Recommendations to the Obama Administration for an Improved

COLUMBIA RIVER SALMON RECOVERY PROGRAM

A Report by the Council of Elders
and Resource Renewal Institute

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Native American cultures relied on elders in their communities to aid decision making through the application of their knowledge and wisdom. This tradition continues to be honored today. On the other hand, our contemporary American culture often honors youth and technical knowledge while disregarding the insight and experience of older professionals who could serve the role of "elders" in decision making.

By tradition, elders represent earned wisdom brought to bear on problems, without the need for personal riches or power but with the value of collective knowledge and a dedication to pursue the common good. To this end, we have organized this "Council of Elders" to apply our efforts to seemingly intractable problems. Our accumulated experience and insight, earned while under public employ, can continue to serve the country.

Many career resource managers, foresters, biologists, and others witness firsthand how the treasure of our country too often takes second place to special interests who manipulate sound policies for economic gain. As the nation adjusts to the decline of natural resource abundance, those special interests still appear to believe there is another new forest to be clear-cut just over the next hill or other short-term advantage to be gained by depleting the base of our national strength. However, the Council of Elders, upon moving to positions where objections to these practices can no longer be silenced, are able to speak freely to avoid further harm to the public good.

The decline of salmon in the Columbia River watershed, and the truths discussed in this paper, are a sad example of such manipulation. The members of the Council of Elders represent many years of engagement, in various roles, to improve the Columbia River fish populations. We think this collective analysis is a useful approach to breaking through many barriers. We expect this is the first of such efforts regarding the country's natural resources.

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EXECUTIVE SUMMARY

The status of the Columbia River salmon is dire. They are in such peril that many species are in worse condition than before listing under the Endangered Species Act. The Council of Elders submits this report to apply its collective natural resources expertise and policymaking experience, both in and out of government, to ensure the survival of the salmon. The politically driven administration of the Endangered Species Act has thwarted appropriate resource management. This problem, combined with the threat of climate change and expanding human populations, overwhelmingly demonstrates the need for an immediate change in salmon recovery efforts. Only intervention by the highest levels of the Obama administration can cut through the varying interests to save the fish from looming extinction. Recovery is achievable through the improved and proper application of the Endangered Species Act. The guiding principles of this effort should be accountability, use of the best available science, and efficiency. To this end we offer the following recommendations and urge the administration to make salmon recovery an immediate and ongoing priority.

I. **Establish an extension of the White House to lead and coordinate all the salmon recovery actions of the federal agencies. Immediately review the status of the current lawsuit and seek a stay if necessary.**

II. **Consolidate Endangered Species Act responsibilities for all salmon species within the U.S. Fish and Wildlife Service.**

III. **Move implementation of the recovery and mitigation programs from the Bonneville Power Administration to the U.S. Fish and Wildlife Service, with the requirement that Bonneville continue to fund the program.**

IV. **Immediately initiate audits and oversight of the Northwest Power and Conservation Council (NPCC) and Bonneville Power Administration to ensure compliance with the Northwest Power and Conservation Act and court decisions.**

V. **Direct federal agencies to include the impacts of climate change and population growth in the Biological Opinion and the Columbia River recovery plans.**

VI. **Issue an Executive Order directing all agencies to foster and protect independent science and scientists contributing to the implementation of federal programs.**

VII. **Support a congressional request for the National Academy of Sciences to complete a credible, exhaustive study of the economic benefits and costs of removing the four Lower Snake River dams with a full discussion of economic actions to assure regional stakeholders.**

VIII. **Task the White House Council on Environmental Quality to develop and implement a federal water management-salmon recovery plan for the Columbia Basin.**

INTRODUCTION

For centuries the Columbia River has provided enormous benefits to Native Americans and, more recently, to the settlers of the Pacific Northwest. Running more than 1,200 miles to the Pacific, the Columbia flows through Washington and Oregon. Its main tributary, the Snake River, runs from Wyoming and across Idaho, connecting to the Columbia in eastern Washington. The Columbia, the Snake, and their many tributaries form the vast Columbia River Basin, which drains portions of Oregon, Washington, Idaho, Montana, Wyoming, Nevada, and Utah. (Fig. 1)

For centuries salmonid populations have spawned and reared in these freshwater tributaries in preparation for their migration to the Pacific. Now, many of these species are on the brink of extinction after almost thirty years of politically driven administrative oversight.

While the Columbia provides many benefits, the salmon are the icon of the river. For millennia, millions of salmon and steelhead inhabited the river and provided a large source of wealth and capital. However, as the region was settled and developed, the salmon were forced into decline by harvest and habitat destruction.

Ultimately, the salmon were listed as threatened or endangered under the Endangered Species Act (ESA), which mandates recovery efforts to prevent extinction. Despite the efforts of career resource managers, however, only modest gains have been made. Redd counts from the remaining pristine areas found in the Salmon River Basin document recent trends. (Fig. 2) It is important to note that the ESA was invoked as a last-ditch effort because agencies failed at complying with the Northwest Power and Conservation Act of 1980, whose mandate is more than avoiding extinction, but to return salmon to formerly productive levels.

FIG. 1 *The Columbia River Basin*

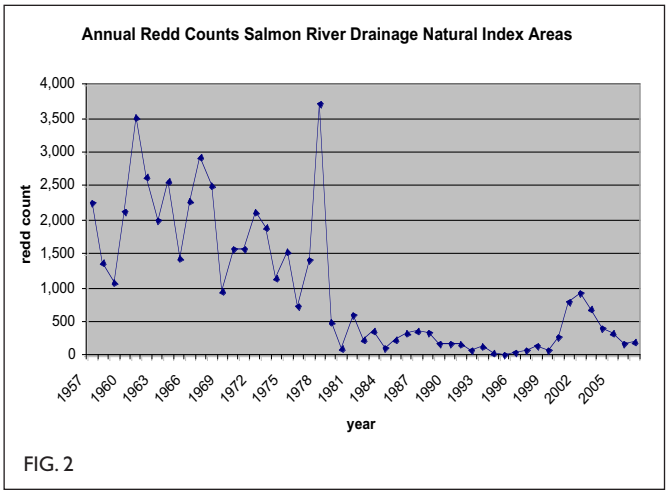


FIG. 2

Recovery efforts, i.e., preventing extinction, have been surrounded by conflict and controversy. Much of these expensive and ineffective recovery efforts has been based on patently flawed implementation of the ESA. Opportunities to enhance recovery strategies have been systematically subverted by the Bush administration. The federal court repeatedly has ordered compliance so that the court, and not the agencies, directs most of the recovery activity. But this provides only piecemeal, short-term fixes while the fish populations continue to decline. *This report documents recommendations that, if implemented, could significantly improve the success and efficiency of recovery actions in the Columbia River Basin.*

OPINION

It is our opinion that climate change, expanding human populations, and the continually skewed implementation of the Endangered Species Act overwhelmingly demonstrate the urgent need for an immediate change in salmon recovery efforts. We further believe that, given advances in science, recovery can be accomplished through the proper application of the Endangered Species Act. Finally, we firmly believe that these objectives can only be accomplished by the intervention of decision makers at the highest levels. We have the necessary laws and funding mechanisms in place to achieve recovery of endangered fish populations in the Columbia River Basin. The guiding principles of this effort should be accountability, credibility, and efficiency. The following recommendations, if implemented, will lead to substantial progress toward recovery of the fish resources of the Columbia.

BACKGROUND

The Status of Columbia Basin Fish Is Dire

Diversity is critical to salmon population stability. Thus far NOAA (National Oceanographic and Atmospheric Administration) Fisheries has listed thirteen evolutionarily significant units and distinct population segments of Columbia Basin salmon as threatened or endangered and their migratory, spawning, and rearing habitat as critical habitat. The past 150 years of European settling of the Northwest by mining, logging, grazing, road building, dewatering streams, and dam construction has led to degradation of spawning and rearing habitat and of mainstem migration habitat, which have contributed to the salmon devastation. Even fish produced in vast still-pristine habitats of federally protected Wilderness, National Recreation Areas and Wild and Scenic Rivers—notably but not exclusively in the Snake River Basin—are threatened with extinction.

The fish thrived for thousands of years with fluctuations only in abundance, not with regard to survival. Now, however, the continuous mediocre to unlawful implementation of the ESA in the freshwaters where they spawn, rear/strengthen, and migrate to the ocean has added extraordinary burdens to many salmon populations. Federal and state analyses point to the dams and reservoirs within the mainstem Columbia and Snake Rivers as the prime cause of decline. Proper oversight of freshwater conditions is essential to the long-term success of recovery actions.

Columbia River Basin Administration Is Unduly Complex

The Columbia is a large economic engine of the region. Hydropower contributes greatly to the region's economy, and surplus power is sold outside the region. The river also supports barge transport of supplies and commodities. Fish recovery actions necessarily impact the economic contributions from the river. Congress recognized these economic and conservation issues when it enacted the Northwest Power and Conservation Act in 1980.

The Federal Caucus of Agencies coordinates activities involving the Endangered Species Act in the Columbia River Basin. NOAA Fisheries and the U.S. Fish and Wildlife Service (FWS) are authorized to take the lead in protection and recovery of ESA-listed fish by developing Biological Opinions (BiOps) and recovery plans. The Federal Columbia River Power System (FCRPS) is administered by the U.S. Bureau of Reclamation (BOR), the U.S. Army Corps of Engineers (Corps), and the federal Bonneville Power Administration (Bonneville).

Bonneville markets the power generated by the Columbia River federal dams; it is also responsible for funding the fish recovery programs. The Northwest Power and Conservation Council (NPCC) also has a dual role, in developing the recovery programs as well as the Northwest power plan. The recovery programs are nominally based on recommendations of state, federal, and tribal fisheries' managers. The power plan and the recovery program are updated every five years. The NPCC is funded by wholesale power revenues from Bonneville. The NPCC's members are appointed by the governors of Idaho, Montana, Oregon, and Washington.

Other agencies in the Caucus include the EPA, which administers the Clean Water Act; the U.S. Forest Service; and the Bureau of Land Management, which manages the surrounding 16.6 million acres of public lands.

The Northwest Power and Conservation Act (1980) Explicitly Mandates That Salmon Protection Has Equal Priority to Power Supply

Nearly three decades after the Northwest Power and Conservation Act was enacted in 1980, mandating salmon recovery to formerly productive levels, there still is no plan to do so. Instead current salmon planning is focused on averting looming extinction. Meanwhile, the region has a surplus of energy, much of which is sold outside the region, the profit being used to keep the rates paid by Bonneville's preference customers at or below the cost of production.

From the beginning, when Congress authorized four dams on the Lower Snake River in southeastern Washington, completed from 1961 to 1975, it clearly stated that Snake River salmon and dependent economies must be substantially protected. It required that fish passages and hatcheries be built to mitigate the unavoidable loss of inundated habitat and an estimated percentage of fish kills resulting from fish attempting to pass the reservoirs and dams.

In building the dams, the Corps included fish ladders for adult fish to migrate upstream to spawn but failed to provide for juvenile fish migrating downstream to the ocean, despite repeated warnings from fish experts long before the dams were built. The predicted disaster began unfolding.

The Corps belatedly conceded the obvious in its flawed design.[1] The Corps also conceded that the dams are so deadly that the migrating fish have to be removed from the river. The majority of juvenile fish are regularly transported down the river by barge and truck. The Corps also implicitly acknowledged that the dams could not be modified to restore the salmon to formerly productive levels despite the intent of Congress in originally authorizing the dams and the explicit mandate of the Northwest Power and Conservation Act (commonly called the Northwest Power Act of 1980 (NPA or the Act).[2]

NOAA Fisheries subsequently agreed with the Corps. In preparing one of its biological opinions on the four dams' effect on salmon, as required by the ESA, NOAA Fisheries stated that all of the nonbreaching measures proposed to avert extinction of Snake River salmon cannot fulfill the mandate of the NPA to restore the fish to formerly productive levels.[3]

By the mid-1970s Snake River salmon were in serious trouble. Review began for possible listing under the ESA. In response Congress enacted strong, unequivocal salmon protection and restoration measures within the NPA.

The NPA set the goal of restoring to formerly productive levels salmon adversely impacted by the federal dams. The Act specified that energy conservation measures have priority as a means to mitigate the energy-generation reduction to be caused by the salmon restoration plan.[4] It authorized what became the NPCC and mandated that the NPCC quickly develop a salmon restoration plan and, based on this plan, develop a compatible regional energy plan to mitigate for the anticipated reduction in hydropower.[5] This was done with the explicit understanding that these changes would result in reduced generation and increased cost of energy. Bonneville was directed to pay the cost of salmon restoration.[6]

Congress was explicit that fish were not to be sacrificed merely to save money. The Act directed that, henceforth, salmon were to receive "equitable treatment" with energy production and other uses of the federal hydrosystem.[7] Congress specifically rejected limiting fish restoration efforts to actions "with minimum economic cost and minimum adverse impact on electric power production." Congress only required use of the least cost means to achieve its clearly stated biological objective, while maintaining an adequate, efficient, and reliable power supply.[8] It authorized Bonneville to acquire energy resources for the latter while meeting the fish protection requirements of the law.[9]

Subsequently, in Northwest Regional Information Center v. Northwest Power Planning Council (1994), the U.S. Court of Appeals soundly rejected arguments by Bonneville's industrial customers that fish restoration measures must meet a cost-benefit test. The court ruled that the law prohibits "power losses and economic costs . . . from precluding biologically sound restoration of anadromous fish in the Columbia River Basin . . . so long as an adequate, efficient, economical, and reliable power supply is assured."[10] The U.S. Supreme Court declined to hear an appeal.

The law has been clear for some time. Compliance by resource managers, however, has been thwarted.

RECOMMENDATIONS

I.

Establish an extension of the White House to lead and coordinate all the salmon recovery actions of the federal agencies. Immediately review the status of the current lawsuit and seek a stay if necessary.

The courts consistently have been needed to force the federal government to follow the law.

Litigation repeatedly has been the backstop to keep the federal agencies from ignoring requirements of the Endangered Species Act. The BiOps produced by the agencies consistently have been found inadequate by the courts, which have ordered interim actions to aid recovery, largely requiring the spill of water at the hydropower dams to assist smolt passage. These measures are temporary and piecemeal, at best.

The agencies consistently fail to follow court orders by, inter alia, resubmitting flawed BiOps by barely altering previously flawed BiOps; arbitrarily ignoring portions of the ESA and interpreting it to fit unscientific, preconceived ends; engaging in amateur, or junk, scientific analysis; and similar behavior. The actions by the federal agencies appear designed to protect the hydropower systems because fish recovery is not given the priority needed to gain success. The court has been extraordinarily patient, particularly during the past eight years.

Many of the recommendations of the states and tribes that are joined with the plaintiffs in the latest lawsuit (National Wildlife Federation, et al., and State of Oregon v. National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, Civ. No. 01-0640-RED [Lead Case]) are sound and have substantial opportunity to assist the recovery of the endangered fish. This report is intended to underscore the urgency of the situation and to provide recommendations outside the litigation context.

Fish are caught in an administrative maze and a structural conflict of interest.

The large number of agencies in the Federal Caucus requires coordination of a very complex administrative environment, with resulting lapses in proper resource management. The most significant problem has been a patent conflict between generating and marketing electrical power versus supporting and enhancing fish populations. To the extent the parity of these goals was ever unclear, it was explicitly and incontrovertibly resolved by the NPA.

In reality the funding of the fish programs has become a political football used to coerce resource management agencies to comply with a policy direction that has undermined efforts for listed fish. Bonneville's role as a power marketer has been the priority. The NPCC's implementation of NPA requirements has been highly political and in conflict with FWS, and tribal fish and wildlife, recommendations. The result has been abysmal implementation of the recovery programs and failure to meet the intent of the Act.

Finally, the economic impact of the hydropower system has motivated public utilities and commercial power customers to become involved in oversight of the fish recovery programs, as are fishing and environmental stakeholders. The result has been gridlock and conflict. In the end the fish that were to be restored to formerly productive levels face extinction.

II.

Consolidate ESA responsibilities for all salmon species within the U.S. Fish and Wildlife Service.

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) share authority for implementing the Endangered Species Act. The NMFS is responsible for marine resources while the FWS is responsible for freshwater inland resources. This split has caused significant difficulty with administering salmon recovery since the major impact on the fish is from inland development.

Lyle Point, Washington, a tribal fishing site on the Columbia River. Photo by Phil Schermeister.

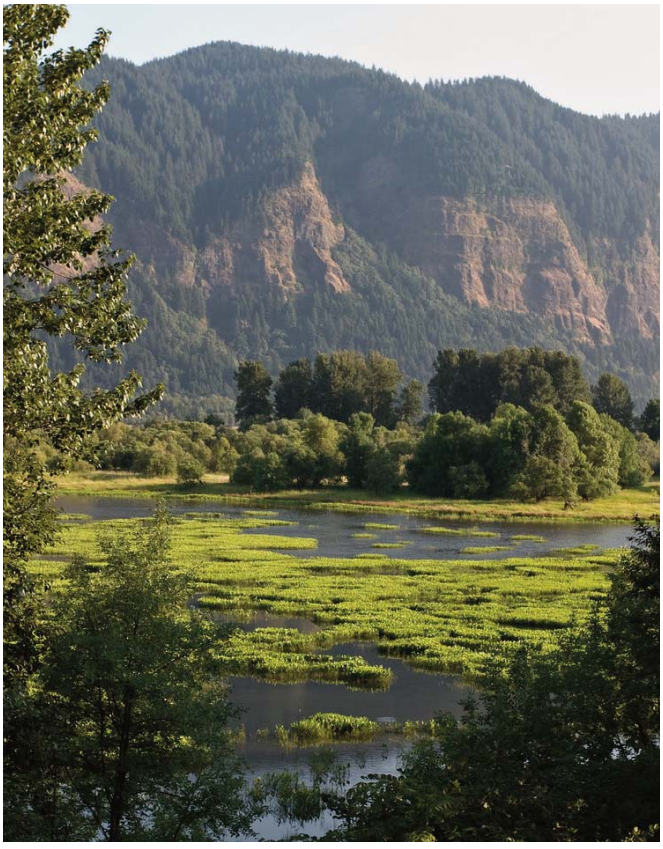
An additional complication is that these two distinct agencies are housed in different Cabinet departments that have very different missions and political constituencies. Further, the Federal Caucus of Agencies has not fostered coordination but has blurred the lines of authority. It is not clear which, if any, of these agencies can act with authority if another agency disagrees with a proposed activity.

Oversight, clarity, and transparency for the public are badly needed. This situation demands clarification by a more senior authority, which could be promptly implemented through an Executive Order. Because the major impacts to the endangered fish come from inland impacts, the FWS should be authorized to take the lead.

III.

Move implementation of the recovery and mitigation programs from the Bonneville Power Administration to the U.S. Fish and Wildlife Service, with the requirement that Bonneville continue to fund the program.

The inherent conflict in the dual missions of Bonneville—power generation versus salmon recovery—has led to the disastrous implementation of the mitigation and recovery programs. In addition to the abject failure to seriously engage in fish recovery, Bonneville has essentially duplicated the staffing at tribal and state wildlife agencies, as well as at the FWS, incurring unnecessary and expensive administrative costs. By contrast, there is a long and well-established program of direct assistance to the states through the FWS that performs well with much lower costs. Placing administration of the salmon programs fully under the auspices of the FWS would eliminate the conflicts and provide more efficient administration.



Wetlands near Skamania in the Columbia Basin. Photo by William Poole.

IV.

Immediately initiate audits and oversight of the Northwest Power and Conservation Council (NPCC) and Bonneville Power Administration to ensure compliance with the Northwest Power and Conservation Act and court decisions.

Lack of federal oversight has allowed for coercion and funding threats.

Because of the charged political atmosphere surrounding the mitigation and recovery programs, and the large amounts of money in play annually, the programs have been corrupted. Bonneville and its utility and industrial customers have aggressively and successfully undermined compliance with the fish and wildlife protections of the NPA.

Bonneville, without fear of recrimination, uses federal funds generated by the dams to offer, or threaten to withhold, funding in order to obtain acquiescence with policy objectives that have put fish recovery at risk. This was dramatically illustrated in the past year when long-term agreements with various state and tribal governments were executed on the basis that the parties would not support further litigation in exchange for ten years of guaranteed funding. This is an obvious and blatant attempt to shut down Bonneville's critics and to coerce support for the latest draft of the Biological Opinion, now the subject of the most recent federal lawsuit.

Despite the clear intent of the NPA, and nearly thirty years and hundreds of millions of dollars later, most fish populations are in much worse condition, and the law continues to be flouted. The strategy pursued by Bonneville and the Corps, in fact, wastes vast amounts of human and economic capital, retards local and regional growth, and wracks the region with legal and political turmoil.

This situation begs for oversight and review.

V.

Direct federal agencies to include the impacts of climate change and population growth in the Biological Opinion and the Columbia River recovery plans.

The Pacific Northwest population is growing rapidly. The U.S. Census Bureau predicts that the four states in the Basin will grow to 16.5 million by 2030, a 43 percent increase since 2000. Population expansion, and attendant development, will require more power and water and will intensify land uses, further pressuring salmon populations, particularly west of the Cascades.

Global climate change is predicted to exacerbate both the fresh- and saltwater environments of Pacific salmon, if this has not already begun. Higher stream temperatures, reduced summer flows, heavier rainfall, earlier spring runoff, rising sea levels, and warmer ocean temperatures will further impact salmon survival.

The Pacific Northwest is facing higher summer temperatures and changing hydrological regimes—lowering juvenile survival and affecting migratory behavior of adults. Studies suggest that global warming likely will reduce potential salmon habitat at lower elevations in the Pacific Northwest and at the southern edge of their range in California. Salmon populations, along with their habitats found in the upper reaches of the Clearwater, Salmon, Grande Ronde, Imnaha, and Tucannon Rivers, demand the greatest conservation priority.

Clearly, future recovery programs must be equal to these increased impacts if catastrophic extinctions are to be avoided. Federal agencies should be directed to develop stronger working relationships with the states and local governments that regulate local development and to assist with financial incentives to protect salmon as these developments occur.

One indication that success is achievable is that some hydrologists have noted that elevations above 4,000 feet display a lower risk for climate change. Since the Snake River supports the highest habitat found in the Columbia River Basin, the proper resource management that we seek will help to ensure salmon survival since at least this one major stressor, climate change, is not expected to notably affect fish spawning in these locations.

VI.

Issue an Executive Order directing all agencies to foster and protect independent science and scientists contributing to the implementation of federal programs.

The Bush administration has been notoriously anti-science and less than friendly to scientists within the federal government. There are many examples of attempts to intimidate key personnel and policy choices that ignored the best available science. The Endangered Species Act requires that decisions be made on this best-science basis. Emphasis on following the law and basing policy on the best science available is needed to restore confidence and credibility to the federal agencies protecting these key resources. This is especially relevant to the Columbia River Basin and the NPCC programs that are required to be based on the best available science.

VII.

Support a congressional request for the National Academy of Sciences to complete a credible, exhaustive study of the economic benefits and costs of removing the four Lower Snake River dams with a full discussion of economic actions to assure regional stakeholders.

Some interests have promoted dissension regarding the economics.

The devastating effects on salmon and dependent economies from the Corps' improperly designed Lower Snake River dams were the impetus for the fish and wildlife restoration provisions of the NPA in 1980. Owing to the continuing failure of governance, the crisis has degenerated into an economic and ecological disaster.

Significant scientific studies have shown that dam removal provides the most likely path to success by increasing the survival of smolts during their out migration. Several economic studies have suggested that this would be an economically viable solution. However, disinformation fostered by entrenched commercial interests has prevented a regional consensus by infecting the discussion so that compliance with the requirements of the NPA is presented as damaging to regional economic stability.

Various sectors (power supply, irrigation, and transportation) simply will not accept a change to their status quo. This is "politics as usual." A thorough economic analysis by the National Academy of Sciences is badly needed to accurately inform the region's citizens and decision makers.

The analysis should include such items as other energy sources, transportation alternatives, irrigation, other water supply, commercial and recreational fishing, and so on.

VIII.

Task the White House Council on Environmental Quality to develop and implement a federal water management-salmon recovery plan for the Columbia Basin.

A compact for the Columbia River system would provide coherent management of all beneficial uses.

The use of water between and among states that share interstate waterways can be determined by formal mechanisms such as compacts or judicial determinations (equitable apportionment). In the absence of direction or limitations imposed by a compact or apportionment, states have nearly complete discretion to determine allocations and use of water within their borders. An interstate compact or equitable apportionment for the Columbia Basin could address such matters as quantification of the amount of water available for allocation to out-of-stream uses within each state, agreements regarding the amount of water to be made available and protected for instream flow throughout the system, and mechanisms for recognizing and protecting federal reserved water rights and tribal claims.

The many laws and rights affecting the Columbia Basin, and the impact on the Endangered Species Act, are described below. All in all, more has become less.

Columbia River management is complicated by a multitude of federal and state laws.

Water management within the Columbia River Basin is largely dependent on state law relating to allocation and use under state-issued water rights. Although each of the affected states has adopted general principles of the "prior appropriation doctrine,"[11] there are important differences and distinctions among the states that complicate and sometimes hamper attempts to manage water more effectively to meet regional goals for salmon restoration. The issue of interstate management becomes even more complex with the overlay of the federal power project and tribal water rights.

Modern "beneficial uses" of water include maintaining adequate instream flow for fish and recreation, but states cannot alter existing water rights.

At one time the "beneficial use" of water meant irrigation, municipal uses, and industrial development. However, within the last thirty years most states have recognized some form of "beneficial use" to ensure water for wildlife and recreation. Despite recognizing instream flow as a beneficial use, there is no mechanism for states to unilaterally change the terms and conditions of water use once a water right has been established. Once established in the law, a right can remain valid in perpetuity as a private property right. It is not subject to periodic renewal and may be cancelled by the state only on the basis of abandonment or forfeiture for nonuse. In most states, water rights may be modified to change the type of authorized use, location of use, or point of diversion only upon request of the holder and subject to regulatory review by the state.

The Endangered Species Act has been buried within the complexity of state, federal, and tribal rights.

The interrelationship between state and federal authority for water use is complex. The Endangered Species Act likely might have been long lost in the midst of all other authorities and rights were it not for the federal court hearing the recent cases.

Historically, courts determined that under the *equal footing doctrine* each state acquired authority to manage the waters within its boundaries as one of the attributes of statehood, subject to an implied reservation of water to serve lands reserved for public benefit and to maintain navigation routes. Federal reservations included public lands now managed by the Bureau of Land Management, Forest Service, and National Park Service. In addition, courts have recognized implied federal reserved water rights for Native American tribes pursuant to treaties established prior to the time of statehood. Over the years, Congress also specified certain types of federal activities that are subject to state water allocation decisions—most significantly, operations of the federal Bureau of Reclamation for reservoir storage. As a result of these complex legal underpinnings, in some cases federal water uses are subject to state allocation authority in the same fashion as other water uses while, in other cases, the federal water right is implied by law but subject to state administrative procedures to establish the specific quantity of water and relative priority date.

Appropriate coordination of these many competing rights and applicable laws is the only means to ensure that the intent of Congress, as stated multiple times, is fulfilled.

CONCLUSION

The Obama administration has the opportunity to rescue the Columbia Basin salmon. The once-mighty salmon face extinction after years of misused science and politically driven implementation of the Endangered Species Act. These genetically strong fish populations can recover but only with a no-nonsense, no-business-as-usual, science-based approach.

These recommendations have been prepared after much analysis by a group dedicated to speaking forthrightly regarding our common natural heritage. We are available at any time to discuss these recommendations in greater depth.

Notes

1. The Corps inadvertently admitted this. "Juvenile bypass facilities were installed at each of the four Lower Snake River dams s*hortly after they were constructed*." *Draft Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement*, U.S. Army Corps of Engineers, December 1999, p. 2-6. [Emphasis supplied]
2. *Pacific Northwest Electric Power Planning and Conservation Act*, 16 United States Code Chapter 12H (1994 & Supp. I 1995). Act of Dec. 5, 1980, 94 Stat. 2697. Public Law No. 96-501, S. 885.
3. Specific purposes of the Act include: "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 the management and operation of Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries." *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, § 2(6), 94 Stat. 2698.
4. The Act gives conservation a 10 percent advantage over conventional resources. *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, § 3(4)(D), 94 Stat. 2699. It defines a "resource" and includes conservation. *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, § 3(19)(B), 94 Stat. 2700.
5. A plan that would: "be based on, and supported by, the best available scientific knowledge"; [and] "provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and, provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives." *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, §4(h)(6)(B); §4(h)(6)(E)(i); §4(h)(6)(E)(ii), respectively, 94 Stat. 2709.
6. "The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this chapter and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this chapter. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law." *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, §4(h)(10)(A), 94 Stat. 2710.
7. The Act confers on the Corps, Bonneville, National Marine Fisheries Service, and all other federal agencies, the duty—independent of the NPCC's program— "to adequately protect, mitigate and enhance fish and wildlife, including related spawning grounds and habitat [affected by the dams] in a manner that provides equitable treatment" to anadromous fish. *Pacific Northwest Electric Power Planning and Conservation Act*, Pub. L. No 96-501, § 4(h)(11)(A)(i), 94 Stat. 2710.

   It is plain 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." *126 Cong. Rec. H10, 683 (daily ed. Nov. 17, 1980) (remarks of Rep. Dingell).*

   The United States Court of Appeals, Ninth Circuit, affirmed this independent duty. In addition, the Court ruled that each agency covered by this provision of the Act, which includes Bonneville, the Corps, and NMFS, must "develop a mechanism for fulfilling its obligation" under this provision, and "will be required to demonstrate, by means that allow for meaningful review, that it has treated fish and wildlife equitably." *Northwest Environmental Defense Center, et al. v. Bonneville Power Administration, et al.*, 117 F.3d 1520 (9th Cir. 1997).
8. *Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. No. 96-501, § 4(h)(6)(C), 94 Stat. 2709.*
9. *Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. No 96-501, §§ 6(a)(2)(A) and (B), 94 Stat. 2717.*
10. *Northwest Resource Information Center, Inc. v. Northwest Power Planning Council*, 35 F.3d 1394 (9th Cir. 1994), cert. den. 116 S.Ct. 50 (1995).
11. The prior appropriation doctrine provides a legal framework under which a public resource—water—is made available for private and public purposes by diverting it from its natural course and making "beneficial use." Historically, the "beneficial use" of water meant irrigation, municipal uses, and industrial development. Protecting natural resources, including the water itself, was not a consideration. The essence of prior appropriation is the concept of "first in time, first in right," by which each water use secures a relative priority date that determines the order in which water rights will be served during times of shortage. The oldest, most senior water right on any given stream system is entitled to be fully satisfied before the next priority date is served.

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On the cover:
Top: View of the Columbia Gorge from Ruthton Point. Photo by David Jensen.
Bottom: Chinook salmon. Photo by Natalie Fobes.

Interior panoramic view of the Columbia River (at the top of all pages) is by William Poole.

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