

**Testimony before the  
Subcommittee on Energy and Air Quality  
Committee on Energy and Commerce  
U.S. House of Representatives**

**on National Energy Policy  
and the Relicensing of Hydroelectric Projects**

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## **I. Introduction**

Good afternoon, Mr. Chairman, Congressman Hall, and members of the Subcommittee. I appreciate the opportunity to appear before you here today. My name is Andrew Fahlund and I am the Vice President for Restoration and Protection at American Rivers, the leader of a national river conservation movement, dedicated to protecting and restoring the nation's rivers.

American Rivers has more than 45,000 members in every state across the country. As chair of the Hydropower Reform Coalition, I also speak for 130 national and local organizations dedicated to improving rivers through the licensing of hydropower projects by the Federal Energy Regulatory Commission (FERC). Coalition members are active in more than 75 percent of the relicensing cases currently pending before FERC and have constructively contributed to numerous policy discussions concerning FERC regulated hydropower.

To start, I would like to express our grave concerns with the Energy Bill Discussion Draft (Discussion Draft) as a whole, which will harm the environment and do nothing to reduce our nation's dependence on foreign oil. We urge the Committee to reject the current Committee Discussion Draft of the Energy Policy Act and work toward a national energy policy that takes bold steps toward a cleaner, safer, and more independent energy future.

More specifically, I am before you today to share the opinions of American Rivers and the Hydropower Reform Coalition on the hydropower title of the Discussion Draft. There are four basic messages in my testimony:

1. Hydropower relicensing significantly improves environmental quality at almost no cost to power generation.
2. Much has changed since hydropower legislation was introduced in 1997 and even since the House passed H.R. 6 in 2003. Many of those changes have already paid dividends and others still hold promise.
3. By creating an administrative appeals process available only to hydropower dam owners, the Hydroelectric Title tilts the scales of justice in their favor and prejudices

states, tribes, local landowners, irrigators, conservation groups, and other interested members of the public who all have interests in how dams are operated.

4. The new process proposed in the Hydroelectric Title of the Energy Policy Act will increase regulatory complexity, decrease certainty, lengthen the timeline and cost of licensing, and diminish environmental standards.

I would like to stress that hydropower relicensing is a natural resources issue and not simply an energy issue, due to the enormous impacts dam operations have on hundreds of species, thousands of river miles, and millions of dollars in recreational opportunities for decades to come. Changes to dam operations that better conserve natural resources have a negligible impact on energy generation, electric rates, and industry viability.

I would also like to make it clear that American Rivers and members of the Hydropower Reform Coalition are NOT anti-hydropower. We simply wish to ensure that dams are operated to protect and restore river resources using best available technologies and best management practices. Coalition members including American Rivers have been involved in the relicensing of more than 300 dams over the past ten years supporting the continued operation of more than 9,000 MW of electricity. By contrast, we have opposed the relicensing of fewer than 20 dams, which together produce less than 100 MW of electricity.

While hydropower has provided significant benefits to society over the past 100 years, this has not come without a cost to our rivers. Dams harm the physical, chemical, and biological function of rivers by disrupting flows, degrading water quality, and blocking passage of fish and other species. Although hydropower's energy source – water – is relatively renewable, the river ecosystems that dams affect are not. The profound impacts of hydropower dams on river systems have been widely documented in the scientific literature. For example, dams cut off free-flowing rivers, blocking not only fish and wildlife migration, but also the flow of nutrients and sediments. By diverting water out of rivers for power generation, hydropower projects often leave entire water channels dry. Simple changes in the operating procedures for these projects can significantly reduce these impacts without significantly reducing generation.

When the scores of hydroelectric licenses scheduled to expire over the next decade were originally licensed decades ago, meeting environmental standards was not required and our understanding of complex ecological systems was in its infancy. For decades, these projects have operated with minimal environmental controls leading to significant and sometimes irreversible damage. Current relicensing represents our first opportunity to review these dams, reservoirs, and turbines, and to place environmental safeguards on them for the next 30 to 50 years that will improve our rivers and protect fish and wildlife for our children and grandchildren.

Though damaging to rivers and ecosystems, hydropower represents an important part of the nation's energy mix, producing about 10% of total annual generation. About half of that energy is generated by non-federal producers and regulated by FERC. The licensees pay nothing for an essentially free and renewable fuel – river water – and less than 2% of the fair market value for the use of federal lands.<sup>1</sup> According to FERC, the relicensing of more than 140 hydropower projects reduced generation an average of only 1.6% per project.<sup>2</sup> Based upon the relative percentage of hydropower in the nation's overall energy mix, we estimate that relicensing requirements would result in a mere 0.025% reduction of the electric power generated annually in America.

The claim by utilities that measures to protect river ecosystems and water quality will lead to substantial rate hikes for consumers are false. For example, the Hells Canyon Complex of three dams on the mainstem of the Snake River, bordering between Idaho and Oregon, is one of the largest privately-owned hydropower projects in the country. This complex blocks access of Snake River Chinook salmon from 80% of their historic spawning grounds. An economic analysis commissioned by the Nez Perce Tribe found that measures to provide fish passage and improve water quality in the river would lead to an average rate increase for residential customers of only \$1 a month, if the entire cost of these measures were passed along to

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<sup>1</sup> U.S. General Accounting Office, *Federal Energy Regulatory Commission: Charges for Hydropower Projects' Use of Federal Lands Need to Be Reassessed*, Washington, D.C., May 2003, GAO-03-383, p. 5.

consumers.<sup>3</sup> In addition, a poll of customers in southern Idaho and western Oregon found widespread support for Idaho Power providing upstream and downstream fish passage and a willingness to pay \$1.50 per month for ensuring these conditions.<sup>4</sup>

## II. Relicensing – An Important Balancing Act

The relicensing process is necessarily complex. Because rivers are *public* resources with many competing interests and significant environmental issues, the licensing process for hydropower dams involves multiple stakeholders. Unlike most electricity generating technologies, hydropower affects a wide range of interests. Because every dam and every river is different, generic standards cannot be applied to each project. Individual conditions suited to each project must be established.

The Federal Power Act (FPA), although commonly considered an energy statute, also occupies an important role in environmental protection. The statute was amended in 1986 to require the Commission to give “equal consideration” to power (electricity generation) and non-power (fish and wildlife protection, recreation, *etc.*) benefits of the river. However, this balancing requirement is not the sole environmental constraint placed on hydro projects. Back in 1920, Congress determined that some basic environmental protections must be afforded at every dam. Under these statutory requirements, expert federal and state resource managers establish basic conditions that form a floor above which FERC then establishes license conditions in the public interest.

Sometimes referred to as mandatory conditions, the statutory requirements assure that:

- (1) Fish can be passed upstream and downstream of a dam (FPA Section 18);
- (2) If a nonfederal dam is located on federally owned land, the purposes of the federal land are protected (FPA Section 4(e)); and

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<sup>2</sup> Federal Energy Regulatory Commission Staff, Report on Hydroelectric Licensing: Policies, Procedures, and Regulations. Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000, Washington, D.C., May 2001.

<sup>3</sup> Jon H. Goldstein, GTBEconomics. *Financial Analysis of Idaho Power Company: Effect of Mitigation Costs on Company: Effect of Mitigation Costs on Company's Financial Status and Electric Rates*, Chevy Chase, Maryland, August 12, 2004

<sup>4</sup> Evans/McDonough Company, Inc. Opinion Research and Strategic Services, *Hells Canyon Dam Complex*, Seattle, Washington, 2004.

- (3) The dam complies with state-developed water quality standards (Clean Water Act, Section 401).

Section 18 of the Federal Power Act grants authority to the Secretaries of Commerce and the Interior to mandate the construction and operation of fish passage. This authority has been upheld by the courts on a regular basis.<sup>5</sup> Setting the requirement for fishways apart as a special consideration reflects the understanding that fish are important to interstate and intrastate commerce and that they also have substantial non-commercial value. It reflects a policy incorporated into the laws governing dam-building from the earliest years of our nation. The privilege of building a dam on a public waterway has long required the protection of those who rely on affected fisheries, through the construction of safe and effective fish passage. New science, technology, and appreciation for the value of healthy fisheries has more recently prompted the construction of fish passage on many dams that were originally constructed without it.

Section 4(e) grants authority to land management agencies to ensure that projects on their lands meet current management goals and objectives. More than 400 FERC regulated projects are located on Forest Service, Bureau of Land Management, and tribal lands. These projects have impacts on water resources, recreation, fish and wildlife, and cultural resources and also receive the benefit of cheap rent.<sup>6</sup> In order to adequately manage the lands entrusted to them and ensure that hydro projects do not interfere with other uses of the land, federal land management agencies must be able to constrain how these projects are operated.

The protection of water quality is a responsibility that has been delegated to the states since the Clean Water Act was adopted 30 years ago. Section 401 ensures that private hydro projects will not interfere with state standards, by requiring that each federally licensed project obtain a state certification that the project is consistent with state standards, including the designated uses for each water body. The Supreme Court confirmed in *PUD No. 1 of Jefferson*

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<sup>5</sup> *Escondido Mutual Water Company et al. v. La Jolla Band of Mission Indians, et al.*, 466 U.S. 765, 777 (9<sup>th</sup> Cir. 1984) (citations omitted); *Bangor Hydro v. FERC*, 78 F.3d 659 (1<sup>st</sup> Cir. 1996) ; *American Rivers v. Federal Energy Regulatory Commission*, 187 F.3d 1007, 1030 (9<sup>th</sup> Cir. 1999).

*County v. Washington Dep't of Ecology*, 511 U.S. 700 (1994), that these standards include chemical, physical, and biological parameters.

These laws establish the simple rule that hydroelectric projects must meet basic environmental standards before operating on our rivers. Just as we should not allow coal-fired plants to operate without modern emissions control devices, hydro plants should not operate without use of best available technologies and practices. Nonetheless, these environmental conditions have been scapegoated as the cause of delays in the relicensing process. This is not supported by the facts.

In May 2001, FERC issued a report to Congress reviewing “policies, procedures, and regulations for the licensing of hydroelectric projects to determine how to reduce the cost and time of obtaining a license.”<sup>7</sup> The report showed that Section 4(e) and 18 requirements of the FPA by federal resource agencies were not a major cause for relicensing delays and that the timeframe for processing licenses incorporating mandatory conditions was nearly identical to that of licenses without conditions.<sup>8</sup> In fact, of the 157 new or existing projects licensed from 1995 through 2000, the Department of the Interior only established mandatory conditions under Section 4(e) for 9 projects, and the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration only established Section 18 fishway conditions for 32 projects.<sup>9</sup> When these conditions are established, they are usually uncontested. Of the 57 challenges brought by applicants for the 157 licenses, only 13 were directed to Interior and NOAA conditions.<sup>10</sup>

### **III. Improvements to the Relicensing Process Can Work**

For the last eight years, American Rivers and members of the Hydropower Reform Coalition have been working with industry, federal and state agencies, and the Commission to

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<sup>6</sup> U.S. General Accounting Office, *Federal Energy Regulatory Commission: Charges for Hydropower Projects' Use of Federal Lands Need to Be Reassessed*, Washington, D.C., May 2003, GAO-03-383, p. 5.

<sup>7</sup> Federal Energy Regulatory Commission Staff.

<sup>8</sup> Federal Energy Regulatory Commission Staff., p. 38

<sup>9</sup> William Bettenberg, Deputy Director, Office of Policy Analysis, U.S. Department of Interior, “Statement before the Senate Committee on Energy and Natural Resources on S. 597, S. 388, and S. 71 and Matters Related to the Hydropower Licensing Process,” Washington, D.C., July 19, 2001, p. 3.

<sup>10</sup> William Bettenberg.

make administrative improvements to the hydropower licensing process. We have made steady progress in a number of areas including federal agency actions and procedures to ensure consistency, timeliness, and coordination.

*Alternative Licensing Process*

Since 1997 when hydropower legislation similar to that in the discussion draft was introduced by Senator Larry Craig, FERC has undertaken two rulemaking efforts to streamline hydropower licensing. The first effort was the Alternative Licensing Process (ALP) established on October 29, 1997, and designed to promote collaboration and settlement in hydropower licensing. Since that time, dozens of projects have used the Commission's ALP rules, resulting in far less litigation and a marked increase in settlements.

From 2001 through 2004, FERC issued 135 licenses. A total of 51 of those licenses or 38% were settlement agreements. Interestingly, settlements accounted for 71% of the total electrical capacity of licenses issued during that time, or 3,208 MW. During that same period, the Commission oversaw the surrender of only 5 constructed projects, most of which were due to age and disrepair.

The recent Tapoco Settlement in Tennessee and North Carolina among Alcoa Aluminum, conservation groups, communities and state and federal agencies will restore flows to two previously dewatered river reaches, including a nine-mile section of the Cheoah River that has been virtually dry for more than 50 years. This will help a diverse array of native aquatic species, including the endangered Appalachian Elktoe mussel and create flows for recreation including fishing and whitewater boating. The agreement will also preserve over 10,000 acres of pristine watershed and biologically diverse lands adjacent to the Great Smoky Mountains National Park and the Cherokee National Forest through a combination of conservation easements, land donation, and rights of first refusal to conservation interests. To correct some of the stream system fragmentation caused by these dams and reservoirs, Alcoa will design and operate systems to transport four endangered fish species between disconnected tributaries and work with state and federal officials to reintroduce these species throughout the region. The agreement also creates two trust funds of \$12 million over 50 years to finance restoration, and recreation

projects in the Little Tennessee watershed. According to FERC, “the project will provide 380 megawatts of electricity generated from a renewable resource while protecting and enhancing fish, wildlife, recreation and aquatic resources near the project.”<sup>11</sup> Last Congress, a component of this agreement was codified in legislation, P.L. 108-343, sponsored by Congressman Duncan and Senator Alexander. The Hydroelectric Title of the Discussion Draft would have made this agreement highly unlikely.

Another success story is the Pelton-Round Butte Project owned and operated by Portland General Electric and the Confederated Tribes of the Warm Springs on the Deschutes Rivers. The settlement agreement, signed officially on July 13, 2004 will lead to salmon and steelhead reaching the upper parts of the Deschutes River for the first time in decades. In discussing the project Portland General Electric stated that ““The river sustains varied economies by generating electricity, irrigating agricultural land, providing a fish harvest for the Tribes and supporting recreation and tourism. The Deschutes draws white water rafters and fishermen from all over the region, while its reservoirs provide water skiing, shoreline camping and other recreation. Those benefits have come at a cost to the river, which the Pelton Round Butte relicensing agreement will help offset.” The settlement is an important last step to earning a new FERC license for the Pelton project. FERC must still accept the settlement and issue a new license.

In New England, major settlement agreements in Massachusetts, Vermont, and New Hampshire have led to tremendous growth in rural economies. For example, a series of dams along the Penobscot River in Maine with nonexistent or insufficient fish passage facilities caused the populations of migratory fish species to plummet to historically low populations. The river was home to the largest Atlantic salmon run in the world. Under the Penobscot River Restoration Project and licensing agreement, two dams will be decommissioned and removed, and state-of-the-art fish passage will be provided at a third. These efforts will open more than 500 miles of river habitat -- historical spawning grounds for Atlantic salmon and other species -- significantly enhancing fishing, recreation and tourism opportunities. As part of the licensing

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<sup>11</sup> Federal Energy Regulatory Commission, “EPA to Oversee Hydroelectric Facility Dismantling As Part of Superfund Remediation Project,” Press Release, January 19, 2005

agreement, 90% of the power production capacity will be maintained in the project by increasing production capabilities at other dams.

These and other settlement agreements have led to enormous improvements to rivers, local economies, and have guaranteed the continued operation of cheap, emissions free hydropower. The one-sided provisions of the Discussion Draft would have made this kind of collaboration almost impossible and significantly detracted from the ability to achieve settlements. Instead, we would have been left with litigation, litigation, and more litigation.

*FERC's New Rule*

Effective October 23, 2003, after the Energy Policy Act passed out of the House of Representatives, FERC established a new licensing process called the Integrated Licensing Process (ILP) designed to establish a single "integrated" environmental analysis. The proposal was the culmination of work by FERC staff and federal agencies as well as a parallel process initiated by hydropower licensees, conservation groups, state agencies, and Indian tribes. The Commission estimates that the ILP will reduce the average time it takes to complete the licensing process by 60%. Further, it estimates that the proposed process will reduce the cost of licensing for a project under 5 megawatts by \$150,000 and for a project greater than 5 megawatts by \$690,000.<sup>12</sup>

The highlights of the ILP are:

- increased assistance by Commission staff to potential applicants and stakeholders during the development of license applications;
- greater coordination among the Commission and federal and state agencies with mandatory conditioning authority;
- coordination of environmental analyses between the Commission and other stakeholders;
- public participation in the consultation process;
- clear and rational schedules and deadlines for all participants;
- development of a Commission-approved study plan, with dispute resolution of

- disagreements; and
- creation of a new Commission Tribal Liaison, to be the point of contact for American Indians' concerns regardless of the proceeding or issue.

Back in 1997, American Rivers and our conservation partners, along with the Departments of Agriculture, Commerce, and the Interior, all argued that it was premature to change the relicensing process until FERC's ALP rule had a chance to work. Eight years later, the success of that process has been borne out. We now stand before Congress immediately following the publication of another FERC rule on hydropower. We again urge Congress not to move forward with drastic proposals until we see how well this new process works. FERC has demonstrated that administrative improvements can occur without amending the law and without jeopardizing public participation or environmental quality.

#### *Mandatory Conditioning Agency Rulemaking*

In 2003, the U.S. Forest Service undertook a rulemaking on the "Notice, Comment, and Appeal Procedures for Projects and Activities on National Forest System Lands."<sup>13</sup> New rules to amend 36 C.F.R. Part 215 eliminated the process for administrative appeal of various Forest Service actions, including Forest Service conditions for the protection and utilization of National Forest System lands in hydropower project licenses under the FPA, section 4(e). American Rivers and the Hydropower Reform Coalition generally opposed the rule change, arguing that administrative appeals were a valuable administrative tool, provided they were adequately staffed and funded. Unfortunately, in an effort to streamline the agency, the Forest Service did away with any administrative review of agency conditions.

The concept behind the one-sided appeals process available exclusively to licensees was publicly vetted in a proposed Department of the Interior rule<sup>14</sup> this past fall. Ninety-nine percent of the 15,000 comments received, including those of eight states and several tribes, opposed the one-sided appeals process. Newspaper editorials in the Washington Post, San Francisco

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<sup>12</sup> Commissioner Nora Brownell, Federal Energy Regulatory Commission, Testimony before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, House of Representatives, Washington, D.C., March 5, 12, and 13, 2003.

<sup>13</sup> 67 Fed. Reg. 77451 (Dec. 18, 2002).

Chronicle, and Atlanta Journal Constitution lambasted the idea of giving utilities an unfair advantage. Comments received by the agency, including those of American Rivers and the Hydropower Reform Coalition, rejected the concept that dam owners were entitled to an appeal process closed to other stakeholders with a direct interest in the project, and called upon the Department of the Interior to establish a process open to all stakeholders. We await a response from the Department.

#### **IV. Current Proposals Would Bias the Process and Harm the Environment**

American Rivers and the Hydropower Reform Coalition oppose the hydropower language in the Energy Bill because it will increase regulatory complexity, decrease certainty, lengthen the timeline of license issuance, provide unjust advantages to hydropower dam owners, interfere with the full participation of states, tribes, homeowners, businesses, and other members of the interested public presently provided under the Federal Power Act, and diminish environmental quality. It should be rejected. Rather than providing a simple fix to the industry's complaint that decisions by resources agencies should be subject to administrative appeal, the language in the Committee discussion draft would undermine the entire resource agency process by: 1) giving hydropower interests unfair advantages at the expense of tribes, states, anglers, and other stakeholders; 2) creating unnecessary complexity; and 3) reducing standards for environmental protection.

##### **A. Title II would give hydro license applicants unprecedented power and access to special processes to address their interests.**

Currently, the Federal Power Act's hydropower licensing provisions create an open, equitable process in which the dam owner initiates the proceedings with its intent to file an application, but thereafter, other interested stakeholders have the same rights to participate all the way through administrative appeal to judicial review. See 18 C.F.R. §§ 380 and 385. The relicensing provisions of the Energy Policy Act Discussion Draft would drastically alter this balance for projects involving fish passage and public lands.

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<sup>14</sup> 64 Fed. Reg. 54602 (Sept. 9, 2004).

Section 231 of the discussion draft grants dam owners seeking a license for a hydropower dam the right to appeal an agency decision using a “trial-type hearing” on the record. Other parties are allowed to comment on these proceedings, but may not initiate them. Providing such a hearing to the license applicant, presumably to challenge conditions that are too onerous, but not granting other parties the chance to challenge weak conditions, is simply unequal treatment under the law and bad public policy. Industry argues that the public has multiple opportunities to have its views heard earlier in the licensing process. So does the license applicant. What matters most is whether the opportunities are even-handed; we ask Congress to ensure that everyone has the same opportunities to be heard, as they have had throughout the history of the Federal Power Act.

Section 231 also allows license applicants the exclusive right to compel the resource agencies to adopt alternative conditions from those issued by the agencies under sections 4(e) and 18. In offering this new authority only to license applicants, this legislation would again prejudice other parties involved in the licensing process – not just conservationists, but also state agencies, tribal interests, irrigators, neighboring landowners and recreationists. Offering alternatives that must be included by the Secretary is an unnecessary infringement on the agency’s authority and expertise, but granting this preferential treatment to hydropower interests is patently unjust, unfair, and inconsistent with every other element of the Federal Power Act. This provision also runs counter to the right of the public to participate in the management of the nation’s rivers.<sup>15</sup>

**B. The hydroelectric relicensing title would make a complex process more so.**

At a time when everyone is working to streamline hydropower licensing, the Hydroelectric Title adds complexity through the addition of three new administrative processes for each affected agency:

- Trial-type hearings for license applicants - This is an incredibly complex and costly proposal to administer and would enable dam owners to call witnesses and cross-examine

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<sup>15</sup> “The public must retain control of the great waterways. It is essential that any permit to obstruct them for reasons and on conditions that seem good at the moment should be subject to revision when changed conditions demand.” President Teddy Roosevelt, 1908

agency witnesses before an Administrative Law Judge. In its discussion of proposed rules to establish an appeals process for license applicants, the Department of the Interior recently argued against imposing a trial-type hearing, stating that it could prolong the current licensing process by up to two years.<sup>16</sup> FERC itself has largely abandoned this practice for its hydropower proceedings in favor of paper processes.

- Consideration of applicants' alternative resource conditions – The license applicant would be granted the opportunity to offer alternative conditions that the Secretary must accept provided the alternative meets certain standards. This process would require additional staff, steps, and analysis; and
- The Commission's Dispute Resolution Service – If the dam owner continues to disagree with the agency, despite each of the steps above, the dam owner may seek review by the Commission's Office of Dispute Resolution, an office with no authority or experience to resolve differences in these cases.

Another new process would mandate that federal resource agencies consider eleven new factors in developing their environmental conditions. Consideration of these factors places an enormous burden on the resource agencies. At present, the relevant state and federal agencies do not have sufficient staff or funding to meet these proposed requirements for new, complex analyses clearly beyond the scope of their resource protection responsibilities and well beyond their expertise. Many of the new procedures and mandates placed on resource agencies are redundant with the Commission's role in relicensing. Currently, FERC is charged with considering a range of factors when it issues a license under the FPA, with the cooperation and input of federal agencies on issues where they add expertise – in this case fisheries and land management.

Having the agencies undertake an additional evaluation would be not only be duplicative; it would also fundamentally realign the agencies' role in the licensing process, which is currently to establish necessary and appropriate environmental protections – a floor of environmental protection – and to leave the balancing of power development versus other factors beyond those

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<sup>16</sup> 69 Fed.Reg. 54603, col. 2 (Sept. 9, 2004).

basic protections to the Commission. For these reasons, American Rivers and the Hydropower Reform Coalition strongly oppose these provisions.

Adding new responsibilities and procedures for resource agency staff will do little to address timeliness or streamline complexity. A more useful and appropriate approach would be to enhance agency capability by ensuring that annual fees collected by FERC from licensees for resource agency relicensing expenses under Section 1701(a) of the Energy Policy Act of 1992 be reimbursed directly back to those agencies, instead of going into the general Treasury. Today, these agencies are stretched near the breaking point and must have additional resources to keep up with their present level of involvement, much less this proposed increase in responsibility.

### **C. Title II would diminish environmental quality**

The language of the hydropower relicensing title in the Discussion Draft eliminates the basic guarantee that alternative license conditions would provide equivalent protection to those proposed by the agencies, establishing a new standard that invites administrative and judicial second-guessing of the protections for fisheries and federal lands. In addition, it forces the resource agencies to give private costs the same level of consideration as the protection of public resources.

The standard for section 18 alternative conditions is even more harmful. Rather than requiring the installation of a fishway, this proposal would establish a standard that the alternative be “no less protective of the fish resources” than the fishway originally proposed by the fishery agency. No one really knows what is meant by “fish resources.” This language could allow the substitution of hatcheries, habitat, or even mitigation funds in lieu of fish passage, none of which will move fish past the dam. Loss of spawning habitat and movement of fish into their historic range cannot be mitigated by hatcheries or downstream habitat improvements. There are many interests in moving fish past dams that go beyond the “protection of fish resources,” such as fishing access and treaty obligations.

## VI. Conclusion

Being a good environmental steward is a legitimate cost of doing business. If a project is already unprofitable because of market forces or because it is run poorly, it should not be exempted from any environmental conditions. According to the courts, “There can be no guarantee of profitability of water power projects under the Federal Power Act; profitability is at risk from a number of variable factors, and values other than profitability require appropriate consideration.”<sup>17</sup> We urge the Committee not to make environmental protections the scapegoat for licensing marginal projects nor to allow utilities that have never mitigated for their environmental impacts to continue to benefit from a sweetheart deal at the public’s expense.

American Rivers and the Hydropower Reform Coalition believe that there should be stricter environmental conditions at hydropower projects, while many in the industry believe that there should be fewer. Perhaps that is a signal that things are working. Whichever position one believes, the Committee’s Discussion Draft of the Energy Policy Act would only make the relicensing process more complex and litigious and would threaten public trust resources that already bear the brunt of relicensing delays. We urge the Committee to defer to the Commission’s new Integrated Licensing Process to truly improve the hydro licensing process and to reject measures that undercut environmental protections and place the voice of license applicants over that of other parties.

We understand and appreciate the value of hydroelectric power. It is a valuable source of emissions free energy and provides numerous other benefits including being the cheapest source available. Unfortunately, its legacy of impacts to our nation’s rivers has been neglected too long. Now is the time to bring these dams up to modern environmental standards, not to continue the status quo. For the reasons outlined in my testimony, we urge the members of this Committee to oppose the Hydroelectric Title of the discussion draft and to oppose this bill.

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<sup>17</sup> *Wisconsin Public Service Corp. v. FERC*, 32 F.3d 1165, 1168 (7th Cir. 1994)