



## PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY

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March 24, 2025

The Honorable Bruce Westerman  
Chairman  
Committee on Natural Resources  
1324 Longworth House Office Building  
United States House of Representatives  
Washington, DC 20515

H.R. 1897 – “ESA Amendments Act of 2025”

Dear Chairman Westerman:

Chelan County Public Utility District (Chelan PUD) is writing in support of H.R. 1897 “ESA Amendments Act of 2025” (H.R. 1897). Chelan PUD owns and operates hydropower dams with a total generating capacity of over 2,000 megawatts. Our Columbia River dams operate under federal licenses and two 50-year Endangered Species Act (ESA) habitat conservation plans (HCPs) covering several species of ESA-listed salmon and steelhead. We have a strong interest in the federal government’s implementation of both the ESA Section 7 interagency consultation process and Section 10 of the ESA, which governs the issuance of ESA permits to those with HCPs who make significant conservation commitments.

Chelan PUD was formed in 1936 by local voters who wanted affordable power for both rural and urban residents. Our hydropower projects deliver clean, renewable energy to 50,000 local customers and other utilities that serve businesses and residents in the Pacific Northwest. Two decades ago, we proactively coordinated with federal and state agencies and tribes under Section 10 of the Endangered Species Act to achieve agreement on historic HCPs “intended to constitute a comprehensive and long-term adaptive management plan” for ESA-listed and non-listed salmon and steelhead affected by our hydropower facilities. Along with one upriver hydropower project, these are the first hydropower HCPs in the nation. As we have met key metrics for salmon and steelhead over the past 20 years, the HCPs have provided the operational flexibility necessary to successfully balance natural resource protection and energy generation.

In addition, Chelan PUD has significant experience with ESA Section 7 consultations with both the National Marine Fisheries Service and U.S. Fish and Wildlife Service (Services) as our HCP permits, our federal licenses, and all federal in-water work permits trigger the Section 7 interagency consultation process.

Given our extensive experiences under ESA sections 7 and 10, Chelan PUD supports H.R. 1897 because it addresses several critical implementation issues:

- **Environmental Baseline**

H.R. 1897 would define the “environmental baseline” for purposes of Section 7 consultation to include the past, present and future impacts from existing structures such as dams. The environmental baseline is a foundational component of every Section 7 consultation because it establishes the basis for comparison of the effects of the proposed action. Unfortunately, regulatory changes adopted in 2019 to clarify that federal dams are part of the baseline because only Congress can order their removal were later interpreted by the Services to mean that existing non-federal dams and other structures may not be in the environmental baseline if the federal agency has discretion to remove them – even if such removal is not being proposed (*see, e.g.*, 89 Fed. Reg. 24,268, 24,274-76 (Apr. 5, 2024)).

This has the inexplicable effect of removing a structure that already exists from the environmental baseline and instead considering the effects of its physical presence to somehow be the result of a new, proposed federal action to continue operating or to make repairs to the structure. *The question of whether a structure is part of the environmental baseline should not depend on the extent of the federal agency’s discretion to remove that structure, but rather on whether it in fact already exists.*

Chelan PUD supports this clarification in H.R. 1897 that existing dams and other structures and the effects that result from their physical existence are part of the environmental baseline, to which a proposed action such as continuing to operate the dam is added.

- **“Mitigation” as a Section 7 Reasonable and Prudent Measure**

H.R. 1897 would clarify that the ESA does not allow the Services to impose mitigation as a Reasonable and Prudent Measure (RPM) in a no-jeopardy biological opinion. In light of recent regulatory revisions adopted by the Services, this clarification is necessary to carry out Congress’ original, statutory direction under Section 7 that RPMs are limited to those “necessary or appropriate to *minimize* such impact” of any incidental take (*see* 16 U.S.C. § 1536(b)(4)(ii) (emphasis added)).

Specifically, in their 2024 regulatory revisions, the Services unlawfully expanded the scope of RPMs to allow them to unilaterally impose mitigation or “offsets,” including offsite mitigation and compensatory fees. In addition to being counter to the statute’s plain language, Congress already provided for mitigation under Section 10, where applicants voluntarily work with the Services to develop an appropriate suite of conservation measures to “minimize and mitigate” for incidental take (*see id.* § 1539(a)(2)(B)(ii)).

Chelan PUD’s HCPs, which were developed under Section 10, are an example of how cooperation between an applicant and the Services can result in conservation measures that are both reasonable and capable of being implemented while providing the highest standards of conservation for the species. The Services’ adoption of regulations that allow them to impose such requirements unilaterally under Section 7 flies in the face of the ESA’s plain language and congressional intent.

Chelan PUD comments on H.R. 1897 cont.

Chelan PUD supports this provision in H.R. 1897, which would confirm that Section 7 RPMs must be limited to minimizing effects of incidental take and may not include mitigation or offsets.

- **Reasonable Certainty and “Jeopardy”**

Finally, H.R. 1897 would clarify what is meant by “jeopardy.” Specifically, it provides that in carrying out ESA Section 7, the Services must determine whether effects that are reasonably certain to be caused by the action are *likely* to result in the action itself resulting in jeopardy. This is consistent with the D.C. Circuit’s decision in *Maine Lobstermen’s Association v. NMFS*, 70 F.4th 582, 595-600 (D.C. Cir. 2023), in which the court held that the Services must use the best available science to determine likely outcomes rather than relying on worst-case scenarios when evaluating the effect of a proposed action.

Chelan PUD supports this clarification in H.R. 1897 relating to jeopardy determinations based on reasonable certainty and the best available science.

Chelan PUD appreciates your consideration these comments and appreciates your efforts to ensure that the ESA is implemented in a manner that facilitates a reasonable Section 7 review process while protecting threatened and endangered species. Please do not hesitate to contact me at [Alene.Underwood@chelandpud.org](mailto:Alene.Underwood@chelandpud.org) should you have any questions regarding these comments.

Sincerely,



Alene Underwood  
Director of Natural Resources and Environmental Compliance  
Chelan County PUD

cc: Michael Purdie, National Hydropower Association