servitude creates a blanket exception to the Takings Clause whenever Congress exercises its Commerce Clause authority to promote navigation," Kaiser Aetna v. United States, 444 U.S. 164, 172 (1979), there can be no doubt that "the Commerce Clause confers a unique position upon the Government in connection with navigable waters." United States v. Rands, 389 U.S. 121, 122 (1967). It gives to



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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).⁵

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).⁶

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).

⁵United 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).

⁶ U.S. v. Cherokee Nation of Oklahoma, 480 U.S. at 706-707, 107 S. Ct. at 1491.



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

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

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

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

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

LIMITS TO CLEAN WATER ACT

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

IPNG currently is an intervenor in a lawsuit⁷ in which the scope of the Clean Water Act (CWA) is at issue. Among the issues raised by IPNG was the limit on the CWA when applied to navigation rights. In view of references from some commenters to the Council

⁷ National Wildlife Federation et al v. US Army Corps of Engineers, US District Court for the District of Oregon, No. CV 99-442 FR.



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in this process regarding integration of CWA into ESA-related recovery measures, it is useful to review this one distinct area.

The Clean Water Act recognizes a special role for navigation. At no time during this ESA-salmon process that has engaged the Pacific Northwest for several years has sovereign authority over navigable waters been “surrendered in unmistakable terms.” Certainly, the Clean Water Act contains no specific surrender of the navigational servitude. On the contrary, the Clean Water Act specifically states that the “Act shall not be construed as . . . affecting or impairing the authority of the Secretary of the Army to maintain navigation.”⁸

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

This provision also clearly provides that there has been no waiver of sovereign immunity in circumstances that would impair the authority of the Corps to maintain navigation. Nothing in Chapter 26 – i.e. 33 USC §1251- 1376 impairs that “authority.” This provision of the Clean Water Act is clear and unambiguous, thus making reference to legislative history unnecessary. (A review of that legislative history, nonetheless, confirms the clear mandate of the provision: ‘Specifically, the authority of the Secretary of the Army to maintain navigation and under the River and Harbors Act of 1899 is preserved.’⁹)

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

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

Washington State CWA regulations acknowledge navigation’s unique status. Some commenters may suggest that Washington State CWA regulations require some

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

⁹ S. Rep. 92-414, 1972 U.S. Code Cong. & Admin. News, 3751.



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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.”¹⁰

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.

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.”¹¹

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.¹²

¹⁰ WAC 173-201A-030(2)(b)(vi)

¹¹ WAC 173-201A-070(1)

¹² 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).



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).¹³

Pursuant to WAC 173-201A-060(4)(a), total dissolved gas standards do not apply “when the stream flow exceeds the 7-day, 10-year frequency flood”. When considering the dissolved gas criteria for a fish passage over dams, a complete understanding requires review of WAC 173-201A-060(4)(b) (“the elevated total dissolved gas levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage”), the special fish passage exemption for sections of the Snake and Columbia Rivers stated therein, and subparagraph(c) “nothing in these special conditions allows an impact to existing and characteristic uses.” Finally, the Washington regulations provide for short-term modifications to both criteria and special conditions pursuant to WAC 173-201A-110.

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

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

These references in the various documents and appendices produced by Federal agencies discussed benefits from “integrating” into ESA recovery plans certain CWA-related activities. IPNG asserts that the Federal Government may not use the Clean Water

¹³ 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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Act to undermine either the existence of dams already protected under the Commerce Clause, or operations necessary to maintain navigation.

IPNG repeats that it appreciates the opportunity to comment on the important work of the Council in developing its Mainstem Plan Recommendations. Please contact IPNG members if members or staff have any questions.

Sincerely,

Walter H. Evans, III

WHE:

