

October 21, 2002

Mr. Tom Fitzsimmons
Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Fitzsimmons:

Thank you for your letter dated October 2, 2002 regarding the draft scope of work for the National Research Council related to the State's Columbia River Initiative. We appreciate the time and thought you put into the response, and it is fair to say that we think the final scope of work has improved relative to the draft we commented on. We look forward to working with Ecology and the NRC panel to ensure that the best available scientific information informs the major water management policy decisions the State of Washington intends to make.

There is, however, one aspect of your letter that we find particularly troubling and to which we would like to respond. You state: "[c]ertainly, the state water management program must be fit within the context of the federal management program for the river; however, a state instream flow would only be a 'second opinion' and would have little effect on federal operations of the river. Accordingly, we are not asking the NRC to second-guess the federal flow targets, and instead are asking them to help us evaluate the effects of offstream water use and management features, if necessary, that will offset those effects."

This statement is inaccurate for several reasons. First, a Washington state instream flow regime for the mainstem Columbia should encompass more than spring and summer migration flows, the only issue addressed by the federal flow targets established in the National Marine Fisheries Service's mainstem biological opinion. Thus, it would not be duplicative of the federal flow targets. Done properly, an instream flow rule for the mainstem Columbia would establish a year-round flow regime that addresses the suite of factors relevant to salmon survival and state water quality standards. Such a flow regime would, for example, include channel maintenance flows, flows essential to the health of the riparian corridor, and flows protective of salmon spawned and reared in the mainstem, not just those that use it primarily as a migratory corridor.

While it is true that the Columbia mainstem is highly altered, important riverine habitats remain, such as the Hanford Reach and the mainstem below Bonneville Dam, that warrant a year-round instream flow regime. The final scope of work for the NRC appears to provide the NRC with the latitude to conduct the broad inquiry necessary to bring forth adequate scientific information to establish year-round flows protective of these riverine habitats, but your letter indicates that you want to narrow the scope of the panel's inquiry


to preclude such an inquiry. Independent of the Endangered Species Act, the State must manage its waters consistent with water quality standards established pursuant to the federal Clean Water Act, and this responsibility cannot be met without establishing a year-round instream flow regime.


Second, a year-round instream flow regime would affect both federal and non-federal dam operations on the river. The operations of non-federal hydroelectric projects, such as Grant County's Priest Rapids project, which plays a major role in shaping Hanford Reach flows, must be certified by the State under Section 401 of the Clean Water Act before the Federal Energy Regulatory Commission can relicense such projects. The Priest Rapids project is due to be relicensed within the next five years.

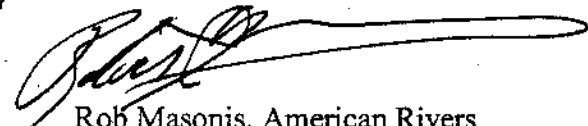
In addition, you are undoubtedly aware of the recent federal district court decision in *National Wildlife Federation et al. v. United States Army Corps of Engineers*, holding that the Army Corps must operate federal dams to comply with Washington state's water quality standards. Thus, a year-round flow regime protective of water quality standards would be a hard constraint on federal dam operations as well.

If the State is to bring the best scientific information to bear on its water management decisions pertaining to the Columbia mainstem, and if it is to manage instream flows consistent with water quality standards, the NRC's inquiry must cover a broader range of issues than those you identify in your letter. We appreciate the constructive approach you have taken to working with the conservation community on the Columbia River Initiative, and we look forward to your response to our concerns.

Sincerely,


for
Karen Allston, Center for Environmental Law and Policy


for
Jan Hasselman, National Wildlife Federation


Rob Masonis, American Rivers

Cc: Gerry O'Keefe, DOE
Dr. Stephen Parker, NRC
Rob Lothrop, CRITFC