September 22, 2014

U.S. Army Corps of Engineers,
Walla Walla District
PSMP/EIS, Attention: Sandy Shelin, CENWW-PM-PD-EC,
201 North Third Avenue
Walla Walla, Washington 99362-1876
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via electronic mail and U.S. Mail

Dear Ms. Shelin:

This letter is written on behalf of American Rivers, Citizens for Progress, Earthjustice, Friends of the Clearwater, Borg Hendrickson, Linwood Laughy, Idaho Rivers United, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen’s Associations, Save Our Wild Salmon, Sierra Club, and Wild Steelhead Coalition to comment on the Final Environmental Impact Statement (“FEIS”) for the Lower Snake River Programmatic Sediment Management Plan (“PSMP”) prepared by the U.S. Army Corps of Engineers, Walla Walla District (“Corps”). We appreciate this opportunity to comment on the Corps’ FEIS.

Representing the voices of more than 6,000,000 people, these individuals and organizations share a common goal of restoring Snake and Columbia River Salmon to healthy, sustainably harvestable levels. Many of these groups were involved in litigation in 2002 and 2004 over the Corps’ previous plans to dredge the navigation channel in the Lower Snake River. That litigation was settled in 2005 to allow interim dredging while the Corps completed a comprehensive long-term study of sediment management options for the navigation channel that would not rely exclusively on dredging. That programmatic sediment management study presented the opportunity to consider a broad range of alternatives to business-as-usual, including an over-emphasis on dredging, in the Lower Snake River and to consider the environmental, economic, and social impacts of a number of different alternatives that allow goods to move to markets, provide for recreational and commercial uses of the river, and that would enhance and restore salmon and steelhead populations.

After nearly ten years and millions of dollars spent, the PSMP and the FEIS fail to accomplish those fundamental tasks. Instead, the Corps’ FEIS and PSMP conclude, yet again, that dredging the navigation channel is the only alternative that will satisfy the Corps’ narrowly-
framed goals and that any and all other alternative actions may be evaluated later. On March 26, 2013, the listed individuals and organizations submitted extensive comment and analysis of the Corps’ DEIS for the PSMP. Unfortunately, the Corps has not addressed the deficiencies identified in those comments in this FEIS. While we will return to and expand upon several specific issues in our comments below, because the Corps has failed to address these issues, we refer the Corps to our DEIS Comments and hereby incorporate them by reference.

I. THE CORPS’ NARROW STATEMENT OF PURPOSE-AND-NEED STATEMENT IS BASED ON AN ERRONEOUS LEGAL CONCLUSION, AND THE CORPS’ RESPONSES TO COMMENTS ARE INADEQUATE.

The Corps’ erroneous legal conclusion that Congress’s authorization of a 14-foot navigation channel is somehow a mandate results in a single-minded focus on dredging – now and into the foreseeable future. Our March 26, 2013, comments responding to the Corps’ draft environmental impact statement pointed out the Corps’ legal error. DEIS Cmts. at 4-6. We adopt those comments in their entirety by reference. The Corps’ flawed legal conclusion results in a narrow purpose-and-need statement that renders dredging a foregone conclusion and all other options window-dressing. That framing of the purpose and need – requiring a 14-foot channel immediately and indefinitely – yields a foregone conclusion because the answer to the Corps’ narrow question will always be dredging. But the purpose of the navigation component of the Lower Snake River system is to facilitate navigation; the navigation component does not – and the system itself does not – exist to provide a dredged channel as the Corps’ inverted reasoning would suggest. Nor does the existence of the navigation component preclude options other than dredging, such as modifying, shifting, or shutting down activities or sites that create a need for dredging but return little in terms of navigation volume or positive economic benefits.

The Corps’ replies to our March 2013 comments are in part unresponsive and are legally inaccurate. Congress passed the Flood Control Act of 1962 with full knowledge that navigation would be unavailable a few months each year. DEIS Cmts. at 4. The Corps’ response acknowledges that “Congress has not required that commercial navigation be guaranteed 365 days a year.” FEIS App’x G at G-83 (Response to Comment 8684). Simultaneously, the Corps attempts to draw a distinction that “Congress intended for commercial navigation to be possible 365 days a year.” Id. These statements demonstrate the inherent contradiction in the Corps’ position – the idea that even when closed to navigation the channel must be theoretically usable. How maintaining the channel aids navigation – when navigation is suspended – is unclear other than that the Corps believes indefinite dredging is the solution.

The Corps has also failed to clarify its position as to when navigation can be appropriately suspended. Through its past actions, the Corps has acknowledged that commercial navigation may be suspended for lock maintenance, but the Corps has not specified why navigation could not also be suspended in service of other Congressionally-authorized uses and purposes of the River, such as conservation of fish and wildlife. As our DEIS Comments detail, Congress requires the Corps to consider several purposes – including fish and wildlife conservation, power generation, and recreation. And while navigation is an authorized purpose, Congress has not exalted that purpose above all others such that an uncompromising devotion to a 14-foot channel can be justified. At bottom, the Corps’ legal conclusion renders absurd results whereby navigation can be suspended for some reasons but not others, without any explanation
of why and how, and without explanation of why one of those reasons could not be related to other Congressionally-required purposes for the Snake River system. Nor does the Corps explain how long navigation may be suspended without violation of its alleged Congressional mandate.

The Corps also mischaracterized our comments’ comparison of the Corps’ treatment of the Snake River system and the Dalles Dam, for which the Corps is authorized to provide a 27-foot channel but has never done so. Our comments did not argue that the 14-foot depth language in the Flood Control Act of 1962 also applies to the Dalles, as the Corps suggests. Instead, the comments highlighted the contradiction in the Corps’ use of discretion to depart from Congressionally-required depths in the Dalles with its refusal to do so here. There remains no principle of law or logic that would allow the Corps to claim it is under a mandate to maintain a particular channel depth on the Snake but not on the Columbia, only a few miles downstream.

The Corps’ commitment to a 14-foot channel also conflicts with its later tacit acknowledgment in the economics section that if costs outweighed benefits, maintenance of the channel would not be justified. See FEIS at 3-55 (concluding that “ongoing channel maintenance on the lower Snake River is warranted” based on a cursory economic analysis). The channel does not exist to be dredged but to provide a navigation benefit. Surely maintenance of the channel must depend on actual use of the system because the channel is not an intrinsic good. The Snake River system as a whole is established for many purposes, with navigation as one component and a 14-foot channel as one option in the menu of possibilities to serve navigation. There are many ways to transport products that do not require the entire channel and that would retain the non-barging economic benefits port facilities provide.

The Corps’ legal theory results in a “dredge no matter what” outlook. The Corps has not specified when it believes it may suspend navigation, and its narrow purpose-and-need statement results in the untenable position that under all circumstances and in light of all other alternatives, it need only dredge. The Corps’ myopic focus on channel depth and dredging improperly limits the alternatives the Corps considers in both the short and long-term.

II. THE CORPS DID NOT CONSIDER ALL REASONABLE ALTERNATIVES.

Based in large part on the Corps’ improperly narrow purpose-and-need statement – deriving from its belief that it must maintain a 14-foot navigation channel – the Corps did not consider all reasonable alternatives. The Corps dismissed nearly all alternatives out of hand because they would not result in the immediate establishment of a 14-foot channel. Of the two alternatives the Corps considered, it is not legally permitted to take one of the alternatives, leaving the option it selected – Alternative 7, dredging with possible future actions – the only possibility. Nor did the Corps evaluate a dam breaching alternative. Instead, the Corps narrowed the alternatives and essentially eliminated any real choice by concluding that its “policy objectives are clear – maintain a 14-foot by 250-foot navigation channel.” FEIS App’x G at G-84 (Response to Comment 8686).

\[1\] See infra at Section IV.

In the DEIS Comments, we detailed that: 1) the Corps failed to consider a true no-action alternative and 2) the Corps’ consideration of its no-action alternative was inadequate.

Rather than evaluating a true no-action alternative, the Corps considers a “no-action” alternative that involves a tremendous amount of action. Under its “no-action” alternative, the Corps would operate reservoirs as close to minimum operating pool as possible at some times of the year and up to “maximum operating pool.” In the Corps’ response to comments, it returns to its mistaken purpose-and-need statement to double down on its position that it is currently operating a program with the purpose of providing a 14-foot channel for navigation. See FEIS App’x G at G-84 to G-85 (Responses to Comments 8686, 8687). The Corps’ program is to provide transportation of goods in and out of the region consistent with the other purposes of the Snake River system. The “ongoing program” is not the maintenance of a 14-foot navigation channel or a channel of any specific depth or length, and the Corps should have evaluated a no-action plan that would maintain the system’s ability to provide transportation of goods without a 14-foot channel that reaches all the way to the Port of Lewiston. Clearly demonstrating the Corps’ flawed perception of its program and evaluation of a no-action alternative is that many of the measures in the “no-action” alternatives are incorporated into the Corps’ preferred, Alternative 7. A true no-action alternative would not involve navigation-oriented reservoir management and would allow sediment to accumulate in the river.

Further, the Corps did not provide rigorous analysis of its “no-action” alternative and has not remedied this problem in the FEIS or responses to comments. As with all non-dredging alternatives, the Corps dismissed that alternative without analysis only because it did not maintain a 14-foot channel, though that alternative was nominally retained for further consideration. FEIS at 2-38.

The Corps failed to consider light-loading barges and other methods that could be used with navigation-objective reservoir operation. The Corps argues that light-loading barges is a reaction by the navigation industry and not an action the Corps itself can take and, therefore, is not something Corps can consider. Id. at G-85 (Response to Comment 8691). While the Corps does not physically load barges or determine how much weight to ship on any individual vessel, the Corps is fully capable and authorized to take action that it knows will lead to light-loading. There is no reason the Corps cannot consider anticipated industry reaction to its actions, and indeed the Corps must do so to gain a full picture of the effects of its actions on navigation purposes in the Snake River system. See infra Section IV.

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2 As discussed in the DEIS Comments, this description is itself a fiction since under the terms of the Biological Opinion for the Federal Columbia River Power System, the Corps is prohibited from raising MOP as the Corps envisions.
B. The Corps Rejected Out of Hand Every Non-Dredging Alternative.

The discussion of Alternatives 2-6 masks a foregone conclusion that dredging with some other theoretical actions would be selected from the alternatives posed. As discussed in the DEIS Comments, the Corps dismissed alternatives 2, 3, 4, and 6 without sufficient analysis based on its determination to dredge a 14-foot channel. DEIS Cmts. at 10-12. When measured against the Corps’ erroneous position that it must maintain a 14-foot channel, no option other than dredging a 14-foot channel can suffice. For that reason, the Corps rejected alternatives 2, 3, and 4. Alternative 6’s fate was similarly sealed since it is comprised only of two already-rejected alternatives, Alternatives 3 and 4; it would have been a case of alternatives alchemy for Alternative 6 to pass the Corps’ 14-foot requirement where its constituent non-dredging parts did not. The Corps automatically dismissed every option but Alternatives 5 (dredging only) and 7 (dredging plus Alternatives 3 and 4). The Corps has not complied with its obligation to thoroughly consider all reasonably available alternatives thoroughly and sufficiently evaluate the alternatives presented.

The dredging-only option, Alternative 5, also could be dismissed out of hand because it would not comply with the Corps’ obligation to develop a programmatic sediment management plan. The 2005 settlement between the Corps and conservation groups requires the Corps to develop a programmatic plan to address sediment. Nat’l Wildlife Fed’n v. US. Army Corps of Eng’rs, CV02-2259L, Settlement Agreement at 3 (W.D. Wash. filed Sept. 8, 2005). Implicit in that settlement is that the Corps would not carry forward a plan that involves only dredging, i.e. Alternative 5. For that reason, Alternative 5 was illusory like the other alternatives the Corps rejected.

The Corps rejected Alternatives 2, 3, 4, and 6 due in large part to the Corps’ faulty statement of purpose-and-need, and Alternative 5 was rejected because it would not comply with the Corps’ obligation to pursue more than a dredging-only programmatic sediment management plan. Given the Corps’ self-imposed constraints and its legal obligation under the 2005 settlement, the outcome – and the winning alternative, Alternative 7 – was pre-determined well before the multi-million dollar EIS was completed. All alternatives other than Alternative 7 amount to nothing more than window dressing as the Corps’ analysis necessarily funnels to one conclusion.

While including an illusory array of illusory alternatives (Alternatives 1-6), the Corps also failed to consider other possible, credible alternatives such as, for example, dam breaching. In its response to comments, the Corps argues that considering such an option was precluded by the Corps’ perception of the PSMP – maintaining a of a 14-foot channel. FEIS App’x G at G-84 (Response to Comment 8686). The Corps must consider all reasonable alternatives to a proposed action. 42 U.S.C. § 4332(2)(C)(iii); Alaska Wilderness Recreation v. Morrison, 67 F.3d 723, 729 (9th Cir.1995). Once again, the Corps’ narrow view dismissing a dam-breaching alternative is based on an erroneous legal conclusion. See supra Section I. The Corps is obligated to consider all options – such as dam removal – that are reasonable and available. See id. Especially when considering the social and environmental costs of the status quo (and the lack of economic and environmental benefits), breaching is a reasonable alternative that would satisfy a properly-defined purpose and need. Even if the Corps did not consider breaching all of the Lower Snake River dams, it should have considered breaching just Lower Granite dam.
Because nearly all of the sediment accumulates behind this single project, breaching Lower Granite dam would eliminate the need for ongoing sediment management. Without Lower Granite pool, any sediment would move downriver and drop out before reaching the next dam. To the extent that other factors could justify the continued operation and maintenance of the other projects, navigation could continue on the other reaches of the lower Snake under that alternative.

C. Alternative 7 Contains No Concrete Actions other than Dredging and Is Not a Real Alternative.

The Corps’ selected alternative appears to include a decision to dredge now and into the indefinite future, while kicking any substantive analysis down the road. Alternative 7 contains no commitments and minimal analysis of how the Corps will decide which actions to select in the future. The DEIS Comments characterized this as a “tell you later” approach, which while the Corps has disclaimed that characterization, it is no less accurate. There is no indication that the Corps is undertaking analysis now that will result in the implementation of any of the measures on its list of options, putting off needed analysis and implementation that should be happening now. The Corps indicates that it will consider all of these factors in future analyses that will “tier off” of the FEIS. FEIS App’x G at G-86 to G-87 (Response to Comment 8691a). But in order to do so, the Corps must have a fully developed, adequate analysis in a programmatic EIS. See generally 40 C.F.R. § 1508.28. But this FEIS fails to provide any foundation from which the Corps can build. “Tiering” provides a limited opportunity to avoid duplication in the future; it is not an wholesale justification for putting off for tomorrow what can and must be done today. All told, the Corps spent $16 million developing a plan that contains no commitments (other than to dredge) and little guidance.

Under Alternative 7, the Corps would wait for certain triggers to begin analysis and implementation of anything other than dredging, and certain triggers would also require dredging. FEIS App’x G at A-21 to A-30. But even while some future triggers may eventually trigger the Corps to look into options other than dredging, dredging will remain the chosen action for all “immediate need actions” for navigation. Id. at A-23. For all such instances, “interim” dredging could go on for 1-3 years. Id. For areas that exhibit chronic sediment buildup, the Corps would initiate a “tier-off” analysis to “determine the most cost-effective, technically

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3 FEIS App’x G at G-86 (Response to Comment 8691a) (“The PSMP is not a ‘tell you later’ or dredging only plan.”).

4 For example, the FEIS continues the Corps’ attempt to delay or downplay any analysis of the current flood risk to the City of Lewiston and any decision or discussion of the need to raise the levees if Lower Granite dam remains in place. See DEIS Cmts. at 15-16; 20-21. The FEIS contains contradictory statements regarding the impact on flood risk to Lewiston of dredging the .7 mcy/year (annualized) of material necessary to maintain the channel. Instead, the Corps claims that future study is necessary to determine which of its models is correct and hence, whether (more likely when) raising the levees will be necessary. The Corps’ evident reluctance to make a decision on this controversial action (and to consider its environmental and socioeconomic impacts) does not justify its decision to kick this controversial can down the road.
acceptable and environmentally acceptable action(s).” *Id.* at A-24. The Corps, however, has given little indication as to how that process would work and which of its menu of options might be selected and in what circumstances, nor has the Corps given any indication as to whether one of those options could ever beat out dredging in its analysis of cost- and technical-effectiveness, particularly in light of its perceived “duty” to constantly maintain a 14-foot channel. Dredging is the selected option for all immediate need options, and – assuming that the Corps does not change its interpretation of the Flood Control Act of 1962 – it is not clear why it would not remain the favored option for all sediment management into the indefinite future.

The FEIS improperly includes the Corps’ favored dredging action (its “immediate need” action) as part of this programmatic plan. This puts the cart before the horse. NEPA prohibits the Corps from including a proposed action that would commit resources into a programmatic EIS, especially when that EIS has not yet been finalized or adopted by the agency, and the Corps’ action is not covered by its own NEPA analysis. 40 C.F.R. §§ 1506.1(c); 1508.28. The Corps’ “immediate need” action is not justified outside the scope of the long-term sediment management plan and the Corps may not proceed with dredging this winter based on this as-yet-incomplete programmatic FEIS. The Corps cannot dredge unless and until it finalize and adopt the PSMP and the EIS in a Record of Decision and prepares separate, site-specific NEPA analysis (likely an EIS) for the “immediate need” action that satisfies the requirements of the law.

Rather than provide definite criteria that can be implemented to select between management options – and that would be transparent and predictable for the public – the Corps has provided only a list of possibilities that may or may not ever be used to supplement or replace dredging. While the Corps presents this scheme as a programmatic plan, it effectively amounts to a decision to dredge whenever there is sediment – in 1 to 3 year increments – with some possible but unspecified use of other measures at some possible but unspecified point in the future. The only certainty in the FEIS is an intent to dredge; and even this action is not fully or adequately considered or justified in the FEIS.

III. THE CORPS HAS FAILED TO CONSIDER THE EFFECTS OF CLIMATE CHANGE

We previously detailed at least three ways in which the proposed channel maintenance (in both the short and long term) affect and are affected by, climate change. Unfortunately the Corps continues to ignore each of these in the FEIS. First, increasing temperatures in the Snake River watershed are projected to bring a continued increase in forest fires and hence an increase in the amount of sediment that reaches the river from the upper portions of the watershed. *See* DEIS Cmts. at 18-19. The Corps’ own information (included as Appendix D of the DEIS and Appendix F of the FEIS) demonstrates that the frequency and severity of these fires have increased over the past 40 years, and will continue to increase in the future. *DEIS, at 1-21 to 1-25.* Appendix D of the DEIS concluded that such

Climate-modulated interactions among vegetation, wildfire, and hydrology suggest that sediment yields will likely increase in response to climate change . . . [and] have the potential to produce sediment yields roughly 10-times greater than those observed during the 20th century. ...these elevated sediment yields are probably outside of the range of expectations for downstream reservoirs.
It is at least reasonably foreseeable – and indeed, likely – that the sediment accumulation the Corps is attempting to address in the FEIS will increase and will require additional measures and additional costs over time. The Corps, however, does not factor any of these increases into the Corps’ consideration of the environmental impacts from increased needs for channel maintenance over time, nor does the Corps consider the increases in any analysis of the benefits and costs of the PSMP.

Rather than address these likely increases in sediment delivery, or evaluate the economic or environmental consequences, the Corps dismisses any likely increases. The Corps now believes that we have already reached “peak sediment delivery” and that “events such as climate change and forest fires should likely not significantly increase the basin’s sediment yield since it appears that present basin climactic conditions might already provide the maximum long-term sediment yield conditions.” FEIS App’x G at G-78 to G-79 (Response to Comment 8461) This astonishing contention – that sediment yield will not increase even as more sediment is created through fires – is based entirely on the Corps’ misinterpretation of a single chart in the study included in Appendix of the FEIS (Appendix D of the DEIS). See id. at G-92 to G-93 (Response to Comment 8705) (interpreting the chart to mean that “[t]he maximum sediment yield generally occurs where the effective precipitation is on the order of 10 inches/year. This annual precipitation is generally experienced over a large portion of the effective drainage basin for lower Granite Reservoir.”). But total precipitation (inches/year) is not the only driver for increased sediment delivery. Numerous other factors – including how that precipitation falls, and when it falls – influence sediment delivery. Indeed, the 1958 study underlying this chart explicitly warns that “[n]umerous exceptions to the above generalizations can be cited, especially when glaciation, deforestation, cultivation, or a change in base level become important,” and that “[v]ariations in temperature, rainfall intensity, number of storms, and seasonal and areal distribution of precipitation can also affect the yield of sediment.” The connection between climate change and increased sediment delivery is well-documented and far more complex than the Corps asserts. The Corps’ continuing failure to consider the environmental and economic consequences of these substantial and reasonably foreseeable sediment increases violates NEPA.

Closely related to this, the Corps continues to ignore the context in which both immediate dredging and long-term maintenance of the channel will occur. As numerous scientific studies have detailed, nearly every element necessary to support healthy salmon and other fish and wildlife populations will continue to decline in most of the Columbia River basin as the continuing effects of climate change are felt throughout the basin. The continued use of the Lower Snake River dams for navigation and other purposes compounds that problem by destroying salmonid habitat and interfering with salmon and steelhead migration to and from

5 Which, given its date, certainly did not consider climate change or any of the other additional impacts that climate change has on factors such as vegetation and precipitation patterns.

6 See Endangered Species Act—section 7(a)(2) Supplemental Biological Opinion for the Consultation on Remand for Operation of the Columbia River Power System at 152-184 and appendices. That BiOp and related documents are available at http://www.westcoast.fisheries.noaa.gov/fish_passage/fcrps_opinion/federal_columbia_river_power_system.html. Though the Corps is well aware of this BiOp and the studies it summarizes, we incorporate them here by reference.
cold-water refugia in central Idaho and eastern Oregon. While the Corps recognizes that its reservoirs result in higher and longer lasting water temperatures in the summer, FEIS at 4-73, it fails to analyze its decision to continue maintaining a navigation system that perpetuates this exceedence, nor does it recognize or consider that increasing temperatures from climate change will make this current problem worse over time. In choosing to maintain this waterway, the Corps is making a decision to carry forward (and thereby exacerbate) these impacts and must fully consider them. The FEIS does not do so.

Finally, we have detailed that the continued use of the Lower Snake River navigation channel by barges will result in the emission of greater amounts greenhouse (GHG) gases than shifts to other modes of transportation. DEIS Cnts. at 16 and Attach. A at 19. As detailed in our comments, a comparison of the GHG emissions from barges versus the emissions from trains is not the correct comparison. Instead, the emissions associated with bargeing goods also include those emissions of transporting those goods to the river to be loaded on barges – by truck. Comparing emissions from trains and barges per ton of cargo does not capture the full emissions picture. As detailed in our comments on the draft EIS, analyses that have actually included this full picture demonstrate that the shorter distances required to reach rail facilities, combined with the efficiencies of rail transport, result in a net reduction of GHG when compared to bargeing. The Corps’ continued narrow focus on emissions from barge tugs alone fails to capture the true impacts of bargeing and does not consider the relevant GHG emissions of continued reliance on the navigation channel.

IV. THE CORPS HAS FAILED TO TAKE A HARD LOOK AT THE SOCIETAL AND ECONOMIC EFFECTS OF MAINTAINING THE NAVIGATION CHANNEL.

We presented extensive evidence that the costs of continuing to maintain the navigation channel far outweigh the benefits in our comments on the DEIS. The FEIS includes a single paragraph attempting to justify both its “immediate need” dredging and continued maintenance of the navigation channel in the FEIS. See FEIS at 3-55. For the reasons more fully described in Attachment 1 (“Comments On the Lower Snake River Programmatic Sediment Management Plan: Final Environmental Impact Statement,” Natural Resource Economics, Inc. (Sept. 2014) (“NRE Comments”)), and in many other sources, the Corps’ simplistic approach presents a misleading, incomplete, and inaccurate picture of the socioeconomic effects and the true balance between the costs and benefits of the ongoing maintenance of the navigation channel or any of the alternatives that the Corps did consider (or should have considered). In doing so, the Corps

7 For example, the Corps has mischaracterized and improperly dismissed our comment about the effect of global warming on the utility of shallow-water habitat created by dredge spoils. FEIS App’x G at G-89 (Response to Comment 8695). Our point was not that the shallow water habitat created by dredge spoils would contribute to the overall warming of waters in the reservoir, but that the shallow water habitat created would become less and less useful over time as the reservoirs warmed. Thus, while we believe that the alleged “benefit” of creating the habitat is unjustified, even if one assumes some benefit, it will disappear as that habitat (along with the rest of the reservoir) becomes too warm for salmon.

8 See, e.g., Attachment 2. All of these materials are fully incorporated by reference here.
has violated NEPA, its internal regulations, and its own guidance. While the Corps is referred to the attached documents for the details of those violations, the following examples are illustrative:

- As we pointed out in our previous comments, the accumulated sediment motivating the actions discussed in the FEIS is deposited in Lower Granite Reservoir, the vast majority of which occurs at the confluence of the Snake and Clearwater Rivers. The volume of goods shipped from this area of the Lower Granite Reservoir comes from two sources: the Port of Lewiston and Lewis and Clark Terminal. The rest of the volume comes from ports downstream from which no channel maintenance is proposed. In 2011, the Port of Lewiston shipped approximately 600,000 tons. While the Lewis and Clark Terminal adds to this total coming from this portion of the Lower Granite pool, close to 99% of the cost (and any purported benefit) of dredging or maintaining the channel relates at most to this total tonnage, not the 3 million tons for the entire Lower Snake River corridor that the Corps utilizes in its purported justification. This error alone, if corrected, would likely demonstrate that the costs of channel maintenance outweigh its benefits. See also NRE Comments at 11-12.

- As explained in detail in the attached NRE Comments, the 2002 EIS that the Corps relies on for the entirety of its estimates of transportation savings from dredging is riddled with errors and omissions, assumptions that have proven false over time, and warnings about the limited utility of the analysis that the Corps did not address – let alone correct – in this FEIS. NEPA and its implementing regulations impose a continuing duty on agencies to use up-to-date and accurate information. The Corps may not pretend that it is still 2002 when it makes a decision in 2014 and cannot continue to rely on information and projections that it knows or should have known are inaccurate at the time, and in any event, have certainly proven wrong over the course of the intervening 12 years. Lands Council v. Powell, 395 F.3d 1019, 1031 (9th Cir. 2004). Indeed, the available evidence shows that the ton-miles currently attributable to the Lower Snake River falls below the threshold that the Corps elsewhere considers as “negligible,” suggesting that analyses would be better focused on disposing of or otherwise abandoning this project, not continuing to funnel scarce public resources into it.

- Contrary to the Corps’ position in its response to comments, nothing in 40 C.F.R. § 1502.23 excuses its failure to provide this information or analysis in the FEIS. The Corps’ (erroneous) view of its responsibilities under the Flood Control act of 1962, are not among the “qualitative considerations” that would excuse the Corps from performing a cost-benefit analysis here. Indeed, for all of their flaws, the Corps’ previous attempts to comply with NEPA for proposed maintenance actions, at least attempted (however incompletely and misleadingly) to look at the benefits and costs of ongoing channel maintenance. See, e.g., 2002 Dredged Material Management Plan FEIS, Appendix C (“Economics”). Given the multi-decade commitment the Corps seeks to make in this

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9 This is not the first time that the Corps has willfully refused to consider and objectively evaluate the true state of the navigation system. As detailed in the attached report and declarations from Anthony Jones from 2002, the Corps in its 2002 dredging and channel maintenance proposal similarly relied on speculative benefits and an unrealistic optimistic view of future shipping volumes on the lower Snake to justify the economic benefits of continued
FEIS, there is no reason for its failure to perform the analysis necessary to answer the fundamental question – “is all of this worth it?” – in this FEIS.

To correct these deficiencies, as well as all of those outlined in comments on the DEIS, the Corps must start over and transparently evaluate the full suite of socioeconomic impacts of its preferred action and a full range of alternatives rather than relying on general statements and outdated assumptions about the costs and benefits of its preferred course.

V. THE CORPS HAS FAILED TO ADEQUATELY CONSIDER THE IMPACTS OF ITS “IMMEDIATE NEED” DREDGING ACTION.

Dredging affects threatened Snake River salmon and steelhead through potential entrainment in dredge equipment, turbidity, noise, mobilization of toxins, and other water quality impacts. The Corps continues to improperly dismiss those impacts as minimal based on the simple assertion that dredging during the “work windows” will minimize the number of fall chinook salmon exposed to these impacts. But the Corps has failed to explain how this dismissal accounts for what it elsewhere (and in other decisions) paints as a significant number of fall chinook that overwinter in the reservoirs. Nor does this explanation account for the potentially large number of ESA-listed Snake River steelhead that are also present in the reservoirs during this time, including those moving between reservoirs.10

The Corps’ attempt to dismiss impacts to chinook based on the belief that they may be found in Little Goose or other reservoirs (a belief for which they offer no evidence and which at least partially contradicts the predictions of benefits from shallow-water habitat created by dredge spoils) highlights the Corps’ willingness to parse and localize the impacts of dredging when it comes to fish, but not to do so when it comes to estimating benefits from these channel maintenance. In other words, while the Corps seeks to downplay the harmful impacts of dredging through limiting the scope of its analysis, it does not examine the alleged benefits of its proposed actions in the context of the relatively small amount of freight that comes from the portion of Lower Granite pool where it seeks to dredge. Instead, it arbitrarily relies on a far more sweeping scope to allege benefits from the continued channel maintenance.

We have also explained that dredging will also destroy or adversely modify suitable spawning habitat for fall chinook. See DEIS Cmts. at 14. The Corps asserts the same “work-window” response to this issue. See App’x G at G-88. But this response continues to ignore potential impacts of dredging and other activities on spawning habitat for Snake River Fall chinook. The Corps’ assertion that it will complete these surveys before dredging and reinitiate consultation if any redds are found, see App’x G at G-88, does not account for the fact that dredging will destroy critical habitat suitable for spawning even if no redds are found in the snapshot survey the Corps promises to conduct.

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10 The Corps’ “work window” explanation also does not address the potential impacts to ESA-listed white sturgeon and white sturgeon habitat, both of which are present in the areas the Corps seeks to dredge.
Moreover, although it is unclear – based on the Corps’ schizophrenic treatment\(^\text{11}\) – whether the Corps believes that the shallow water habitat created by disposal of dredge spoils is intended to mitigate or offset the impacts to ESA listed fish, the FEIs fail to address the concerns raised by our organizations and other entities about the efficacy of that habitat.

Finally, the Corps has failed to follow the requirements of the Clean Water Act for its dredging proposal. Contrary to the Corps’ insistence that it need not complete a full public interest review under § 404 of the Clean Water Act, there is nothing in the Act or the case law that permits the Corps to rely on the authorizing legislation – or continuing appropriations for the project – as satisfying that requirement. The Corps must conduct a full public interest review and satisfy all requirements of § 404(b) of the Clean Water Act before it may proceed with its proposed “immediate need” dredging.

VI. THE FEIS FAILS TO IDENTIFY AND ADEQUATELY ANALYZE CUMULATIVE IMPACTS.

While the FEIS contains several additional pages listing activities that the Corps believes may cause cumulative impacts, merely listing such actions is not the same as considering their cumulative impacts. For example, while the Corps finally acknowledges the existence of the McCoy unit facility, it provides no detail on the actual socioeconomic effects this and other facilities have and will continue to have in the future. See \textit{infra} at Section IV (discussing impacts and significance of this facility on cargo volumes in the river). \textit{But see} FEIS at 4-84 (asserting – contrary to the existing evidence and without any explanation – that this facility is somehow unlikely to divert grain volume from the barge corridor).\(^\text{12}\)

Similarly, while the Corps vaguely alleges that “information available” shows ongoing and potential future economic effects to the Lewiston and Clarkston area due to the current condition of the navigation channel, FEIS at 4-78, it presents absolutely no data to demonstrate what those effects might be, whether they are transitory or expected to increase or decrease in the future, or whether any of those effects may be reasonably foreseeable.\(^\text{13}\)

\(^\text{11}\) On the one hand, the Corps emphasizes that this habitat is not intended to mitigate for the impacts of dredging, see App’x G at G-148, but notes elsewhere that habitat creation was developed to “offset” the negative impacts of dredging. \textit{Id.} at G-175.

\(^\text{12}\) The FEIS similarly notes the potential significant expansion of Columbia Grain’s storage facility at the Port of Garfield’s facility far downstream of the primary area proposed for dredging, FEIS at 4-81, but fails to provide any additional detail or any assessment of what this would mean for grain volumes on the river, let alone whether dredging far upstream from this facility would provide any benefits in light of this reasonably foreseeable development.

\(^\text{13}\) As discussed elsewhere in these comments and in the attached Report from Natural Resources Economics, \textit{see infra} Section IV, this lack of any information is just one of the many problems created by the Corp’s wholesale refusal to examine the full scope and extent of the economic impacts of the alternatives in the FEIS.
The Corps also fails to address the cumulative effects of continued navigation – and the interrelated continued existence of the four Lower Snake River dams – on a host of resources. There is no dispute that the continued existence and operation of the Lower Snake River dams has had and will continue to have a devastating impact on Snake River salmon, steelhead, lamprey, and other species. As discussed previously, those impacts are magnified in the context of continuing climate change, and climate change itself will have reasonably foreseeable impacts of the frequency and volume of the sediment the Corps will need to manage in the upper portion of the Snake River near the confluence. The Corps fails to present any credible information, however, on those impacts, or how its proposals to maintain a waterway affect those resources, or how its alternatives may be affected by these impacts. As numerous courts have made clear, the Corps must evaluate the potential additive impacts of future actions and environmental conditions. See Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1379 (9th Cir. 1998) (NEPA requires that a cumulative impacts analysis provide “some quantified or detailed information” because “[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide.”).

CONCLUSION

As detailed throughout these comments, the Corps has continued to pursue an approach that betrays an apparent desire to dredge the river – this winter and into the future – without regard to whether the investment is worth it, without considering the direct, indirect, and cumulative impacts of doing so, and while impermissibly dismissing alternatives to its preferred approach. While the agency appears committed to its current path, we urge the Corps to take a step back and reexamine the flawed biological and economic assumptions that it carries forward in the FEIS, and decline to adopt its preferred (or any other listed) alternative. Given the amount of resources and time the Corps has taken to produce its business-as-usual approach, we would urge the Walla Walla District to turn over any further such analysis to independent parties.

If you have any questions about these comments, or would like to discuss any matter discussed in these comments, please contact any of the undersigned.

Sincerely,

/s/

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