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FLYFISHER

MAGAZINE OF THE FEDERATION OF FLY FISHERS

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SNAKE RIVER fisheries IN CRISIS

Salmon and steelhead caught in politics of extinction

TIPS FOR muddy water BASS FISHING

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FEATURES

DEPARTMENTS

This page: Combat fishing for spring chinook at the mouth of the Little Salmon where it enters the Salmon River • Story page 21
Photo by Bill Mullins

Cover photo: Salmon circle in Idaho's Selway River Wilderness. See the full photo, and story of the Snake River Basin's endangered fisheries, on page 21.
Photo by Dick Walker/Alpha 1 Photography

Magazine of the Federation of Fly Fishers • Summer 2007 Volume XL, No. III

Sudden Death Overtime for Wild Snake River Basin Salmon and Steelhead PART IV

By Ed Chaney

In 2001 excellent ocean conditions following several years of high winter snowpacks allowed for the largest salmon in-migration in years in the Snake River Basin. Dick Walker captured this extraordinary shot of a pod circling in a salmon hole in Idaho's Selway River Wilderness.

Photo by Dick Walker/Alpha 1 Photography

Editor's note: This is the fourth in a series of articles on the threatened extinction of the wild salmon and steelhead in the Inland Northwest's Snake River Basin. See the Winter 2004, Spring 2004 and Spring 2005 issues.

In the early 1960s and '70s, American Indian fishermen were being arrested for trying to exercise their treaty-guaranteed rights to fish for salmon and steelhead in the Columbia River and tributaries.

During this same period, the Army Corps of Engineers built four large pork barrel dams on the lower Snake River commons in southeastern Washington. The Corps negligently failed to design the dams to allow juvenile salmon and steelhead to migrate from the vast Snake River Basin to the Pacific Ocean.

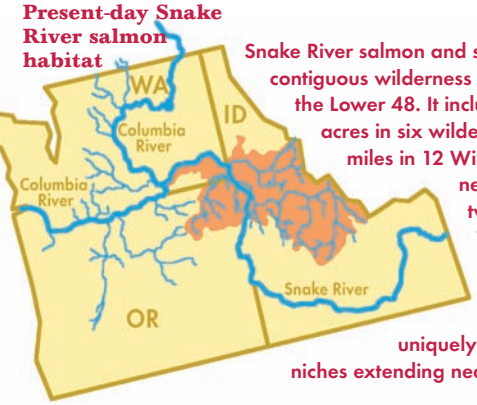
To date, the four dams and reservoirs have killed and wasted more salmon and steelhead than Indian fishermen caught the preceding 1,000 years. That's a rough estimate. All Snake River salmon and steelhead now are listed as threatened or endangered under the Endangered Species Act (ESA). No citations have been issued.

> The law locks up
> both man and woman
> Who steal the goose
> from off the common
> But lets the greater
> felon loose
> Who steals the common
> from the goose
>
> *Anonymous, from Social and Industrial History of England, Edward Potts Cheyney, 1901*

For more than a decade, Federal government agencies repeatedly, and with increasing desperation, have tried to shield the lower Snake River dams from the ESA. In late May 2007, the George W. Bush Administration tried again with a plan to implement a shopping list of non-dam related actions it claims would offset the damage by the dams, which would stay in place and operate much as they do now.

In fact, the administration's plan would perpetuate the dams' egregious ongoing social, economic, cultural and ecological damage throughout the many-thousand-mile-long migratory ranges of the fish. It would put wild Snake River salmon and steelhead at even greater risk of extinction. It would subvert the intent of the ESA, the law of last resort for threatened and endangered species great and small.

Present-day Snake River salmon habitat



Snake River salmon and steelhead spawn in the largest contiguous wilderness and roadless land complex in the Lower 48. It includes more than 4.4 million acres in six wilderness areas, more than 700 miles in 12 Wild and Scenic Rivers, and nearly 1 million acres within two National Recreation Areas. These vast areas are the safe deposit box for a genetic heritage millions of years old, since the Ice Age uniquely adapted to infinite habitat niches extending nearly 1,000 miles inland.

Flashback

Previous articles in this series summarize the dark history of the struggle to protect wild Snake River salmon and steelhead and the people who depend on them.

These fish are one of the world's most magnificent natural assets, once numbering millions of adult fish annually. For 10,000 years, since the Ice Age, they contributed to fisheries thousands of miles along the Pacific Coast and 1,000 miles inland.

Over time their numbers dwindled as their spawning and rearing habitats were diminished in quantity and quality. A vast area of high quality habitat remains, much of it legally protected in Wilderness Areas, National Recreation Areas, and Wild and Scenic Rivers. The Army Corps of Engineers' four dams on the lower Snake River threaten to make that legal protection meaningless.

Congress authorized the dams with the intent that Snake River salmon and steelhead and the people who depended on them would be substantially protected. Hatcheries would be built upstream to mitigate for the fish habitat inundated by 130 miles of reservoirs behind the dams and for the unavoidable annual mortality of juvenile and adult fish migrating through the lower Snake River to and from the ocean.

The Corps' design for the dams included fish ladders to allow adult fish to migrate upstream, albeit not without difficulty and some loss. Despite repeated warnings from fisheries experts, the Corps' design negligently made no provision for juvenile salmon and steelhead to migrate through the reservoirs and past the dams. Disaster happened.

The Corps responded by spending many millions of dollars retrofitting the dams with various accessories designed to reduce the damage. It was like pasting butterfly wings on pyramids in hopes of making them fly. The fundamental design error could not be overcome.

It is difficult to imagine what the Corps could have done to make the dams and reservoirs more deadly to downstream migrants. During chronic years of low runoff, there is insufficient current to carry young fish through the series of slack water reservoirs. Their travel time has been increased five to 15 times over what it was when the free-flowing river swept young fish downstream. The damaging effects of this delay are compounded by high water temperatures and large populations of predator fish that thrive in reservoirs. Many migrants don't make it to the dams.

Those that do are stressed and confronted with a series of enormous concrete structures where they are presented with four alternatives, all of which are very unfriendly to small, fragile fish.

Driven by the primal urge to migrate, the young fish are forced to commit an unnatural act and dive 50 to 70 feet and then: 1) be sucked through the turbines; 2) be screened out of the turbine intakes into a bypass system and be routed through the dam and dumped back into the river downstream; or 3) be routed to a collection facility and transported downstream in river barges or trucks; 4) be sucked through the spillway in the middle of the dam and be spewed out the downstream side. Either way it's not a joy ride.

Spilling water and juvenile fish through the dams instead of running it through the turbines proved to be the least deadly option. Bonneville Power Administration, which sells the power generated by the federal dams, doesn't like that. Spill reduces the amount of power Bonneville can sell to pay for its enormous nuclear power plant and energy futures gambling debts, as well as to keep power costs low, its customers happy and politicians compliant.

The Corps eventually conceded the dams and reservoirs were lethal to juvenile migrants (a fact the apologists for extinction still can't internalize). It resolved to strain most of them out of the river, put them in barges and ship them 400 or so miles downstream to the lower Columbia River. Unfortunately, fragile wild salmon and steelhead,

HOW HAVE WE COME TO THIS? AND FOR WHAT?

It's about the money, of course. The Pork Alliance covets every dime it can squeeze from the Federal Columbia River Power System and insists it would lose too much money if it had to stop stealing the lower Snake River commons from the goose.

The Corps claims it would cost more to fix the lower Snake River dams than to breach them. The cost of breaching is translated into prognostications of economic doom for the region. This is The Big Lie used to frighten and energize the rubes, which gives politicians pretext for shamelessly going along with the con.

The Big Lie is based on the false premise that the people of the Northwest must pay the entire cost of fixing the mess created by the Corps' negligence. The Corps did not build the dams Congress authorized. It ignored congressional intent. It would be irrational and without precedent to saddle the people of the Northwest, including the victims of the Corps' negligence, with the full cost of cleaning up the mess.

The cost of breaching the four dams – including keeping whole waterway shippers and a handful of affected irrigators – properly treated as a federal obligation and spread across the nation would have an imperceptible economic effect on the nation and a large positive economic effect on the region. The cost to the Northwest for replacing the lost power – less than 5 percent of the region's current firm energy production – over, say, 15 years while sequentially breaching the dams, would be subsumed to insignificance in the cost of new power plants that will be necessary to meet growing regional demand.

It costs more to kill wild Snake River Basin salmon and steelhead than it would cost to

The Snake River is the largest tributary to the Columbia River. It originates in the state of Wyoming and flows 1,038 miles [1671 km] to its confluence with the Columbia. The Snake drains an area of about 109,000 square miles [282,310 km²].

already stressed from navigating the reservoirs, didn't take well to the rough handling and Rube Goldberg substitute for natural downstream migration.

Barging was hailed as a way to reduce mortality of juvenile migrants at and between the dams. In fact, barged fish returned as adults at about the same rate as fish that hadn't been barged, even though the latter had to pass a gauntlet of up to eight dams and reservoirs to reach the ocean. This was no improvement. Consequently, the number of adult wild fish returning to the Snake River Basin continued the perilous downward trajectory.

restore them to productive levels. The ringleaders of the Pork Alliance know this.

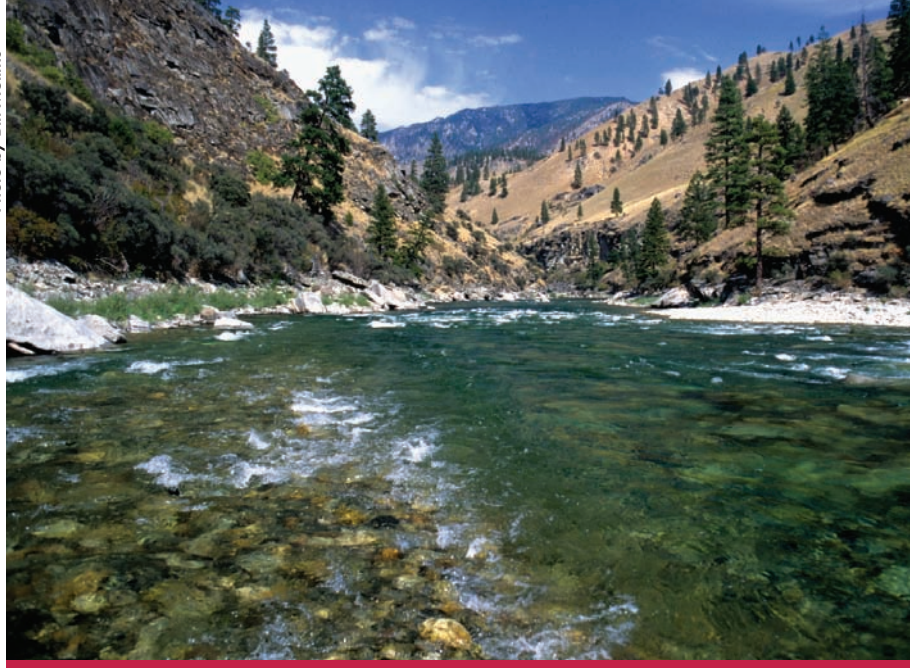
It's not just about the money. It's about covering up and evading responsibility for the horrific human and ecological consequences of egregious errors and mismanagement. It's about defending, at all cost to others, the incestuous regional culture of compromised bureaucracy, crony capitalism, monopolies, political hegemony, and the personal power and sinecures that culture bestows as reward for betraying the public trust.

In 1980, Congress responded to the deepening crisis with strong fish protection mandates in what is commonly called the Northwest Power Act. It said salmon and steelhead must be provided with adequate quantity and quality of flow at and between the federal dams on the Snake and Columbia rivers. Fish must have equitable treatment with all other uses of the Federal Columbia River Power System, including power production. Salmon and steelhead must be restored to formerly productive levels, not just prevented from going extinct.

The act also contains a legal trump card that makes the "Columbia River Pork Alliance" tremble with rage and trepidation: the cost of modifying the hydrosystem to fulfill these mandates cannot be used as an excuse not to do so. The U.S. Court of Appeals has so ruled, and the U.S. Supreme Court declined to hear the appeal.

Longtime fish advocates, holding the quaint view that the rule of law still means something, breathed a sigh of relief. It was premature.

Photo by Bill Mullins



The Middle Fork of the Salmon River was the first Wild and Scenic River in the nation. It rises in and flows through the 2.4-million-acre Frank Church River of No Return Wilderness, largest wilderness in the lower 48.

The Columbia River Basin is not Mr. Rogers' neighborhood. It is a political fiefdom long ruled by the Columbia River Pork Alliance, a politically powerful, regional clique of compromised bureaucrats, monopolists, crony capitalists, entrenched pork barrel economic interests, and allied politicians who feed off public largess and each other. It includes electric utilities, waterway transportation, Big Ag and energy intensive industry. The energy faction dominates: Bonneville is the goose that lays the golden eggs and ringmaster.

" ... It is now painfully, inarguably obvious that the salmon and steelhead runs of the upper Columbia Basin will not survive the federal agencies' continued refusal to provide the comparatively small fraction of main-stem flows necessary to minimize salmon and steelhead mortalities at main-stem hydroelectric dams.

"It is now equally clear the federal hydropower agencies in the Columbia Basin will not and perhaps cannot change their traditional attitudes and operational procedures without a direct congressional mandate to do so.

"It is my view that the failure to include such language will inevitably result in the virtual extinction of what once were the largest, most valuable segments of the world's largest chinook salmon and steelhead runs."

Testimony of Ed Chaney, director of the Northwest Resource Information Center, invited by U.S. Rep. John Dingell in Boise, Idaho, during field hearing on proposed Pacific Northwest Electric Power Planning and Conservation Act, December 14, 1978.

The Alliance defeated every past effort to substantially reduce the federal dams' damage to salmon and steelhead and related economies. It set out to defeat the salmon restoration intent of the Power Act. It succeeded. This success made listing Snake River salmon and steelhead under the Endangered Species Act a self-fulfilling prophecy. It soon came to pass.

The listings elicited the customary wailing and gnashing of teeth and prophecies of doom for life as we know it in the Northwest. The Pork Alliance, of course, blamed its victims for causing all this trouble. It set out to defeat the ESA. This made it inevitable that the federal courts eventually would intervene. And this, too, came to pass. The Alliance blamed radical environmentalists and activist judges.

Using the ESA to Protect Dams

National Marine Fisheries Service (NMFS) has the duty to identify and prescribe remedies for things that jeopardize recovery of listed anadromous salmon and steelhead. For the lower Snake River Dams, NMFS analyses proposed actions by the federal "action agencies," Bonneville, the Corps and Bureau of Reclamation, which controls some upstream water storage reservoirs. It issues a formal finding called a Biological Opinion (BiOp) that is subject to judicial review.

NMFS produced its first BiOp in 1993. It acknowledged the lower Snake River dams and reservoirs jeopardize the fish, but it waffled on remedies. Lawsuits were quickly filed in federal court. In March, 1994 U.S. District Court Judge Malcolm Marsh said the BiOp needed a "major overhaul" and sent NMFS back to the drawing board. NMFS tried again in 1995 with the same strategy – protect the dams against the ESA – with the same result.

In the following 2000 BiOp, NMFS persisted in trying to make jeopardy disappear by offsetting the damaging effects of the dams with a variety of non-dam-related actions of hypothetical effectiveness. U.S. District Court Judge James A. Redden rejected that approach and sent NMFS home for another redo.

Meanwhile, the George W. Bush Administration had come into power. When NMFS unveiled its 2004 BiOp for Judge Redden, it averred the dams no longer jeopardized the fish. This dramatic reversal was based on three bold core assertions:

1) The four lower Snake River dams and their reservoirs are part of the landscape. They were built before the ESA became law in 1973 (the first dam was completed in 1961, the last in 1975) and, therefore, the dams and reservoirs per se are exempt from the ESA. Only the operations of the projects are within the act's purview.

2) The ESA did not require that the listed species actually be recovered, only that the greatly diminished populations be stabilized and not allowed to get any lower.

3) A laundry list of new, improved, non-dam-related actions, including tributary habitat improvement projects, predator control, tinkering with hatchery policies, etc., plus experimental improvements in juvenile fish passage at the dams (a new add-on spillway weir does look promising) would, in time, offset the damaging effect of the dams sufficiently to stabilize the listed populations. Lawsuits quickly followed.

In September 2006, Judge Redden ruled the 2004 BiOp also violated the ESA. NMFS was ordered to collaborate with the action agencies and, without precedent, also with state fisheries agencies and tribes, to come up with a legally and biologically defensible BiOp. Meanwhile, the Bush Administration appealed Redden's decision to the Ninth Circuit Court of Appeals. It would prove to be another bad hair day for NMFS and the administration.

On April 9, 2007, the Ninth Circuit upheld Judge Redden's decision on the 2004 BiOp. The three-judge panel unanimously held that, among other flaws, hiding the four lower Snake River dams in the landscape and only considering the effects of their operations, "amounted to little more than analytical slight of hand, manipulating the variables to achieve a 'no jeopardy' finding."

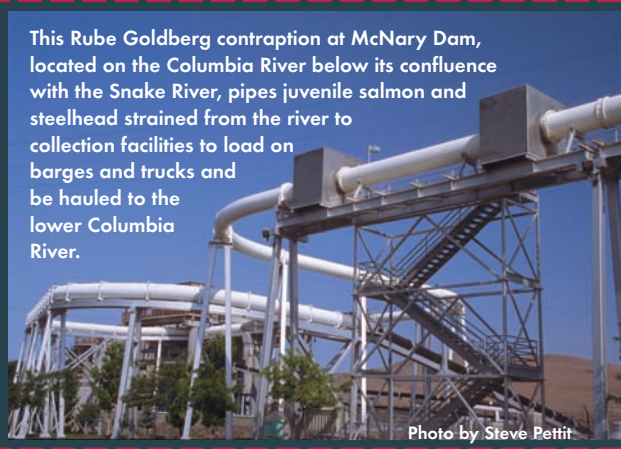
Justice Thomas wrote, "Statistically speaking, using the 2004 BiOp's analytical framework, the dead fish were really alive. The ESA requires a more realistic, common sense examination."

The appeals court also upheld

IT'S NOT A JOY RIDE

Fish that pass through turbines are exposed to extreme pressure changes and mechanical injuries while going through the turbines. Some smolts are guided into a collection and bypass system by intake screens. From the intake screens, the guided smolts are returned in three seconds back to the surface (about 20 meters) into a turbulent gatewell. Smolts go from one to three and back to one atmospheric pressure in about ten seconds. At Lower Granite Dam they are then piped from the fish collection area nearly 0.4 km to below the dam at high velocity (9 meters per second) and pressured through two 90-degree turns, experiencing high turbulence and rapid deceleration at the end. Smolts are passed through a device to separate fish by size, dewatered and then passed through a tube that leads to a PIT-tag detector. Remember, this account describes the passage through only one of eight dams.

From "Evidence Linking Delayed Mortality of Snake River Salmon to the Earlier Hydrosystem Experience," Budy, Thiede, Petrosky and Shaller. North American Journal of Fisheries Management, 2002.



This Rube Goldberg contraption at McNary Dam, located on the Columbia River below its confluence with the Snake River, pipes juvenile salmon and steelhead strained from the river to collection facilities to load on barges and trucks and be hauled to the lower Columbia River.

Photo by Steve Pettit

This 1973 photo shows a catch of spring chinook from the Middle Fork Salmon River two years before the uppermost Corps of Engineers' dam was completed on the lower Snake River. Salmon fishing in this pristine wilderness/wild and scenic river and its tributaries was closed in 1978 and has remained closed for 34 consecutive years to date. Prior to the four lower Snake River dams, as much as 1,000 miles of stream within the vast Salmon River Basin in Idaho were open to fishing for wild spring/summer chinook for a month or two every year. In 2007 about 100 miles of stream were opened four days a week, some areas for a few weeks, others for a couple of months. Only hatchery fish could be retained.

Photo by Middle Fork Lodge, courtesy Idaho Rivers United

Redden's rejection of the administration's assertion that the ESA does not require the listed species be recovered, only that greatly diminished populations must be stabilized. "Under this approach, a listed species could be gradually destroyed, so long as each step of the path to destruction is sufficiently modest. This type of slow slide into oblivion is one of the very ills the ESA seeks to prevent."

Back to the Future

On May 21, 2007, the action agencies released their new proposal to recover threatened Snake River salmon and steelhead. It was ceremoniously passed on to NMFS – which helped write it – to "analyze" for its next Biological Opinion on whether or not the proposed actions jeopardize survival of wild Snake River salmon and steelhead.

The court-ordered collaboration with the states and tribes turned out to be like Lucy holding the football for Charlie Brown. State and tribal recommendations that deviated from the feds' preserve-the-dams-at-any-cost-to-others game plan were ignored. The fix was in.

It was not realistic to expect any substantial change in administration strategy. Like Bonnie and Clyde, NMFS and the action agencies have caused such enormous damage and are in so deep they had no choice but to brazen it out to the end. It follows that their new proposal basically is more of the same-old same-old, with some bold and ominous new twists.

The new proposal continues to try to shield the dams with non-dam-related actions, promising enough fish on paper, sometime in the future, to achieve minimal population targets that NMFS guesses would constitute "recovery." While NMFS tests its high-risk hypothesis, real fish and real people would continue to suffer.

Improving degraded tributary habitat is a centerpiece of the agencies' proposal. It's a puzzler. Vast areas of existing pristine habitat are chronically, perilously under-seeded with wild salmon and steelhead. Improving currently degraded habitat and salting it with hatchery fish won't change that.

The agencies also propose to reduce spill at the dams (proven the least deadly passage option for juvenile fish) during peak juvenile fish migration periods, and to eliminate spill for up to a month at the tail end of the migration period in August (that's big bucks spilling over the dams). A greater percentage of juvenile migrants would be collected and barged to the lower Columbia River.

Their proposal would make worse the lower Snake River reservoirs' damaging effects on juvenile migrants by stopping the (already inadequate) releases of water from storage reservoirs presently used to help propel young fish through the slack water reservoirs.

In short, the federal agencies propose to tighten their iron grip and squeeze a few more dollars out of the lower Snake River commons. That's bold. That's we-stole-it-fair-and-square-and-intend-to-keep-it bold.

They would perpetuate the dams' ongoing social, economic, cultural and ecological damage throughout the many-thousand-mile-long migratory ranges of the fish. They would put at even greater risk of extinction wild salmon and steelhead still produced in vast, pristine habitats – fish that are the genetic seed corn for restoring the runs to productive levels.

It is very hard work not to understand this. Many have made the necessary effort. The action agencies and NMFS understand this. Judge Redden also appears to understand it, so there is hope.

At some point in the foreseeable future – though definitely not by the original July 31, 2007, deadline – NMFS will deliver Judge Redden a new BiOp. In due course the judge will rule on its legal adequacy under the ESA. Lawsuits will follow. And more lawsuits.

There is reason for cautious optimism that the law of last resort for creatures great and small may at long last force the Corps and Bonneville to comply with the will of the people and intent of Congress in authorizing occupation and use of the lower Snake River commons. Perhaps it will happen within the lifetimes of some of the many good men and women who fought and sacrificed for so many years to hold the line against the predatory Pork Alliance to make possible that day of reckoning.

Calling John Dingell

The Endangered Species Act cannot ensure Snake River Basin salmon and steelhead will be restored to formerly productive levels. It cannot cure the underlying failure of governance and serial betrayal of the public trust. Those are jobs for Congress.

Around the time the last of the four lower Snake River dams was nearing completion, the dominant energy faction of the Pork Alliance was shopping draft congressional legislation to increase the flow of pork from East to West and to spread it more widely.

A small group of veteran Idaho salmon and steelhead advocates smelled more trouble brewing. They persuaded U.S. Sen. Frank Church of Idaho to intervene. He added a short paragraph to the draft energy bill that eventually blossomed into the salmon and steelhead restoration mandates in the Pacific Northwest Electric Power Planning and Conservation Act of 1980.

Church got the ball rolling. U.S. Rep. John Dingell, a Michigan Democrat, then chairman of the House Subcommittee on Energy and Power of the Committee on Interstate Commerce and Foreign Commerce, quarterbacked it to the finish line.

More than a quarter century and several billion dollars later, wild Snake River salmon and steelhead and the people who depend on them are in more dire straits than before the act was passed. No citations have been issued. No one has been held accountable.

The time never will be riper for Congress to investigate how the salmon and steelhead restoration mandates of the Northwest Power Act were subverted, to amend the act, and to bring responsible public entities to heel. Bonneville should be stripped of its power of the purse over fish restoration that it blatantly uses as a velvet fist to blackmail, bribe and intimidate in service to the Pork Alliance. The hopelessly dysfunctional regional council established to oversee implementation of the act should be replaced with a new institution charged with fiduciary duty for which it can be held legally accountable.

The Northwest congressional delegation will not initiate reform of the Power Act. Many members will strongly resist reform out of fear it would tip over the pork barrel. This tangled political web cries out for a classic deus ex machina.

The Lone Ranger is no longer on call. Shane never came back. Fortuitously, Dingell now is chairman of the influential House Committee on Energy and Commerce. He has a very big stake in the salmon and steelhead restoration provisions of the Power Act. He fought hard for passage of the Endangered Species Act. What better congressional champion for wild Snake River salmon and steelhead in their darkest hour?

WRITE HIM

Congressman John Dingell is a champion of the Endangered Species Act of 1973 and of the salmon and steelhead restoration provisions of the Northwest Power Act of 1980. Can he be persuaded to step into the breach one more time in behalf of wild Snake River Basin salmon and steelhead and the people who depend on them in this, their darkest hour?

Honorable John Dingell
2328 Rayburn House Office Building
Washington, DC 20515
(202) 225-4071
E-mail him through his Web site:
www.house.gov/dingell

Bearing Witness

We are eyewitnesses to a struggle of epic proportions. It will determine if the will of the people and the rule of law can prevail over failed government entities that slipped their public interest moorings and collaborated with pork barrel economic interests to serially betray the public trust.

Wild Snake River Basin salmon and steelhead are a genetic heritage millions of years in the making. For 10,000 years since the Ice Age, they uniquely adapted to infinite habitat niches as far as 1,000 miles inland. Their fate hangs in the balance. And now it may depend on two men, a federal judge and a Michigan congressman. What's wrong with this picture?

Stay tuned. The pork barrel apologists for extinction are starting to sweat. It's going to get interesting.

Ed Chaney has nearly 40 years professional experience with Columbia/Snake rivers salmon and steelhead issues. He lives in Eagle, Idaho. The articles in this series and related information are posted at *www.nwric.org*.

AT PRESS TIME

Judge Redden Sends Feds Warning

In a new development at press time, on June 20 U.S. District Court Judge James Redden told the federal action agencies their latest proposal at best contains few improvements over what he previously rejected as inadequate. He added that at worst it "represents a retreat" from relatively successful spill and reservoir flow enhancement, and would increase reliance on removing fish from the river and barging them downstream.

Redden made clear he expects the new BiOp, now due October 31, 2007, to do more to recover the listed salmon and steelhead. If it fails to do so, he said, "Consequences are going to be very severe."

Redden's comments followed a June 13 ruling by U.S. District Court Judge John C. Coughenour nullifying a Bush administration policy that included hatchery fish when determining the status of wild salmon and steelhead for protection by the Endangered Species Act.

"The purpose of the Endangered Species Act is to promote populations that are self-sustaining without human interference," Coughenour wrote. "If the ESA did not require that species be returned to a state in which they were naturally self-sustaining, preservation of the habitat of the species would be unnecessary."

This commonsensical ruling unravels another thread of the Administration's effort to undermine the ESA.Anti-ESA forces are expected to appeal Judge Coughenour's ruling to the Ninth Circuit Court of Appeals.

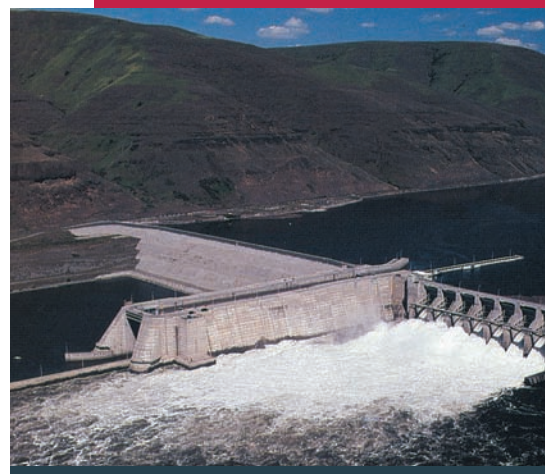


Photo courtesy Army Corps of Engineers

The first of the lower Snake River dams, Ice Harbor, was completed in 1961 about 10 miles (16.1 km) upstream from the confluence of the Snake and Columbia Rivers. The last of the four-dam complex was completed in 1975.