



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115-0070

SEP -9 1997

Brig. General Robert H. Griffin
Division Commander, North Pacific Division
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, Oregon 97208-2870

Re: Mitigation requirements for new water diversions that affect spring and summer flow objectives established to improve the mainstem survival of listed Snake River Salmon.

Dear General Griffin:

I am writing to clarify guidance issued by the National Marine Fisheries Service (NMFS) to the Corps of Engineers (Corps) on May 16, 1997 upon completion of the Inland Land consultation¹. That guidance elaborated on the reasonable and prudent alternative contained in the Inland Land biological opinion and was intended to guide the Corps on future consultations on projects likely to result in water withdrawals in the Columbia River Basin. The guidance recommended that the Corps initiate formal consultation for all pending and future requests for permits for water diversion structures likely to result in withdrawals in the Basin. The rationale was that Snake and Columbia River flows are already inadequate in many years to meet the flow objectives identified in the 1995 Biological Opinion on Operation of the Federal Columbia River Power System (FCRPS)², and that any new diversions would further degrade this inadequate baseline.

The guidance identified as a goal that any diversions should have a “zero net impact” on flows. We attempted to draw the guidance narrowly, to ensure that withdrawals can continue that do not adversely affect listed salmon. Accordingly, we recommended that permits be conditioned to prohibit the withdrawal of water only during the salmon migration period and only if flow objectives are not being met. Alternatively, a permittee might withdraw water by providing replacement flows to offset depletion during times when flow objectives are not met. Referring to the replacement flow issue, the guidance stated that applicants must provide evidence that

¹ Letter from William Stelle, Jr., to Brig. General Robert H. Griffin (May 16, 1997) (transmitting jeopardy opinion and concluding consultation on permit application number 96-697 by the Inland Land, Inc.)

² Endangered Species Act Section 7 Biological Opinion on the Reinitiation of Consultation on 1994-1998 Operation of the Federal Columbia River Power System and Juvenile Transportation Program (March 2, 1995).



“they are ready and able to provide water that was put to beneficial use for transfer to instream use.”

As you are aware, considerable discussion has occurred among our staffs concerning the meaning of the replacement flow requirement. The Inland applicants have offered to dedicate a portion of their water right to instream flow to satisfy the “no net impact” requirement. No water associated with this right is currently being withdrawn. If we were to accept their view, the net result would be that more water would be withdrawn from the Columbia River than is being withdrawn currently.

Inland’s reasoning relies on its interpretation of the role played in NMFS’s decision by the interim report by the Bureau of Reclamation³. The Bureau’s report characterized streamflows in the Columbia Basin before flows were altered by major human activities, compared these natural conditions to present conditions, and identified the relative contribution of various human activities in effecting change from natural flow to present conditions. In doing so, the Bureau attempted to consider all water uses authorized by state law, whether fully developed or not. This allowed the Bureau to obtain the fullest possible view of the impact of human factors on present and foreseeable flow conditions.

NMFS, however, did not use the report to establish a new environmental baseline that considered only existing water rights or potential withdrawals. Rather, NMFS used the report to confirm a fundamental conclusion of the FCRPS consultation: present flow conditions are inadequate to meet the biological requirements of listed species in many years. The Bureau’s report also documented the size of irrigation’s contribution to the problem of flow deficits compared with other river uses. NMFS’s jeopardy determination in the Inland opinion was based on the conclusion that actual flows, not some hypothetical baseline, were inadequate in many years; that extreme actions had been taken in FCRPS operations to augment flows; that irrigation contributes significantly to the inadequate actual flows; and that it makes no sense to allow further depletions when current actual flows are inadequate much of the time.

In other words, the hypothetical baseline established by the Bureau report cannot be read as a description of the actual baseline for a “zero net impact” test. In particular, reference to the environmental baseline in the Bureau study does not in any way justify Federal approval of new water developments that will make it even more difficult to achieve flow objectives. Indeed, the Bureau has already pointed out to the Corps the contradiction between approving permits to develop new irrigated lands and securing water to protect salmon⁴. According to the Bureau, the

³ Interim Report Cumulative Effects of Water Use: An Estimate of the Hydrological Impacts of Water Resource Development in the Columbia River Basin. U.S. Bureau of Reclamation, Pacific Northwest Region (March, 1997).

⁴ Letter from John W. Keys III, Regional Director, Bureau of Reclamation, to Martha O. Pagel, Director, Oregon Water Resources Department (referring to concerns previously raised with the Corps of Engineers related to a request by Boeing Agri-Industrial Corp. for water use permit extensions).

new diversion sought by Inland alone would largely neutralize its costly efforts to augment flows by 427,000 acre feet under the FCRPS Opinion.

Improved flows in the Columbia and Snake Rivers are part of an overall strategy to immediately improve the survival of migrating juvenile salmon. Before the Corps issues a permit for any new use likely to deplete target flows, the Corps must ensure that the applicant secures a replacement for that quantity of water from other sources or initiate formal consultation with NMFS. Put another way, applicants seeking to avoid formal consultation through this exemption must provide bucket for bucket replacement flow that meets all criteria of location, timing, and enforceability that, but for the applicant's efforts, would not otherwise be present in the river.

Admittedly, it may be difficult for some applicants to secure adequate replacement flows. Their task is not made easier by the lack of a coordinated program based on states working together within the Basin to protect instream flows necessary to recovery and sustain salmon. If such a program were in place that worked to prevent and solve problems of depleted streamflows throughout the Basin, NMFS would not need to impose this type of restraint.

I hope this letter settles any misunderstanding about NMFS' view of the replacement flow issue in the Inland RPA and gives the Corps direction it needs to complete the permit application process for water withdrawal projects in the Columbia Basin. My staff and I stand ready to work with the Corps in any way necessary to ensure the recovery of these listed fish and to prevent additional listings.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Stelle, Jr.", written in a cursive style.

William W. Stelle, Jr.
Regional Administrator