

IMPROVING THE HYDROPOWER LICENSING PROCESS

HEARING BEFORE THE SUBCOMMITTEE ON ENERGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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¹Mr. Oliver did not answer submitted questions for the record by the time of printing.

IMPROVING THE HYDROPOWER LICENSING PROCESS

THURSDAY, JUNE 7, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 11:04 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman of the subcommittee) presiding.

Members present: Representatives Upton, Olson, Shimkus, Latta, Kinzinger, Griffith, Johnson, Long, Bucshon, Mullin, Walberg, Duncan, Walden (ex officio), Rush, McNerney, Peters, Green, Doyle, Castor, Sarbanes, Welch, Tonko, Loeb sack, Kennedy, and Pallone (ex officio).

Also present: Representative McMorris Rodgers.

Staff present: Mike Bloomquist, Staff Director; Samantha Bopp, Staff Assistant; Kelly Collins, Legislative Clerk, Energy/Environment; Wyatt Ellertson, Professional Staff Member, Energy/Environment; Margaret Tucker Fogarty, Staff Assistant; Jordan Haverly, Policy Coordinator, Environment; Mary Martin, Chief Counsel, Energy/Environment; Sarah Matthews, Press Secretary; Drew McDowell, Executive Assistant; Brandon Mooney, Deputy Chief Counsel, Energy; Mark Ratner, Policy Coordinator; Annelise Rickert, Counsel, Energy; Peter Spencer, Senior Professional Staff Member, Energy; Jason Stanek, Senior Counsel, Energy; Austin Stonebraker, Press Assistant; Hamlin Wade, Special Advisor for External Affairs; Everett Winnick, Director of Information Technology; Jean Fruci, Minority Policy Advisor, Energy and Environment; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Member Services, and Outreach; and Catherine Zander, Minority Environment Fellow.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Good morning, everyone.

Good morning again to you, Mr. Shimkus. He and I sat together for the last couple hours at our Republican conference.

Today, the Energy Subcommittee—you'll read about it, right—the Energy Subcommittee is going to examine the benefits of our Nation's hydroelectric resources and how we can improve upon the existing framework to more efficiently license and relicense non-

Federal hydropower projects in the U.S. and to help us better understand this complex and multi-agency process, we are joined by a great panel of experts representing five agencies that play a significant role in the hydro licensing process. So thank you for being here and appreciate you submitting your testimony to us in advance.

Although the Nation's first hydroelectric plant began generating electricity back in 1882 in Wisconsin, we have been served by a dependable fleet of hydropower dams, many of which have been in operation since the early 1900s.

Nearly 8 percent of the country's electricity is now produced by renewable hydro and that number has the potential to substantially grow in coming years as the demand for clean energy increases and as advancements in hydro technologies still occur.

While the energy industry is in the midst of a debate regarding whether coal and nuclear resources should be compensated for their baseload characteristics, it is easy to overlook that hydro produces a significant amount of clean, zero emissions baseload electricity. Hydro also contributes to the flexible and reliable operations of the electric grid by providing more than just energy and capacity.

Hydro facilities provide many ancillary services. In fact, the old-fashioned pumped-storage infrastructure which has been contributing to the grid since the 1920s closely resembles today's newer energy storage and battery technologies.

Setting aside the many benefits that affordable hydro provides to our economy and national security, the focus of today's hearing relates to how non-Federal hydro projects are licensed and how that process can in fact be improved.

As the lead agency for licensing, FERC is authorized by the Federal Power Act to review proposals for the construction of hydro facilities as well as to oversee the operations and safety of hydro facilities over their license term, ranging from 30 to 50 years.

However, the licensing of new hydro and the relicensing of existing facilities requires extensive consultation with a number of resources and agencies at the Federal, State, and local levels.

Those agencies, including NOAA, the Corps of Engineers, EPA, the U.S. Fish and Wildlife, plays an important role in lending their expertise and evaluating a range of impacts that a hydro project may have on the natural environment.

Their collective analysis assists FERC in the preparation of an EIS and the input of these cooperating agencies can influence the mandatory conditions that a hydro developer must agree to follow in order to receive a license approval from FERC.

Unfortunately, we have heard of a number of instances where resource agencies are failing to cooperate with FERC by withholding necessary authorizations to allow the project to proceed.

And while a typical relicensing action ought to take about 5 years, it is not uncommon for the project to stretch much longer. Just last month, FERC Chairman McIntyre provided us with a long list of hydro projects that are waiting for other agencies to act before FERC can even issue a decision.

Too frequently, FERC cannot take final action because other agencies such as the National Marine Fisheries Service or the Fish

and Wildlife, et cetera, have not completed the consultation pursuant to the Endangered Species Act.

In other instances, FERC has been waiting years for a State agency to issue a water quality certification under section 401 of the Clean Water Act. In one case, FERC completed the NEPA review in 2004, but they are still waiting on approvals from a California State agency and Fish and Wildlife. Obviously, that's 14 years.

We can't allow important infrastructure projects as hydro to fall victim to an endless bureaucratic process. It's not fair. I am optimistic that these agencies will make progress towards improving their coordination and the timely processing of environmental reviews.

Notably, the agencies appearing today, along with many others, signed an MOU a couple months ago to seek a cooperative relationship and expedite authorizations of major infrastructure projects, such as hydro facilities.

So we welcome your attendance today.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Good morning. Today, the Energy Subcommittee will examine the benefits of our Nation's hydroelectric resources and how we can improve upon the existing framework to more efficiently license and relicense non-Federal hydropower projects in the United States. To help us better understand this complex and multiagency process, we are joined by a panel of experts representing five agencies that play a significant role in the hydro licensing process. Thank you for being here to testify this morning.

Although the Nation's first hydroelectric plant began generating electricity in 1882 in Wisconsin, next door in Michigan we have been served by a dependable fleet of hydropower dams—many of which have been in operation since the early 1900s. Nearly 8 percent of the country's electricity is now produced by renewable hydropower. That number has the potential to substantially grow in coming years as the demand for clean energy increases, and as advancements in hydro technologies occur.

While the energy industry is in the midst of a debate regarding whether coal and nuclear resources should be compensated for their baseload characteristics, it is easy to overlook that hydropower produces a significant amount of clean, zero emissions, baseload electricity. Hydropower also contributes to the flexible and reliable operations of the electric grid by providing more than just energy and capacity. Hydropower facilities provide many ancillary services. In fact, the old-fashioned pumped-storage infrastructure which has been contributing to the grid since the 1920s closely resembles today's newer energy storage and battery technologies.

Setting aside the many benefits that affordable hydropower provides to our economy and national security, the focus of today's hearing relates to how non-Federal hydropower projects are licensed and how this process can be improved. As the lead agency for licensing, the Federal Energy Regulatory Commission is authorized by the Federal Power Act to review proposals for the construction of hydropower facilities, as well as to oversee the operations and safety of hydro facilities over their license term, ranging from 30 to 50 years.

However, the licensing of new hydropower facilities and the relicensing of existing facilities requires extensive consultation with various resources agencies at the Federal, State, and local levels. Those agencies, including NOAA, the Army Corps of Engineers, EPA, and the U.S. Fish and Wildlife Service play an important role in lending their expertise and evaluating a range of impacts that a hydro project may have on the natural environment. Their collective analysis assists FERC in the preparation of an Environmental Impact Statement (or "EIS"), and the input of these "cooperating agencies" can influence the mandatory conditions that a hydro developer must agree to follow in order to receive a license approval from FERC.

Unfortunately, we have heard of some instances and examples where resource agencies are failing to cooperate with FERC by withholding necessary authorizations to allow the project to proceed. While a typical relicensing action should take

approximately 5 years according to FERC, it is not uncommon for the process to stretch much longer. Just last month, FERC Chairman McIntyre provided me with a long list of hydro projects that are waiting for other agencies to act before FERC can issue a decision.

Too frequently, FERC cannot take final action because other agencies such as the National Marine Fisheries Service or the Fish and Wildlife Service have not completed its consultation pursuant to the Endangered Species Act. In other instances, FERC has been waiting years for a State agency to issue a water quality certification under section 401 of the Clean Water Act. In one case, FERC completed its NEPA review in 2004, but is still waiting on approvals from a California State agency and Fish and Wildlife. That's 14 years!

We cannot allow important infrastructure such as hydropower projects to fall victim to an endless bureaucratic process—it's simply not fair. I am optimistic, however, that these agencies will make progress towards improving their coordination and the timely processing of environmental reviews. Notably, the agencies appearing today, along with many others, signed an MOU in April seeking to establish a "cooperative relationship" and expedite authorizations of major infrastructure projects, including hydropower facilities.

I look forward to hearing from our agency witnesses on how together we can improve and streamline the existing licensing process and, in turn, encourage the development of new and needed hydropower resources in the United States.

Mr. UPTON. I would ask unanimous consent to put a statement in the record from a colleague not on our committee, Mr. Poliquin, into the record.

Without dissent, it will be part of the record.

And I will yield 5 minutes to the ranking member of the subcommittee, Mr. Rush.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. I want to thank you, Mr. Chairman, for holding today's hearing on improving the hydropower licensing process.

Although, Mr. Chairman, I must admit, this hearing would have been even more helpful if it had occurred before this subcommittee passed legislation making sweeping changes to that licensing process such as H.R. 3043 last year.

Mr. Chairman, as we have previously discussed on many occasions, hydropower is supported by Members on both sides of the aisle.

However, the process for how we license these projects is too important for us to get it wrong by making changes that could lead to negative unintended consequences.

After all, Mr. Chairman, we must remember that hydroelectric licensing can span between 30 to 50 years, and under existing law a license holder can be granted automatic yearly extension in perpetuity without even having to reapply.

Mr. Chairman, any potential changes to this process must include a balanced approach that protects the rights of Federal resource agencies, States, and Native Tribes to impose conditions in accordance with modern environmental law.

As you may remember, Mr. Chairman, I offered such an approach in the form of an amendment in the nature of a substitute to H.R. 3043 on the floor of the House last December.

While that amendment was defeated, I continue to urge the majority to work with our side to address this issue in a bipartisan manner if we are to truly enact legislation that can pass both chambers of Congress and truly help improve the licensing process.

Mr. Chairman, I remain very leery of supporting any approach that will make FERC the lead agency over the licensing process and would require Native Tribes, the States, and Federal resource agencies to pay deference to FERC.

This is especially true when it comes to matters where FERC has absolutely no expertise or statutory authority, including on issues regarding agricultural water use, drinking water protection, fisheries management, and recreational river use.

Initially, Mr. Chairman, in past testimony before this subcommittee we have heard repeatedly that a major cause for the licensing delays was due to the incomplete application that do not include all the pertinent information necessary to issue a final decision while none of the bills previously passed out of this subcommittee have done anything to address this issue.

The minority side, Mr. Chairman, has offered an approach that would address the critical concerns. In the amendment that I offered during the floor debate on H.R. 3043, FERC, and the other Federal resource agencies would be directed to convene a negotiating rulemaking when all stakeholders include State and local government representatives as well as Native Tribes.

These stakeholders would then collaboratively develop a process to coordinate all necessary Federal authorizations and to enable the Commission to make a final determination on a license not later than 3 years of receiving a completed license application.

Mr. Chairman, I continue to oppose any modification, and I look forward to today's hearing, and I want to welcome all the expert witnesses to this subcommittee hearing.

Thank you, and I yield back.

[The prepared statement of Mr. Rush follows:]

PREPARED STATEMENT OF HON. BOBBY L. RUSH

Thank you, Mr. Chairman, for holding today's hearing on improving the hydro-power licensing process.

Although, I must admit that this hearing would have been even more helpful if it had occurred before this subcommittee passed legislation making sweeping changes to the licensing process, such as HR 3043 last year.

Mr. Chairman, as we have previously discussed on many occasions, hydropower is supported by Members on both sides of the aisle.

However, the process for how we license these projects is too important for us to get it wrong by making changes that could lead to negative unintended consequences.

After all, we must remember that hydroelectric licenses can span between 30–50 years, and under existing law a license holder can be granted automatic yearly extensions in perpetuity without ever even having to re-apply.

Mr. Chairman, any potential changes to this process must include a balanced approach that protects the rights of Federal resource agencies, States, and Native Tribes to impose conditions in accordance with modern environmental laws.

As you may remember, Mr. Chairman, I offered such an approach in the form of an Amendment in the Nature of a Substitute to HR 3043 on the floor of the House last December.

While that amendment was defeated, I continue to urge the majority to work with our side to address this issue in a bipartisan manner if we are to truly enact legislation that can pass both chambers of Congress and truly help improve the licensing process.

Mr. Chairman, I remain very leery of supporting any approach that would make FERC the lead agency over the licensing process and would require Native Tribes, the States, and Federal resource agencies to pay deference to the Commission.

This is especially true when it comes to matters where FERC has absolutely no expertise or statutory authority, including on issues regarding agricultural water use, drinking water protection, fisheries management, and recreational river use.

Additionally, Mr. Chairman, in past testimony before this subcommittee we have heard repeatedly that a major cause for licensing delays was due to incomplete applications that do not include all the pertinent information necessary to issue a final decision.

While none of the bills previously passed out of this subcommittee have done anything to address this issue, the minority side has offered an approach that would address this critical concern.

In the amendment that I offered during floor debate of HR 3043, FERC and the other Federal resource agencies would be directed to convene a negotiated rule-making with all stakeholders, including State and local government representatives, as well as Native Tribes.

These stakeholders would then collaboratively develop a process to coordinate all necessary Federal authorizations and enable the Commission to make a final decision on a license not later than 3 years of receiving a completed license application.

Mr. Chairman, I will continue to oppose any modifications to the process that would give priority of our public waterways to industry, over and above the rights and interests of Native Tribes, farmers, fishermen, boaters, and other stakeholders who also rely on our public rivers and streams.

I look forward to engaging today's panelists on the best way forward to improving this process in a fair, balanced, and transparent manner and with that I yield back the remainder of my time.

Mr. UPTON. Gentleman yields back.

The Chair would recognize the chair of the full committee, Mr. Walden, from the good State of Oregon.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you, Mr. Upton. Good morning.

And today's hearing will focus on ways to improve the hydropower licensing process. Hydropower, of course, is the Nation's largest source of clean, domestic, renewable energy.

Unfortunately, as those of us certainly in the West know, the lengthy and unpredictable project licensing process disadvantages hydropower when compared to fossil fuel generation and other renewables, such as wind and solar.

So this committee has defined and identified several ways to improve the permitting processes for hydropower licensing by modernizing the Federal Power Act.

At the same time, the administration has taken promising steps with executive orders to bring greater discipline and accountability in the environmental review and permitting processes.

Now, while these steps help, there is, clearly, more work that needs to be done. That's why we are here today.

We need to make this process more predictable, more transparent, and more efficient.

The purpose of today's hearing is to hear directly from those agencies most closely involved in the hydropower permitting process, to see what specific measures have been taken to increase the efficiency and effectiveness of your respective reviews.

Today's hearing will also allow for a deeper discussion about the benefits of real statutory reforms, such as those that have already passed through this committee and, by the way, through the House floor.

Given what's at stake, I'm optimistic our colleagues in the Senate will eventually be able to pass companion legislation so we can finally get these bills across the finish line.

And, you know, hydropower is, clearly, near and dear to my heart. My district has a lot of the major main stem dams along the Columbia River and certainly up the Snake River as well. Our district is impacted in Oregon and, of course, Washington and Idaho.

In fact, hydropower, mainly from projects of the Federal Government, is often able to supply up to two-thirds of our electricity generation, and I would argue it's also carbon free.

The challenges of utilizing our hydro resources do not end with permitting and licensing, however. Despite decades of thorough science-backed analysis by many of these agencies here with us today, litigation and biology from the bench negatively impacts river operations and our ratepayers.

In fact, this year, the Army Corps and Bonneville Power Administration are spilling water instead of generating power at full capacity.

This all comes at a cost—nearly \$40 million in increased rates to Pacific Northwest electric ratepayers this year alone, according to the Federal agencies that are involved.

And it is not just the rates. BPA invested nearly \$275 million last year in fish projects across the Northwest. This spill, supposedly in the name of fish, undercuts that revenue stream as well.

Now, the House recently passed H.R. 3144. This was legislation led by Cathy McMorris Rodgers, Kurt Schrader, and myself to provide certainty for operations of the hydro system and to protect ratepayers.

So I'm hopeful our colleagues in the Senate will move this legislation forward as well to help tackle the challenges of operating the hydro system.

There is no question that hydropower licensing is complex. There are lots of equities involved. It requires dozens of Federal, State, and local agencies to coordinate and balance a wide range of issues and competing interests, such as electricity production, flood control, Tribal issues, water navigation, and fish and wildlife issues.

Recognizing this complexity, I look forward to hearing from our agency witnesses today—and, again, we thank you for being here—so we can gather together some suggestions on ways to improve the process—the licensing process.

Not to diminish the environmental issues, not to diminish any of that, but just how do we streamline this—how do we make it more efficient—how do we get the answer sooner?

So I thank you for being here.

Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good morning. Today's hearing will focus on ways to improve the hydropower licensing process. Hydropower is the Nation's largest source of clean, domestic, renewable electricity. Unfortunately, the lengthy and unpredictable project licensing process disadvantages hydropower when compared to fossil fuel generation and other renewables, like wind and solar.

This committee has identified several ways to improve the permitting process for hydropower licensing by modernizing the Federal Power Act. At the same time, the

administration has taken promising steps with Executive Orders to bring greater discipline and accountability in the environmental review and permitting process. While there's no silver bullet, there's plenty of room to improve coordination, and to make the process more predictable and transparent.

The purpose of today's hearing is to hear directly from those agencies most closely involved in the hydropower permitting process, to see what specific measures have been taken to increase the efficiency and effectiveness of their respective reviews. Today's hearing will also allow for a deeper discussion about the benefits of real, statutory reforms, such as those that have already passed through this committee and the House Floor. Given what's at stake, I'm optimistic that our colleagues in the Senate will eventually be able to pass companion legislation, so that we can finally get these bills across the finish line.

Hydropower is near and dear to my heart because it supplies the majority of the power that we consume in the Pacific Northwest. In fact, in my home State of Oregon, hydropower, mainly from Federal projects, is often able to supply up to two-thirds of our electricity generation.

The challenges of utilizing our hydro resources do not end with permitting and licensing, however. Despite decades of thorough, science backed analysis by many of the agencies here with us today, litigation and biology from the judicial bench negatively impacts river operations and ratepayers.

This year, the Army Corps and Bonneville Power Administration are spilling water over dams instead of generating power at full capacity. This all comes at a cost. Nearly \$40 million in increased rates to Pacific Northwest ratepayers this year, according to the Federal agencies. And it is not just rates. BPA invested nearly \$275 million last year in fish projects across the Pacific Northwest. This spill—supposedly in the name of fish—undercuts that revenue stream as well.

The House recently passed H.R. 3144—legislation Cathy McMorris Rodgers, Kurt Schrader, and myself worked on to provide certainty for operations of the hydro system and protect ratepayers. I'm hopeful our colleagues in the Senate will move this legislation forward as well to help tackle the challenges of operating this hydro system.

There is no question that hydropower licensing is complex—it requires dozens of Federal, State, and local agencies to coordinate and balance a wide range of issues and competing interests, such as electricity production, flood control, water navigation, fish, and wildlife issues. Recognizing this complexity, I look forward to hearing from our agency witnesses, to gather suggestions on ways to improve the licensing process.

Thank you, I yield back the balance of my time.

Mr. UPTON. The Chair yields back, and I yield now for an opening statement of the ranking member of the full committee, Mr. Pallone from New Jersey, 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

I am glad that we are holding a hydropower hearing with the Federal resource agencies. This is something we have been requesting ever since the committee began to consider changes to the hydropower licensing provisions of the Federal Power Act.

And while we should have heard from these agencies before we moved legislation that fundamentally alters the licensing regime, I do appreciate the chairman convening this hearing today.

And I hope we will follow this up with a hearing with States and Tribal governments on this issue since they are equal and critical stakeholders in this process who should not be ignored.

Hydropower has provided reliable baseload electricity for a century. It's an important source of renewable energy and we certainly want it to continue providing power safely and reliably.

At the same time, we can't ignore the fact that hydropower has major impacts on water quality, water supply and management,

fish and wildlife populations, and other important physical and cultural resources, and we also must recognize that a lot of changes can occur over the period of a 30- to 50-year hydro license.

Just think of the dramatic changes that are possible in weather patterns, population, economic development, and competition for water resources.

These issues must be analyzed and addressed during the licensing process and this is particularly important for facilities that were last licensed before modern environmental laws.

This process will understandably be more complex and contentious. We must also guarantee dam safety and structural integrity are reviewed carefully during the process.

The damage to the Oroville Dam in California last year that led to the evacuation of more than 180,000 people is a wake-up call.

These dams and hydropower facilities are critical infrastructure that require investment and physical maintenance to ensure they are structurally sound and able to handle new conditions created by shifting weather patterns due to climate change.

And I realize that companies and public power entities want faster more efficient decision making on their license application. Dealing with multiple Federal agencies, States, Tribal governments, and other water users is complex and time consuming.

But the fuel these licenses are using—water—is a resource owned by all of us. It's essential for everyone's daily life and since licenses are granted from 30 to 50 years, the process must take proper account of the needs of others who also require the use of that water.

FERC has the difficult task of coordinating all stakeholders in this process, and for the larger older facilities this is an especially difficult task.

It is FERC's responsibility to ensure that license applicants provide all the necessary info for the Commission and all other participating agencies so they can make their decisions.

An application is not complete until all participating agencies have the information required to make a sound analysis and support their decisions under the applicable laws, and I continue to believe that FERC could do more to support the information requests of other Federal agencies, States, and Tribes in these proceedings.

Unfortunately, one of the largest sources of delay continues to be licenses failing to provide complete applications, making it nearly impossible for resource agencies, States and Tribal governments to complete their work on time.

And because the law provides for unlimited automatic 1-year license extensions, licensees failing to provide that info can gain the process to their advantage without jeopardizing their license.

So we need to put an end to this if we are serious about expediting the licensing process.

So, Mr. Chairman, we can have clean water, thriving fisheries, healthy watersheds, good jobs, and affordable hydropower.

But it requires cooperation, collaboration, and the inclusion of all stakeholders in the process, returning to the days when power was the only consideration, and issuing a license will not ensure that our water resources are managed to serve everyone's needs.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

I am glad that we are finally holding a hydropower hearing with the Federal resource agencies. This is something we have been requesting ever since the committee began to consider changes to the hydropower licensing provisions of the Federal Power Act. While we should have heard from these agencies before we moved legislation that fundamentally alters the licensing regime, I do appreciate the chairman convening this hearing today.

I hope we will follow this up with a hearing with States and Tribal governments on this issue, since they are equal and critical stakeholders in this process who should not be ignored.

Hydropower has provided reliable, baseload electricity for a century. It is an important source of renewable energy, and we certainly want it to continue providing power safely and reliably.

At the same time, we cannot ignore the fact that hydropower has major impacts on water quality, water supply management, fish and wildlife populations, and other important physical and cultural resources. We also must recognize that a lot of changes can occur over the period of a 30- to 50-year hydro license. Just think of the dramatic changes that are possible in weather patterns, population, economic development, and competition for water resources. These issues must be analyzed and addressed during the licensing process. And this is particularly important for facilities that were last licensed before modern environmental laws. This process will understandably be more complex and contentious.

We also must guarantee dam safety and structural integrity are reviewed carefully during this process. The damage to the Oroville Dam in California last year that led to the evacuation of more than 180,000 people is a wake-up call. These dams and hydropower facilities are critical infrastructure that require investment and physical maintenance to ensure they are structurally sound and able to handle new conditions created by shifting weather patterns due to climate change.

I realize that companies and public power entities want faster, more efficient decision-making on their license applications. Dealing with multiple Federal agencies, States, Tribal governments, and other water users is complex and time-consuming. But, the fuel these licensees are using—water—is a resource owned by all of us. It is essential for everyone's daily life. Since licenses are granted for 30 to 50 years, the process must take proper account of the needs of others who also require the use of that water.

The Federal Energy Regulatory Commission has the difficult task of coordinating all stakeholders in this process. And, for the larger, older facilities, this is an especially difficult task. It is FERC's responsibility to ensure that license applicants provide all the necessary information for the Commission and all other participating agencies so they can make their decisions. An application is not complete until all participating agencies have the information required to make a sound analysis and support their decisions under the applicable laws.

I continue to believe that FERC could do more to support the information requests of other Federal agencies, States, and Tribes in these proceedings.

Unfortunately, one of the largest sources of delay continues to be licensees failing to provide complete applications, making it nearly impossible for resource agencies, States and Tribal governments to complete their work on time. And, because the law provides for unlimited, automatic 1-year license extensions, licensees failing to provide that information can game the process to their advantage without jeopardizing their licenses. We need to put an end to this if we are serious about expediting the licensing process.

We can have clean water, thriving fisheries, healthy watersheds, good jobs and affordable hydropower. It requires cooperation, collaboration and the inclusion of all stakeholders in the process. Returning to the days when power was the only consideration in issuing a license will not ensure that our water resources are managed to serve everyone's needs.

Mr. PALLONE. I'd like to yield the remainder of my time now to Mr. McNerney.

Mr. MCNERNEY. Well, I thank the ranking member. I thank the chairman for holding this hearing.

Hydropower is an important energy resource but, like all energy resources, it has environmental down sides. A significant benefit, though, of hydropower is that it produces no greenhouse gases.

So the question is do you believe that climate change is a problem or not. If you do, let's work together to minimize the down sides of hydropower.

As Chairman Upton discussed, hydropower licensing and relicensing can take up to a decade of time and \$50 million. Now, that's excessive and will prevent hydropower projects from going forward and that'll also prevent—it'll also help produce more greenhouse gases, which we want to avoid.

So I ask my colleagues to work together on a bipartisan basis and make progress on hydropower licensing and relicensing, and let's not have the majority forcing through a program that will get bogged down in partisan fighting.

Thank you. Mr. Chairman, I yield back.

Mr. PALLONE. Thank you, and I yield back, Mr. Chairman.

Mr. UPTON. The gentleman yields back. Thank you.

All Members' opening statements will be made part of the record again to our panel. Thank you for your statements.

We are going to give you now each 5 minutes to summarize your statement, at which point we will ask questions of both sides.

Mr. Turpin, Deputy Director, Office of Energy Projects from FERC, welcome.

STATEMENTS OF TERRY L. TURPIN, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION; CHRIS OLIVER, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; GREG SHEEHAN, PRINCIPAL DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR; RYAN A. FISHER, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, ARMY CORPS OF ENGINEERS; JOHN GOODIN, ACTING DIRECTOR, OFFICE OF WETLANDS, OCEANS, AND WATERSHEDS, OFFICE OF WATER, ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF TERRY L. TURPIN

Mr. TURPIN. Thank you, sir.

Good morning, Chairman Upton, Ranking Member Rush, and members of the committee.

My name is Terry Turpin and I am Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The office is responsible for taking a lead role in carrying out the Commission's duties and siting infrastructure.

This includes non-Federal hydropower projects, interstate natural gas pipelines and storage, and liquefied natural gas terminals.

Thank you for the opportunity to appear before you today to discuss hydropower permitting and the Commission's processes for conducting the environmental reviews under the National Environmental Policy Act.

As a member of the Commission's staff, the views I express in this testimony are my own and not necessarily those of the Commission or of any individual Commissioner.

The Commission regulates over 1,600 non-Federal hydropower facilities projects at over 2,500 dams, which represents about half of the hydropower-generating capacity in the U.S.

Under the Federal Power Act, the Commission acts as the lead agency for conducting the environmental review for both relicensing actions and for original licenses.

To support these activities, FERC has established procedures to give stakeholders the opportunity to participate in collaborative public proceedings where all significant issues are identified and studied.

The Commission must also ensure compliance with many statutes including the Coastal Zone Management Act, Wild and Scenic Rivers Act, National Historic Preservation Act, Endangered Species Act, and the Clean Water Act.

These statutory requirements, along with those of the Federal Power Act, give multiple agencies a significant role in the licensing process.

The Commission has, for many years, worked closely with other Federal and State agencies to complete reviews of infrastructure projects in an expeditious, coordinated, and transparent manner.

Since fiscal year 2010, the Commission has issued 180 hydropower licenses and small hydropower exemptions authorizing approximately 13 gigawatts of generation capacity.

Earlier this year, Chairman McIntyre entered into the one Federal decision memorandum of understanding with several agencies.

This MOU, which calls for a goal of completing action on all governmental decisions within 2 years, should encourage agencies to redouble their efforts in actively participating in the review process as well as in communicating their analysis needs to each other and to project sponsors so that the review process becomes more predictable, transparent, and efficient.

This concludes my remarks and I'd be happy to answer any questions you have.

[The prepared statement of Mr. Turpin follows:]

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Testimony of

Terry L. Turpin
Director, Office of Energy Projects

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC, 20426

Committee on Energy and Commerce
Subcommittee on Energy
United States House of Representatives

“Improving the Hydropower Licensing Process”

June 7, 2018

Chairman Upton, Ranking Member Rush, and Members of the Subcommittee:

My name is Terry Turpin and I am Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office is responsible for taking a lead role in carrying out the Commission's responsibilities in siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization of liquefied natural gas (LNG) terminals.

I appreciate the opportunity to appear before you to discuss federal infrastructure permitting and the Commission's processes for conducting environmental reviews required under the National Environmental Policy Act (NEPA). As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

Under the Federal Power Act (FPA), the Commission acts as the lead agency for the purposes of complying with NEPA. Consistent with its role as lead agency, the Commission has developed processes to engage Indian Tribes, state and federal agencies, and other stakeholders and provide them the opportunity to identify significant issues regarding proposed infrastructure. The Commission's practices allow for a systematic, efficient, and collaborative process, which has resulted in substantial additions to the nation's infrastructure.

I. The Commission's Hydropower Program

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams pursuant to Part I of the FPA. Aggregately, these projects represent about 56 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Together, public and private hydropower capacity total about eight percent of U.S. electric generation capacity. Since fiscal year 2010, the Commission has issued 180 hydropower licenses and small hydropower exemptions authorizing approximately 13 gigawatts of generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce. The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions (which are actually a simpler form of license) for projects that would be located at existing dams or within conduits, as long as these projects meet specific criteria. Licenses are generally issued for terms of between 30 and 50 years and may be renewed. Exemptions are perpetual and do not need to be renewed.

The Commission has established procedures which allow an applicant to request a review process that it believes best suited to its individual situation. All of these processes, which involve specified procedural steps, are transparent and involve extensive

coordination among the applicant, Commission staff, Indian Tribes, state and federal agencies, and other stakeholders. The three processes are:

- Traditional Licensing Process: best for less complex or controversial projects and is the process used for exemptions;
- Integrated Licensing Process: frontloads issue identification and decisions on information needs to the period before an application is filed and is suited to the more complex or controversial cases; and
- Alternative Licensing Process: allows participants significant flexibility to tailor the licensing process in a manner that can work well for unique, particular circumstances.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, public proceedings, where all significant issues are identified and studied. Commission staff, consistent with the Commission's role as lead agency, develops detailed, thorough environmental analyses, pursuant to the FPA and NEPA. Stakeholders are afforded numerous opportunities to provide the Commission with information, comments, and recommendations.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Coastal Zone Management Act; the Wild and Scenic Rivers Act; the National Historic Preservation Act; the Endangered Species Act; and the Clean Water Act. The statutory requirements of these

acts, along with the FPA, give other agencies a significant role in the licensing process. For example, if a project is located on U.S. lands such as a national forest, section 4(e) of the FPA authorizes the federal land managing agency to impose mandatory conditions to protect those lands. Section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. With respect to exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources.

Under the Endangered Species Act, the Commission is required to consult with the National Marine Fisheries Services or the U.S. Fish and Wildlife Service with respect to threatened and endangered species. In addition, section 401(a)(1) of the Clean Water Act precludes the Commission from issuing final authorization for hydroelectric project construction or operation until the project has first obtained a water quality certification, or a waiver thereof, and requires the Commission to adopt all conditions contained in the water quality certification. There are instances where Commission staff has completed its analysis of a hydroelectric project but final Commission action on the application cannot be taken until issuance by a state, acting under delegated federal authority, of a water quality certification under the Clean Water Act or until endangered species consultation is completed.

In addition to licensing projects and issuing exemptions, the Commission is responsible for ensuring compliance with license and exemption conditions during the life of regulated projects. The Commission also maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

II. Recent Efforts in Process Improvements

The Fixing America's Surface Transportation Act was enacted on December 4, 2015. Title 41 of that act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," issued August 15, 2017, established a federal government policy of providing public transparency, agency accountability, and timeliness regarding environmental review and authorization decisions. On April 9, 2018, Chairman McIntyre, along with the Department of the Interior, Department of Agriculture, Department of Commerce, Department of Housing and Urban Development, Department of Transportation, Department of Energy, Department of Homeland Security, U.S. Army Corps of Engineers, Environmental Protection Agency, and the Advisory Council on Historic Preservation entered into a memorandum of understanding (MOU) on processing environmental reviews and authorization decisions for proposed major infrastructure projects (One Federal Decision MOU). At this point, staff is developing the Commission's implementation plan for submittal to the Office of Management and Budget and the Council on Environmental Quality by the July deadline listed in the One Federal Decision MOU.

To a great extent, the processes envisioned by FAST-41, Executive Order 13807, and the One Federal Decision MOU parallel the Commission's own processes to improve early consultation and to increase transparency of project review. The Commission has for many years worked closely with other federal and state agencies to complete reviews of all

infrastructure projects in an expeditious, coordinated, and transparent manner. The One Federal Decision MOU, which calls for a goal of completing action on all governmental approval decisions within two years, should encourage agencies to redouble their efforts in actively participating in environmental reviews and communicating their analysis needs to each other, and project sponsors, so that the review process is more predictable and transparent.

III. Conclusion

Commission staff remains committed to working with all federal agencies to assist in the successful implementation of these goals and to ensure the most effective processing of energy infrastructure matters before the Commission. This concludes my remarks. I would be happy to answer any questions you may have.

Mr. UPTON. Well, I think you set the record for most time yielded back in my tenure not only as full committee chair but certainly as subcommittee chair as well.

So Mr. Oliver, Assistant Administrator for Fisheries at NOAA, welcome to you. You don't have to beat the record, by the way. But welcome.

STATEMENT OF CHRIS OLIVER

Mr. OLIVER. Thank you, Chairman Upton and Ranking Member Rush, for the opportunity to testify.

NOAA has authorities under the Federal Powers Act and the Endangered Species Act to protect and restore migratory fish and their habitats for new or relicensed FERC hydropower facilities.

With more than a thousand hydropower dams licensed by FERC, we are busy keeping up with the demand to upgrade the Nation's hydropower infrastructure to meet today's environmental standards.

Many migratory fish such as Pacific and Atlantic salmon, need access to both ocean and fresh water habitats to complete their life cycles. When dams block their upstream and downstream passage, migratory fish cannot reproduce, maintain, or grow their populations.

On the West Coast alone, 28 salmonic species are listed under the ESA, many of which interact with hydropower operations and we have relicensed many FERC projects that have allowed for fish passage or other mitigation measures.

The preferred approach for streamlining ESA consultation is to front load the ESA process into FERC's licensing steps.

Use of the pre-filing process improves the quality of hydropower applications filed with the Commission, accelerates the environmental review process, assists participants in assessing the resource impacts with the applicant's proposal, and evaluating reasonable alternatives pursuant to the NEPA requirements.

It also allows participants to reach a negotiated settlement on all issues raised by a hydropower license application.

As one example, on the Clackamas River project, 33 parties signed a negotiated settlement agreement, resulting in the 2010 license renewal.

We have had discussions with other agencies about how to better integrate these ESA consultations into the FERC licensing process.

We are specifically working with Fish and Wildlife Service on our ESA implementing regulations to clarify and streamline Section 7 and Section 4 implementation.

In general, we process ESA actions through three types of consultations—informal, formal, and programmatic. NOAA fisheries is committed to improving the processing time for informal consultations by 25 percent on average nationwide.

In 2017, consultations took an average of 53 days informal—53 days from request to completion of the letter of concurrence.

In the previous 4-year period, these took an average of 122 days, which is an overall improvement of more than 50 percent. In addition, we are also focusing on increasing the use of programmatic consultations and increasing tracking and workforce management to improve time lines.

We are also exploring improvements to our formal consultation process, which we intend to implement over the coming year.

Building on our commitment to streamlining this process, we are also committed to implementing the provisions of EO 13807, the one Federal decision memorandum of understanding.

We are currently in the process of developing an implementation plan that details specific actions we are planning to take to ensure the success of that policy.

These include a centralized process for monitoring our authorizations and consultations, internal process improvements to reduce time lines, and particularly enhance coordination with lead and other cooperating agencies. We have a strong interest in avoiding unnecessary delays in the FERC licensing process.

To cite a recent example of exercising flexibility in that licensing process pursuant to major projects on the Tuolumne River in California, in January of this year we chose not to require fish passage in that license renewal process.

Rather, we reserved our mandatory fish passage conditioning authority under the FPA for the La Grange and Don Pedro projects until December of 2025. This reservation authority aligns with the time frames and conditions in the San Joaquin River Restoration Settlement Act and facilitates coordination of potential future fish passage actions for both Central Valley steel head and Central Valley's spring-run Chinook.

When FERC issues a new license, they will decide whether to include NOAA's fish passage planning recommendations. We believe this is an example of carefully weighing the significant cost of fish passage against potential benefits while considering alternative mitigation measures through the settlement negotiation process.

In addition, we recently conducted fish passage program review where a diverse external panel considered the effectiveness of our fish passage activities over the past 10 years including those under our hydropower program.

We look forward to receiving the recommendations provided by that panel on potential ways to improve our program effectiveness and we expect to get that reported in the next couple of weeks.

We remain committed to increasing our efficiency and effectiveness in this permitting process and I thank you for the opportunity again to testify and hope to be able to answer any questions that you have.

[The prepared statement of Mr. Oliver follows:]

**WRITTEN TESTIMONY BY CHRIS OLIVER
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**ON
ENVIRONMENTAL REVIEW AND PERMITTING PROCESS
BEFORE THE**

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY
U.S. HOUSE OF REPRESENTATIVES**

June 7, 2018

Chair and Members of the Subcommittee, I am Chris Oliver, Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. Thank you for inviting me to testify today on environmental review and permitting processes. NOAA Fisheries is responsible for the stewardship of the nation's ocean resources and their habitat. We provide vital services for the nation: productive and sustainable fisheries, safe sources of seafood, the recovery and conservation of protected resources, and healthy ecosystems—all backed by sound science and an ecosystem-based approach to management.

Many migratory fish, such as Pacific and Atlantic salmon, American shad, river herring, American eel, and Atlantic and shortnose sturgeon need access to both the ocean and freshwater habitat to complete their life cycles. When barriers such as hydropower dams block their upstream and downstream passage, migratory fish cannot reproduce and maintain or grow their populations. NOAA Fisheries has authorities under the Federal Power Act (FPA) and Endangered Species Act (ESA) to protect and restore migratory fish and their habitats for new or

relicensed Federal Energy Regulatory Commission (FERC) hydropower facilities. This work supports the sustainability of economically important commercial and recreational fisheries and aids the survival and recovery of federally threatened and endangered fish. With more than 1,000 hydropower dams licensed by FERC, NOAA Fisheries is busy keeping up with the demand to upgrade the nation's hydropower infrastructure.

Overview of Permitting Processes/Timelines and Streamlining Efforts

At present, a typical FERC relicensing, for a license which lasts 30-50 years, takes about 5 years to complete under FERC's default Integrated Licensing Process (ILP). The ILP is intended to streamline licensing by providing a predictable, efficient, and timely process that continues to ensure natural resource protections. The ILP establishes time frames to complete process steps for all stakeholders, including FERC and NOAA.

Under the ILP, the applicant must start the relicensing process with FERC five to five and a half years before the current license is set to expire. The relicensing process is divided into two distinct parts: 1) pre-license application activity and 2) post-license application filing activity. Pre-license application activity encompasses the first three to three and a half years of the process and is highly focused on project scoping and scientific studies. Post-license application filing activity encompasses the final two years of the process and is highly focused on fulfilling National Environmental Policy Act (NEPA) requirements, parties' compliance with license terms and conditions (including NOAA Fisheries' mandatory fish passage measures and

recommended habitat improvements), ESA consultation, and state water quality certification (under the Clean Water Act).

As with other federal action agencies, FERC has a responsibility under the ESA, in consultation with NOAA Fisheries and/or the Fish and Wildlife Service, to ensure that their actions are not likely to jeopardize the existence of an endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. NOAA Fisheries' consultation work involves a great deal of collaboration with federal action agencies, including FERC, to ensure NOAA Fisheries understands the scope and scale of their actions in order to effectively address the impacts and identify appropriate mitigation measures. The operation of dams can have significant effects on migratory fish stocks, including those that are listed as threatened or endangered under the ESA. Therefore, NOAA Fisheries typically issues biological opinions for FERC actions on hydropower projects. To the extent FERC incorporates NOAA Fisheries' mandatory fish passage measures and recommended habitat improvements under the FPA into their proposed action, NOAA Fisheries evaluates these measures when considering the effects of FERC's action on endangered or threatened species during consultations required by section 7(a)(2) of the ESA.

Consistent with the principles of E.O. 13807, NOAA Fisheries' preferred approach for streamlining ESA consultation in FERC proceedings is to front-load the ESA process into FERC's licensing steps. Use of the pre-filing process improves the quality of hydropower applications filed with the Commission, accelerates the environmental review process, assists the participants in addressing the resource impacts of the applicant's proposal and evaluating

reasonable alternatives pursuant to NEPA, and allows participants to reach a negotiated settlement on all issues raised by a hydropower license application. Early resolution of issues can provide for earlier implementation of recommended environmental measures and allow the licensee to plan for anticipated license conditions. Early resolution of issues often results in less time and expense for applicants. Because the new license will contain measures to protect NOAA Fisheries' trust resources and mitigate impacts, NOAA Fisheries has a strong interest in avoiding unnecessary delays in the licensing process.

In general, NOAA Fisheries processes ESA actions through three types of consultations: informal consultations, formal consultations, and programmatic consultations covering thousands of projects at one time. NOAA Fisheries completes 1,200-1,500 individual informal consultations per year and approximately 315 formal consultations. In addition, NOAA Fisheries addresses approximately 22,000 actions through over 100 programmatic consultations. The approximate average time to review actions covered by programmatic consultations is 10 days. For informal consultations, 36% are currently completed within 30 days and 61% are completed within 90 days. There are approximately 46 informal consultations that have been open for over 200 days. The average time to complete a formal consultation is 211 days.

As part of the Department of Commerce's review of agency actions pursuant to E.O. 13783, NOAA Fisheries has committed to improving the processing time for informal ESA consultations by 25% on average nationwide. We chose to focus on the informal consultation

process leading to the development of letters of concurrence¹ because about three-quarters of NOAA Fisheries' consultation work is completed through this process. In August 2017, we implemented an expedited approach to letters of concurrence. The purpose of this approach is to be able to agree with the federal action agency's conclusion more quickly when they provide sufficient information to do so. For calendar year 2017, NOAA's ESA section 7 informal consultations took an average of 53 days from request to completion of the letter of concurrence. From 2013-2016, our ESA section 7 informal consultations took an average of 122 days from request to completion. This is an overall improvement of more than 50% nationally.² In addition, we are also focusing on increasing the use of programmatic or batched consultations, increased tracking, and workforce management to improve timeliness. We are also exploring improvements to our formal consultation process which we intend to implement over the coming year.

Executive Order 13807 and One Federal Decision

Building on our commitment to streamlining our environmental review processes, NOAA is also committed to implementing the provisions of Executive Order 13807 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure) and the One Federal Decision Memorandum of Understanding signed by the Secretary on behalf of the Department of Commerce. Under the One Federal Decision approach established in E.O. 13807, federal agencies with a role in the environmental review and permitting process for a

¹ Letters of concurrence are issued for actions where the effect is determined to be insignificant, discountable, or wholly beneficial on ESA-listed species.

² Due to the nature of the ESA section 7 program, future results will vary from quarter to quarter, and year-to-year based on the number, scope, and complexity of the consultation requests we are working on at any one time.

major infrastructure project are directed to develop an environmental review and authorization decision schedule for that project. For each major infrastructure project, agencies will work together to develop a single permitting timetable for the necessary environmental review and authorization decisions, prepare a single environmental impact statement (EIS), sign a single record of decision (ROD), and issue all necessary authorization decisions within 90 days of issuance of the ROD, subject to limited exceptions. E.O. 13807 also sets a goal for agencies to reduce the time to complete environmental reviews and authorization decisions to an agency average of not more than two years from publication of a Notice of Intent (NOI) to prepare an EIS. NOAA is currently in the process of developing a One Federal Decision implementation plan that details specific actions we are planning to take to ensure the success of the policy. These actions include creating a centralized process for monitoring our authorizations and consultations, internal process improvements to reduce permitting timelines, and enhanced coordination with lead and other cooperating agencies.

Non-federal hydropower projects that meet the E.O.'s definition of a major infrastructure project can benefit from the provisions of the One Federal Decision MOU. NOAA serves primarily as a cooperating agency, rather than a lead agency, in environmental review processes for major infrastructure projects. NOAA will work cooperatively with our federal agency partners and project sponsors to ensure that the goals of the MOU, including providing a more predictable, transparent and timely federal review and authorization process, eliminating duplication of effort among agencies, and promoting good environmental, community and economic outcomes, are achieved for eligible hydropower projects.

What's Working?

NOAA has a strong interest in avoiding unnecessary delays in the FERC licensing process. NOAA recognizes the critical importance of our national energy infrastructure and the potential economic and safety implications of delays caused by the environmental review and permitting process. As mentioned above, NOAA's preferred approach is to "front-load" our ESA consultations into FERC's licensing steps, in particular through engagement in the pre-filing consultation process. We have found that our engagement in the pre-filing process improves the quality of hydropower applications filed with FERC, accelerates the environmental review process, assists other participants in addressing resource impacts of the applicant's proposal, and reasonable alternatives pursuant to NEPA, and allows participants to reach a negotiated settlement on all issues raised by a hydropower license application. Early resolution of issues often saves the applicants both time and money in the overall FERC licensing process.

The Clackamas Hydroelectric Project (FERC No. 2195) is one example of many that highlights the benefits of front loading ESA consultations into a FERC license proceeding. Portland General Electric owns and operates five dams and four hydroelectric plants associated with this project that affect more than 100 miles of the Clackamas River in Oregon. A project of this size and scope naturally affects the interests of many stakeholders, including multiple federal and state agencies, local municipalities, tribes, and non-governmental organizations. Each of these parties had objectives that needed to be addressed as part of the FERC license proceeding, potentially setting the stage for a lengthy and combative relicensing process. However, all parties committed early on in the process to resolving issues collaboratively, enabling a

negotiated settlement on the Clackamas Hydroelectric Project that achieved a shared outcome supported by all. NOAA worked with Portland General Electric to include information about the needs of potentially affected ESA-listed salmon and steelhead species (Upper Willamette River Chinook as well as Lower Columbia River spring Chinook, coho, and steelhead) in FERC's pre-filing consultation. NOAA also collaborated with Portland General Electric to identify studies to determine the project's impacts on ESA-listed species as well as the benefits of the settlement's proposed enhancements to fish and wildlife. In total, 33 parties signed the settlement for the Clackamas Hydroelectric Project in March 2006. The settlement included \$120 million worth of enhancements for fish and wildlife which have significantly improved fish-passage efficiencies in the system and enhanced the population diversity of the ESA-listed species. The settlement also provided increased regulatory assurances for Portland General Electric. Once the State of Oregon's water certificate was issued for this project in June 2009, NOAA issued a Biological Opinion, and FERC granted a new project license in December of 2010.

Another example of a coordinated and streamlined federal effort is ongoing on the Columbia River, where Douglas and Chelan County Public Utility Districts (PUDs) own and operate three large run-of-river FERC-licensed projects (the Wells, Rocky Reach, and Rock Island hydroelectric projects). In the late 1990s, NOAA listed Upper Columbia River spring-run Chinook salmon and steelhead under the ESA. These listings were followed by more than a decade of litigation relating to the impacts of these projects and other activities on protected Upper Columbia River salmon and steelhead. Despite high tensions in the Upper Columbia River area, NOAA and the Douglass and Chelan PUDs elected to work collaboratively and pursue comprehensive settlements for these projects through three Habitat Conservation Plans

(HCP). These HCPs satisfied the PUD's obligations to protect ESA-listed threatened and endangered fish, protected ecologically and economically important non-listed salmon species, and satisfied the PUD's many other regulatory obligations under the FPA, the Fish and Wildlife Coordination Act, the Pacific Northwest Electric Power Planning and Conservation Act, and Title 77 of the Revised Code of Washington. The HCPs were signed in 2002 by NOAA, FWS, the PUDs, the Washington Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakama Nation, and the Confederated Tribes of the Colville Reservation. In 2003, NOAA issued three ESA Section 10 Incidental Take Permits to the PUDs for a period of 50 years. Based on the strength of the commitments in these HCPs, when FERC requested formal ESA consultation on the amendment of the project licenses in December 2003, NOAA completed and issued biological opinions in just four months. Although the process to develop the HCPs took years to complete, these plans - the first ever for hydroelectric projects in the United States - resolved substantial issues relating to the protection of both ESA-listed and non-listed salmon and steelhead species, provided regulatory assurances to the projects for a period of 50 years, and streamlined the subsequent amendment of the project licenses. These HCP agreements established over 15 years ago helped usher in a renewed spirit of collaboration in the upper Columbia River basin, and the plans are still being successfully implemented by the signatory parties today.

We also recently worked with FERC on the path forward regarding hydroelectric projects along the Tuolumne River, California. NOAA is reserving its right to file prescriptions for mandatory fish passage under the FPA for the La Grange and Don Pedro projects until December 31, 2025. This reservation of authority aligns with timeframes and conditions in the San Joaquin River

Restoration Settlement Act and facilitates coordination of future fish passage actions for both California Central Valley steelhead and Central Valley spring-run Chinook salmon. NOAA has provided fish passage planning recommendations to FERC that are consistent with our goals for recovery of these two threatened species. When FERC issues a new license for these projects, FERC will decide whether to include NOAA's fish passage planning recommendations.

Potential Upcoming ESA Consultations with FERC and Looking Forward

NOAA is actively working with applicants on hydroelectric licenses for four projects in California: the Lassen Lodge Project (FERC No. 12496) on Upper South Fork Battle Creek; the Anderson Dam Project (FERC No. 5737) on Coyote Creek near Silicon Valley; and the La Grange and Don Pedro Projects (FERC No. 14581 and FERC No. 2299) on the Tuolumne River. We anticipate FERC initiating ESA consultations on each of these projects in the near future. We will use the informal ESA consultation process and the existing steps of FERC's pre-filing consultation process to identify and avoid potential conflicts between each project's operations and the needs of ESA-listed species early in the licensing process. We have already participated in numerous meetings to date concerning each of these projects, and have provided the applicants with information on ESA-listed species in the project areas including: (1) species presence and distribution, as well as the location of critical habitat; (2) the need for surveys or studies to examine the effects of the project on ESA-listed species; and (3) appropriate measures for species protection or enhancement.

NOAA Fisheries remains committed to increasing efficiency and effectiveness of our permitting processes. As discussed, the agency is developing and/or implementing multiple program improvements to support faster processing times and reduce burden on applicants. In addition, NOAA Fisheries recently conducted a Fish Passage Program review where a diverse external panel considered the effectiveness of NOAA's fish passage activities over the past ten years, including those under our Hydropower Program. NOAA Fisheries' fish passage activities are managed by various national and regional offices across the country and work to maintain (or improve) access for migrating fish that need to reach riverine habitats to complete their life cycle. We look forward to receiving the recommendations provided by the panel on potential ways to improve our program effectiveness.

This concludes my testimony. Thank you again for the opportunity to testify before your Subcommittee today. I would be happy to answer any questions that you may have.

Mr. UPTON. Thank you very much.

Mr. Sheehan, Principal Deputy Director of U.S. Fish and Wildlife, welcome.

STATEMENT OF GREG SHEEHAN

Mr. SHEEHAN. Thank you, Chairman Upton and Ranking Member Rush and members of the subcommittee for an opportunity to testify today.

My name is Greg Sheehan, Principal Deputy Director of the U.S. Fish and Wildlife Service. I do, again, want to thank you for an opportunity to testify on the important role of hydropower licensing process.

The administration's goal is to streamline regulatory processes to facilitate the development of our infrastructure for energy, transportation, and other uses.

We also recognize our responsibilities to ensure the appropriate conservation objectives of our Nation's fish and wildlife resources as part of review processes established under Federal statutes and serving those resources is important to current and future generations of Americans with their recreational, economic, and cultural values.

The Fish and Wildlife Services' mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

In the licensing of hydroelectric dams, the working together part of our mission includes close and timely coordination with Federal, State, and Tribal partners as well as engagement with project applicants and open communications with the public.

We recognize the role and importance of the Federal Energy Regulatory Commission as they regulate and license non-Federal hydroelectric projects.

FERC authorizes initial construction issues, licenses for operation, and renews licenses every 30 to 50 years. FERC's licensing decisions are guided by the Federal Power Act.

The law directs FERC to, quote, "give equal consideration to the purposes of energy conservation, the protection and mitigation of damage to and enhancement of fish and wildlife, including related spawning grounds and habitat, the protection of recreational opportunities and the preservation of other aspects of environmental quality," end quote.

The Federal Power Act also provides the avenue through which the Fish and Wildlife Services makes recommendations, in some cases prescribes conditions, to conserve fish and wildlife species and mitigate the impact of hydroelectric projects through those species.

Hydroelectric dams span rivers and restrict natural flows. As a result, dams impede fish passage. This includes preventing migratory fish from reaching spawning grounds.

Dams also change water temperature and water levels, which can adversely affect fish. Fish and Wildlife Service's role in the hydropower project licensing process is to recommend or prescribe solutions to restore the impact of those effects while still recognizing the goals of our Nation's clean renewable energy resources.

When we are successful, our recommendations can contribute to species and habitat conservation as well as to energy development and energy production objectives.

Although the review process provides important benefits, it can be complex and lengthy, and there are situations where licenses are delayed as a result.

As the Fish and Wildlife Service works to achieve our conservation mission, we must also recognize the importance of hydropower to the administration's energy objectives.

We are working within the Federal family to make sure we are efficient in implementing the law. One example, as you have heard already today, is President Trump's executive order 13807 establishing discipline and accountability in the environmental review and permitting process for infrastructure.

This executive order includes a framework to coordinate environmental reviews and authorizations under one lead agency. The goal is to facilitate improved coordination and timely decisions.

This April, the Federal agencies involved in the permitting process including the Department of Interior signed an MOU on one Federal decision to implement the executive order and fulfilled the president's goal of completing permitting decisions within 2 years.

Within the Department of Interior we also have been given secretarial direction to streamline time lines and document length for other types of reviews under NEPA.

We are committed to improving the review process to facilitate environmentally sound hydropower operations through timely, transparent, and predictable reviews.

In the review and permitting of complex hydropower projects, delays may occur. But we recognize that there are steps that the Government could take to be more efficient and provide more certainty for the relicensing of hydropower projects.

We appreciate that subcommittee's interest in further improving the process. Thank you for the opportunity to discuss the service's work and the hydropower licensing process.

I would be happy to address any questions that you may have.
[The prepared statement of Mr. Sheehan follows:]

**Testimony of Greg Sheehan, Principal Deputy Director,
U.S. Fish and Wildlife Service, Department of the Interior
before the House Committee on Energy and Commerce, Subcommittee on Energy
on Improving the Hydropower Licensing Process**

June 7, 2018

Good morning Chairman Upton, Ranking Member Rush, and Members of the Subcommittee. I am Greg Sheehan, Principal Deputy Director of the U.S. Fish and Wildlife Service (Service). I appreciate the opportunity to testify today on the Service's role in the hydropower licensing process. It is the goal of the Administration to make the licensing process more efficient so hydropower projects get their licenses faster, while achieving the important conservation objectives that are a part of the review process. These objectives—the conservation of fish, wildlife, and habitat—are important to current and future generations of Americans.

The Service is the longest standing federal fish and wildlife conservation agency, tracing its lineage back to 1871. Our primary responsibility is conservation of fish and wildlife resources for the American public. The Service and other bureaus within the Department of the Interior (Department) are stewards of our nation's natural resources and are committed to the responsible development of those resources, furthering our nation's goal of energy independence. Hydropower is an important component of a diverse and sustainable energy portfolio.

The Service's mission is "working with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people." In the licensing of hydropower projects, "working together" includes close and timely coordination with our federal, state and tribal partners; engagement with project applicants; and open communication with affected communities and the public. When Tribal lands are involved, the Service works directly with the Bureau of Indian Affairs for ensuring that there is an adequate record to support conditions and recommendations for licensing.

The Federal Energy Regulatory Commission (FERC) is the lead federal entity in the regulation of non-federal hydroelectric projects, authorizing initial construction of facilities, issuing licenses for operation, and reviewing license renewals every 30 to 50 years. In licensing decisions, the Federal Power Act (FPA), as amended by the Energy Policy Act of 2005, directs FERC to "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality." The FPA also provides an avenue through which other agencies, such as the Service, engage and provide expertise to the licensing process.

The consideration of fish and wildlife resources, recreational opportunities, and other aspects of environmental quality are valuable to Americans and an important aspect of the licensing renewal process. Energy production and conservation achieved through the licensing of hydroelectric projects is also of great value and a similarly important consideration in the licensing process. The licensing process can be lengthy and there are often delays resulting from the federal and state review for environmental considerations. There are many reasons for such

delays, and some are unavoidable, but we must do better to get licenses renewed more efficiently.

Fish and Wildlife Service Role in the Hydropower Licensing Process

The Service's overall role in the hydropower licensing process is to facilitate the development and approval by FERC of environmentally sound projects. Under the authority of section 10(j) of the FPA, the Service evaluates hydropower license applications and makes recommendations to FERC on measures to mitigate the impacts of project development and operation on fish and wildlife. The FPA, in section 18 of the law, also authorizes the Service to prescribe upstream and downstream fish passage, and those fish passage prescriptions are incorporated into the license by FERC. The Service is engaged in an advisory or consultative role with FERC on nonfederal hydropower projects under a number of other statutory authorities, including the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and Fish and Wildlife Coordination Act, including coordination with the Bureau of Indian Affairs regarding tribal treaty rights and reservation trust natural resources.

In hydropower license reviews, the Service works with project proponents, FERC, other partner agencies, and non-governmental organizations to help avoid and minimize harm to fish and wildlife, and to offset those impacts that are unavoidable. A large portion of the licensing process is devoted to the study plan phase, which provides an opportunity for the license applicant to perform studies to determine the project's effects on natural resources. The Service engages early in the licensing process to request and guide the license applicant to conduct studies related to our trust resources. Information from these studies is critical in informing and providing the scientific basis for the Service's recommendations.

FERC's licensing processes encourage applicants to come to agreement with stakeholders on proposed conservation measures, resulting in a settlement agreement. The Service, along with other agencies and nonfederal stakeholders, often engage in such settlement negotiations with the applicant. Our collaborative engagement with license applicants facilitates timely development and approval of appropriate study plans.

The hydropower project licensing process provides the Service with a significant opportunity to pursue conservation of the nation's wetlands, waterways, and watersheds and the fish and wildlife populations that they sustain. These opportunities include improving instream flows at existing projects, protecting fish from project-induced injury and mortality, conserving threatened and endangered species, providing fish passage to reconnect fragmented river habitats, and managing project-related riparian, wetland, and upland habitats to maintain healthy fish and wildlife populations for the benefit of the public.

Coordination with Partners and the MOU on One Federal Decision

The Service cannot achieve its conservation goals without our federal, state, and tribal partners. Likewise, the Service has a long tradition of working with these partners to support their management objectives. Many states depend on the Service to exercise its authority to prescribe fishways to further the state's fishery management and restoration targets, as fish passage can be a critical component of maintaining a healthy fishery.

To ensure that this important conservation work does not lead to avoidable delays to the detriment of environmentally sound energy production and conservation, the agencies must maximize their coordination and efficiency.

The Departments of the Interior, Energy and Army are all party to a 2015 Memorandum of Understanding (MOU) for Hydropower, which established the Federal Inland Hydropower Working Group composed of 16 federal entities involved in the regulation, management, or development of hydropower resources in rivers and streams of the United States. The Service is a member of the working group and, in that role, participates in fostering and maintaining the interagency relationships established by the MOU.

Last year, in an effort to streamline complex multi-agency reviews for major infrastructure projects, President Trump signed Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure. This executive order includes a framework to coordinate environmental reviews and authorizations under one lead agency, facilitating improved coordination and timely decisions. This April, the federal agencies involved in the permitting process, including the Service, signed a MOU setting out goals under the One Federal Decision framework, to implement the executive order and fulfill the President's goal of completing Federal environmental review and permitting decisions for major infrastructure projects within two years, on average. The Service supports this as it will improve and accelerate the review process for hydropower licensing.

The Service typically carries out environmental reviews at the field level, working closely with license applicants, other DOI agencies, federal partners, tribes and other stakeholders. The Service's local field staff have in-depth knowledge of the ecosystems in which they work and the species that inhabit them, bringing expertise to project reviews to facilitate efficient, project-specific analyses. These field staff are also engaged in their local communities in order to further facilitate coordination in license reviews. By engaging in the relicensing process, the Service is able to contribute to license terms that both fulfill the power needs of local communities and provide significant conservation benefits for species and their habitat.

Additional Efforts to Streamline Environmental Permitting and Reviews

In addition to supporting the President's priorities related to infrastructure, the Service and Department have established priorities to guide our work, including sustainably developing our energy and natural resources, modernizing our infrastructure, supporting tribal land and tribal natural resources, and striking a regulatory balance. We believe that responsible energy development and the conservation of wildlife can go hand in hand through a transparent and efficient permitting process. We are committed to completing environmental reviews in a timely and accountable manner and have taken several actions to do so. For example, our Information for Planning and Consultation (IPaC) online platform allows project applicants to quickly and easily identify Service-managed resources and, in some cases, seek concurrence that a project is not likely to adversely affect ESA-listed species or is consistent with a programmatic ESA consultation. Other efficiencies include recent guidance for expediting ESA consultations for those projects designed to benefit listed species, programmatic consultations that address multiple projects, and large-scale Habitat Conservation Plans that allow for the efficient permitting of numerous covered projects in a geographic area.

The Service is also participating in the Department's efforts to streamline and improve the NEPA-review process under Secretarial Order 3355. By setting target time and page limits for analyses under NEPA, the Service can deliver more timely and consistent reviews. The Service is also improving our NEPA training so that staff can make more structured reviews and better informed decisions under the law.

Conclusion

The Service is focused on building efficiencies into our review and permitting processes that will improve and expedite consideration of many projects, while still delivering on our mission to conserve fish, wildlife, and habitat for the American people. We are committed to improving the environmental review process to facilitate environmentally sound hydropower operations through timely, transparent, and predictable reviews, while ensuring the conservation of our nation's fish and wildlife resources. E.O. 13807 and its implementing MOU on One Federal Decision will facilitate increased coordination and result in more timely decisions. These are important steps in integrating various reviews and facilitating efficient processes across the Federal government.

As highlighted above, the Service is working under our existing authorities to improve the environmental review process for applicants, while ensuring conservation of our trust resources. In the review and permitting of complex hydropower projects, delays are inevitable, but we recognize that there are steps that the Service, and my colleagues on this panel, can take to provide all stakeholders with more efficient and effective reviews, resulting in more certainty for the relicensing of hydropower projects. We appreciate the Subcommittee's interest in further improving this process.

Thank you for the opportunity to discuss the Service's work in the hydropower licensing process. I would be happy to address any questions that you may have.

Mr. UPTON. Thank you.

Mr. Fisher, Principal Deputy Assistant Secretary of the Army Corps of Engineers, thank you. Welcome, sir.

STATEMENT OF RYAN A. FISHER

Mr. FISHER. Thank you, Mr. Chairman, Ranking Member Rush, distinguished members of the subcommittee.

Thank you for the opportunity to testify before you today to discuss the U.S. Army Corps of Engineers' hydropower program.

Like the chairman said, my name is Ryan Fisher. I am the Principal Deputy Assistant Secretary of the Army for Civil Works. Army Corps is the Nation's largest producer of hydropower.

In total, the Corps owns 715 dams and has constructed hydropower projects at 75 of those, generate 353 generating units at a total capacity of over 21,000 megawatts.

In addition, non-Federal interests have constructed hydropower projects at 68 other Corps-owned dams. These projects contain 199 generating units and produce a total capacity of 2,500 megawatts.

In 2014, the Department of Energy released its non-powered dam resource assessment which listed the top 100 dams who were most likely to have the potential for commercial hydropower.

Of those 100 dams, 81 are owned by the Corps of Engineers. In fiscal years 2016 and 2017, the Corps supported the development of non-Federal hydropower at 36 of its dams.

In addition to these active projects, there are approximately another 60 planned hydropower projects. In 2016, the Corps and FERC renewed their MOU on non-Federal hydropower project development.

In addition to renewing mutual commitment to early involvement and proactive participation, the two agencies laid out a synchronized two-phased environmental review process to be used during non-Federal hydropower development at Corps-owned dams.

This MOU reflects the commitment by both agencies to work together to facilitate non-Federal development of hydropower projects at Corps-owned dams when it is appropriate.

Section 14 of the Rivers and Harbors Act of 1899—it's often referred to as Section 408—provides the—as amended, provides the basis for the Corps review of requests by non-Federal interests to construct a hydropower project at a Corps-owned dam.

Section 408 provides the secretary of the Army the authority upon the recommendation of the chief of engineers to grant permission to other entities for the permanent or temporary alteration or use of any Corps civil works project.

In order to address concerns we have heard from the public about the 408 process. The Corps has already implemented a few improvements.

For instance, Section 408 decisions are being delegated to the lowest level possible. This has resulted in more than 95 percent of such decisions being made at the Army Corps district level.

Additionally, the Corps has clarified when Section 408 permission is or is not required, and it's further clarified when the requirements of Section 408 may be met by another Corps authority or process, which has resulted in the reduction of redundancies.

The Corps recognizes the importance of establishing a one Federal decision striction for environmental reviews throughout its program with the goal of it shortening environmental review time lines will still protecting the environment, including the need to eliminate redundance and unnecessary reviews, concurrences, and approvals as well as the importance of firm deadlines to complete review and make timely decisions.

As a member of the Federal Permitting Improvement Steering Council, which facilitates the statutory responsibilities identified in the FAST-41 Act, the Army works with fellow council members to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covering infrastructure projects.

In addition, the Corps is working to incorporate the objectives as FAST-41 and the Executive Order 13807, one Federal decision, into its directives, its manuals, its policies, and plans.

For example, where FERC is the lead agency on a proposed Federal action that will also require a Corps approval or permit, the Corps works closely with FERC as a cooperating agency under NEPA.

This enables the Corps to ensure that the information prepared by FERC is able to support a decision by the Corps under its Section 408 authority and any other Clean Water Act permits that might be applicable.

U.S. Army Corps of Engineers is responsible for the dams that it owns and operates. We are consistent with the other authorized purposes of this infrastructure and other applicable law.

The Corps stands ready to support the needs of non-Federal hydropower development.

This concludes my testimony, Mr. Chairman. I thank you for being here and I look forward to answering any questions you might have.

Thank you.

[The prepared statement of Mr. Fisher follows:]

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT OF

RYAN A. FISHER

**PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE ARMY
FOR CIVIL WORKS**

BEFORE

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

IMPROVING THE HYDROPOWER LICENSING PROCESS

JUNE 7, 2018

Mr. Chairman and distinguished members of the Subcommittee:

I am honored to testify before you today to discuss the U.S. Army Corps of Engineers (Corps) hydropower program. I am Ryan Fisher, Principal Deputy Assistant Secretary of the Army for Civil Works.

The Corps is the Nation's largest producer of hydropower. The Corps owns 715 dams. The Corps has constructed hydropower projects at 75 of its dams, with 353 generating units and a total capacity of over 21,000 megawatts (MW). In addition, non-Federal interests have constructed hydropower projects at 68 other Corps owned dams. These 68 projects contain 199 generating units with a total capacity of 2,500 MW.

In 2014, the Department of Energy released its Non-Powered Dam Resource Assessment, which listed the top 100 dams that were most likely to have the potential for commercial hydropower development. Of these 100 dams, 81 are owned by the Corps. In Fiscal Years 2016 and 2017, the Corps supported the development of non-Federal hydropower at 36 of its dams. In addition to these active projects, there are approximately 60 other planned projects.

The Corps and FERC renewed, in 2016, their Memorandum of Understanding on Non-Federal Hydropower Project Development. In addition to renewing mutual commitment to early involvement and proactive participation, the two agencies laid out a synchronized, two-phased, environmental review process to be used during non-federal hydropower development at Corps-owned dams. This MOU reflects the commitment by both the Corps and FERC to cooperatively work together to facilitate non-federal development of hydropower projects at Corps owned dams where appropriate.

Section 14 of the Rivers and Harbors Act of 1899, as amended, and codified in 33 USC 408 (Section 408) provides the basis for the Corps review of requests by non-Federal interests to construct a hydropower project at a Corps owned dam. Section 408 provides that the Secretary of the Army may, upon the recommendation of the Chief of Engineers, grant permission to other entities for the permanent or temporary alteration or use of any Corps Civil Works project. The Corps also has implemented the following improvements to the Section 408 review process: delegation of Section 408 decisions to the lowest level possible (resulting in more than 95% of Section 408 decisions being made at the Corps district level) and further clarifying when Section 408 permission is required, when Section 408 permission is not required, and when the requirements of Section 408 may be met by another Corps process and/or authority (resulting in the reduction of redundancies).

The Corps recognizes the importance of establishing a "one federal decision" structure for environmental reviews throughout its program, with the goal of shortening environmental timelines to two years on average while still protecting the environment, including the need to eliminate redundant and unnecessary reviews, concurrences and approvals, as well as the importance of firm deadlines to complete reviews and make decisions.

As a member of the Federal Permitting Improvement Steering Council (Permitting Council), which facilitates the statutory responsibilities identified in Title 41 of the Fixing America's Surface Transportation Act (FAST-41), the Army works with fellow Council members to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects. In addition, the Corps is working to incorporate the objectives of FAST-41 and Executive Order (EO) 13807 "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" into its directives, manuals, policies and plans, as applicable and to the extent practicable. For example, where FERC is the lead agency on a proposed Federal action that will also require a Corps approval or permit, the Corps works closely with FERC as a cooperating agency under NEPA. This enables the Corps to ensure that the information prepared by FERC is able to support a decision by the Corps under its Section 408 authority and any Clean Water Act permits as applicable.

The U.S. Army Corps of Engineers is responsible for the dams that it owns and operates. Where consistent with the other authorized purposes of this infrastructure and other applicable law, the Corps stands ready to support the needs of non-Federal hydropower developers.

This concludes my testimony and I look forward to answering any questions you might have. Thank you.

Mr. UPTON. Thank you.

Mr. Goodin, Assistant Director for the Office of Wetlands at EPA, welcome to you.

STATEMENT OF JOHN GOODIN

Mr. GOODIN. Good morning, Chairman Upton, Ranking Member Rush, and members of the subcommittee, I am John Goodin, Acting Director of the Office of Wetlands, Oceans, and Watersheds at the Office of Water at U.S. Environmental Protection Agency.

Thank you for the opportunity to be here before you today to discuss the Clean Water Act's State certification authority as it relates to Federal permits and licenses.

Section 401 of the Clean Water Act provides States with an opportunity to evaluate and address aquatic resource impacts of federally issued licenses and permits including Federal Energy Regulatory Commission licenses for non-Federal hydroelectric dams.

It is a direct grant of authority from Congress to the States. The statute does not provide EPA with the authority to review, approve, or deny State certification programs or individual State certification decisions.

Under the statute, a State determines whether any discharge that may result from a federally licensed or permitted activity will comply with certain specified sections of the act including approved State water quality standards, effluent limitations, and monitoring requirements, as well as any other appropriate requirements of State law.

A Federal agency cannot issue a license or a permit for an activity that may result in a discharge to waters until the State where the discharge would originate has granted or waived water quality certification.

Congress sought to ensure that State certification did not unduly delay the issuance of Federal licenses or permits by providing that States complete their certification analysis and decision within a reasonable period of time which shall not exceed 1 year.

Tribes with treatment as State status also may exercise certification authority. A State or Tribe may grant, deny, condition, or waive their certification of a Federal license or permit based in part on whether a discharge from the proposed project will comply with their water quality standards.

Conditions imposed on a licensed or permitted activity assure compliance with any other appropriate provision of State law and must relate to water quality in one manner or another.

Such conditions must become a term of the permit or license should it be issued. EPA has two primary roles with respect to water quality certification.

First, the agency acts as the certifying agency where the proposed discharge would originate in a jurisdiction without such authority. Most typically, that is on Tribal lands lacking treatment as State status.

Second, where EPA has determined that the proposed discharge may affect neighboring jurisdictions, the statute requires EPA to notify those other jurisdictions as well as the licensing or permitting agency and the applicant and provide an opportunity to comment on or object to the license or permit.

Administrative regulations which predate the establishment of EPA describe these procedures.

The president's infrastructure initiative seeks to increase the efficiency and effectiveness of environmental reviews for new roads, dams, pipelines, and other critical infrastructure.

EPA strongly supports the initiative's emphasis on the use of advanced coordination and thinks that such coordination can play an important role in ensuring States and Tribes complete their water quality certification process on a time frame consistent with other planning and review activities.

We support the president's recommendations regarding clarification of those provisions in the statute. Moreover, the agency has identified a potential clarifying action in its most recent regulatory agenda and may consider updates to its 2010 handbook to assist States and Tribes in making informed and timely decisions.

In conclusion, I would like to thank you, Chairman Upton, Ranking Member Rush, and members of the subcommittee for the opportunity to testify before you today.

EPA looks forward to continuing our work with the subcommittee to foster protection of America's waterways and the public's health and wellbeing.

I will happy to answer questions that you may have.

[The prepared statement of Mr. Goodin follows:]

**TESTIMONY OF
JOHN GOODIN, ACTING DIRECTOR
OFFICE OF WETLANDS, OCEANS AND WATERSHEDS
OFFICE OF WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY
UNITED STATES HOUSE OF REPRESENTATIVES**

June 7, 2018

Good morning Chairman Upton, Ranking Member Rush and members of the Subcommittee. I am John Goodin, Acting Director for the Office of Wetlands, Oceans and Watersheds in the Office of Water, at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to appear before you today to discuss Clean Water Act (CWA) section 401 water quality certification authority, as it relates to federal permits and licenses.

Section 401 of the CWA provides states with an opportunity to evaluate and address aquatic resource impacts of federally-issued licenses and permits. It is a direct grant of authority from Congress to the states. The statute does not provide the EPA with the authority to review, approve, or deny state section 401 certification programs or individual state certification decisions.

Under section 401(a)(1), a state determines whether any discharge that may result from a federally licensed or permitted activity “will comply with” certain specified sections of the CWA, including state water quality standards approved by the EPA pursuant to section 303.

Under section 401(d), a state's certification shall set forth "any effluent limitations and other limitations, and monitoring requirements" necessary to assure compliance with those same sections of the CWA, as well as "any other appropriate requirements of State law." A federal agency cannot issue a license or permit for an activity that may result in a discharge to waters of the United States until the state where the discharge would originate has granted or waived section 401 certification.¹ Congress sought to ensure that section 401 did not unduly delay the issuance of federal licenses or permits by providing that states complete their section 401 certification analysis and decision within "a reasonable period of time (which shall not exceed one year)."² Tribes with "treatment as a state" (TAS) status may exercise section 401 certification authority.

Among the licenses and permits subject to section 401 certification are the U.S. Army Corps of Engineers section 404 permits for discharge of dredged or fill material, section 402 National Pollutant Discharge Elimination System (NPDES) permits issued by the EPA in states that have not been authorized to administer the NPDES program, and Federal Energy Regulatory Commission licenses for non-federal hydroelectric dams.

States or tribes make their decisions to grant, deny, certify, condition, or waive their certification of a federal licenses or permits based, in part, on whether a discharge from the proposed project will comply with water quality standards developed under CWA section 303. In addition, state

¹ CWA § 401(a)(1); 40 CFR Part 121.

² CWA § 401(a)(1).

certifying agencies consider whether any discharge resulting from the licensed or permitted activity will comply with any applicable effluent limitations under CWA sections 301 and 302, new source performance standards under section 306, and toxic pollutant restrictions under section 307.³ Conditions imposed on a licensed or permitted activity pursuant to section 401(d) “assure” compliance with “any other appropriate requirement of State law” and must “relate to water quality in one manner or another.”⁴ Such conditions must become a term of the permit or license should it be issued.⁵

The EPA has two primary roles under section 401. First, the Agency acts as the certifying agency where the proposed discharge would originate within a jurisdiction without section 401 authority;⁶ most typically that is on tribal lands without TAS status. Second, where the EPA has determined the proposed discharge “may affect” neighboring jurisdictions, the CWA requires the EPA to notify those other jurisdictions whose water quality may be affected as well as the licensing or permitting agency and the applicant, and provide an opportunity to comment on or object to the license or permit.⁷ Administrative regulations, which pre-date the establishment of the EPA, describe the process of certification and the process for notifying neighboring jurisdictions.⁸

³ CWA § 401(a)(1).

⁴ *American Rivers v. Federal Energy Regulatory Commission*, 129 F.3d 99, 110-111 (2d Cir 1997).

⁵ CWA § 401(d).

⁶ CWA § 401(a)(1), “[i]n any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator.”

⁷ CWA § 401(a)(2).

⁸ 40 C.F.R. Part 121.

In addition to its two primary roles laid out in the CWA, the EPA has helped states and authorized tribes better understand how they can use section 401 certification to address water quality concerns while not unduly delaying proposed projects. For example, in 2010 the EPA developed a handbook, “Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes.”⁹ The 2010 Handbook is not formal guidance, but instead summarizes section 401 statutory provisions and caselaw, and provides examples of ways that states and tribes have used available information to make informed and timely section 401 certification decisions.

The President’s Infrastructure Initiative seeks to increase the efficiency and effectiveness of environmental review for new roads, dams, pipelines, and other critical infrastructure.¹⁰ The EPA strongly supports the Infrastructure Initiative’s emphasis on the use of advance coordination, and thinks such coordination can play an important role in ensuring states and tribes complete their section 401 certification process on a timeframe consistent with other planning and review activities. For example, advance coordination can identify potential water quality concerns and information needs early in the process, thereby helping ensure that project sponsors are able to provide information necessary to inform the certifying agency’s decision within the statutorily allotted timeframe. The Agency has heard concerns of stakeholders regarding the section 401 process and we support the President’s recommendations regarding clarification of those provisions in statute. Moreover, the Agency has identified a potential action in its most recent regulatory agenda and may consider updates to the 2010 Handbook.

⁹ https://www.epa.gov/sites/production/files/2016-11/documents/cwa_401_handbook_2010.pdf

¹⁰ <https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf>

In conclusion, I would like to thank you, Chairman Upton, Ranking Member Rush and members of the subcommittee for the opportunity to testify before you today. The EPA looks forward to continuing our work with this Subcommittee to foster protection of America's waterways and the public's health and well-being. I will be happy to answer any questions you may have.

Mr. UPTON. Well, thank you all. Thank you all for being here and, again, presenting your testimony in advance.

As we know, hydropower is a pretty big bipartisan—has a lot of bipartisan support and not only in the House but certainly in the Senate.

And, you know, we've seen in this committee we've passed a number of hydro bills with strong bipartisan support, often by voice vote not only in committee but on the House floor as well waiting for the Senate where they are a little bit stuck but hopefully moving soon.

One of the—one of the principles that we've moved through the committee here is that the lead agency, since we have all five you here, really ought to be FERC to manage where things are and I would just welcome a comment from you as to whether you agree that FERC ought to be the lead agency.

And Mr. Turpin, we don't need to hear from you. Even though you don't speak for the agency, as you said, we'll presume that you are on that point but maybe just if you'd like to concur that FERC ought to be the lead agency on this one that we are working together. If you could give a response, yes or no, that would be great or expand on it if you'd like.

Mr. Oliver.

Mr. OLIVER. The short answer, Mr. Chairman, is yes, our responsibilities within fisheries are really similar to U.S. Fish and Wildlife Service with regard to the ESA consultation aspect of it and we are rarely, if ever, and I don't this will change under the one Federal decision—the lead agency—we are cooperating and are a consulting agency.

Mr. UPTON. Mr. Sheehan.

Mr. SHEEHAN. I would concur very much with what Mr. Oliver just shared. You know, certainly, we respect and look for that guidance out of FERC as we move through these processes now and I think that will continue.

Certainly, we've got other laws—Endangered Species Act and all that both NMFS and ourselves have to address. But, you know, I think there's always more we can do together better and we look forward for feedback that comes from Congress itself to help us instruct that.

Mr. UPTON. Mr. Fisher.

Mr. FISHER. Mr. Chairman, I would concur as well. We have an MOU in place with FERC—just renewed it a couple years ago, in 2016.

We are a cooperating agency. FERC is the lead agency and it has worked well for us as long. As the Corps continues to focus on some internal 408—Section 408 permissions we'll be just fine with FERC as the lead agency.

Mr. UPTON. Mr. Goodin.

Mr. GOODIN. Thank you for the question, and EPA supports—

Mr. UPTON. Softball—it's a softball question.

Mr. GOODIN [continuing]. Coordinated activity and would concur that FERC is the appropriate lead.

Mr. UPTON. Now, I will say that FERC provided us with a list of 21 different pending projects. Some of them are fairly lengthy in

terms of how long they've been in the queue. I think there's one that's been there almost, what, 18 years—I am sorry, 14 years.

I don't know—Mr. Sheehan, you indicated that since 2010 you all have seen 180 projects, you said in your testimony, move through the process. What's happening to some of these that have been longer than 2, 3, 4 years that are on that list of 21? Are there some additional steps that you're taking to focus on those? Are they particularly troublesome? What's your reaction on where we are as it relates to those?

Mr. Turpin.

Mr. TURPIN. So those in the table we provided I think predominantly they're relicensing actions and so I think what we see there a lot of times are facilities that were built long before a lot of the environmental laws and so there's a lot of very complicated contentious issues that are involved in those.

I think if you look at the list, a large part of them are in a very few number of States that their water quality cert process has a large implication for the timing of it and then some of them have areas—are in areas where there have been additional species listed since the completed its review and so we have to kind of go back and coordinate through that.

So we do do outreach to all the entities involved on those to try to get updates and to try to help move the process along. But it always comes down to the priorities of those agencies and their resources.

Mr. UPTON. So I think each of you talked about the MOU that was—that was signed. Is there some effort to try and focus on those that have taken already longer than 2 or 3 years in the next couple of months?

Mr. TURPIN. So on FERC's staff's part, we are setting up the implementation plan for the one Federal decision with a rollout later this summer and, I mean, all that's going to be sort of across-the-board outreach to all the agencies involved to try to get things moving not just on those specific projects but on everything.

Mr. UPTON. My time is expired.

I yield to the ranking member of the subcommittee, Mr. Rush.

Mr. RUSH. Once again, Mr. Chairman, I want to thank you.

I want to direct my question to Director Turpin, and I mentioned in my opening statement I previously ordered an amendment on H.R. 3043 that would direct FERC and Federal resource agencies to convene a negotiated rulemaking within 90 days of enactment with State and local representatives, Native Tribes, and other stakeholders.

The purpose of this collaborative approach would have been to develop a process to coordinate all necessary Federal authorization and enable the Commission the make a final decision on a license within 3 years of receiving a completed license application.

Director Turpin, in your opinion, how would this type of approach when stakeholders are brought into the process early on and their input is considered, how would it impact the application process?

And once Director Turpin completes, I would like to ask all the other panellists if they had an opinion about the impact of this type of approach on the application process.

Mr. TURPIN. Thank you, sir. That essentially is an approach we take on a project by project basis. You know, there's a significant amount of outreach whether it's under the integrated license process or by the applicant on the traditional licensing process.

That sort of outreach and negotiations are done on a case by case basis. We last did a more sort of programmatic approach like that I think in about the mid-2000s when we looked at the ILP process.

And so we've gotten all the stakeholders in to sort of help design. That was a little bit more focused on relicensing as opposed to original licenses and I think since then we've seen a lot more originals come in.

But by and large, the original licenses are done—typically, the median time for those is well under 2 years—3 years to start with. I think it's somewhere around 29 months on median.

So collaboration with all of the parties is necessary. It's valuable in every aspect of the process and because of all the differing authorities and responsibilities it can't work without everybody coming to the table.

Mr. RUSH. Anybody else want to respond?

I want to ask the second question here. Deputy Director Sheehan, how is the work of the Fish and Wildlife Service affected in instances where licensees provide incomplete information in their application? Are there State deadlines in place for applicants to submit all of the necessary information and what are the enforcement mechanisms where an applicant does not meet these deadlines?

And again, I want to ask if any of the other members have any opinions on how incomplete applications impact overall time lines for final decisions.

Mr. SHEEHAN. Thank you, Ranking Member. I think your first question or your question revolved around time lines—what are the requirements. We don't, at the Fish and Wildlife Service, impose times lines.

We really are working under a framework of time lines that FERC, who's a lead on this effort, gives us and as a cooperating agency if we feel there is insufficient information on a permit application, we would return back to the applicant and try to get that as rapidly as possible.

So I think that's how we try to move through this and that needs to be done timely on both our part and the applicant's part if we are going to keep the overall time lines in check, as was mentioned by Mr. Turpin.

Mr. RUSH. Anyone else want to respond? Mr. Oliver.

Mr. OLIVER. Yes, sir. Yes, sir.

I would say as I—when some of these projects take what seems like an inordinately long time to get the process, it can be a number of reasons or the combination of several factors.

But in many cases one of the most important, and this was mentioned earlier, is to get a complete package which to evaluate and which to consult on, and we have to have an application—license application package that has sufficient definition of the proposed action and in some cases the proposed action itself is not crystal clear and it has to have sufficient information upon which for us to do an evaluation and in many cases we get an application and

we say we are sorry—it's not complete or it's not specific enough, and there's a back and forth process, and there's not a specific time line and perhaps that's part of the problem is that it can drag out because we go back and forth and eventually—and during that period new information can come into play.

The proposed project action can change. New species can get listed during that time. A number of other factors can exacerbate that time. But it is important to get that initial complete application that very clearly describes the project and very clearly provides us the information on which to base it.

And so getting that back and forth that occurs to get to that point can often take years.

Mr. RUSH. I want to thank you, Mr. Chairman.

I yield back.

Mr. GRIFFITH [presiding]. I thank the gentleman.

I now recognize the ranking member of the full committee, the gentleman from Oregon, Mr. Walden.

Mr. WALDEN. The chairman of the full committee.

Mr. GRIFFITH. Chairman of the full committee. Didn't I say that?

Mr. WALDEN. The ranking member.

Mr. GRIFFITH. Oh, sorry. Sorry about that.

Mr. WALDEN. Yes. Good morning. Thank you for being here today to talk about hydro. I've got a couple of Oregon-specific issues, and I think we flagged them for you on these as we raise them. Obviously, we are doing a lot on hydro.

But NOAA and NMFS have a lot of other authorities in my district and across the West. On Friday, Mr. Oliver, your agency finalized a year overdue grazing biological opinion for the Malheur National Forest allotments on the Malheur National Forest and I've repeatedly heard concerns about the process and concerns about the science used.

As an example, I understand from your regional staff that there's no science behind using the three trampled reds as a threshold for take forest wide. Just that it is an easy way for the agencies to monitor, but there's no science behind this.

As you know, ranchers and others had barely a week to review and comment on the 300-plus page document but they did their best.

Can you explain how their concerns are being addressed in the final biological opinion?

Mr. OLIVER. I will try to address that, sir.

First of all, we wanted to be sure that we got the biological opinion finalized by June the 1st in time for the traditional turnout for grazing.

My understanding and—my understanding is that there are a couple of different ways. While there may be some question about the three trampled reds threshold for reinitiation, that was different or altered from the original one red per year that was at one point proposed.

So that was one way in which we hoped to address some of the concerns or alleviate some of the concerns. There was a lot of contention over the stubble height issue, and I am not an expert on stubble height but we did—

Mr. WALDEN. You may have to become one.

Mr. OLIVER. I am quickly becoming an expert on many of these issues, sir.

Mr. WALDEN. Yes.

Mr. OLIVER. And but the stubble height issue was presented to us by the U.S. Forest Service—excuse me—support for a standard less than six inches is—there's no support for a standard less than six inches where you have habitat that is presently degraded and where you have a ESA-listed fish present.

Now, that may be different in areas where—such as the Blue Mountain Forest plan where it may allow a lesser number in certain conditions but that's only where stream conditions are good.

And so that was one of the issues that I know was raised. But what we did change is that the stubble height requirement would be considered in the context only of individual—only in individual pastures and therefore reinitiation would only occur for violations in successive years on the same pasture and such that we would only reinitiate consultation on the subject pasture as opposed to the whole forest. So those were a few ways—

Mr. WALDEN. Welcome to my world.

Mr. OLIVER [continuing]. In which we addressed those concerns and we certainly—the other issue was to delay turnout until July 1st in response to two incidences of noncompliance. But we didn't want to delay that until July 1st, which is one of the reasons we got that finalized this Friday on June 1st.

Mr. WALDEN. Thank you for that.

What I would like is the science behind this determination about the reds. Meanwhile, we have, you know, predators in the river devouring all kinds of fish.

You have got one cow steps in one red and all of a sudden you may—it may be OK, but two may be a reconsultation. Three may be a disaster.

I mean, there's a lot of frustration out there, as you know. The issue of stubble height—and I've been through a number of briefings out in my district and parts of the planning process there were requirements initially for stubble heights that, frankly, probably couldn't be achieved if nobody was within 100 miles because the grass just never grows that high.

And I just—you know, when you—these communities are pretty upset and when it comes to taking all the hits, applying it all to grazing, when it comes to trying to do a balanced effort to restore salmon and steel head fishery and they really want a little more face to face time with NMFS and we don't feel like we get it in eastern Oregon.

And so I appreciate the conversations and participation around the Blue Mountain Forest plan, but we've got a few other things at some point—and I know you're talking about hydro today but we'll need to get together and discuss because this is a life and death matter for the ranchers out there and a lot goes on out in the ocean.

We are told it's just a black box—can't do anything about it—and then we watch the fish get devoured by the sea lions coming up the river and then the only thing you can do is shut down cattle operations and blame it all on them and we are not going to put up with that.

And so we'll talk more, but my time has expired. With that, I yield back.

Mr. GRIFFITH. I thank the chairman of the full committee, and I respectfully request great forgiveness for prior—

Mr. WALDEN. Did you want to revise and extend your opening remarks?

Mr. GRIFFITH. I do. Yes, sir. Absolutely. Thank you very much. I now recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. I thank the Chair and I thank the witnesses this morning.

Mr. Turpin, several groups filed motions with the Commission during the relicensing in 2005 for the Oroville facility, arguing that FERC should require a licensee to install concrete-lined emergency spillway because the existing structure was not adequate. The Commission did not require this, but it was certainly a concern that needed much more serious consideration.

The facility was not able to handle the high flow rates encountered during the flood and we came very close to catastrophic damage.

What adjustments have been made given this experience to ensure that dam safety issues raised during the relicensing are thoroughly investigated?

Mr. TURPIN. So after Oroville we had gone out to both request, of course, that DWR put up a forensics team and we also stood up a team internally of independent consultants to look at our own process to kind of go through the inspection process, our review process to see is there something that we could have done on our side that could have headed that off or is something that we are routinely missing.

That panel is still investigating and I expect results back sometime this summer or later this year and with that we'll then go through our program and sort out what changes we need to make.

Mr. MCNERNEY. OK. Please contact my office with those results and let's go over those together.

Mr. TURPIN. Absolutely.

Mr. MCNERNEY. Mr. Turpin, again, on another subject, any reason why legislation would not require applicants to provide all necessary information for FERC to make timely decisions?

Mr. TURPIN. I think the question of what's the necessary information is a bit hard to pin down in regulations. Most of the time we do have regulations that lay out what the minimal filing requirements are and what the sort of first shot it.

But oftentimes the project issues are so specific or are so varied that there is a lot of back and forth data requests that need to happen as issues are raised through the NEPA process so that folks can get the right data.

I don't think it would be possible to lay out this sort of a checklist of everything that anyone could ever think that might apply.

I think to do that you end up—that one-size-fits-all ends up with sort of an over complexity for a lot of projects that isn't needed, and we tend to handle it with a minimum level to get in the door and then additional data requests.

When we have applicants that provide information quickly or that are responsive, the process works very well. When we have applicants that don't provide it or we have agencies that don't let folks know what information it needs to have, that tends to gum it up a bit.

Mr. MCNERNEY. OK. So you can work on a case by case basis to make sure the applicants are providing the information that you need as a licensing agency.

There's a measure in H.R. 3043 that grants FERC the authority to set deadlines for decisions by Federal agencies. Do you see that as necessary?

Mr. TURPIN. I think in every—in every circumstance I've seen language like that. I mean, there's a couple issues. So, first, the Commission has routinely done that.

I mean, under the FPA and the NGA the Commission already attempts to set schedules for agencies to kind of keep the process moving. But none of that overrides these agencies' independent authority for the processes under their own statutes.

Most every language I've seen that's been enacted or been proposed along those lines includes language that points to the fact that these other statutes have their own independent time lines and that this can't override that.

So you have sort of always got that out or that conflict that's built in.

Mr. MCNERNEY. Thank you.

Has implementation of FAST-41 been good? Has the outline dashboard been helpful in agencies' project applicants?

Mr. TURPIN. I think it has been good. There hasn't been a lot of projects that have nominated themselves for coverage. The ones—the majority of the ones that are on there were ones that were open at the time that the law was passed.

The effect of that as well as the administration's interest in infrastructure I think has really been to get agencies to pay attention to the sort of maybe smaller activities that feed into the large licensing process. And so we have seen a lot more diligence and a lot more turnover in the information that comes in and then processes moving forward.

Mr. MCNERNEY. Given that hydropower licenses are awarded for long periods of time, significant changes can happen due to climate or other causes.

How does FERC account for these changes during consideration of a license renewal—of long-term projection of change?

Mr. TURPIN. So there's a couple of ways.

First, we are basing our look at impacts on the historical record. So, you know, as climate change, being a geologic sort of scale event, anything that's been going on is already going to be reflected in the projections that go forward.

Secondly, there are reopeners in cases as well as the general approach is one of adaptive management. When you're issuing a license that's 30 to 50 years long you have to have processes in there that will allow for adjustments throughout that life or else it's just not possible that to do anything that makes a lot of sense.

Mr. MCNERNEY. OK. Thank you, Mr. Chairman. I yield back.

Mr. GRIFFITH. I thank the gentleman.

I now recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. Latta. Thank you, Mr. Chairman, and thanks very much to our panel of witnesses here today. Appreciate the testimony you're giving today.

Mr. Ryan, if I—Mr. Fisher, if I could start with a question to you. A common complaint that I hear from private industry is that environmental regulations are often redundant and needless costly.

States requiring environmental reviews before issuing Section 401 water quality certification for hydropower developments. FERC requires a comprehensive environmental review of proposed hydropower developments before it will issue a license for them.

If one of these—those projects is to be built on a Corps-owned project, the developers often must repeat the environmental review, adding time and cost to the development with no gain to the environment or the public interest.

In reading your testimony you referenced the need to eliminate redundant unnecessary reviews, concurrences, and approvals. And so the question is what is and how is the Corps going to accomplish this goal for FERC license hydropower projects.

Mr. Fisher. Yes. Thank you, sir. It would be—so you're, obviously, aware of how this works. If an applicant approaches the Army Corps, has a FERC license to be on a Corps project, our role in this is how it's going to modify that project and we have to give permission for an applicant to modify the structure itself or the operation of it to allow for hydropower while not impacting the other missions with flood control or commercial navigation.

The Corps is doing some things. They've delegated some of those decisions down to the district level so there's not multiple levels of review so we can hopefully make those decisions quicker.

We are trying to eliminate duplication within a division of the Corps—it's the planning branch or the real estate division to make sure that both of those parts of the Corps district are not taking separate chops at an application so that we are streamlining that process as well.

And we also want to do more public facing communication, I think, with the applicant themselves. The Corps, obviously, tracks these 408 requests and want to make sure that the applicants are aware of where their application is in the process at any given time. So, hopefully, those will reduce redundancies and move things quicker from the Corps perspective.

Mr. Latta. Let me just follow up real quick just on those four points that you brought up there. When did you start that process of, you know, delegating down to the district level and also eliminating the duplication within the branches and the public safety and also the appraising, you know, the applicants out there. How long have you started doing that?

Mr. Fisher. It's relatively new. I think when the new administration came in, Corps leadership recognized the focus on infrastructure and even before the one Federal decision MOU was signed by the relevant agencies, some of the civil works leadership at the Army Corps started pushing—delegating decisions down to the district level in trying to streamline those processes so that applicants might have a smoother process.

Mr. LATTI. Let me ask you another question, if I may. You also state in your testimony that the Corps stands ready to support the needs of non-Federal hydropower developments. You point to the Corps implementing improvements to the Section 408 review process for private entities to develop hydropower and other alterations to Corps projects.

Would you go into more detail about these improvements in the status of your implementation?

Mr. FISHER. Sure. I think some of the ones I just outlined that's exactly what I was talking about—the delegating to districts and eliminating the redundant reviews of the planning branch and the real estate branch. So that's kind of what I was referring to.

The second part of that question there, the Corps will continue to do that. I think the one Federal decision memo forces some of that.

We are currently doing implementation plans as are the other agencies. Those are—those are due on the one Federal decision MOU in July.

So we will, hopefully, see more initiatives and we'll continue to identify—as we talk to applicants that identify issues we will certainly consider those and the Corps will look to continue to streamline and eliminate any redundancies.

Mr. LATTI. Just out of curiosity, when you're delegating back to the district level on a lot of different projects I know of maybe on the hydro side but I've been involved with Corps.

By getting it down to the district level how much time do you think you're going to save on projects?

Mr. FISHER. So, sir, I actually—before this appointment I worked at a district level of the Corps office and you're talking about district, division, headquarters office, then a potential shop, even at the assistant secretary of the Army's office where I am now. So you're looking to take out two to three levels.

So it could be weeks and months that we would be shortening the time. It's project specific, obviously, but it would certainly be shortened.

Mr. LATTI. Well, thank you very much, and Mr. Chairman, my time has expired.

Mr. GRIFFITH. I thank the gentleman. I appreciate him yielding back and now recognize the gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman, and thank you to our witnesses today.

Pittsburgh is home to three rivers—the Allegheny, the Monongahela, and the Ohio, and utilizing these water resources is incredibly important, and hydropower plays a critical role in our renewable energy portfolio.

In Pennsylvania, there are many existing dams though that do not have hydropower and this existing infrastructure presents a significant opportunity to develop and increase our hydropower capacity.

Mr. Fisher, how is the U.S. Army Corps of Engineers working to prioritize the establishment of hydropower on existing dams and what are some of the challenges in this process that the Corps has identified and is addressing?

Mr. FISHER. Sir, I don't have the numbers in front of me. I actually spent time in the—actually I was just in Pittsburgh for the past couple of days, to be honest with you and I know that there's a lot—I think 11 reservoirs that—Corps-owned reservoirs that feed down in Allegheny County as well as the 20 some locks and dams that feed the system as well. All are—some of those do have hydropower and others have pending licenses or are in the process of looking at that.

The Corps simply wants to continue working with those applicants on the permit process, work with FERC. FERC is the lead agency. We want to—if somebody proposes to modify a Corps project, our main objective there is to make sure that those modifications are not impacting the flood control—flood risk management operations that affect downtown Pittsburgh there at the Point while at the same time—it's about balance, right.

It's about balancing that need for the hydropower with the other environmental concerns and improving the economic environment as well.

Mr. DOYLE. Does the Corps intend to construct anymore hydropower projects on your existing dams?

Mr. FISHER. We are certainly—the Corps of Engineers is a self—there are projects federally, yes, but I think you're mostly referring to non-Federal.

So we intend to, yes, as applicants approach us with what is private investment and these sort of non-Federal investment in hydropower at a Corps facility, yes, we would certainly want to pursue that with them.

Mr. DOYLE. So when a non-powered dam is developed for hydropower, how does the Corps of Engineers work with FERC on the licensing and are there opportunities for your agencies to coordinate earlier in that process to increase coordination?

Mr. FISHER. The MOU we've signed with them and just recently renewed it in 2016, yes, it's about early coordination, most definitely, and the two-phase approach there with the FERC license as well as the Corps 408 review. And, certainly, a direct question was asked earlier about insufficient information on applicant—applications so I would certainly also encourage that the applicants—to reach out early to your Corps district and make sure you're providing the proper information to us as well.

Mr. DOYLE. Let me ask, Mr. Fisher, you and Mr. Turpin. Given the potential in adding hydropower to existing dams, do you see any potential to expanding utilization of pump storage capacity as well?

For example, in my region, we have substantial existing locks and dams infrastructure. What potential do you see for expanded pump storage capacity?

Mr. FISHER. Sir, that might be one I have to get back with Corps staff and review and come back to you on. As you mentioned, in your area there's—the Allegheny River has eight locks and dams going up it and the Mon does as well as well as all the ones on the Ohio River.

So there's certainly Corps—a lot of Corps infrastructure there. The capacity might be available. I am going to have to come back

to you after I speak with Corps headquarters staff to get you a more firm answer.

Mr. DOYLE. Mr. Turpin, do you have anything to add to that?

Mr. TURPIN. Yes. There's a tremendous amount of interest, I think, on the private sector with pump storage. I know we have a number of applications or processes underway. I don't know an exact number and I have to get back to you. But it does—you know, given the benefits of storing the energy it does—it does always present good opportunities for the Nation.

Mr. DOYLE. Mr. Fisher, you mentioned in your testimony that the Corps recently made several changes to the Section 408-related non-Federal use of Corps civil works process. What's the time line for finalizing that draft policy?

Mr. FISHER. So as it relates to one Federal decision, I think all of our agencies are looking at July—or July 9th, I believe, is the deadline for that.

But overall, separate from one Federal decision, the Corps continues to look. Anytime an applicant approaches us with an idea, there's not necessarily a time line to get it done but we want to consider that and see—always continually look at how we are doing this 408 process and make continual improvement in it at any time.

Mr. DOYLE. Thanks.

Mr. Chairman, thank you. I will yield back.

Mr. GRIFFITH. I thank the gentleman for yielding back.

I now recognize the gentleman from Virginia, myself, for 5 minutes. I am going to pick up some of or similar to what Mr. Doyle was just asking related to pump storage.

I had a bill last year on closed loops pump storage and the question that he asked was what is the potential. Of course, what we are looking at is maybe using some of our old coal mines and having the closed loop pump storage in there or some other closed loop pump storage possibilities.

But the bill was put in to kind of streamline the regulatory process. So I am guessing I need to know both on Mr. Doyle's potential projects where there's already a lot of infrastructure or on others.

What is FERC doing, or any other agency that wants to answer, to try to streamline the regulatory process to make it easier if you already have the infrastructure there as we do in the mines. There's already electricity and roads and all kinds of things.

In Mr. Doyle's case, he's already got the dams built. What are we doing to try to streamline that regulatory process so we can make this a reality? because there is a lot of potential.

Mr. TURPIN. I would say that we approach that—well, fundamentally we are always looking for ways within the existing authority of the Commission to make things move along better.

But also on a case by case basis, as we have projects, especially for projects that don't involve a lot of issues or a lot of infrastructure additions, they, by their very nature, end up sort of being streamlined in the process.

So we did the 2-year pilot program a couple years ago, a report to Congress on that, and there I think that demonstrated that, under the existing processes, it is not a stretch at all to get things done under 2 years and even faster when you have got something

that doesn't involve a lot of issues, that doesn't involve a lot of new infrastructure.

Mr. GRIFFITH. Well, and I would say, and I think I speak for Mr. Doyle as well, that if there's something that you think that we need to do in Congress, some additional authority or some tweaking of some regulation, we are not going to do anything crazy. But don't hesitate to let us know if there's something we can do to be of assistance on that as well.

I appreciate that. Does anybody else want to comment on that topic?

All right. Sticking with you, Mr. Turpin, I also have a little bill in called the SHORE Act. I picked it up from Robert Hurt. It's an issue in our area where FERC has come in and said to the power dams, electric power companies, you have to do this, that, and the other along property lines, and we have all kinds of issues that we've brought up with you all.

I am just wondering what can we do to assure that people who own the land adjacent to lakes can use that property as they see fit and, of course, it's a big—one of the reasons people like to have those projects is oftentimes it's a big economic development tool for a region when you suddenly have the recreational facility available.

So what can we—what can we do to help there?

Mr. TURPIN. I think a lot of those sort of hot issues around that topic come from the fact that it's predominantly a land rights issue between the land owner—the adjacent land owner and the power company that has either the flowage easement or the deed to the—where the high water mark is.

The Commission is not involved in adjudicating those property rights. So when a license is first issued, the Commission looks at, within the property boundary, to balance all of the recreation and development uses around there.

But it's really up to the applicant who owns that land to then monitor and to be certain that those things occur within their property.

Mr. GRIFFITH. But here's what we've been discovering is is that FERC is saying you have to do this, that, or the other, and folks are—to the power company.

So the rules have changed within the last 10 years and at least the power companies are coming in and saying, no, wait a minute, you have to keep this clear—you have to do this, that, or the other.

And what is interesting is de facto you are actually, maybe not intentionally, making some property rights decisions because—I happen to know of one lake in the region where when the power company acquired—decades ago acquired the land titles they did three—must have had three different people working on it. So there's three different sets.

Some places they got the fees simple—some places they just got an easement to flow onto the water and that changes what can be done.

So if they own it outright, got you—they've got the whole thing. But if there's only an easement, I would submit that in that situation a person can build out onto their own property.

It just happens to be in the water, which works perfectly fine if you want a boat dock. But they're being told in some places, wait

a minute, we don't want a boat dock there and it's creating some conflicts. So I would just make you aware of that.

I see my time is up and I yield back, and now recognize Mr. Tonko of New York for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair, and thank you to our witnesses for testifying on an important topic here today.

I believe we all want to avoid unnecessary delays in the hydro relicensing process and, without a doubt, complaints about long licensing processes have persisted for some time—for years.

It is my understanding that over a decade ago, FERC created the integrated licensing process, or the ILP, to address many of the same issues that we are discussing here.

So Director Turpin, can you explain the purpose and benefits of the ILP, please?

Mr. TURPIN. Sure. It was developed, I think, in looking out for a large upcoming relicensing workload that we were anticipating in the—in that sort of mid-2000 era.

The primary benefits of it is it gets a lot of people to the table early. In fact, all of our processes do that. We try to get folks to the table early.

The ILP tends to have a much more structured approach to—and a much more driven approach for schedules to try to get all of the stakeholders to commit to meeting a lot of, you know, information points or consensus points in that process on a very tight time line or a very strict time line so that everybody has some expectation of what's going to be the full schedule.

It also includes a dispute resolution process to be used when there are disputes over study information needs and study plans.

Mr. TONKO. And of those structured points, which—are there any that are the most meritorious here?

Mr. TURPIN. In all honestly, I am not as familiar with each step of that process. So I would have to—I would have to get back to you on that.

Mr. TONKO. OK. Thank you.

And generally, how often is it used today?

Mr. TURPIN. By regulation, it was—it is the default process. But only about a quarter of the projects use it. About 68 percent of projects come in and request to use the traditional licensing process.

I mean, it really is up to the applicant or the licensee to try to take their shot at saying which of the three license processes best meets their circumstance and to work with the stakeholders to sort that out.

My suspicion is that a large part of the reason the number is so high right now is we've just hit a patch of a lot of projects that don't have—the stakeholders don't see it as the ILP schedule being advantageous.

Mr. TONKO. All right. And do any of our other witnesses want to weigh in? Have you had any experience from your agency perspective with the ILP and generally what's that about?

Mr. Oliver.

Mr. OLIVER. If I could comment, sir. We strongly support the process and our experience when it's being used is that, as I understand, it's a two-phase process and that prelicensing part of the

process where we are able to interact with the other agencies that are involved with State entities, municipalities, Tribal interests, environmental group interests, other stakeholder/landowner interests, when you're able to effectively engage in that part of the process and very clearly resolve a lot of issues and define the environmental impacts and alternatives, that makes the second part of the process where we actually have to do the NEPA analysis and the Endangered Species Act consultation much more timely and smooth process.

Mr. TONKO. Well, that's good to hear, because it seems to me that the ILP can speed up the process because it does front load information gathering and consultations, and enables the State and Tribal governments and Federal resource agencies and other interested stakeholders to start coordinating much earlier in the process this includes putting licensees on notice about the information and studies required in order for agencies to review the application.

And I heard a lot of discussion and I just want to state that it seems to me that everyone agrees that in order for the licensing process to go smoothly it is important to determine all the necessary information and include interested stakeholders earlier on in the process and I think that's an assessment that we all share.

I believe the ILP was created to address many of the same issues we are discussing now and debated last year in Hydro Power Policy Modernization Act.

I am sure that there are things that can be done to improve the ILP process but we should be looking at ways to further encourage its use rather than strictly seeking to weaken environmental laws or severely limiting Federal, State, or Tribal partners from completely—totally from their reviews.

Moving to another potential cause for delays to your agencies or your counterparts in State government, to what extent has insufficient staffing or resources caused delays in applications or permitting reviews?

Mr. TURPIN. At the Commission, there's not—I don't think we've had a staffing problem on the hydro side. We've got a very large upcoming relicensing workload and that should start kicking up in 2019.

So we are looking at that. But we have the options of using third-party contractors or direct contracts to augment staff. So I don't think that's been a huge impact for us.

Mr. TONKO. Anyone else want to comment about the impact of resources or staffing?

Mr. SHEEHAN. Yes. Thank you, Congressman.

The Fish and Wildlife Service—first of all, we need to make sure we prioritize these right and in the right time lines.

But the president has recognized this need and the president's fiscal year 2019 proposed budget he's proposed an increase for energy consultation for the very type of work that you're describing, and if that makes its way through Congress I think it will only broaden our ability to react timely and make sure that we have this staffed in the way that we need.

Mr. TONKO. Well, I see I am way over my time. So, Mr. Chair, I apologize and I yield back.

Mr. GRIFFITH. I thank the gentleman and now recognize the gentleman of Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Fisher, coming back to you, our committee has listened to testimony from companies that express concern over the predictability of the permitting process when adding hydropower to a Federal dam.

For instance, we've heard that the Corps might prescribe a different water quality standard than FERC late in the permitting process, which can significantly affect the financial viability of a hydro project.

Is there any way the Corps can help provide a bit more certainty when making this determination?

Mr. FISHER. Sir, I think water quality mission isn't necessarily the most important thing to the Corps regarding these applications. We are mostly looking at the—how it's modifying the dams.

So if there's a lock and dam on the Ohio River and you have an applicant that wants to put a hydropower at the foot of that dam, we certainly have a water quality staff that looks at these things.

But we are mostly concerned with how they're modifying the project. So that's where most of our concerns would lie.

Mr. JOHNSON. Well, the question—I mean, the problem lies in that a different water quality standard than FERC. I mean, I don't understand why two Federal agencies have a—would have a different water quality standard for adding a hydro project to an existing dam.

Mr. FISHER. Certainly. It could be how the water quality impacts—you're probably well aware of some of those locks and dams on the Ohio River and how old they are and the aging infrastructure problems the Corps faces.

So we would be looking at water quality from the standpoint of how it affects those projects.

Mr. JOHNSON. Doesn't FERC have that information too, I mean, how old these are?

Mr. FISHER. Sure. It's certainly in our MOU—

Mr. JOHNSON. Well, can the Corps be more up front with its standard when FERC is working through its side of the permitting process?

Mr. FISHER. Sure.

Mr. JOHNSON. Can you guys communicate so that it doesn't drag this thing out?

Mr. FISHER. Certainly. We want to, no doubt, work with FERC under our MOU to make sure that we are providing them with all of our information and vice versa and then make sure that the applicant is aware of that information as well.

Mr. JOHNSON. OK. All right. Well, thank you.

Mr. Sheehan, as you know, it's often more difficult to relicense existing projects on dams that predate our modern environmental laws and regulations.

So how do you approach this issue and what can be done to ensure that your agency's license conditions are achievable and cost effective, given the age of some of our dam infrastructure?

Mr. SHEEHAN. Thank you.

I think there's a variety of things. You mentioned aged structures that predate many environmental laws or even processes—things that may not even necessarily be a law, how we address its passage and those sorts of things.

As these come to us now, we do make those evaluations. We do look at the economics that are involved and how those may impact the project applicant and we try to be wise and create balance.

We've approved or worked through about 400 projects since 2000. In specific terms for fish passage, about 100 of those required either new or some modification of a fish passage structure, you know, to get them compliant or more up to date.

I do think we need to be wise and I think we need to make sure at a top level that we don't let our staff get ahead of the processes as far as requiring what—more than what needs to be required to fulfil those project needs, and I hope we're going to have that.

Mr. JOHNSON. OK. Well, continuing on, you mentioned in your testimony that environmental reviews are conducted at the field level where most of the coordination between other agencies and stakeholders takes place.

What happens when there's a disagreement about a study or a proposed licensing condition?

Mr. SHEEHAN. Well, first of all, we try to elevate those as best we can and I—you know, often the applicants will elevate those for us.

There was some discussion earlier today about some of these California projects that are many years past their licensing date.

Yesterday, I had a good phone call with our California field office—the individuals working on that to try to get to the bottom of is this something that's being caused by Fish and Wildlife Service or other partners through this process.

I think we—you know, again, it's a cultural process. It's a prioritization process and we've got to make sure we do it right.

Mr. JOHNSON. Is it—do you think it would be helpful to more formally outline a dispute resolution process so that the head of the agency can get involved quicker? Would that—would that expedite and make it more efficient?

Mr. SHEEHAN. Certainly, anything we can do to make upper level management aware of these situations and try to help to resolve those is always going to be part of the process.

Mr. JOHNSON. I would encourage—I would encourage the agency to look at how to do that.

Mr. SHEEHAN. Thank you for that suggestion.

Mr. JOHNSON. I yield back, Mr. Chairman.

Mr. GRIFFITH. I thank the gentleman for yielding back.

I now recognize the gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

Mr. LOEBSACK. Thank you, Mr. Chair, and I do want to thank the panel for being here today.

Iowa is an interesting State in many ways, but I think we are kind of unique in some ways for our energy and electricity production.

Some of you may know that in Iowa close to 40 percent of our State's electricity is coming from wind and then we've got hydro-power and we've got coal.

We've got natural gas. Got a lot of different components to our—to our energy portfolio, and we are seeing solar grow more and more as well. So I am very proud, obviously, of my State and my district in particular.

But we are talking about hydropower today and this has been a great hearing. Learning a lot about this and how we can streamline regulations.

But in my district I do have the Mississippi River and it starts at—those of you who don't know the geography that's OK, but it starts at Clinton in the north of my district and then goes all the way down to Keokuk, in fact, on the Mississippi River—the lock and dam in Keokuk, which is right on the border with Missouri and Illinois.

We've got a hydro plant that's produced an enormous amount of clean energy since 1913. Currently, the plant does produce enough energy to power about 75,000 homes and I visited that plant in the past.

And I've also got the Red Rock Dam at my district. It's located right there at the Army Corps Red Rock Dam and they've got a hydroelectric project there.

I've been there at least a few times since that began, and when that's completed the project is estimated to produce about 178,000 megawatt hours, or enough energy to power 18,000 homes. So it will be that—much of that area if not that entire area around Pella, Iowa.

And it's really important. It's created jobs and, obviously, it's going to bring electricity to a whole lot of homes. But it's taken a long time to complete.

There's no question about that. That's why what we are talking about today I think is really important in terms of streamlining the hydropower licensing process.

I am also very interested to know more of what we can do on the Mississippi, much like Congressman Doyle, what he was talking about with respect to the three rivers there in Pennsylvania.

So I guess I want to address my concerns to you, Mr. Fisher, primarily and if you can't answer all the questions today, I get that. That's not a problem. We can, you know, get some information from you in writing.

I guess—I guess I just want to ask at the outset hasn't the technology risen to a level where the Mississippi River is now an economically feasible option for hydropower expansion, especially at these locks and dams?

Mr. FISHER. I probably should speculate a little bit there. I am not an expert on the technology. But yes, I think in the industry the technology has certainly increased. A lot of it is still going to depend on the flow, right.

If you have a private applicant approaching the Army Corps of Engineers, we are not going to just alter the flow rates through the Mississippi River just to accommodate that applicant. We still have to manage our flood risk management mission as well as the commercial navigation that certainly flows on the Mississippi.

But yes, I believe there are advances and we certainly want to work with any applicant and FERC as well to drive that economy in your area.

Mr. LOEBSACK. And the Corps is trying to do that at the Rock Island Arsenal. We've got a small project there. But a project nonetheless where they're going to be able to generate some significant electricity, I think.

So what are some of the challenges, if you will, of adding hydropower generation to the existing dams, particularly some of the older ones on the upper Mississippi?

Mr. FISHER. I think that's exactly it, sir. Old ones, right—aging infrastructure. As we're—as we are considering hydropower on a Corps infrastructure somewhere, we've got to make sure that we are not further damaging an already deteriorating structure.

We want to make sure those are bolstered. We want to make sure that whatever modifications we have to make to allow that hydropower to exist there is also not affecting all the other water resources there.

Mr. LOEBSACK. Yes. And, look, I mean, I think all of us agree that we've got to have a huge infrastructure emphasis here in this country, going forward. We are not going to go forward this year, it looks like, with the president's proposal on a trillion-or-so-dollar plant, but locks and dams upgrading has to be a part of that.

There's no question about it. These things are from the 1930s, you know, and we've got to be able to ship more grain down the Mississippi and out to the Panama Canal and out to our trading partners in other parts of the world so that we are not out competed, if you will, by Brazil and various folks.

But I just want to advocate for kind of a—something comparable to the one-dig policy when we talked about building roads and what have you and then making sure we don't have to dig again to put fiber in and all the rest.

Do the same kind of thing with these locks and dams on the Mississippi. Take that back to your folks, if you will. I think it's a great suggestion to think about as we upgrade our locks and dams that we take advantage of that opportunity also to add hydropower so we don't have to worry about the old existing systems we have now that are crumbling in many ways and trying to deal with all that.

But when we actually do the upgrade that we need and we are going to put a lot of money into this that we think about the expansion and think seriously about the expansion of hydropower as well.

So just keep that in mind, going forward, and send that along to the folks at the Army Corps, if you would.

And thank you, Mr. Chair, and I yield back my time.

Mr. OLSON [presiding]. Thank you.

Mr. Long, 5 minutes for questions.

Mr. LONG. Thank you, Mr. Chairman.

And Mr. Turpin, FERC, as you know, exercises jurisdiction over non-Federal hydropower projects and their licensing. Do you think the current hydropower licensing process involves too many agencies with too little accountability for making deadlines?

Mr. TURPIN. I think that's—there's such a wide variety of expertise that's required I don't know that I could say that it involves too many agencies.

I think that all agencies don't prioritize the work on those the same way. I mean, for us, it's kind of easy. We are, in this regard, a single purpose agency. This is all we do is look at the non-Federal hydropower.

Other agencies are balancing other mandates and other competing workloads and so I think—

Mr. LONG. Is there no way to streamline that? I mean, at one of the competing agencies?

Mr. TURPIN. I don't know that—I don't know that streamlining—I think keeping the focus on what ought to be the priority helps tremendously.

Mr. LONG. FERC is responsible for licensing projects and issuing exemptions, but the Commission is also responsible for ensuring compliance during the life of a project, as you know.

In your opinion, can FERC adequately monitor all non-Federal hydroelectric plants with the resources currently available to the Commission?

Mr. TURPIN. Yes. We have about 70 folks who do the licensing and about 40 or so that do just the compliance and administration of a license, and then another 120 that do the dam safety. So I think we are adequately staffed in that regard.

Mr. LONG. You do think you are? I mean, it doesn't matter the numbers if you don't think you're—you have the adequate—you think you have adequate numbers?

Mr. TURPIN. We are consistently consulting with the chairman on that to talk about staffing levels.

Mr. LONG. OK. In your testimony you state that since 2010 FERC has issued 180 hydropower licenses and small hydropower exemptions.

Based on the number of hydropower licenses up for renewal on the horizon, is FERC's current pace of renewal capable of meeting the demand?

Mr. TURPIN. Well, the good thing about relicense is you know that they are coming. So, unlike originals where it's very hard to forecast what your workload is going to be, we've known what the workload is going to be for a while.

And so we are continuing looking for ways to improve the process in-house and so to bring other resources to bear. So we've been preparing for this and I think, I mean, depending upon what issues are raised it may be a different scenario in each case. But I think, by and large, we've adequately prepared.

Mr. LONG. OK. Is there a way to hold agencies accountable when deadlines proposed by the president's executive orders and inter-agencies' memorandums of understanding or, I as I call them, memorandums of misunderstanding, are not met?

Mr. TURPIN. I think a large benefit of this approach is—has been over the last year or so and is going to be that the decentralized agencies get sort of a reset and a refresh on maybe what ought to be priorities in certain things and that you don't have field staff that are making decisions that possibly the headquarters folks don't know about.

Again, at the Commission we are relatively fortunate. We are all located in one building. I kind of get to know what's going on by

just walking down the hallway. I don't have a lot of remote field offices.

Mr. LONG. OK.

Mr. Oliver, there are a number of projects that have been delayed between two and 12 years because the National Marine Fishery Services has not approved licenses under the Endangered Species Act.

Can you explain the reason for these extensive delays?

Mr. OLIVER. Sir, I alluded a little bit in my earlier testimony there can be a number of reasons for delays. They can range from the very beginning when we get a license application to having a complete project description—and adequately detailed project description and it's sufficient—a sufficient definition of the proposed action and information for us to begin that consultation process on.

And there are instances where we've gone back and said, we are sorry but this is insufficient for us to do our consultation. That can result in a back and forth. There can be changes to the project action. There can be new information that comes to bear, scientific studies.

We are dealing with the very issue with a particular major project right now where we have new scientific information that's likely going to compel us to request an extension of the NEPA deadline in order to adequately assess that information. There—sometimes we are held up by Clean Water Act certifications that are out of our control and there are times when we have to prioritize.

We do over, I believe, 1,200 informal and over 300 formal consultations a year on various infrastructure projects not limited to hydropower, obviously. So there are resource limitations and prioritization decisions we have to make.

And so there are a number of reasons that—and so I don't want to make an excuse—that it's sometimes just staff workload but there are a number of reasons or combinations of reasons for those delays, some of which are within our control or partially and some of which are not. But we are striving to make improvements in that.

Mr. LONG. OK. I am past my time. I do have other questions for Mr. Goodin and Mr. Fisher but I will submit them in writing to you all.

And with that, Mr. Chairman, I yield back.

Mr. OLSON. Thank you, Mr. Long.

The Chair now calls upon the gentleman from Indiana, Dr. Bucshon, for 5 minutes of questions.

Mr. BUCSHON. Thank you, Mr. Chairman. I think, hopefully, you all are gathering from the very diplomatic questioning that there's a high level of frustration among the constituents that we represent across the country and how Federal agencies not only, honestly, in hydropower but across the permitting process have a very high level of frustration that is projected through their elected representatives here today.

And we've heard from developers, for example, in my district and across—really, across the country that on hydropower projects 10, 12 years to get—to secure a license, and this is on projects on existing dams.

The dams are already there, but we are just trying to convert them—10, 12 years, some of which is, you know, from a multitude of different reasons as what has been described here today.

You know, duplicative red tape, duplicative regulations, duplicative agencies looking at the project not in a—you know, in a timely fashion—red tape.

And so, I mean, honestly—I was on Transportation Infrastructure for 4 years—I honestly believe unless Congress sets hard deadlines that the reality is, this is probably not going to change in any substantial way.

You know, we've been debating this for decades and in that—in that vein I think, you know, I applaud the president's efforts and the administration established the one Federal decision policy by signing the Executive Order 13807. But there still, in my view, needs to be a modernization of our existing infrastructure and particularly in my—the area I am talking about is in the non-powered dams and conversion of those to hydroelectric power.

And to do that in a timely fashion, I introduced and the House passed unanimously H.R. 2872, the Promoting Hydro Power Development at Existing Non-powered Dams Act, which would instruct FERC to issue a rule establishing an expedited licensing process for qualifying facilities that will result in a final decision on an application within 2 years or less, which is a hard deadline.

Again, on Transportation Infrastructure we heard, you know, on bridges, on roads that we are streamlining—we are doing everything we can to streamline the process and it's getting better and all that.

But, honestly, I think you have probably heard from the—from what we are asking today the frustration is there. And, you know, the Senate—Senator Portman and Senator McCaskill have introduced a companion bill in the Senate and I hope the Senate passes that soon.

So a couple questions. Mr. Turpin and Mr. Fisher, could you—what do you think the impact might be on powering—potentially powering over the 50,000 suitable non-powered dams across the country might have on our power grid and also, honestly, might have on our emissions, because this is clean renewable energy, as well as do you have any thoughts on what it might do in the job creation area and also in the private investment area into our Nation's infrastructure.

Just kind of a general question, Mr. Turpin.

Mr. TURPIN. Yes. That is, of course, the area with the largest potential for expansion on any hydropower. I know DOE did the study a number of years ago that identified a very large number of dams that—nonpowered dams that might be suitable.

Mr. BUCSHON. Fifty thousand, the number that I have.

Mr. TURPIN. So—

Mr. BUCSHON. That may be a little over generous.

Mr. TURPIN. Well, that's the number I was remembering too, so—

Mr. BUCSHON. It's the number I have so—

Mr. TURPIN. Yes. So it's, obviously, great benefits to the Nation in terms of what it might do to the grid. I mean, hydropower—you know, the benefits of that have been enumerated in a lot of dif-

ferent ways in terms of either black start or just sort of renewable energy kind of component to it.

So in terms of economic and jobs it's not something I have enough of a background in to provide info on.

Mr. BUCSHON. I guess, I mean—I guess the point I am trying to make is that what you all do in the licensing process is not just—not just necessarily having an impact on, you know, actually the direct impact that you might have in getting projects completed but there is, you know, the impact of getting the surrounding big infrastructure projects in our country, as all of us know, whether that's on hydroelectric power, whether that's bridges, whether that's road, the overall economic impact of being able to produce big infrastructure projects in a timely manner is a substantial positive economic—has a substantial positive economic impact on our country.

So I hope that that message comes across today that as quickly as we can get through the process the better it is for all of us.

Thank you. I yield back.

Mr. OLSON. Thank you.

The Chair now calls upon the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel for being here.

And what we've discussed so far is water over the dam, as they say. But I would like to go to some specific questions. That's what happens when you're so far down on the dais here.

Mr. Turpin, the Commission has spent a fair amount of time, I understand, recently on making it faster to license very small hydro projects. Does FERC have any plans to find ways to speed up the licensing process for larger hydros?

Mr. TURPIN. Well, I think we are always looking for ways for improvement, as I said earlier, within the existing authorities that we've got.

And, again, I think a large time it's not the process. It's the issues that are there. So I think getting folks to bring issues to the table on a specific project earlier and getting the stakeholders to identify the information needed to meet those needs is probably the single biggest thing that can be done to improve time lines.

Mr. WALBERG. So that would, I would assume, would involve FERC making sure that the appropriate questions are given to people who are submitting request for licensing, wouldn't you say?

Mr. TURPIN. Yes, that's correct. FERC and—as well as the other agencies that have statutory authorities.

Mr. WALBERG. Because that can—that can be just a major problem, as I understand it, understanding what in the world I am supposed to be taking care of to get that licensing received.

So any way we can help on that, that would be super. Does FERC have any plans to put its recently revised license term policy into regulations or does it plan to keep that policy solely as a policy?

Mr. TURPIN. So I am not aware of any move to move—to make that a regulation. But I don't know that it needs to be. The Commission issued it as a policy to state that 40 would be the default and then with accommodation could kind of, depending on the circumstance, fluctuate the time line.

I think with that policy issued it gives certainty to the industries to kind of what to expect, coming in.

Mr. WALBERG. Wouldn't regulation, though, provide greater certainty?

Mr. TURPIN. It does, but it also then provides no ability to adapt to unique circumstances. Whether you have multiple facilities in the same watershed that might need to have their terms aligned because they all have the same environmental impact or whether there are investments that are made that might warrant a longer term just so that folks can recoup the costs of having made those improvements.

Mr. WALBERG. OK. OK.

There's been a regular group of licensees that have protected FERC's inclusion of certain costs related to non-FERC agencies into their annual hydro bills from FERC.

Does FERC have any plans to clarify the rules governing what can be included and what can't?

Mr. TURPIN. Well, I don't have a very strong background in how the annual charges are done. I do know that—I am not aware that we have a lot of discretion as to—as to which agencies we charge on behalf of. I think that's enumerated in the—in the Federal Power Act.

So that's certainly something I can look into and get back to you on.

Mr. WALBERG. I appreciate that.

And then, finally, does FERC believe it would add value to the Commission to have the legal authority to resolve disputes between agencies during the licensing process?

Mr. TURPIN. We do quite a lot of work with that now and that's the entire intent, I think, behind the pre-filing part of the ILP and it's always beneficial to have everybody kind of get to an agreement about what needs need to be met in studies before any actions are taken.

Mr. WALBERG. Anything that stands in the way of making that more efficient?

Mr. TURPIN. No, it's really—it really comes down to the willingness of the participants to collaborate and reach the consensus.

Mr. WALBERG. Thank you, Mr. Chairman. I yield back.

Mr. OLSON. Thank you.

The Chair now calls upon the biggest advocate for hydropower in this committee, Mrs. McMorris Rodgers from Washington State. You have 5 minutes, ma'am.

Mrs. MCMORRIS RODGERS. Thank you very much. I want to thank the committee for hosting this hearing and everyone for being here today.

As I know many realize, but hydropower is foundational to the Northwest economy, and I am proud to represent a district that is largely based upon carbon-free baseload. It's renewable. It's reliable and it's essential to our energy supply in the Northwest.

Hydropower can be expanded nationwide by modernizing the inefficient permitting process. According to a recent report that was actually from the previous administration, only 3 percent of the dams actually produce hydroelectricity and we could double hydropower in America without investing—or by simply investing in the

turbines such that are needed to convert dams into hydroelectric dams.

On average right now it takes 18 months to license a natural gas facility and it takes 10 years to relicense a hydropower facility. We can do better.

I've heard from PUDs, co-ops, investor-owned utilities across the country that they would like to upgrade non-powered dams but are unwilling to risk spending millions of dollars on an uncertain and bureaucratic process.

Even if we brought new dams online it would only burden the current relicensing process. Previous testimony by FERC's deputy associate general counsel testified that the Commission staff already had a full workload.

It's obvious that the current process is broken. After hearing these concerns as well as other local stories from eastern Washington, I've introduced legislation, the Hydro Power Policy Modernization Act of 2017 and it passed the House earlier this Congress with 256 yes votes.

The bill seeks to improve the coordination among agencies and provide FERC the ability to resolve interagency disputes.

My legislation also increases communication between FERC and other agencies by requiring them to explain in writing when deadlines may be missed. This added step of accountability is crucial to keep an account of delays and avoid the increasing backlog of hydropower relicensing.

Finally, we are also seeking to encourage investments at dams outside of the relicensing window. Currently, there is a small window to receive credit for making upgrades at a dam that can be included in the length of a new license.

By allowing early action, newer technologies can be installed as they come online that can increase power generation or fish passage, or both.

Before I move on to my questions, I quickly wanted to highlight the issues on the Colombia Snake River Dam system with current limitation over the 2014 biological opinion.

I have introduced legislation to codify this common sense biological opinion that the previous administration supported. Included in the Energy and Water Appropriations bill is language that will effectively stop the court-mandated spill and I encourage the Senate to act on my legislation which recently passed the House and which codifies the current Bi-op.

In the meantime, I am submitting questions for the record to both NOAA and the Army Corps requesting an update on aspects of the court-mandated NEPA review and the implementation of spill.

Now to questions—Mr. Oliver and Mr. Sheehan, data from FERC shows that a number of hydro licensings are delayed waiting for a final EIS biological opinion from your agencies.

Some of these cases have been delayed 5, 10 years, or longer. My office has even heard that agency staff have suggested that applicants may need to redo studies that are now stale or out of date—a situation caused by the agency itself.

I think we can all agree that this is not good practice and ultimately delays beneficial mitigation measures that industry members would otherwise enact with the issuance of a new license.

So I urge you to undertake a comprehensive review of this issue across your regional offices. For today, what are your thoughts on how your agencies can address this problem, and I would like to work with your office to have you report back your findings as well as your recommendations and a time table for when these bi-ops will be completed.

Mr. SHEEHAN. Thank you, Congresswoman.

At the Fish and Wildlife Service, I think there are a number of things. We've talked a lot today about one Federal decision. That forces us to get on some time lines and keep these projects advancing forward.

Whether it's through our biological opinions or other processes, it will force us to make sure that we are being persistent and working with applicants or other co-operators in these efforts.

But achieving time lines is critical and I think that your suggestion that we devise ways to better do that is well heeded. Again, processes being re-examined internally is where we are at right now.

Mr. OLIVER. I will echo what Mr. Sheehan said.

We have been working I believe cooperatively with all the agencies that are on this panel over the, certainly, the last year that I've been here to explore mechanisms to streamline these reviews and consultations.

We've had coordination occur through our participation in the Federal Permitting Improvement Steering Council, through inter-agency working groups relative to the executive order, and through interactions on specific projects that we are mutually engaged on.

I think that we—NOAA and Department of Commerce—are developing a specific implementation plan to, in addition to the cross-agency MOU that was signed we are developing a Commerce-level implementation plan for the Executive Order 13807, the one Federal decision.

So I am hopeful that that will go a long ways toward getting at some of these issues that are frustrating you and other members of this committee.

Mrs. MCMORRIS RODGERS. OK. Well, unfortunately, I've run out of time. I do have some further questions, and I will get them to you in writing as well as a question to the EPA on Clean Water Act Section 401 that I need your attention on.

I appreciate, again, the committee hosting this hearing today and really highlighting hydropower and the potential that it has to meeting America's important energy needs.

Mr. OLSON. Thank you.

The Chair now calls upon himself for 5 hours.

[Laughter.]

You're paying attention. Five minutes.

Welcome to our five witnesses. A special welcome to the witness who has an esteemed title back home that I will never, ever have—a native Texan—Mr. Oliver.

Welcome. Now, as I understand it too, you went to a special school there called Texas A&M University—the Aggies. Is that correct?

Mr. OLIVER. That's correct, sir.

Mr. OLSON. So you understand that this is a compliment but I just want to say howdy and woop.

Mr. OLIVER. Gig 'em.

Mr. OLSON. OK. As you all probably know, my home State of Texas has only 23 hydropower dams. It's a minor source of power for our State.

In fact, the State energy conservation office has basically said our good hydropower has been developed.

And this is a question for you, Mr. Turpin, of FERC. Your office is responsible for drafting the environmental documents for infrastructure projects like LNG terminals and natural gas pipelines.

Different issues in hydropower, but are there lessons learned—you can improve upon the permitting process with lessons learned from permits for LNG, natural gas—apply that to hydropower? Lessons you can learn?

Mr. TURPIN. Yes, absolutely. We are always trying to cross-pollinate. I mean, that—both those infrastructure are handled by the office I work in and so ideas can flow back and forth freely.

I think the things we've most is that the—what benefits the process and the time lines the most is having the early engagement of all the stakeholders and getting everybody to the table to identify the issues as well as to identify the information needs and then having the applicants meet those needs.

Mr. OLSON. The question for all your comments—Mrs. McMorris Rodgers had her bill pass the House, H.R. 3043, and an overwhelming bipartisan vote, and the goal of this legislation is for FERC to be the lead agency in these hydropower projects. We want to create more predictable, transparent, and an accountable licensing process.

And so my question for all five of you is are we hitting the target? Is there something we are missing, lacking? Can we modify it before the Senate acts? Because we hope they act—there's no guarantee—but they've got the bill in their court right now.

So anything we should look to change on the bill we passed? Because I think it's a good bill but sometimes these things cause unforeseen consequences. So are you guys concerned about the text that we may modify?

Mr. TURPIN. Well, I have to admit that—I know we testified on it last April and we had a lot of technical calls with staff on it. But I am not familiar enough with it to give you that diagnosis today. But, certainly, we can look at it and get back to you.

Mr. OLSON. Mr. Oliver, the proud Aggie—any comments that we should address with this bill? Suggestions?

Mr. OLIVER. I have to admit, sir, I would probably have to give the same answer as Mr. Turpin. I am not familiar enough with the details of it to really provide you a comment. It's something I would have to look at carefully and get back to see whether we could offer you some meaningful insights.

Mr. OLIVER. Aggie never lies, always tells the truth.

Mr. Sheehan from Fish and Wildlife, any issues we should address, you think, with the bill that's out there—that passed the House?

Mr. SHEEHAN. Well, certainly, I can't formally comment on the bill today but what I would probably say, and we heard a little bit earlier from Mr. Turpin, is we want to make sure that we don't tie our hands in some areas too tight so that as we have applicants come in with unique conditions that we don't legislate them right out of interest in a project.

So I think it's critical that flexibility exists throughout any process that we create in Government.

Mr. OLSON. Thank you.

Mr. Fisher.

Mr. FISHER. I sound like a broken record here. I, too, did not really come prepared to address specific legislation but, I certainly want to work with the panellists here, huddle with Corps headquarters and to perhaps come back to you with a fuller response.

Mr. OLSON. Mr. Goodin, anything—concerns you have with, sir?

Mr. GOODIN. I would offer a similar answer. Happy to provide any requested technical assistance there. But would just emphasize the theme of early coordination being important.

Mr. OLSON. OK. Great. Thank you, guys. We are out of our time.

Seeing no more witnesses, I would like to thank all the witnesses for coming today. I would like to introduce—ask unanimous consent to introduce for the record a document called a letter from the Western Governors' Association.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. OLSON. Pursuant to committee rules, I remind Members that they have 10 business days to submit additional questions for the record, and I ask that witnesses submit their response within 10 business days upon receipt of the questions.

Without objection, this hearing is now water under the dam and is adjourned.

[Whereupon, at 1:08 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]



DENNIS DAUGAARD
GOVERNOR OF SOUTH DAKOTA
CHAIR

DAVID IGE
GOVERNOR OF HAWAII
VICE CHAIR

JAMES D. OGGBURY
EXECUTIVE DIRECTOR

June 4, 2018

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230 U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
U.S. Senate
419 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators McConnell and Schumer, and Representatives Ryan and Pelosi:

Western Governors are concerned about various proposals to alter the state certification process under Section 401 of the federal Clean Water Act (CWA). Western Governors urge Congress to reject any effort that may diminish, impair or subordinate our ability to protect water quality within the boundaries of our states.

States have primary legal authority over the allocation, administration, protection and development of water resources within their boundaries. In the West, water is a scarce resource that must be managed with sensitivity to social, environmental, and economic values and needs. Sustainability of our natural resources (especially water) is imperative to the West. Responsible growth and development, as well as proper environmental management, depend upon the recognition and preservation of state stewardship.

Western Governors recognize the importance of partnerships between states and federal agencies. To implement the CWA, Congress designated states as co-regulators under a system of cooperative federalism that recognizes state interests and authority.

Congress recognizes states' legal position in the CWA; Section 101 clearly expresses Congress's intent:

to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter...Federal agencies shall co-operate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

CALL (303) 623-9378
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Suite 1700
Denver, CO 80202

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The Honorable Paul Ryan
The Honorable Mitch McConnell
The Honorable Nancy Pelosi
The Honorable Charles Schumer
June 4, 2018
Page 2

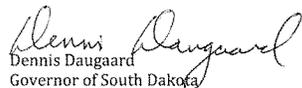
A balanced system of cooperative federalism has enabled states to implement the CWA with flexibility. The Act recognizes that a one-size-fits-all approach to water management and protection does not accommodate the practical realities of geographic and hydrologic diversity.

A vital component of the CWA's system of cooperative federalism is state authority to certify and condition federal permits of discharges into waters of the United States under Section 401. This authority has helped ensure that activities associated with federally-permitted discharges will not impair states' water quality. The U.S. Supreme Court has addressed this issue of state authority and concluded that, "[s]tate certifications under [Section] 401 are essential in the scheme to preserve state authority to address the broad range of pollution." *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006), citing 116 Cong. Rec. 8984 (1970).

Western Governors understand the importance of regulatory efficiency and welcome efforts to streamline federal infrastructure permitting processes. We have actively pursued reforms that would incorporate early, meaningful, substantive, and ongoing consultation with states, through their Governors' offices, so that material impediments to efficient infrastructure development may be properly identified and addressed.

Reducing the authority and vital role of states in maintaining water quality within their borders would inflict serious harm to the division of authority established by the Constitution and recognized statutorily in the CWA. Any legislative or regulatory effort to streamline environmental permitting should be developed in consultation with states and must not be achieved at the expense of state authority under the CWA – nor impair states' sovereign authority over the management and allocation of their water resources. Western Governors implore you to ensure that the CWA continues to effectively protect water quality while maintaining the proper balance between state and federal authorities.

Sincerely,


Dennis Daugaard
Governor of South Dakota
Chair, WGA


David Ige
Governor of Hawaii
Vice Chair, WGA

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
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COMMITTEE ON ENERGY AND COMMERCE
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Minority (202) 225-2927
Minority (202) 225-3641

July 13, 2018

Mr. Terry Turpin
Director
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Mr. Turpin:

Thank you for appearing before the Subcommittee on Energy on Thursday, June 7, 2018, to testify at the hearing entitled "Improving the Hydropower Licensing Process."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing. To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Friday, July 27, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachments

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

July 27, 2018

The Honorable Fred Upton, Chairman
Subcommittee on Energy
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for the opportunity to appear before the Subcommittee on Energy on Thursday, June 7, 2018. Attached are my responses to the Supplemental Questions for the Record.

Sincerely,



Terry Turpin
Director, Office of Energy Projects

The Honorable Fred Upton

1. **On August 15, 2017, President Trump signed Executive Order 13807, which established the "One Federal Decision" policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.**
 - a. **Please describe how the E.O will be implemented for hydropower projects.**

Pursuant to section V.B of the MOU, Commission staff submitted its implementation plan for the One Federal Decision (OFD) process to OMB and CEQ on July 9, 2018. The attached flowchart, included with that plan, shows how staff is implementing the provisions of the OFD for hydropower projects that meet the definition of major infrastructure.
2. **Delays in the hydropower licensing process have a profound impact on the State of Maine. As you may know, Forest City is a small border community on the St. Croix River that is home to the county's largest employer, the Woodland Pulp Mill. Woodland Pulp operates the Forest City Project, a small dam that impounds two lakes on the U.S.-Canada border. In order to preserve jobs at the mill, Woodland Pulp reached an agreement with the State of Maine to allow it to transfer ownership of the hydropower facility to the state, if FERC determines that the dam will not require a FERC license. Woodland Pulp filed a request on July 27, 2017, but a final decision has not been issued, stalling investment and contributing to economic uncertainty in one of the most rural and impoverished counties in Maine.**
 - a. **Please provide an update on FERC's evaluation of Woodland Pulp's request and timeline for issuing a final decision.**

In response to the licensee's July 27, 2017 request, the Commission issued a Declaratory Order on December 21, 2017. On January 19, 2018, Woodland Pulp requested rehearing of that Order. That request is under consideration by the Commission.

FERC Hydropower Licensing Process

This is a companion document to the following flowchart entitled *FERC Hydropower Licensing Process*. The flowchart highlights where major provisions of the One Federal Decision (OFD) Memorandum of Understanding (MOU) will occur in the Federal Energy Regulatory Commission's most commonly used licensing process (i.e., the Traditional Licensing Process). The primary steps in the Commission's pre-filing and application review processes are shown with major OFD provisions depicted in gold. Steps depicted in green represent applicant or other agency actions that are outside of the Commission's control, but are necessary to the review process.

The OFD MOU sets a goal of completing all federal environmental reviews and authorizations for major infrastructure projects within an average of two years, measured from the date of publication of a Notice of Intent to Prepare an Environmental Impact Statement (EIS).¹ The gold arrow in the flowchart includes a cumulative timeline for completing major steps in the application review process and meeting the two-year goal. Project-specific circumstances, including scope and complexity, account for the timeline ranges shown.

The Commission's ability to meet the timeline ranges in the flowchart and carry out the OFD goals are dependent on: (1) the applicant filing a complete application developed in consultation with agencies and other stakeholders; (2) the applicant providing timely and complete responses to additional information requests; and (3) all other agencies adhering to the timeframes established in the permitting timetable for their specific environmental reviews and authorizations. In addition, significant modifications to an applicant's proposal after the filing of an application may alter the timeline.

Additional Acronyms Used in the Flowchart

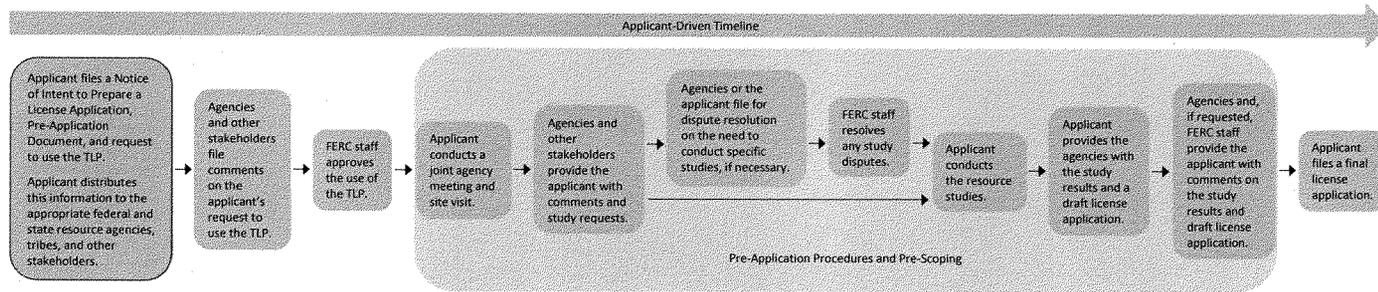
DEIS	Draft Environmental Impact Statement
EO	Executive Order
FEIS	Final Environmental Impact Statement
NOI	Notice of Intent
ROD	Record of Decision
TLP	Traditional Licensing Process

¹ Per the OFD Framework, the Commission has procedures that provide for publication of a Notice of Intent to prepare an EIS substantially in advance of filing of an application (i.e., in the pre-filing process), and may meet the OFD goals by starting the two-year timeline from the date on which the application is filed.

FERC Hydropower Licensing Process

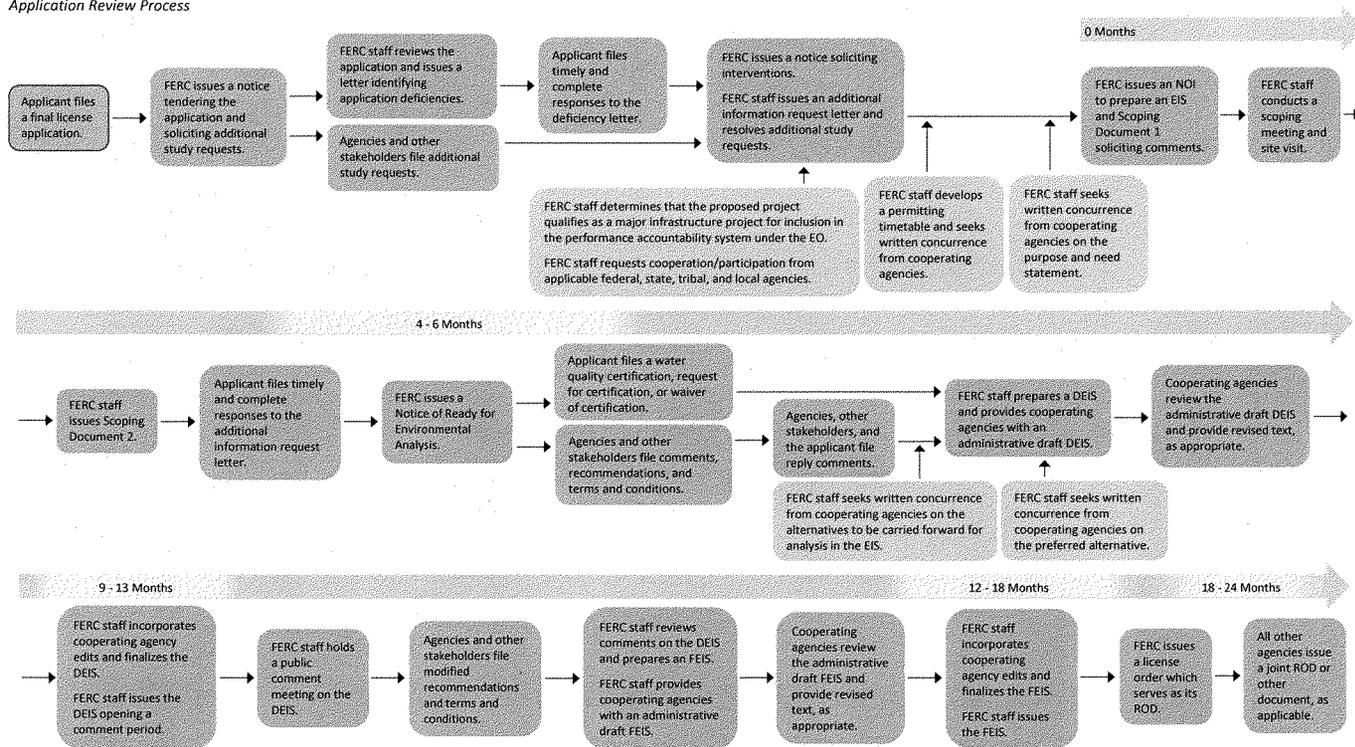
- One Federal Decision Provisions
- FERC Actions
- Applicant or Other Agency Actions

Pre-filing Process



FERC Hydropower Licensing Process

Application Review Process



The Honorable Jeff Duncan

While I have you in front of me I want to bring up a situation a county in my district has been dealing with for quite some time.

Greenwood County has been going back and forth with FERC on the location of a Fuse Plug at the Lake Greenwood Dam. The location of the Fuse Plug was approved previously by FERC but the Atlanta Regional office deemed that if the Fuse Plug was to be activated (which has not occurred in the entire existence of the lake) there would be severe damage to the surrounding area.

Greenwood has spent a great deal of personnel and money to offer up proposals to FERC, but in return, the federal government has not been clear on what they are willing to accept. This Lake Greenwood dam remediation has moved at a glacial pace and has literally been going on for 15 years. I think this situation is emblematic of larger bureaucratic problems within FERC's approval process. With that in mind, I have some questions.

I mentioned the amount of money the folks in Greenwood have spent trying offer a proposal to FERC. The fiscal impact the delays caused by FERC have on local communities should be examined carefully.

While in theory, the idea of getting experts in the fields of engineering, geology, hydrology to render a viable solution makes sense, there is a lot to take into consideration, It is expensive to impanel a Board of Consultants as FERC mandates, It cost Greenwood \$135,000 for them to do their work. Earlier this year, Greenwood sent FERC a proposal to spend \$19 million on the construction of an auxiliary spillway to address their concerns with the fuse plug. It is important to make note this money is all that of taxpayers in the third district.

1. **What can FERC do to better facilitate their relationship with local communities and municipalities, such as Greenwood? How should this be handled compared to a large utility company?**

FERC staff works with all licensees to develop a positive relationship and help them meet FERC requirements to protect the public living downstream of their dams. In this example, Commission staff engaged in extensive coordination with the operator of the dam, both when the operator was a utility company and when it was a municipality. Issues and amount of coordination are dictated by the design and the situation, not the type of licensee.

2. **What regulatory changes can be made by FERC to minimize the cost placed on municipalities?**

Because public safety is a prime concern, safety decisions are not made with cost as a driving factor, no matter the type of licensee. The facilities must meet the FERC dam safety requirements to minimize risk to the public. Safety requirements are based on the dam type, size and consequence of failure. The costs to the licensee always depend upon the magnitude of the specific issues at the project and the difficulties in developing and implementing solutions.

3. **Take the Board of Consultants for example, there is no assurance on FERC's end that they accept the BOC's proposal-Greenwood County could be subject to pay thousands and thousands of taxpayer dollars to have whatever they propose ultimately rejected. That just doesn't make sense-how can this be handled differently?**

In 2017, Greenwood County proposed a stanchion gate structure to replace the existing fuse plug in the auxiliary spillway. While stanchion gates have been successfully employed on gravity concrete structures on rock foundations discharging directly to rivers and rocky channels, the proposed stanchion gate control structure would release flows to an unlined earthen spillway. Because of safety concerns with erosion of unlined spillway channels highlighted during recent events at Oroville dam and because of the unprecedented use of stanchion gates proposed by Greenwood County, FERC has required an independent Board of Consultants (BOC) to assist in reviewing and evaluating the proposed design. Greenwood County has selected well-qualified BOC members and FERC staff will be fully engaged during the BOC process. Issues will be raised, discussed, and resolved as the project moves along. Our experience with the BOC process has shown that it does not result in rejections of proposals, but rather in modifications to the designs where required. We have had a long history of success with the process and there is no reason to think that it won't be successful in this situation.

The Honorable John P. Sarbanes

Mr. Turpin, the state of Maryland has been working with Exelon for a number of years to re-license the Conowingo Dam on the Susquehanna River. The Conowingo facility was last licensed in 1980. The current license expired in September 2014. Exelon is seeking a new 50-year license for the facility.

The State of Maryland also has been working with neighboring states and the states within the Susquehanna River Basin to improve water quality conditions in the Chesapeake Bay. All of these states continue to work on programs to reduce sediment and nutrient inputs to the watershed. And, it is Maryland's position that the Conowingo facility must be part of the solution too. This re-licensing provides a once-in-a-generation opportunity to address the sediment issues associated with the dam and the facility's operation.

At the beginning of the Integrated Licensing Process for the Conowingo Dam, the State of Maryland asked FERC to require Exelon to perform studies essential for the State to have the data necessary to issue a 401 certification that would be legally defensible. The Commission denied that request. Early in the relicensing process, Maryland also requested conditions to address water quality and fisheries issues. FERC denied those also.

Had the Commission approved Maryland's requests, the license proceedings for the Conowingo Dam would have moved more quickly. It was only upon the State of Maryland declaring that it would deny certification based on insufficient data and an incomplete application, that Exelon finally agreed to perform the studies necessary for Maryland to complete its work.

1. Please describe the purpose of the study report in the licensing process. Is this report intended only to inform the applicant of the studies required for FERC's decision-making or to inform the applicant of all studies required to secure all state and federal approvals needed to secure a license?

Study reports describe the results of any studies deemed necessary by the Commission to provide a sound evidentiary basis on which FERC can make a licensing decision.

2. **In the Order establishing the Integrated License Process (ILP), it states in the summary that one of the purposes of the ILP is: "better coordination between the Commission's processes,...., and those of Federal and state agencies with authority to require conditions" and "encouragement of informal resolution of study disagreements". Why doesn't the Commission defer to the other Federal and state agencies and support their study requests?**

The Commission consults with other Federal and state agencies on study needs during the ILP. As the arbiter established under the Federal Power Act to make a public interest licensing determination, the Commission considers the need for studies by applying criteria developed in a collaborative rulemaking process that included tribes and state and federal resource agencies. The criteria are listed in 18 C.F.R § 5.9(b). Any information or study request must:

- (1) Describe the goals and objectives of each study proposal and the information to be obtained;
- (2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;
- (3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;
- (4) Describe existing information concerning the subject of the study proposal, and the need for additional information;
- (5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;
- (6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and
- (7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

For a particular study, if the Commission concludes that the criteria have not been adequately addressed, it will not require the study for Federal Power Act licensing purposes. However, recognizing that other Federal and state agencies may operate under other statutory mandates, the Commission notes in its determinations that its required studies are not intended in any way to limit any agency's exercise of its independent statutory authority to require additional studies.

3. **As lead agency in this process, the Commission's failure to include all studies necessary for relevant agencies' decisions effects the ability of those agencies to complete their work and ultimately delays the license process. The Commission appears to be cooperating more with the applicant than with other agencies charged with protecting public resources. Many stakeholders have told this Committee that the number one thing that FERC could do to expedite hydropower licensing is to require studies requested by States, Tribes, and federal resource agencies in the FERC study plan. Thus far, FERC has refused to do so. Is the Commission giving any consideration to altering its process for developing and approving study plans given their impact on the schedule for completing the licensing process?**

It is only in those cases where the study requestor has not provided information that meets the criteria in 18 C.F.R. § 5.9(b) that studies are not required by the Commission. The Commission's study plan determinations do not limit any agency's ability to require additional information for its processes. To help avoid delays in the licensing process, other agencies could make such decisions on the need for additional studies during the pre-filing period when the Commission makes its study plan determinations. They do not need the Commission's approval to do so. As we move forward in implementing the One Federal Decision Memorandum of Understanding, staff will ensure that stakeholders understand this.

The Honorable Tim Walberg

1. **There's been a regular group of licensees that have protected FERC's inclusion of certain costs related to non-FERC agencies into their annual hydro bills from FERC. Does FERC have any plans to clarify the rules governing what can be included and what can't?**

The Commission is required to determine the reasonableness of costs incurred by other Federal agencies (OFAs) in connection with their participation in the Commission's proceedings under the Part I of the Federal Power Act. The Commission's *Order on Remand and Acting on Appeals of Annual Charge Bills* (107 FERC ¶ 61,277, *order on reh'g*, 109 FERC ¶ 61,040 (2004)) determined which costs are eligible to be included in the administrative annual charges. In addition, the order established requirements for detailed cost accounting reports and other documented analyses, to explain the cost assumptions contained in the OFAs' submissions. The basis for eligible costs that are to be included in the OFAs' administrative annual charges is prescribed by the Office of Management and Budget's Circular A-25 - *User Charges* and the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards Number 4 - *Managerial Cost Accounting Concepts and Standards for the Federal Government*. I am not aware of any plans by the Commission to change its rules regarding other Federal agencies' submittal of costs.

The Honorable Michael F. Doyle

- 1. Given the potential in adding hydropower to existing dams, do you see any potential to expanding utilization of pump storage capacity as well? For example, in my region, we have substantial existing locks and dams infrastructure. What potential do you see for expanded pump storage capacity?**

As a Federal agency with a regulatory rather than a research mandate, the Commission does not evaluate potential opportunities for hydropower development. Accordingly, I have little basis for any opinion on expanding pump storage capacity. However, I note that so far this fiscal year, almost 70 percent (11 of 16) of the preliminary permits that FERC has issued were to parties evaluating pumped storage projects.

The Honorable Paul Tonka**1 Of the structured points of the ILP, are there any that are most meritorious here?**

In general, the value of the ILP is that stakeholders get involved in the relicensing process as early as possible to identify environmental resources affected by a project and the information that will be needed to assess those issues and formulate any needed measures. Ideally, from a timing perspective, the ILP results in frontloading most of this process to the pre-filing stages with the goal of reducing the amount of information that staff or other agencies need to require from a licensee after an application has been filed.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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July 13, 2018

Mr. Chris Oliver
Assistant Administrator, Fisheries
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, N.W.
Washington, DC 20230

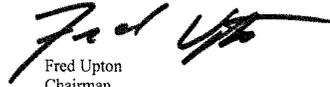
Dear Mr. Oliver:

Thank you for appearing before the Subcommittee on Energy on Thursday, June 7, 2018, to testify at the hearing entitled "Improving the Hydropower Licensing Process."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday July 27, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

[Mr. Oliver did not answer submitted questions for the record by the time of printing.]

Attachment—Additional Questions for the Record

The Honorable Fred Upton

1. On August 15, 2017, President Trump signed Executive Order 13807, which established the “One Federal Decision” policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.
 - a. Please describe how the E.O will be implemented for hydropower projects.
2. FERC provided the Committee with a table with information regarding cases where FERC staff has completed its environmental review and is currently waiting for an action to be completed by another agency before FERC can issue a decision on a project (See Table 1).
 - a. Please describe the status of each of the pending proceedings.
 - b. Please describe your consultations with FERC and any steps taken by your agency to complete the action.

The Honorable Cathy McMorris Rodgers

1. I understand the 2014 Biological Opinion (BiOp) on the Federal Columbia River Power System was developed in unprecedented collaboration with the Northwest’s states and tribes and represents the best available science of both the Bush and Obama Administrations, and this was defended in federal appellate court by the current Administration. Does the National Oceanic Atmospheric Administration (NOAA) continue to support the 2014 BiOp?
2. Could you provide a report to Congress on the court mandated spill this spring? It would be beneficial for federal decision makers to know the costs of the spill, benefits or detriments to fish returns, and other effects this court mandated decision has had on the river system.
3. What is the current harvest data of salmon species listed under the Endangered Species Act (ESA) on the Federal Columbia Snake River System as well as the Puget Sound?
4. The Federal Power Act provides “mandatory conditioning authority” to your departments over fish passage at FERC-licensed hydropower projects. I am concerned by reports of agency staff using this authority in an effort to force concessions - rather than conduct fact-based analysis on project effects, and without considering other project benefits. For example, license applicants report agency staff requiring fish passage that could cost ratepayers tens of millions of dollars, even if the target species is healthy, or where very few individuals are present in the watershed.

Understanding that the Services' primary stewardship is for species and habitat management, isn't it reasonable to expect the agencies to understand the full range of impacts that their conditions have on the various other public uses and benefits of these projects -such as renewable power generation, water supply and irrigation, grid reliability and security, and public recreation?

The Honorable Billy Long

1. There are a number of projects that have been delayed between 2 and 12 years because the National Marine Fisheries Service has not approved the license under the Endangered Species Act.
 - a. Can you explain the reasons for these extensive delays?
2. Your agency's approval processes are managed by both national and regional offices.
 - a. Is there a defined process that dictates how the offices work together and who are the final decision makers who ultimately decide licensing approval?

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

July 13, 2018

Mr. Greg Sheehan
Principal Deputy Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.; Room 3331
Washington, DC 20240

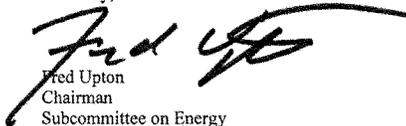
Dear Mr. Sheehan:

Thank you for appearing before the Subcommittee on Energy on Thursday, June 7, 2018, to testify at the hearing entitled "Improving the Hydropower Licensing Process."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, July 27, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

QUESTIONS FOR THE RECORD
Submitted to Greg Sheehan, Principal Deputy Director
U.S. Fish and Wildlife Service
“Improving the Hydropower Licensing Process”
House Energy and Commerce Subcommittee on Energy
June 7, 2018

The Honorable Fred Upton

1. On August 15, 2017, President Trump signed Executive Order 13807, which established the "One Federal Decision" policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.

a. Please describe how the E.O will be implemented for hydropower projects.

Response: Executive Order 13807 includes a framework to coordinate environmental reviews and authorizations under one lead agency, facilitating improved coordination and timely decisions. This April, the federal agencies involved in the permitting process, including the Department of the Interior, signed a MOU setting out goals under the One Federal Decision framework to implement the executive order and fulfill the President's goal of completing Federal environmental review and permitting decisions for major infrastructure projects within two years, on average.

The One Federal Decision policy is complementary to current law for the licensing of hydropower projects. Under current law, the Federal Energy Regulatory Commission (FERC) is the lead agency for conducting analyses of proposed hydropower licensing projects pursuant to the National Environmental Policy Act (NEPA) and issuing licenses, exemptions, or amendments. FERC's regulations at 18 CFR §5 outline the procedures of its Integrated Licensing Process (ILP), which shares the One Federal Decision objective of establishing cooperative relationships for the timely processing of environmental reviews and authorization decisions. For example, through its ILP, FERC develops a preliminary schedule for expeditious processing of a license application, similar to the Permitting Timetable required under One Federal Decision. Also, the pre-application phase of FERC's ILP provides for early involvement in the process by all stakeholders, similar to the preliminary project planning contemplated in One Federal Decision. The Service will continue to work with FERC to complete its reviews relative to FERC hydropower projects to meet the expectations of One Federal Decision.

2. FERC provided the Committee with a table with information regarding cases where FERC staff has completed its environmental review and is currently waiting for an action to be completed by another agency before FERC can issue a decision on a project (See Table 1).

a. Please describe the status of each of the pending proceedings.

Response: Please see attached table for information on those projects in which the Service is engaged.

b. Please describe your consultations with FERC and any steps taken by your agency to complete the action.

Response: Please see attached table for information on those projects in which the Service is engaged.

3. Please explain generally how the Fish and Wildlife Service evaluates the threat of invasive species when making decisions on hydropower licenses, including the prescription of upstream and downstream fish passage.

Response: The Service recommends instream surveys at each proposed hydroelectric project to determine the presence of any invasive species either upstream or downstream of the project dam. If an invasive species is present, the Service evaluates and compares the value of providing passage to the target species with the potential risk and effects of expanding the range of invasive species. Depending on the species involved, it may be possible to provide a type of passage that will only pass the target species and not the invasive species. When the threat of spreading invasive species is high, the Service may decide not to prescribe fish passage. In those cases where invasive species are already either upstream or downstream of a dam, the Service considers the value of providing passage to all species, particularly if there is a greater benefit for all aquatic species, such as mussels.

4. Section 5 of H.R. 3043, the "Hydropower Policy Modernization Act of 2017," contains a provision that requires consideration of the threat of invasive species in prescribing a fishway under Section 18 of the Federal Power Act.

a. Please explain how the Fish and Wildlife Service would implement this requirement.

Response: Where possible, the Service would prescribe fishways designed to selectively move target species without providing passage for invasive species. This is possible where the passage criteria (e.g., velocity, height, width depth, seasonality, water temperature, diel timing, etc.) for target and invasive species do not materially overlap. Such passage criteria are based on industry standard practices, accepted design methodologies, and the best available science.

Where it is not possible to implement designs that prevent invasive species movement while simultaneously providing passage for target species, the Service would prescribe

fishways that integrate trapping and sorting facilities. Trapping and sorting facilities provide licensees/state agencies with the ability to identify, screen out, and euthanize invasive organisms to ensure that only target species are moved through the fishway. Trapping and sorting procedures are codified in a project's comprehensive "Fishway Operating Plan" or in a separate "Invasive Species Control and Prevention Plan."

b. Would any changes to existing guidance or regulation be necessary?

Response: No, existing guidance and regulations would not need to be changed.

c. How would this requirement affect renewals and extensions of existing licenses?

Response: The Service does not believe that this requirement would have an effect on relicensings or potential license extensions, both of which are under FERC's purview.

The Honorable Cathy McMorris Rodgers

1. The Federal Power Act provides "mandatory conditioning authority" to your departments over fish passage at FERC-licensed hydropower projects. I am concerned by reports of agency staff using this authority in an effort to force concessions - rather than conduct fact-based analysis on project effects, and without considering other project benefits. For example, license applicants report agency staff requiring fish passage that could cost ratepayers tens of millions of dollars, even if the target species is healthy, or where very few individuals are present in the watershed.

Understanding that the Services' primary stewardship is for species and habitat management, isn't it reasonable to expect the agencies to understand the full range of impacts that their conditions have on the various other public uses and benefits of these projects -such as renewable power generation, water supply and irrigation, grid reliability and security, and public recreation?

Response: The Service aims to be judicious when using its mandatory conditioning authorities, only issuing prescriptions when we have substantial justification that conservation measures would have a significant benefit for fisheries and other trust resources. If we believe that fisheries would benefit from a fishway prescription, but do not have enough information at the time we are developing recommendations and prescriptions to file with FERC, we will reserve this authority and revisit possible fishway prescriptions at a later date when more information on that waterway has become available. Since 2000, the Service has prescribed fishways at approximately one-fourth of the projects where it has engaged in FERC's relicensing process.

The Service seeks to conduct as much of our review process as possible in concert with other entities, including stakeholders interested in power generation, water supply, grid

reliability, recreation, and the many other affected sectors. Oftentimes, the prescriptions are developed as a part of a settlement negotiation process, through which interested parties consider and discuss the costs of various proposed measures, and any potential effects to energy production. In developing our prescriptions, as well as the other conservation measures that we recommend to FERC, we engage with our partner agencies, license applicants, and other stakeholders to ensure that there are no surprises in our final prescriptions or recommendations. Pursuant to Section 4(e) of the Federal Power Act, FERC must balance the need for power with the need to protect, mitigate damage to, and enhance fish and wildlife (including related spawning grounds and habitat) as well as protect recreational opportunities, and preserve other aspects of environmental quality.

FERC Projects Requiring U.S. Fish and Wildlife Service Action
Current as of September 10, 2018

Project Number	Project Name	State	NEPA Completed	Current FWS Status
2086	Vermilion Valley	CA	5/3/2004	The U.S. Fish and Wildlife Service (Service) is working with the applicant, Southern California Edison (SCE), and anticipates concurring with FERC’s determination that proposed project, as well as five other projects associated with it (FERC Project Nos. 2174, 67, 120, 2085, and 2175), will not adversely affect any Endangered Species Act (ESA)-listed species or critical habitat. Service staff met with SCE twice and discussed potential conservation measures for the Yosemite toad and Sierra Nevada yellow-legged frog. The Service received draft conservation measures from SCE on June 19, 2018, to which we responded with clarifying questions. The Service is awaiting SCE’s response. We anticipate resolving outstanding issues and issuing a letter of concurrence to FERC before the end of 2018.
2174	Portal	CA	4/27/2016	The Service is working with the applicant, SCE, and anticipates concurring with FERC’s determination that proposed project, as well as five other projects associated with it (FERC Project Nos. 2086, 67, 120, 2085, and 2175), will not adversely affect any ESA-listed species or critical habitat. Service staff met with SCE twice and discussed potential conservation measures for the Yosemite toad and Sierra Nevada yellow-legged frog. The Service received draft conservation measures from SCE on June 19, 2018, to which we responded with clarifying questions; we are awaiting SCE’s response. We anticipate resolving outstanding issues and issuing a letter of concurrence to FERC before the end of 2018.
1971	Hells Canyon	ID/OR	8/31/2007	Completion of consultation is awaiting finalization of a Salmon Passage Agreement by the states of Oregon and Idaho.

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67	Big Creek 2A, 8, and Eastwood	CA	3/13/2009	The Service is working with the applicant, SCE, and anticipates concurring with FERC's determination that proposed project, as well as five other projects associated with it (FERC Project Nos. 2086, 2174, 120, 2085, and 2175), will not adversely affect any ESA-listed species or critical habitat. Service staff met with SCE twice and discussed potential conservation measures for the Yosemite toad and Sierra Nevada yellow-legged frog. The Service received draft conservation measures from SCE on June 19, 2018, to which we responded with clarifying questions; we are awaiting SCE's response. We anticipate resolving outstanding issues and issuing a letter of concurrence to FERC before the end of 2018.
120	Big Creek 3	CA	3/13/2009	On September 18, 2008, SCE requested consultation on the potential effects to valley elderberry longhorn beetle from FERC relicensing of Big Creek 2A, 8, and Eastwood; Big Creek 1&2; Big Creek 3; and Mammoth Pool projects. The Service completed the consultation on December 16, 2008 (TAILS # 81420-2009-I-0238). No other consultation request for Big Creek 3 has been received by the Service.
2085	Mammoth Pool	CA	3/13/2009	On September 18, 2008, SCE requested consultation on the potential effects to valley elderberry longhorn beetle from FERC relicensing of Big Creek 2A, 8, and Eastwood; Big Creek 1&2; Big Creek 3; and Mammoth Pool projects. The Service completed the consultation on December 16, 2008 (TAILS # 81420-2009-I-0238). No other consultation request for Mammoth Pool has been received by the Service.
2175	Big Creek 1 and 2	CA	3/13/2009	The Service is actively working with the applicant, SCE, and anticipates concurring with FERC's determination that proposed project, as well as five other projects associated with it (FERC Project Nos. 2086, 2174, 67, 120, and 2085), will not adversely affect any ESA-listed species or critical habitat. Service staff met with SCE twice and discussed potential conservation measures for the Yosemite toad and Sierra Nevada yellow-legged frog. The Service received draft conservation measures from SCE on June 19, 2018, to which we responded with clarifying questions; we are awaiting SCE's response. We anticipate resolving outstanding issues and issuing a letter of concurrence to FERC before the end of 2018.

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2079	Mid-Fork American	CA	2/22/2013	The Service and the applicant, Placer County Water Agency (PCWA), reached agreement on avoidance measures. PCWA has not indicated when they will complete the Biological Assessment. ESA consultation completed.
2266	Yuba Bear	CA	12/19/2014	The Service is currently working with the applicant, Nevada Irrigation District (NID), on this project. Service staff are reviewing project information, including management plans and other documents, to complete our analysis. NID indicated needing to resolve issues with NOAA Fisheries prior to concluding ESA consultation with the Service. Service staff continue to review project information, including additional project information received in August 2018. Service staff have requested a meeting with NID to discuss proposed conservation measures. We anticipate completing consultation by end of summer 2018.
2310	Drum Spaulding	CA	12/19/2014	The Service contacted the applicant, Pacific Gas and Electric Company (PG&E) in late 2017. At that time, PG&E indicated it did not have staff to work on the project. PG&E recently informed the Service that it had hired a project manager and we anticipate completing consultation shortly after PG&E's new project manager engages with us.
2179	Merced	CA	12/4/2015	Depending on potential workload conflicts, the Service anticipates completing consultation on this project fall 2018.
2467	Merced Falls	CA	12/4/2015	Depending on potential workload conflicts, the Service anticipates completing consultation on this project fall 2018.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
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COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2827
Minority (202) 225-3841

July 13, 2018

Mr. Ryan Fisher
Principal Deputy Assistant Secretary of the Army, Civil Works
U.S. Army Corps of Engineers
441 G Street, N.W.
Washington, DC 20314

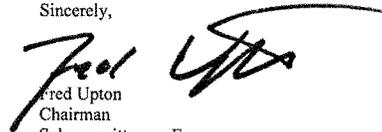
Dear Mr. Fisher:

Thank you for appearing before the Subcommittee on Energy on Thursday, June 7, 2018, to testify at the hearing entitled "Improving the Hydropower Licensing Process."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing. To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Friday, July 27, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachments

House Energy and Commerce Committee
Questions for the Record
June 7, 2018
Improving the Hydropower Licensing Process

Witness: Ryan Fisher, Principal Deputy Assistant Secretary of the Army for Civil Works

Attachment 1—Additional Questions for the Record

The Honorable Fred Upton

1. On August 15, 2017, President Trump signed Executive Order 13807, which established the “One Federal Decision” policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.
 - a. Please describe how the E.O. will be implemented for hydropower projects.

Answer: The U.S. Army Corps of Engineers (Corps) and the Federal Energy Regulation Commission (FERC) are working to streamline the reviews associated with the non-Federal hydropower development process, while maintaining responsibility for each agency’s statutory responsibilities.

The Honorable Cathy McMorris Rodgers

1. The U.S. Army Corps has had difficulty managing Total Dissolved Gas (TDG) levels at the dams as a result of the court mandated spill. Given the agency’s responsibility for the conservation of listed salmon are you concerned with court orders forcing added spill at the dams that are resulting in TDG levels exceeding water quality standards? Who is responsible for ensuring such standards are met and how are those standards being enforced? I recognize that “involuntary” spill is now occurring throughout the system due to high runoff, however, when spill can be controlled, shouldn’t it be kept under the law’s limits to protect endangered fish and other aquatic species?

Answer: The Corps is responsible for managing its project operations for ESA listed fish in a manner that is consistent with the state water quality standards, to the extent practicable, while implementing the NOAA Fisheries 2014 Biological Opinion for juvenile fish passage spill at specified levels to meet performance objectives for juvenile dam passage survival. The Total Dissolved Gas (TDG) criteria established by the states of Washington and Oregon (Washington’s Department of Ecology and Oregon’s Department of Environmental Quality), as adjusted specifically for juvenile fish passage at the Corps’ projects in the lower Snake and lower Columbia rivers, accommodates the biological opinion spill levels. We recognize the uncertainties associated with forecasting environmental conditions and other variables that influence TDG levels. During periods of voluntary spill within the time frame of the 2018 Court Order, the Corps set spill caps in an effort to meet, and not exceed, the state water quality standards.

The state water quality agencies are responsible for determining the TDG limits in their respective water quality standards for the uses the standard is designed to address, including endangered fish and other aquatic species, and for enforcement of those standards. The Corps provides an annual TDG monitoring report to both states that provides information on that year's operations.

2. Only an act of Congress can remove federal dams. Why is the Army Corps of Engineers spending tax payer and NW ratepayer resources to study Snake River dam removal without Congressional authorization?

Answer: Under the National Environmental Policy Act, agencies shall "include reasonable alternatives not within the jurisdiction of the lead agency." 40 CFR § 1502.14(c). In addition, the May 2016 District Court opinion that ordered the agencies to conduct the Columbia River System Operations Environmental Impact Statement (CRSO EIS) included observations about alternatives that could be considered and a large number of public comments advocated for the inclusion of an alternative to breach the lower Snake River dams. In reviewing the long term operations of the federal projects in the CRSO EIS, the Corps and the other co-lead agencies (the Bonneville Power Administration and the Bureau of Reclamation) are evaluating a reasonable range of alternatives that may meet the purpose and need for this action, which includes actions that may require congressional authorization.

3. I understand one of the largest if not the largest National Environmental Policy Act (NEPA) study is currently underway on the Federal Columbia River Power System:
 - a. How much does this study cost?

Answer: The Corps expects to fund a total of approximately \$45 million to complete the Columbia River System Operations Environmental Impact Statement (CRSO EIS) by the court-ordered deadline. The Bonneville Power Administration and Bureau of Reclamation are best positioned to provide a response regarding their expenses for this effort.

- b. What are the added costs to the river system from the court mandated spill?

Answer: The Bonneville Power Administration (BPA) could best provide information on estimates of foregone revenue and related costs of the 2018 spring spill operation. The Corps incurred some additional costs for increased manpower requirements to implement and manage the court ordered 2018 spring spill operations, approximately \$130,000 for additional staff and overtime. The Corps may also incur some increases in future Operations and Maintenance (O&M) costs due to wear and tear on the spillways and stilling basins from the fish passage spill operations.

- c. Who is paying for these costs?

Answer: The Corps and BPA are paying for these costs.

The Honorable Bill Johnson

1. Through its Civil Works program, the U.S. Army Corps of Engineers (USACE) has constructed Civil Works projects throughout the nation. Non-USACE entities require permission to alter or occupy these projects (Section 14 of the Rivers and Harbors Act of 1899; 33 USC 408; “Section 408”). Over the years, USACE has developed complex rules and regulations for implementing Section 408. On January 25, 2018, USACE issued a draft policy document (EC 1165-2-220) intended to replace its existing patchwork of Engineering Circulars and Memoranda. Comments from interested parties were due to USACE by April 6, 2018, and USACE announced that EC 1165-2-220 would be finalized by summer 2018. Can you please provide a status update of this process in terms of finalizing EC 1165-2-220? When can Congress expect to see either another draft or final version of this important document?

Answer: The revised guidance document is currently under development.

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Michael F. Doyle

1. Given the potential in adding hydropower to existing dams, do you see any potential to expanding utilization of pump storage capacity as well? For example, in my region, we have substantial existing locks and dams infrastructure. What potential do you see for expanded pump storage capacity?

Answer: Developers would be better positioned to determine the financial feasibility of expansion of pumped storage hydropower at existing dams.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
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COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (201) 225-2927
Minority (201) 225-3641

July 13, 2018

Mr. John Goodin
Acting Director, Office of Wetlands, Ocean, and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

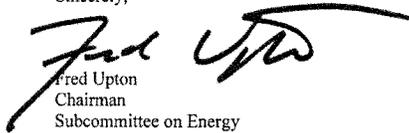
Dear Mr. Goodin:

Thank you for appearing before the Subcommittee on Energy on Thursday, June 7, 2018, to testify at the hearing entitled "Improving the Hydropower Licensing Process."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, July 27, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Fred Upton
Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 18 2018

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
Subcommittee on Energy
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's Questions for the Record following the June 7, 2018, hearing titled, "*Improving the Hydropower Licensing Process.*"

I hope this information is helpful to you and the members of the Committee. If you have any questions, please contact me or your staff may contact Denis Borum in my office at borum.denis@epa.gov or at (202) 564-4836.

Sincerely,


Tracy M. Lyons
Associate Administrator

Enclosure

QUESTIONS FOR THE RECORD
Submitted to John Goodin, Acting Director
Office of Wetlands, Oceans and Watersheds, Office of Water
U.S. Environmental Protection Agency
“Improving the Hydropower Licensing Process”
House Committee on Energy and Commerce, Subcommittee on Energy
June 7, 2018

The Honorable Fred Upton

On August 15, 2017, President Trump signed Executive Order 13807, which established the “One Federal Decision” policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.

a. Please describe how the E.O. will be implemented for hydropower projects.

Response: The goal of the MOU is to provide a framework for federal agencies to implement the One Federal Decision policy for major infrastructure projects, as directed by E.O. 13807. Although hydropower projects are not specifically mentioned in the MOU, we recognize that large hydropower projects could be important infrastructure under that framework. The EPA understands that there is concern that Clean Water Act section 401 certification may be a source of delay for major projects. The EPA intends to consult with the states and tribal organizations as the Agency considers updates to the administrative regulations governing section 401 certification and clarifying guidance to the states, tribes, federal agencies, and the regulated community.

The Honorable Cathy McMorris Rodgers –

FERC data shows that Clean Water Act Section 401 water quality certification is another area significantly delaying license issuances – again, in some case[s] 5, 10 years or longer. While Section 401 authority is delegated to the states, was the EPA itself aware of this? Can you review this process and report back findings and recommendations to address this problem?

Response: Clean Water Act section 401 provides that states complete their section 401 analysis and decision “within a reasonable period of time (which shall not exceed one year).” As described in the statute and regulations, a state waives certification when it does not act on an application within one year, or within a reasonable period of time less than one year as determined by the licensing or permitting agency.

The EPA understands that there is concern that Clean Water Act section 401 certification may be a source of delay for major projects. The EPA intends to consult with the states on this and has reached out to several state associations and tribal organizations as the Agency considers updates

to the administrative regulations governing section 401 certification and opportunities to provide clarifying guidance to the states, tribes, federal agencies, and the regulated community.

The Honorable Billy Long –

In 2010 the EPA developed a handbook to help states and tribes make informed and timely decisions regarding the Clean Water Act. You say that the EPA has heard the concerns from stakeholders regarding this process and the need to increase the efficiency and effectiveness of environmental reviews.

- a. The EPA has identified a “potential action” in its most recent regulatory agenda to update the 2010 handbook. Can you describe that action?**

Response: The Regulatory Agenda identifies “Clarification of State Certification Procedures Under Section 401 of the Clean Water Act” as a potential future EPA action. As noted in the Regulatory Agenda, the EPA is considering updates to the existing regulations, which pre-date the establishment of the EPA, and opportunities to provide clarifying guidance. Updates to the 2010 handbook, “Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes,” could be one such opportunity. The EPA has recently reached out to initiate conversations with the states and tribes on this important issue to inform EPA’s options and decision-making.