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Hydropower
“Surface Water Systems: Managing Future Flow”

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1. Introduction

- 1.1. From an energy perspective, hydropower provides 75% of our renewable power today.
- 1.2. From an environmental perspective, hydropower is one of the most significant stressors of public trust resources. For example, such dams block passage of anadromous fish to historical habitat on most Sierra rivers.
- 1.3. There is substantial interest in new hydropower development in response to policy initiatives to expand renewable power from the baseline of 10% of our generation mix, to 20% or more.

2. Basic Law

- 2.1. Each non-federal hydropower project must be licensed under the Federal Power Act, 16 U.S.C. 791 *et seq.* (FPA).
- 2.2. Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction to issue such licenses.
- 2.3. Under FPA section 10(a)(1), a license must be best adapted to a comprehensive plan of development for power and other beneficial uses of the affected waters.
- 2.4. Under Clean Water Act section 401(a)(1), the State Water Resources Control Board (SWRCB) must certify that a project complies with water quality standards, before a license may issue.
- 2.5. Each license has a term of 30-50 years subject to renewal.

3. Current Reality of Relicensing

- 3.1. The licensee conducts field studies of project impacts early in the relicensing proceeding. FERC and other regulatory agencies then use the study results as the basis for environmental analysis.
- 3.2. FERC and SWRCB generally do not cooperate to prepare a joint environmental document to support their respective licensing and certification decisions. Based on its interpretation of the *ex parte* rule, FERC requires that a cooperating agency waive its right to intervene as a party in the relicensing proceeding.
- 3.3. FERC generally does not require that a licensee cooperate with other licensees or federal agencies which operate other dams in a given watershed, to study or implement measures to mitigate cumulative impacts on fisheries or other resources.
- 3.4. As a positive development, most new licenses are based on settlements reached between a given licensee, regulatory agencies, and other stakeholders.

4. How Could Hydropower Contribute to Better Management of Surface Waters?

- 4.1. FERC should continue to emphasize settlements as the preferred basis for licenses. A settlement should be comprehensive, including proposed license conditions as well as non-jurisdictional measures that the signatories will implement as a matter of contract.
- 4.2. FERC and the SWRCB should cooperate in the preparation of a joint environmental document in each relicensing proceeding. SWRCB should have specific responsibility to prepare analysis of water quality impacts. It should not be required to waive party status to cooperate.
- 4.3. FERC and SWRCB should make a joint priority to study and mitigate the cumulative impacts of a licensed project and other facilities in a watershed.
- 4.4. A license should include specific performance standards for environmental results, in addition to compliance measures such as release of minimum flows.
- 4.5. A license for a project which is a terminal barrier to fish passage should include effective mitigation for that impact, either on- or off-site.

- 4.6. A license should include reopeners that (i) accommodate climate change and (ii) permit adjustment of compliance measures in response to evolution of generally applicable requirements for protection of trust resources.
- 4.7. Dams should be decommissioned when necessary to restore critical public trust resources, particularly if replacement power will be secured from other renewable sources. See the Klamath Hydro and Restoration Agreements (Jan. 2010), <http://www.edsheets.com/Klamathdocs.html>.

5. Further Information

Hydropower Reform Coalition, *Citizens' Guide to Hydropower* (2005), <http://www.hydroreform.org/hydroguide/hydropower-licensing/citizen-toolkit-for-effective-participation>.

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