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IMPROVING THE HYDROPOWER LICENSING PROCESS

THURSDAY, JUNE 7, 2018

House of Representatives

Subcommittee on Energy

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 11:00 a.m., in Room 2123 Rayburn House Office Building, Hon. Fred Upton [chairman of the subcommittee] presiding.

Members present: Representatives Upton, Barton, 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).

Staff present: Mike Bloomquist, Deputy Staff Director; Samantha Bopp, Staff Assistant; Kelly Collins, Legislative Clerk, Energy/Environment; Wyatt Ellertson, Professional Staff,

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1 Energy/Environment; Margaret Tucker Fogarty, Staff Assistant;
2 Jordan Haverly, Policy Coordinator, Environment; Mary Martin,
3 Chief Counsel, Energy/Environment; Sarah Matthews, Press
4 Secretary; Drew McDowell, Executive Assistant; Brandon Mooney,
5 Deputy Chief Counsel, Energy; Mark Ratner, Policy Coordinator;
6 Annelise Rickert, Counsel, Energy; Peter Spencer, Professional
7 Staff Member, Energy; Jason Stanek, Senior Counsel, Energy;
8 Austin Stonebraker, Press Assistant; Hamlin Wade, Special
9 Advisor, External Affairs; Everett Winnick, Director of
10 Information Technology; Jean Fruci, Minority Energy and
11 Environment Policy Advisor; Rick Kessler, Minority Senior Advisor
12 and Staff Director, Energy and Environment; John Marshall,
13 Minority Policy Coordinator; Alexander Ratner, Minority Policy
14 Analyst; Andrew Souvall, Minority Director of Communications,
15 Outreach and Member Services; and Catherine Zander, Minority
16 Environment Fellow.

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1 Mr. Upton. Good morning, everyone.

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

4 Today, the Energy Subcommittee -- you'll read about it, right
5 -- the Energy Subcommittee is going to examine the benefits of
6 our nation's hydroelectric resources and how we can improve upon
7 the existing framework to more efficiently license and relicense
8 non-federal hydropower projects in the U.S. and to help us better
9 understand this complex and multi-agency process, we are joined
10 by a great panel of experts representing five agencies that play
11 a significant role in the hydro licensing process. So thank you
12 for being here and appreciate you submitting your testimony to
13 us in advance.

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

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

22 While the energy industry is in the midst of a debate
23 regarding whether coal and nuclear resources should be
24 compensated for their baseload characteristics, it is
25 easy to overlook that hydro produces a significant amount of

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1 clean, zero emissions baseload electricity. Hydro also
2 contributes to the flexible and reliable operations of the
3 electric grid by providing more than just energy and
4 capacity.

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

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

14 As the lead agency for licensing, FERC is authorized by the
15 Federal Power Act to review proposals for the construction of
16 hydro facilities as well as to oversee the operations and safety
17 of hydro facilities over their license term, ranging from 30 to
18 50 years.

19 However, the licensing of new hydro and the relicensing of
20 existing facilities requires extensive consultation with a number
21 of resources and agencies at the federal, state, and local levels.

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

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

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

10 And while a typical relicensing action ought to take about
11 5 years, it is not uncommon for the project to stretch much longer.

12 Just last month, FERC Chairman McIntyre
13 provided us with a long list of hydro projects that are waiting
14 for other agencies to act before FERC can even issue a decision.

15 Too frequently, FERC cannot take final action because other
16 agencies such as the National Marine Fisheries Service or the
17 Fish and Wildlife, et cetera, have not completed the consultation
18 pursuant to the Endangered Species Act.

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

25 We can't allow important infrastructure projects as hydro

1 to fall victim to an endless bureaucratic process. It's not fair.

2 I am optimistic that these agencies will make progress towards
3 improving their coordination and the timely processing of
4 environmental reviews.

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

9 So we welcome your attendance today.

10 [The prepared statement of Mr. Upton follows:]
11

12 *****INSERT 1*****

1 Mr. Upton. I would ask unanimous consent to put a statement
2 in the record from a colleague not on our committee, Mr. Holoquin,
3 into the record.

4 Without dissent, it will be part of the record.

5 [The information follows:]

6
7 *****COMMITTEE INSERT 2*****

1 Mr. Upton. And I will yield five minutes to the ranking member
2 of the subcommittee, Mr. Rush.

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

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

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

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

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

19 Mr. Chairman, any potential changes to this process must
20 include a balanced approach that protects the rights of federal
21 resource agencies, states, and native tribes to impose conditions
22 in accordance with modern environmental law.

23 As you may remember, Mr. Chairman, I offered such an approach
24 in the form of an amendment in the nature of a substitute to H.R.
25 3043 on the floor of the House last December.

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

6 Mr. Chairman, I remain very leery of supporting any approach
7 that will make FERC the lead agency over the licensing process
8 and would require native tribes, the state, and federal resource
9 agencies to pay deference to FERC.

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

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

20 The minority side, Mr. Chairman, has offered an approach
21 that would address the critical concerns. In the amendment that
22 I offered during the floor debate on H.R. 3043, FERC and the other
23 federal resource agencies would be directed to convene a
24 negotiating rulemaking when all stakeholders include state and
25 local government representatives as well as native tribes.

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1 These stakeholders would then collaboratively develop a
2 process to coordinate all necessary federal authorizations and
3 to enable the commission to make a final determination on a license
4 not later than three years of receiving a completed license
5 application.

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

9 Thank you, and I yield back.

10 Mr. Upton. Gentleman yields back.

11 The chair would recognize the chair of the full committee,
12 Mr. Walden, from the good state of Oregon.

13 The Chairman. Thank you, Mr. Upton. Good morning.

14 And today's hearing will focus on ways to improve the
15 hydropower licensing process. Hydropower, of course, is the
16 nation's largest source of clean, domestic, renewable
17 electricity.

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

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

25 At the same time, the administration has taken promising

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1 steps with executive orders to bring greater discipline and
2 accountability in the environmental review and permitting
3 processes.

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

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

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

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

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

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

25 In fact, hydropower, mainly from projects of the federal

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1 government, is often able to supply up to two-thirds of our
2 electricity generation, and I would argue it's also carbon free.

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

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

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

14 And it is not just the rates. BPA invested nearly
15 \$275 million last year in fish projects across the Northwest.
16 This spill, supposedly in the name of fish, undercuts that revenue
17 stream as well.

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

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

25 There is no question that hydropower licensing is complex.

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1 There are lots of equities involved. It requires dozens of
2 federal, state, and local agencies to coordinate and balance a
3 wide range of issues and competing interests, such as electricity
4 production, flood control, tribal issues, water navigation, and
5 fish and wildlife issues.

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

10 Not to diminish the environmental issues, not to diminish
11 any of that, but just how do we -- how do we streamline this --
12 how do we make it more efficient -- how do we get the answer sooner.

13 So I thank you for being here.

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

15 [The prepared statement of Chairman Walden follows:]

16
17 *****INSERT 3*****

1 Mr. Upton. The chair yields back, and I yield now for an
2 opening statement of the ranking member of the full committee,
3 Mr. Pallone from New Jersey, five minutes.

4 Mr. Pallone. Thank you, Mr. Chairman.

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

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

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

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

18 At the same time, we can't ignore the fact that hydropower
19 has major impacts on water quality, water supply and management,
20 fish and wildlife populations, and other important physical and
21 cultural resources, and we also must recognize that a lot of
22 changes can occur over the period of a 30- to 50-year hydro
23 license.

24 Just think of the dramatic changes that are possible in
25 weather patterns, population, economic development, and

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1 competition for water resources.

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

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

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

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

17 And I realize that companies and public power entities want
18 faster more efficient decision making on their license
19 application. Dealing with multiple federal agencies, states,
20 tribal governments, and other water users is complex and time
21 consuming.

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

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1 require the use of that water.

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

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

8
9 An application is not complete until all participating
10 agencies have the information required to make a sound analysis
11 and support their decisions under the applicable laws, and I
12 continue to believe that FERC could do more to support the
13 information requests of other federal agencies, states, and
14 tribes in these proceedings.

15 Unfortunately, one of the largest sources of delay continues
16 to be licenses failing to provide complete applications, making
17 it nearly impossible for resource agency states and tribal
18 governments to complete their work on time.

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

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

25 So, Mr. Chairman, we can have clean water, thriving

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1 fisheries, healthy watersheds, good jobs, and affordable
2 hydropower.

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

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

10 Mr. McNerney. Well, I thank the ranking member. I thank
11 the chairman for holding this hearing.

12 Hydropower is an important energy resource but, like all
13 energy resources, it has environmental down sides. A significant
14 benefit, though, of hydropower is that it produces not greenhouse
15 gases.

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

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

24 So I ask my colleagues to work together on a bipartisan basis
25 and make progress on hydropower licensing and relicensing, and

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1 let's not have the majority forcing through a program that will
2 get bogged down in partisan fighting.

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

4 Mr. Pallone. Thank you, and I yield back, Mr. Chairman.

5 Mr. Upton. The gentleman yields back. Thank you.

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

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

10 Mr. Turpin, deputy director, Office of Energy Projects from
11 FERC, welcome.

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1 STATEMENTS OF TERRY TURPIN, DIRECTOR, OFFICE OF ENERGY PROJECTS,
2 FEDERAL ENERGY REGULATORY COMMISSION; CHRIS OLIVER, ASSISTANT
3 ADMINISTRATOR, FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC
4 ADMINISTRATION; GREG SHEEHAN, PRINCIPAL DEPUTY DIRECTOR, U.S.
5 FISH AND WILDLIFE SERVICE; RYAN FISHER, PRINCIPAL DEPUTY
6 ASSISTANT SECRETARY OF THE ARMY, CIVIL WORKS, U.S. ARMY CORPS
7 OF ENGINEERS; JOHN GOODIN, ACTING DIRECTOR, OFFICE OF WETLANDS,
8 OCEAN, AND WATERSHEDS, U.S. ENVIRONMENTAL PROTECTION AGENCY

9
10 STATEMENT OF MR. TURPIN

11 Mr. Turpin. Thank you, sir.

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

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

18 This includes non-federal hydropower projects, interstate
19 natural gas pipelines and storage, and liquefied natural gas
20 terminals.

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

25 As a member of the commission's staff, the views I express

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1 in this testimony are my own and not necessarily those of the
2 commission or of any individual commissioner.

3 The commission regulates over 1,600 non-federal hydropower
4 facilities projects at over 2,500 dams, which represents about
5 half of the hydropower-generating capacity in the U.S.

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

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

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

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

20 The commission has, for many years, worked closely with other
21 federal and state agencies to complete reviews of infrastructure
22 projects in an expeditious, coordinated, and transparent manner.

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

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1 Earlier this year, Chairman McIntyre entered into the one
2 federal decision memorandum of understanding with several
3 agencies.

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

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

12 [The prepared statement of Mr. Turpin follows:]
13
14

*****INSERT 4*****

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

4 So Mr. Oliver, assistant administrator for fisheries at
5 NOAA, welcome to you. You don't have to beat the record, by the
6 way. But welcome.

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1 STATEMENT OF MR. OLIVER

2
3 Mr. Oliver. Thank you, Chairman Upton and Ranking Member
4 Rush, for the opportunity to testify.

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

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

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

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

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

23 Use of the prefiling process improves the quality of
24 hydropower applications filed with the commission, accelerates
25 the environmental review process, assists participants in

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1 assessing the resource impacts with the applicant's proposal,
2 and evaluating reasonable alternatives pursuant to the NEPA
3 requirements.

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

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

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

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

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

19 In 2017, consultations took an average of 53 days informal
20 -- 53 days from request to completion of the letter of concurrence.

21
22 In the previous four-year period, these took an average of
23 122 days, which is an overall improvement of more than 50 percent.

24 In addition, we are also focussing on increasing the use of
25 programmatic consultations and increasing tracking and workforce

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1 management to improve time lines.

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

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

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

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

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

20 Rather, we reserved our mandatory fish passage conditioning
21 authority under the FPA for the La Grange and Don Pedro projects
22 until December of 2025. This reservation authority aligns with
23 the time frames and conditions in the San Joaquin River
24 Restoration Settlement Act and facilitates coordination of
25 potential future fish passage actions for both Central Valley

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1 steel head and Central Valley's spring-run Chinook.

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

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

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

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

20 [The prepared statement of Mr. Oliver follows:]

21 *****INSERT 5*****

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1 Mr. Upton. Thank you very much.

2 Mr. Sheehan, principal deputy director of U.S. Fish and

3 Wildlife, welcome.

1 STATEMENT OF MR. SHEEHAN

2
3 Mr. Sheehan. Thank you, Chairman Upton and Ranking Member
4 Rush and members of the subcommittee for an opportunity to testify
5 today.

6 My name is Greg Sheehan, principal deputy director of the
7 U.S. Fish and Wildlife Service. I do, again, want to thank you
8 for an opportunity to testify on the important role of hydropower
9 licensing process.

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

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

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

23 In the licensing of hydroelectric dams, the working together
24 part of our mission includes close and timely coordination with
25 federal, state, and tribal partners as well as engagement with

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1 project applicants and open communications with the public.

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

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

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

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

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

22 Dams also change water temperature and water levels, which
23 can adversely affect fish. Fish and Wildlife Service's role in
24 the hydropower project licensing process is to recommend or
25 prescribe solutions to restore the impact of those effects while

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1 still recognizing the objectives of our nation's clean -- goals
2 of our nation's clean renewable energy resources.

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

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

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

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

17 This executive order includes a framework to coordinate
18 environmental reviews and authorizations under one lead agency.

19 The goal is to facilitate improved coordination and timely
20 decisions.

21 This April, the federal agencies involved in the permitting
22 process including the Department of Interior signed an MOU on
23 one federal decision to implement the executive order and
24 fulfilled the president's goal of completing permitting decisions
25 within two years.

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

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

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

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

14 I would be happy to address any questions that you may have.

15
16 [The prepared statement of Mr. Sheehan follows:]
17

18 *****INSERT 6*****

1 Mr. Upton. Thank you.

2 Mr. Fisher, principal deputy assistant secretary of the Army

3 Corps of Engineers, thank you. Welcome, sir.

1 STATEMENT OF MR. FISHER

2
3 Mr. Fisher. Thank you, Mr. Chairman, Ranking Member Rush,
4 distinguished members of the subcommittee.

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

7 Like the chairman said, my name is Ryan Fisher. I am the
8 principal deputy assistant secretary of the Army for civil works.

9 Army Corps is the nation's largest producer of hydropower.

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

13 In additional, non-federal interests have constructed
14 hydropower projects at 68 other Corps-owned dams. These projects
15 contain 199 generating units and produce a total capacity of 2,500
16 megawatts.

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

20 Of those 100 dams, 81 are owned by the Corps of Engineers.

21 In fiscal years 2016 and 2017, the Corps supported the
22 development of non-federal hydropower at 36 of its dams.

23 In addition to these active projects, there are
24 approximately another 60 planned hydropower projects. In 2016,
25 the Corps and FERC renewed their MOU on non-federal hydropower

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1 project development.

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

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

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

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

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

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

25 Additionally, the Corps has clarified when Section 408

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

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

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

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

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

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

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

9 The Corps stands ready to support the needs of non-federal
10 hydropower development.

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

14 Thank you.

15 [The prepared statement of Mr. Fisher follows:]
16
17

*****INSERT 7*****

1 Mr. Upton. Thank you.

2 Mr. Goodin, assistant director for the Office of Wetlands
3 at EPA, welcome to you.

1 STATEMENT OF MR. GOODIN

2
3 Mr. Goodin. Good morning, Chairman Upton, Ranking Member
4 Rush, and members of the subcommittee, I am John Goodin, acting
5 director of the Office of Wetlands, Oceans, and Watersheds at
6 the Office of Water at U.S. Environmental Protection Agency.

7 Thank you for the opportunity to be here before you today
8 to discuss the Clean Water Act's state certification authority
9 as it relates to federal permits and licenses.

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

15 It is a direct grant of authority from Congress to the states.
16 The statute does not provide EPA with the authority to review,
17 approve, or deny state certification programs or individual state
18 certification decisions.

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

25 A federal agency cannot issue a license or a permit for an

1 activity that may result in a discharge to waters until the state
2 where the discharge would originate has granted or waived water
3 quality certification.

4 Congress sought to ensure that state certification did not
5 unduly delay the issuance of federal licenses or permits by
6 providing that states complete their certification analysis and
7 decision within a reasonable period of time which shall not exceed
8 one year.

9 Tribes with treatment as state status also may exercise
10 certification authority. A state or tribe may grant, deny,
11 condition, or waive their certification of a federal license or
12 permit based in part on whether a discharge from the proposed
13 project will comply with their water quality standards.

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

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

20 First, the agency acts as the certifying agency where the
21 proposed discharge would originate in a jurisdiction without such
22 authority. Most typically, that is on tribal lands lacking
23 treatment as state status.

24 Second, where EPA has determined that the proposed discharge
25 may affect neighboring jurisdictions, the statute requires EPA

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1 to notify those other jurisdictions as well as the licensing or
2 permitting agency and the applicant and provide an opportunity
3 to comment on or object to the license or permit.

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

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

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

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

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

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

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1 I will happy to answer questions that you may have.

2 [The prepared statement of Mr. Goodin follows:]

3

4 *****INSERT 8*****

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

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

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

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

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

22 Mr. Oliver.

23 Mr. Oliver. The short answer, Mr. Chairman, is yes, our
24 responsibilities within fisheries are really similar to U.S. Fish
25 and Wildlife Service with regard to the ESA consultation aspect

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1 of it and we are rarely, if ever, and I don't this will change
2 under the one federal decision -- the lead agency -- we are
3 cooperating and are a consulting agency.

4 Mr. Upton. Mr. Sheehan.

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

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

14 Mr. Upton. Mr. Fisher.

15 Mr. Fisher. Mr. Chairman, I would concur as well. We have
16 an MOU in place with FERC -- just renewed it a couple years ago
17 in 2016.

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

22 Mr. Upton. Mr. Goodin.

23 Mr. Goodin. Thank you for the question, and EPA supports
24 --

25 Mr. Upton. Softball -- it's a softball question.

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1 Mr. Goodin. -- coordinated activity and would concur that
2 FERC is the appropriate lead.

3 Mr. Upton. Now, I will say that FERC provided us with a
4 list of 21 different pending projects. Some of them are fairly
5 lengthy in terms of how long they've been in the queue. I think
6 there's one that's been there almost, what, 18 years -- I am sorry,
7 14 years.

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

15 Mr. Turpin.

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

21 I think if you look at the list, a large part of them are
22 in a very few number of states that their water quality cert
23 process has a large implication for the timing of it and then
24 some of them have areas -- are in areas where there have been
25 additional species listed since the completed its review and so

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1 we have to kind of go back and coordinate through that.

2 So we do do outreach to all the entities involved on those
3 to try to get updates and to try to help move the process along.

4 But it always comes down to the priorities of those agencies
5 and their resources.

6 Mr. Upton. So I think each of you talked about the MOU that
7 was -- that was signed. Is there some effort to try and focus
8 on those that have taken already longer than two or three years
9 in the next couple of months?

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

16 Mr. Upton. My time is expired.

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

18 Mr. Rush. Once again, Mr. Chairman, I want to thank you.

19 I want to direct my question to Director Turbin -- Turpin,
20 rather, and I mentioned in my opening statement I previously
21 ordered an amendment on H.R. 3043 that would direct FERC and
22 federal resource agencies to convene a negotiated rulemaking
23 within 90 days of enactment with state and local representatives,
24 native tribes, and other stakeholders.

25 The purpose of this collaborative approach would have been

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1 to develop a process to coordinate all necessary federal
2 authorization and enable the commission the make a final decision
3 on a license within three years of receiving a completed license
4 application.

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

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

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

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

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

25 But by and large, the original licenses are done --

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1 typically, the median time for those is well under two years --
2 three years to start with. I think it's somewhere around 29
3 months on median.

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

8 Mr. Rush. Anybody else want to respond?

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

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

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

23 We really are working under a framework of time lines that
24 FERC, who's a lead on this effort, gives us and as a cooperating
25 agency if we feel there is insufficient information on a permit

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1 application, we would return back to the applicant and try to
2 get that as rapidly as possible.

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

7 Mr. Rush. Anyone else want to respond? Mr. Oliver.

8 Mr. Oliver. Yes, sir. Yes, sir.

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

12
13 But in many cases one of the most important, and this was
14 mentioned earlier, is to get a complete package which to evaluate
15 and which to consult on, and we have to have an application --
16 license application package that has sufficient definition of
17 the proposed action and in some cases the proposed action itself
18 is not crystal clear and it has to have sufficient information
19 upon which for us to do an evaluation and in many cases we get
20 an application and we say we are sorry -- it's not complete or
21 it's not specific enough, and there's a back and forth process,
22 and there's not a specific time line and perhaps that's part of
23 the problem is that it can drag out because we go back and forth
24 and eventually -- and during that period new information can come
25 into play.

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

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

8 Mr. Rush. I want to thank you, Mr. Chairman.

9 I yield back.

10 Mr. Griffith. [Presiding.] I thank the gentleman.

11 I know recognize the ranking member of the full committee,
12 the gentleman from Oregon, Mr. Walden.

13 The Chairman. The chairman of the full committee.

14 Mr. Griffith. Chairman of the full committee. Didn't I
15 say that?

16 The Chairman. The ranking member.

17 Mr. Griffith. Oh, sorry. Sorry about that.

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

22 But NOAA and NMFS have a lot of other authorities in my
23 district and across the West. On Friday, Mr. Oliver, your agency
24 finalized a year overdue grazing biological opinion for the
25 Malheur National Forest allotments on the Malheur National Forest

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1 and I've repeatedly heard concerns about the process and concerns
2 about the science used.

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

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

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

11 Mr. Oliver. I will try to address that, sir.

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

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

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

24 The Chairman. You may have to become one.

25 Mr. Oliver. I am quickly becoming an expert on many of these

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1 issues, sir.

2 The Chairman. Yes.

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

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

12 And so that was one of the issues that I know was raised.

13 But what we did change is that the stubble height requirement
14 would be considered in the context only of individual -- only
15 in individual pastures and therefore reinitiation would only
16 occur for violations in successive years on the same pasture and
17 such that we would only reinitiate consultation on the subject
18 pasture as opposed to the whole forest. So those were a few ways
19 --

20 The Chairman. Welcome to my world.

21 Mr. Oliver. -- in which we addressed those concerns and
22 we certainly -- the other issue was to delay turnout until July
23 1st in response to two incidences of noncompliance. But we didn't
24 want to delay that until July 1st, which is one of the reasons
25 we got that finalized this Friday on June 1st.

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1 The Chairman. Thank you for that.

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

5 You have got one cow steps in one red and all of a sudden
6 you may -- it may be okay but two may be a reconsultation. Three
7 may be a disaster.

8 I mean, there's a lot of frustration out there, as you know.

9 The issue of stubble height -- and I've been through a number
10 of briefings out in my district and parts of the planning process
11 there were requirements initially for stubble heights that,
12 frankly, probably couldn't be achieved if nobody was within 100
13 miles because the grass just never grows that high.

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

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

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

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

8 Mr. Griffith. I thank the chairman of the full committee
9 and I respectfully request great forgiveness for prior --

10 The Chairman. Did you want to revise and extend your opening
11 remarks?

12 Mr. Griffith. I do. Yes, sir. Absolutely. Thank you
13 very much.

14 I now recognize the gentleman from California, Mr. McNerney,
15 for five minutes.

16 Mr. McNerney. I thank the chair and I thank the witnesses
17 this morning.

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

24 The facility was not able to handle the high flow rates
25 encountered during the flood and we came very close to

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1 catastrophic damage.

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

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

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

15 Mr. McNerney. Okay. Please contact my office with those
16 results and let's go over those together.

17 Mr. Turpin. Absolutely.

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

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

25 But oftentimes the project issues are so specific or are

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1 so varied that there is a lot of back and forth data requests
2 that need to happen as issues are raised through the NEPA process
3 so that folks can get the right data.

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

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

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

16 Mr. McNerney. Okay. So you can work on a case by case basis
17 to make sure the applicants are providing the information that
18 you need as a licensing agency.

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

22 Mr. Turpin. I think in every -- in every circumstance I've
23 seen language like that. I mean, there's a couple issues. So,
24 first, the commission has routinely done that.

25 I mean, under the FPA and the NGA the commission already

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1 attempts to set schedules for agencies to kind of keep the process
2 moving. But none of that overrides these agencies' independent
3 authority for the processes under their own statutes.

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

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

10 Mr. McNerney. Thank you.

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

13 Mr. Turpin. I think it has been good. There hasn't been
14 a lot of projects that have nominated themselves for coverage.

15 The ones -- the majority of the ones that are on there were ones
16 that were open at the time that the law was passed.

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

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

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

3 Mr. Turpin. So there's a couple of ways.

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

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

14 Mr. McNerney. Okay. Thank you, Mr. Chairman. I yield
15 back.

16 Mr. Griffith. I thank the gentleman.

17 I now recognize the gentleman from Ohio, Mr. Latta, for five
18 minutes.

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

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

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

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

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

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

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

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

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

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

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

25 Mr. Latta. Let me ask you another question, if I may. You

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1 also state in your testimony that the Corps stands ready to support
2 the needs of non-federal hydropower developments. You point to
3 the Corps implementing improvements to the Section 408 review
4 process for private entities to develop hydropower and other
5 alterations to Corps projects.

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

8 Mr. Fisher. Sure. I think some of the ones I just outlined
9 that's exactly what I was talking about -- the delegating to
10 districts and eliminating the redundant reviews of the planning
11 branch and the real estate branch. So that's kind of what I was
12 referring to.

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

16 We are currently doing implementation plans as are the other
17 agencies. Those are -- those are due on the one federal decision
18 MOU in July.

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

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

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

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

8
9 So it could be weeks and months that we would be shortening
10 the time. It's project specific, obviously, but it would
11 certainly be shortened.

12 Mr. Latta. Well, thank you very much, and Mr. Chairman,
13 my time has expired.

14 Mr. Griffith. I thank the gentleman. I appreciate him
15 yielding back and now recognize the gentleman from Pennsylvania,
16 Mr. Doyle, for five minutes.

17 Mr. Doyle. Thank you, Mr. Chairman, and thank you to our
18 witnesses today.

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

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

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1 capacity.

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

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

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

21
22 It's about balancing that need for the hydropower with the
23 other environmental concerns and improving the economic
24 environment as well.

25 Mr. Doyle. Does the Corps intend to construct anymore

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1 hydropower projects on your existing dams?

2 Mr. Fisher. We are certainly -- the Corps of Engineers is
3 a self -- there are projects federally, yes, but I think you're
4 mostly referring to non-federal.

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

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

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

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

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

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

9 So there's certainly Corps -- a lot of Corps infrastructure
10 there. The capacity might be available. I am going to have to
11 come back to you after I speak with Corps headquarters staff to
12 get you a more firm answer.

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

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

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

24 Mr. Fisher. So as it relates to one federal decision, I
25 think all of our agencies are looking at July -- or July 9th,

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1 I believe, is the deadline for that.

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

8 Mr. Doyle. Thanks.

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

10 Mr. Griffith. I thank the gentleman for yielding back.

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

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

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

23 What is FERC doing, or any other agency that wants to answer,
24 to try to streamline the regulatory process to make it easier
25 if you already have the infrastructure there as we do in the mines.

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1 There's already electricity and roads and all kinds of things.

2
3 In Mr. Doyle's case, he's already got the dams built. What
4 are we doing to try to streamline that regulatory process so we
5 can make this a reality, because there is a lot of potential.

6 Mr. Turpin. I would say that we approach that -- well,
7 fundamentally we are always looking for ways within the existing
8 authority of the commission to make things move along better.

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

13 So we did the two-year pilot program a couple years ago,
14 a report to Congress on that, and there I think that demonstrated
15 that it's -- under the existing processes it is not a stretch
16 at all to get things done under two years and even faster when
17 you have got something that doesn't involve a lot of issues, that
18 doesn't involve a lot of new infrastructure.

19 Mr. Griffith. Well, and I would say, and I think I speak
20 for Mr. Doyle as well, that if there's something that you think
21 that we need to do in Congress, some additional authority or some
22 tweaking of some regulation, we are not going to do anything crazy.

23 But don't hesitate to let us know if there's something we can
24 do to be of assistance on that as well.

25 I appreciate that. Does anybody else want to comment on

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1 that topic?

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

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

14 So what can we -- what can we do to help there?

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

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

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

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1 their property.

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

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

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

14 So there's three different sets.

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

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

21
22 It just happens to be in the water, which works perfectly
23 fine if you want a boat dock. But they're being told in some
24 places, wait a minute, we don't want a boat dock there and it's
25 creating some conflicts. So I would just make you aware of that.

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

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

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

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

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

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

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

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

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

4 Mr. Tonko. And of those structured points, which -- are
5 there any that are the most meritorious here?

6 Mr. Turpin. In all honestly, I am not as familiar with each
7 step of that process. So I would have to -- I would have to get
8 back to you on that.

9 Mr. Tonko. Okay. Thank you.

10 And generally, how often is it used today?

11 Mr. Turpin. By regulation, it was -- it is the default
12 process. But only about a quarter of the projects use it. About
13 68 percent of projects come in and request to use the traditional
14 licensing process.

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

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

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

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1 Mr. Oliver.

2 Mr. Oliver. If I could comment, sir. We strongly support
3 the process and our experience when it's being used is that, as
4 I understand, it's a two-phase process and that prelicensing part
5 of the process where we are able to interact with the other
6 agencies that are involved with state entities, municipalities,
7 tribal interests, environmental group interests, other
8 stakeholder/landowner interests, when you're able to effectively
9 engage in that part of the process and very clearly resolve a
10 lot of issues and define the environmental impacts and
11 alternatives, that makes the second part of the process where
12 we actually have to do the NEPA analysis and the Endangered Species
13 Act consultation much more timely and smooth process.

14 Mr. Tonko. Well, that's good to hear, because it seems to
15 me that the ILP can speed up the process because it does front
16 load information gathering and consultations, and enables the
17 state and tribal governments and federal resource agencies and
18 other interested stakeholders to start coordinating much earlier
19 in the process this includes putting licensees on notice about
20 the information and studies required in order for agencies to
21 review the application.

22 And I heard a lot of discussion and I just want to state
23 that it seems to me that everyone agrees that in order for the
24 licensing process to go smoothly it is important to determine
25 all the necessary information and include interested stakeholders

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1 earlier on in the process and I think that's an assessment that
2 we all share.

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

6 I am sure that there are things that can be done to improve
7 the ILP process but we should be looking at ways to further
8 encourage its use rather than strictly seeking to weaken
9 environmental laws or severely limiting federal, state, or tribal
10 partners from completely -- totally from their reviews.

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

15 Mr. Turpin. At the commission, there's not -- I don't think
16 we've had a staffing problem on the hydro side. We've got a very
17 large upcoming relicensing workload and that should start kicking
18 up in 2019.

19 So we are looking at that. But we have the options of using
20 third-party contractors or direct contracts to augment staff.

21 So I don't think that's been a huge impact for us.

22 Mr. Tonko. Anyone else want to comment about the impact
23 of resources or staffing?

24 Mr. Sheehan. Yes. Thank you, Congressman.

25 The Fish and Wildlife Service -- first of all, we need to

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1 make sure we prioritize these right and in the right time lines.

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

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

10 Mr. Griffith. I thank the gentleman and now recognize the
11 gentleman of Ohio, Mr. Johnson, for five minutes.

12 Mr. Johnson. Thank you, Mr. Chairman.

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

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

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

23 Mr. Fisher. Sir, I think water quality mission isn't
24 necessarily the most important thing to the Corps regarding these
25 applications. We are mostly looking at the -- how it's modifying

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1 the dams.

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

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

8 Mr. Johnson. Well, the question -- I mean, the problem lies
9 in that a different water quality standard than FERC. I mean,
10 I don't understand why two federal agencies have a -- would have
11 a different water quality standard for adding a hydro project
12 to an existing dam.

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

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

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

21 Mr. Fisher. Sure. It's certainly in our MOU --

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

25 Mr. Fisher. Sure.

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

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

7 Mr. Johnson. Okay. All right. Well, thank you.

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

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

14 Mr. Sheehan. Thank you.

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

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

22 We've approved or worked through about 400 projects since
23 2000. In specific terms for fish passage, about 100 of those
24 required either new or some modification of a fish passage
25 structure, you know, to get them compliant or more up to date.

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

6 Mr. Johnson. Okay. Well, continuing on, you mentioned in
7 your testimony that environmental reviews are conducted at the
8 field level where most of the coordination between other agencies
9 and stakeholders takes place.

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

12 Mr. Sheehan. Well, first of all, we try to elevate those
13 as best we can and I -- you know, often the applicants will elevate
14 those for us.

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

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

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

24 Mr. Johnson. Is it -- do you think it would be helpful to
25 more formally outline a dispute resolution process so that the

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1 head of the agency can get involved quicker? Would that -- would
2 that expedite and make it more efficient?

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

6 Mr. Johnson. I would encourage -- I would encourage the
7 agency to look at how to do that.

8 Mr. Sheehan. Thank you for that suggestion.

9 Mr. Johnson. I yield back, Mr. Chairman.

10 Mr. Griffith. I thank the gentleman for yielding back.

11 I now recognize the gentleman from Iowa, Mr. Loeb sack, for
12 five minutes.

13 Mr. Loeb sack. Thank you, Mr. Chair, and I do want to thank
14 the panel for being here today.

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

18 So of you may know that in Iowa close to 40 percent of our
19 state's electricity is coming from wind and then we've got
20 hydropower and we've got coal.

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

25 But we are talking about hydropower today and this has been

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1 a great hearing. Learning a lot about this and how we can
2 streamline regulations.

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

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

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

16 I've been there at least a few times since that began, and
17 when that's completed the project is estimated to produce about
18 178,000 megawatt hours, or enough energy to power 18,000 homes.

19 So it will be that -- much of that area if not that entire area
20 around Pella, Iowa.

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

24 There's no question about that. That's why what we are
25 talking about today I think is really important in terms of

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1 streamlining the hydropower licensing process.

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

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

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

14 Mr. Fisher. I probably should speculate a little bit there.

15 I am not an expert on the technology. But yeah, I think in the
16 industry the technology has certainly increased. A lot of it
17 is still going to depend on the flow, right.

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

24 But yes, I believe there are advances and we certainly want
25 to work with any applicant and FERC as well to drive that economy

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1 in your area.

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

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

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

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

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

24 There's no question about it. These things are from the
25 1930s, you know, and we've got to be able to ship more grain down

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1 the Mississippi and out to the Panama Canal and out to our trading
2 partners in other parts of the world so that we are not out
3 competed, if you will, by Brazil and various folks.

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

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

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

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

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

22 Mr. Olson. [Presiding.] Thank you.

23 Mr. Long, five minutes for questions.

24 Mr. Long. Thank you, Mr. Chairman.

25 And Mr. Turpin, FERC, as you know, exercises jurisdiction

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1 over non-federal hydropower projects and their licensing. Do
2 you think the current hydropower licensing process involves too
3 many agencies with too little accountability for making
4 deadlines?

5 Mr. Turpin. I think that's -- there's such a wide variety
6 of expertise that's required I don't know that I could say that
7 it involves too many agencies.

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

12 Other agencies are balancing other mandates and other
13 competing workloads and so I think --

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

16 Mr. Turpin. I don't know that -- I don't know that
17 streamlining -- I think keeping the focus on what ought to be
18 the priority helps tremendously.

19 Mr. Long. FERC is responsible for licensing projects and
20 issuing exemptions but the commission is also responsible for
21 ensuring compliance during the life of a project, as you know.

22 In your opinion, can FERC adequately monitor all non-federal
23 hydroelectric plants with the resources currently available to
24 the commission?

25 Mr. Turpin. Yes. We have about 70 folks who do the

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1 licensing and about 40 or so that do just the compliance and
2 administration of a license, and then another 120 that do the
3 dam safety. So I think we are adequately staffed in that regard.

4 Mr. Long. You do think you are? I mean, it doesn't matter
5 the numbers if you don't think you're -- you have the adequate
6 -- you think you have adequate numbers?

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

9 Mr. Long. Okay. In your testimony you state that since
10 2010 FERC has issued 180 hydropower licenses and small hydropower
11 exemptions.

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

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

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

24 Mr. Long. Okay. Is there a way to hold agencies
25 accountable when deadlines proposed by the president's executive

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1 orders and interagencies' memorandums of understanding or, I as
2 I call them, memorandums of misunderstanding, are not met?

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

9 Again, at the commission we are relatively fortunate. We
10 are all located in one building. I kind of get to know what's
11 going on by just walking down the hallway. I don't have a lot
12 of remote field offices.

13 Mr. Long. Okay.

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

18 Can you explain the reason for these extensive delays?

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

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1 And there are instances where we've gone back and said, we
2 are sorry but this is insufficient for us to do our consultation.

3 That can result in a back and forth. There can be changes to
4 the project action. There can be new information that comes to
5 bear, scientific studies.

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

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

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

23 Mr. Long. Okay. I am past my time. I do have other
24 questions for Mr. Goodin and Mr. Fisher but I will submit them
25 in writing to you all.

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

2 Mr. Olson. Thank you, Mr. Long.

3 The chair now calls upon the gentleman from Indiana, Dr.
4 Bucshon, for five minutes of questions.

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

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

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

19 You know, duplicative red tape, duplicative regulations,
20 duplicative agencies looking at the project not in a -- you know,
21 in a timely fashion -- red tape.

22 And so, I mean, honestly -- I was on Transportation
23 Infrastructure for four years -- I, honestly, believe unless we
24 -- unless Congress sets hard deadlines that the reality is is
25 this is probably not going to change in any substantial way.

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

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

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

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

25 So a couple questions. Mr. Turpin and Mr. Fisher, could

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1 you -- what do you think the impact might be on powering --
2 potentially powering over the 50,000 suitable non-powered dams
3 across the country might have on our power grid and also, honestly,
4 might have on our emissions, because this is clean renewable
5 energy, as well as do you have any thoughts on what it might do
6 in the job creation area and also in the private investment area
7 into our nation's infrastructure.

8 Just kind of a general question, Mr. Turpin.

9 Mr. Turpin. Yes. That is, of course, the area with the
10 largest potential for expansion on any hydropower. I know DOE
11 did the study a number of years ago that identified a very large
12 number of dams that -- non-powered dams that might be suitable.

13 Mr. Bucshon. Fifty thousand, the number that I have.

14 Mr. Turpin. So --

15 Mr. Bucshon. That may be a little over generous.

16 Mr. Turpin. Well, that's the number I was remembering too,
17 so --

18 Mr. Bucshon. It's the number I have so --

19 Mr. Turpin. Yes. So it's, obviously, great benefits to
20 the nation in terms of what it might do to the grid. I mean,
21 hydropower -- you know, the benefits of that have been enumerated
22 in a lot of different ways in terms of either black start or just
23 sort of renewable energy kind of component to it.

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

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

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

15 Thank you. I yield back.

16 Mr. Olson. Thank you.

17 The chair now calls upon the gentleman from Michigan, Mr.
18 Walberg, for five minutes.

19 Mr. Walberg. Thank you, Mr. Chairman, and thanks to the
20 panel for being here.

21 And what we've discussed so far is water over the dam, as
22 they say. But I would like to go to some specific questions.

23 That's what happens when you're so far down on the dais here.

24 Mr. Turpin, the commission has spent a fair amount of time,
25 I understand, recently on making it faster to license very small

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1 hydro projects. Does FERC have any plans to find ways to speed
2 up the licensing process for larger hydros?

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

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

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

16 Mr. Turpin. Yes, that's correct. FERC and -- as well as
17 the other agencies that have statutory authorities.

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

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

25 Mr. Turpin. So I am not aware of any move to move -- to

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1 make that a regulation. But I don't know that it needs to be.

2 The commission issued it as a policy to state that 40 would be
3 the default and then with accommodation could kind of, depending
4 on the circumstance, fluctuate the time line.

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

7 Mr. Walberg. Wouldn't regulation, though, provide greater
8 certainty?

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

16 Mr. Walberg. Okay. Okay.

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

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

22 Mr. Turpin. Well, I don't have a very strong background
23 in how the annual charges are done. I do know that -- I am not
24 aware that we have a lot of discretion as to -- as to which agencies
25 we charge on behalf of. I think that's enumerated in the -- in

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1 the Federal Power Act.

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

4 Mr. Walberg. I appreciate that.

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

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

13 Mr. Walberg. Anything that stands in the way of making that
14 more efficient?

15 Mr. Turpin. No, it's really -- it really comes down to the
16 willingness of the participants to collaborate and reach the
17 consensus.

18 Mr. Walberg. Thank you, Mr. Chairman. I yield back.

19 Mr. Olson. Thank you.

20 The chair now calls upon the biggest advocate for hydropower
21 in this committee, Mrs. McMorris Rodgers from Washington State.
22 You have five minutes, ma'am.

23 Mrs. McMorris Rodgers. Thank you very much. I want to
24 thank the committee for hosting this hearing and everyone for
25 being here today.

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

6 Hydropower can be expanded nationwide by modernizing the
7 inefficient permitting process. According to a recent report
8 that was actually from the previous administration, only 3 percent
9 of the dams actually produce hydroelectricity and we could double
10 hydropower in America without investing -- or by simply investing
11 in the turbines such that are needed to convert dams into
12 hydroelectric dams.

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

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

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

24 It's obvious that the current process is broken. After
25 hearing these concerns as well as other local stories from eastern

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1 Washington, I've introduced legislation, the Hydro Power Policy
2 Modernization Act of 2017 and it passed the House earlier this
3 Congress with 256 yes votes.

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

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

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

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

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

21 I have introduced legislation to codify this common sense
22 biological opinion that the previous administration supported.

23 Including in the Energy and Water Appropriations bill is language
24 that will effectively stop the court-mandated spill and I
25 encourage the Senate to act on my legislation which recently

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1 passed the House and which codifies the current Bi-op.

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

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

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

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

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

21 Mr. Sheehan. Thank you, Congresswoman.

22 At the Fish and Wildlife Service, I think there are a number
23 of things. We've talked a lot today about one federal decision.

24 That forces us to get on some time lines and keep these projects
25 advancing forward.

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

5 But achieving time lines is critical and I think that your
6 suggestion that we devise ways to better do that is well heeded.

7 Again, processes being re-examined internally is where we are
8 at right now.

9 Mr. Oliver. I will echo what Mr. Sheehan said.

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

14 We've had coordination occur through our participation in
15 the Federal Permitting Improvement Steering Council, through
16 interagency working groups relative to the executive order, and
17 through interactions on specific projects that we are mutually
18 engaged on.

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

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

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1 of this committee.

2 Mrs. McMorris Rodgers. Okay. Well, unfortunately, I've
3 run out of time. I do have some further questions and I will
4 -- I will get them to you in writing as well as a question to
5 the EPA on Clean Water Act Section 401 that I need your attention
6 on.

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

10 Mr. Olson. Thank you.

11 The chair now calls upon himself for five hours.

12 [Laughter.]

13 You're paying attention. Five minutes.

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

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

20 Mr. Oliver. That's correct, sir.

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

23 Mr. Oliver. Gig 'em.

24 Mr. Olson. Okay. As you all probably know, my home state
25 of Texas has only 23 hydropower dams. It's a minor source of

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1 power for our state.

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

4 And this is questions for you, Mr. Turpin, of FERC. Your
5 office is responsible for drafting the environmental documents
6 for infrastructure projects like LNG terminals and natural gas
7 pipelines.

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

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

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

21 Mr. Olson. The question for all your comments -- Mrs.
22 McMorris Rodgers had her bill pass the House, H.R. 3043, and an
23 overwhelming bipartisan vote, and the goal of this legislation
24 is for FERC to be the lead agency in these hydropower projects.
25 We want to create more predictable, transparent, and an

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1 accountable licensing process.

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

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

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

16 Mr. Olson. Mr. Oliver, the proud Aggie -- any comments that
17 we should address with this bill? Suggestions?

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

23 Mr. Oliver. Aggie never lies, always tells the truth.

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

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1 the House?

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

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

10 Mr. Olson. Thank you.

11 Mr. Fisher.

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

17 Mr. Olson. Mr. Goodin, anything -- concerns you have with,
18 sir?

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

22 Mr. Olson. Okay. Great. Thank you, guys. We are out of
23 our time.

24 Seeing no more witnesses, I would like to thank all the
25 witnesses for coming today. I would like to introduce -- ask

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1 unanimous consent to introduce for the record a document called
2 a letter from the Western Governors Association.

3 Without objection, so ordered.

4 [The information follows:]

5

6 *****COMMITTEE INSERT 9*****

1 Mr. Olson. Pursuant to committee rules, I remind members
2 that they have 10 business days to submit additional questions
3 for the record and I ask that witnesses submit their response
4 within 10 business days upon receipt of the questions.

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

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