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6 IMPROVING THE HYDROPOWER LICENSING PROCESS

7 THURSDAY, JUNE 7, 2018

8 House of Representatives

9 Subcommittee on Energy

10 Committee on Energy and Commerce

11 Washington, D.C.

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

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

23 Staff present: Mike Bloomquist, Deputy Staff Director;

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1 Samantha Bopp, Staff Assistant; Kelly Collins, Legislative
2 Clerk, Energy/Environment; Wyatt Ellertson, Professional
3 Staff, Energy/Environment; Margaret Tucker Fogarty, Staff
4 Assistant; Jordan Haverly, Policy Coordinator, Environment;
5 Mary Martin, Chief Counsel, Energy/Environment; Sarah
6 Matthews, Press Secretary; Drew McDowell, Executive
7 Assistant; Brandon Mooney, Deputy Chief Counsel, Energy; Mark
8 Ratner, Policy Coordinator; Annelise Rickert, Counsel,
9 Energy; Peter Spencer, Professional Staff Member, Energy;
10 Jason Stanek, Senior Counsel, Energy; Austin Stonebraker,
11 Press Assistant; Hamlin Wade, Special Advisor, External
12 Affairs; Everett Winnick, Director of Information Technology;
13 Jean Fruci, Minority Energy and Environment Policy Advisor;
14 Rick Kessler, Minority Senior Advisor and Staff Director,
15 Energy and Environment; John Marshall, Minority Policy
16 Coordinator; Alexander Ratner, Minority Policy Analyst;
17 Andrew Souvall, Minority Director of Communications, Outreach
18 and Member Services; and Catherine Zander, Minority
19 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
4 conference.

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

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

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

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

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

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

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

23 However, the licensing of new hydro and the relicensing

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1 of existing facilities requires extensive consultation with a
2 number of resources and agencies at the federal, state, and
3 local levels.

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

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

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

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

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

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

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

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

20 So we welcome your attendance today.

21 [The prepared statement of Mr. Upton follows:]

22

23 *****INSERT 1*****

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

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

5 [The information follows:]

6

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

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

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

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

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

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

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

21 Mr. Chairman, any potential changes to this process must
22 include a balanced approach that protects the rights of
23 federal resource agencies, states, and native tribes to

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1 impose conditions in accordance with modern environmental
2 law.

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

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

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

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

21 Initially, Mr. Chairman, in past testimony before this
22 subcommittee we have heard repeatedly that a major cause for
23 the licensing delays was due to the incomplete application

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1 that do not include all the pertinent information necessary
2 to issue a final decision while none of the bills previously
3 passed out of this subcommittee have done anything to address
4 this issue.

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

12 These stakeholders would then collaboratively develop a
13 process to coordinate all necessary federal authorizations
14 and to enable the commission to make a final determination on
15 a license not later than three years of receiving a completed
16 license application.

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

20 Thank you, and I yield back.

21 Mr. Upton. Gentleman yields back.

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

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

2 And today's hearing will focus on ways to improve the
3 hydropower licensing process. Hydropower, of course, is the
4 nation's largest source of clean, domestic, renewable
5 electricity.

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

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

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

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

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

21 The purpose of today's hearing is to hear directly from
22 those agencies most closely involved in the hydropower
23 permitting process, to see what specific measures have

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1 been taken to increase the efficiency and effectiveness of
2 your respective reviews.

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

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

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

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

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

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1 negatively impacts river operations and our ratepayers.

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

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

9 And it is not just the rates. BPA invested nearly
10 \$275 million last year in fish projects across the Northwest.
11 This spill, supposedly in the name of fish, undercuts that
12 revenue stream as well.

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

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

20 There is no question that hydropower licensing is
21 complex. There are lots of equities involved. It requires
22 dozens of federal, state, and local agencies to coordinate
23 and balance a wide range of issues and competing interests,

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1 such as electricity production, flood control, tribal issues,
2 water navigation, and fish and wildlife issues.

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

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

12 So I thank you for being here.

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

14 [The prepared statement of Chairman Walden follows:]

15

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

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1 Mr. Upton. The chair yields back, and I yield now for
2 an opening statement of the ranking member of the full
3 committee, 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
6 the federal resource agencies. This is something we have
7 been requesting ever since the committee began to consider
8 changes to the hydropower licensing provisions of the Federal
9 Power Act.

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

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

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

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

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

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

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

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

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

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

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1 And I realize that companies and public power entities
2 want faster more efficient decision making on their license
3 application. Dealing with multiple federal agencies, states,
4 tribal governments, and other water users is complex and time
5 consuming.

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

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

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

18 An application is not complete until all participating
19 agencies have the information required to make a sound
20 analysis and support their decisions under the applicable
21 laws, and I continue to believe that FERC could do more to
22 support the information requests of other federal agencies,
23 states, and tribes in these proceedings.

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

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

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

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

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

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

21 Mr. McNerney. Well, I thank the ranking member. I
22 thank the chairman for holding this hearing.

23 Hydropower is an important energy resource but, like all

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1 energy resources, it has environmental down sides. A
2 significant benefit, though, of hydropower is that it
3 produces not greenhouse gases.

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

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

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

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

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

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

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

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

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1 Mr. Turpin, deputy director, Office of Energy Projects

2 from FERC, welcome.

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

10

11 STATEMENT OF MR. TURPIN

12 Mr. Turpin. Thank you, sir.

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

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

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

23 Thank you for the opportunity to appear before you today

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1 to discuss hydropower permitting and the commission's
2 processes for conducting the environmental reviews under the
3 National Environmental Policy Act.

4 As a member of the commission's staff, the views I
5 express in this testimony are my own and not necessarily
6 those of the commission or of any individual commissioner.

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

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

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

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

22 These statutory requirements, along with those of the
23 Federal Power Act, give multiple agencies a significant role

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1 in the licensing process.

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

6 Since fiscal year 2010, the commission has issued 180
7 hydropower licenses and small hydropower exemptions
8 authorizing approximately 13 gigawatts of generation
9 capacity.

10 Earlier this year, Chairman McIntyre entered into the
11 one federal decision memorandum of understanding with several
12 agencies.

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

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

22 [The prepared statement of Mr. Turpin follows:]

23

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

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1 STATEMENT OF MR. OLIVER

2

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

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

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

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

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

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

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1 Use of the prefiling process improves the quality of
2 hydropower applications filed with the commission,
3 accelerates the environmental review process, assists
4 participants in assessing the resource impacts with the
5 applicant's proposal, and evaluating reasonable alternatives
6 pursuant to the NEPA requirements.

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

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

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

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

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

23 In 2017, consultations took an average of 53 days

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1 informal -- 53 days from request to completion of the letter
2 of concurrence.

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

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

11 Building on our commitment to streamlining this process,
12 we are also committed to implementing the provisions of EO
13 13807, the one federal decision memorandum of understanding.

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

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

23 To cite a recent example of exercising flexibility in

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1 that licensing process pursuant to major projects on the
2 Tuolumne River in California, in January of this year we
3 chose not to require fish passage in that license renewal
4 process.

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

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

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

23 We look forward to receiving the recommendations

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1 provided by that panel on potential ways to improve our
2 program effectiveness and we expect to that get that reported
3 in the next couple of weeks.

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

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

9 *****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.

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1 STATEMENT OF MR. SHEEHAN

2

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

6 My name is Greg Sheehan, principal deputy director of
7 the U.S. Fish and Wildlife Service. I do, again, want to
8 thank you for an opportunity to testify on the important role
9 of hydropower 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
16 under federal statutes and serving those resources is
17 important to current and future generations of Americans with
18 their 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

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1 together part of our mission includes close and timely
2 coordination with federal, state, and tribal partners as well
3 as engagement with project applicants and open communications
4 with the public.

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

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

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

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

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

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

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

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

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

20 We are working within the federal family to make sure we
21 are efficient in implementing the law. One example, as you
22 have heard already today, is President Trump's executive
23 order 13807 establishing discipline and accountability in the

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1 environmental review and permitting process for
2 infrastructure.

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

7 This April, the federal agencies involved in the
8 permitting process including the Department of Interior
9 signed an MOU on one federal decision to implement the
10 executive order and fulfilled the president's goal of
11 completing permitting decisions within two years.

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

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

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

23 We appreciate that subcommittee's interest in further

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1 improving the process. Thank you for the opportunity to
2 discuss the service's work and the hydropower licensing
3 process.

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

6 [The prepared statement of Mr. Sheehan follows:]

7

8 *****INSERT 6*****

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1 Mr. Upton. Thank you.

2 Mr. Fisher, principal deputy assistant secretary of the
3 Army Corps of Engineers, thank you. Welcome, sir.

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1 STATEMENT OF MR. FISHER

2

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

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

8 Like the chairman said, my name is Ryan Fisher. I am
9 the principal deputy assistant secretary of the Army for
10 civil works. Army Corps is the nation's largest producer of
11 hydropower.

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

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

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

23 Of those 100 dams, 81 are owned by the Corps of

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1 Engineers. In fiscal years 2016 and 2017, the Corps
2 supported the development of non-federal hydropower at 36 of
3 its dams.

4 In addition to these active projects, there are
5 approximately another 60 planned hydropower projects. In
6 2016, the Corps and FERC renewed their MOU on non-federal
7 hydropower project development.

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

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

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

22 Section 408 provides the secretary of the Army the
23 authority upon the recommendation of the chief of engineers

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1 to grant permission to other entities for the permanent or
2 temporary alteration or use of any Corps civil works project.

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

6 For instance, Section 408 decisions are being delegated
7 to the lowest level possible. This has resulted in more than
8 95 percent of such decisions being made at the Army Corps
9 district level.

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

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

23 As a member of the Federal Permitting Improvement

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1 Steering Council, which facilitates the statutory
2 responsibilities identified in the FAST-41 Act, the Army
3 works with fellow council members to improve the timeliness,
4 predictability, and transparency of the federal environmental
5 review and authorization process for covering infrastructure
6 projects.

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

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

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

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

23 The Corps stands ready to support the needs of non-

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1 federal hydropower development.

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

5 Thank you.

6 [The prepared statement of Mr. Fisher follows:]

7

8 *****INSERT 7*****

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1 Mr. Upton. Thank you.

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

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1 STATEMENT OF MR. GOODIN

2

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

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

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

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

20 Under the statute, a state determines whether any
21 discharge that may result from a federally licensed or
22 permitted activity will comply with certain specified
23 sections of the act including approved state water quality

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1 standards, effluent limitations, and monitoring requirements,
2 as well as any other appropriate requirements of state law.

3 A federal agency cannot issue a license or a permit for
4 an activity that may result in a discharge to waters until
5 the state where the discharge would originate has granted or
6 waived water quality certification.

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

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

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

22 Such conditions must become a term of the permit or
23 license should it be issued. EPA has two primary roles with

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1 respect to water quality certification.

2 First, the agency acts as the certifying agency where
3 the proposed discharge would originate in a jurisdiction
4 without such authority. Most typically, that is on tribal
5 lands lacking treatment as state status.

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

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

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

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

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

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

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

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

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

15

16 *****INSERT 8*****

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1 Mr. Upton. Well, thank you all. Thank you all for
2 being 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
5 certainly 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
12 through the committee here is that the lead agency, since we
13 have all five you here, really ought to be FERC to manage
14 where things are and I would just welcome a comment from you
15 as to whether you agree that FERC ought to be the lead
16 agency.

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

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1 Mr. Oliver.

2 Mr. Oliver. The short answer, Mr. Chairman, is yes, our
3 responsibilities within fisheries are really similar to U.S.
4 Fish and Wildlife Service with regard to the ESA consultation
5 aspect of it and we are rarely, if ever, and I don't think
6 will change under the one federal decision -- the lead agency
7 -- we are cooperating and are a consulting agency.

8 Mr. Upton. Mr. Sheehan.

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

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

18 Mr. Upton. Mr. Fisher.

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

22 We are a cooperating agency. FERC is the lead agency
23 and it has worked well for us as long. As the Corps

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1 continues to focus on some internal 408 -- Section 408
2 permissions we'll be just fine with FERC as the lead agency.

3 Mr. Upton. Mr. Goodin.

4 Mr. Goodin. Thank you for the question, and EPA
5 supports --

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

7 Mr. Goodin. -- coordinated activity and would concur
8 that FERC is the appropriate lead.

9 Mr. Upton. Now, I will say that FERC provided us with a
10 list of 21 different pending projects. Some of them are
11 fairly lengthy in terms of how long they've been in the
12 queue. I think there's one that's been there almost, what,
13 18 years -- I am sorry, 14 years.

14 I don't know -- Mr. Sheehan, you indicated that since
15 2010 you all have seen 180 projects, you said in your
16 testimony, move through the process. What's happening to
17 some of these that have been longer than two, three, four
18 years that are on that list of 21? Are there some additional
19 steps that you're taking to focus on those? Are they
20 particularly troublesome? What's your reaction on where we
21 are as it relates to those?

22 Mr. Turpin.

23 Mr. Turpin. So those in the table we provided I think

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1 predominantly they're relicensing actions and so I think what
2 we see there a lot of times are facilities that were built
3 long before a lot of the environmental laws and so there's a
4 lot of very complicated contentious issues that are involved
5 in those.

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

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

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

21 Mr. Turpin. So on FERC's staff's part, we are setting
22 up the implementation plan for the one federal decision with
23 a rollout later this summer and, I mean, all that's going to

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1 be sort of across-the-board outreach to all the agencies
2 involved to try to get things moving not just on those
3 specific projects but on everything.

4 Mr. Upton. My time is expired.

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

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

9 I want to direct my question to Director Turbin --
10 Turpin, rather, and I mentioned in my opening statement I
11 previously ordered an amendment on H.R. 3043 that would
12 direct FERC and federal resource agencies to convene a
13 negotiated rulemaking within 90 days of enactment with state
14 and local representatives, native tribes, and other
15 stakeholders.

16 The purpose of this collaborative approach would have
17 been to develop a process to coordinate all necessary federal
18 authorization and enable the commission the make a final
19 decision on a license within three years of receiving a
20 completed license application.

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

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1 application process?

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

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

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

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

18 But by and large, the original licenses are done --
19 typically, the median time for those is well under two years
20 -- three years to start with. I think it's somewhere around
21 29 months on median.

22 So collaboration with all of the parties is necessary.
23 It's valuable in every aspect of the process and because of

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1 all the differing authorities and responsibilities it can't
2 work without everybody coming to the table.

3 Mr. Rush. Anybody else want to respond?

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

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

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

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

23 So I think that's how we try to move through this and

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1 that needs to be done timely on both our part and the
2 applicant's part if we are going to keep the overall time
3 lines in check, as was mentioned by Mr. Turpin.

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

5 Mr. Oliver. Yes, sir. Yes, sir.

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

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

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

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

10 I yield back.

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

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

14 The Chairman. The chairman of the full committee.

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

17 The Chairman. The ranking member.

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

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

23 But NOAA and NMFS have a lot of other authorities in my

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1 district and across the West. On Friday, Mr. Oliver, your
2 agency finalized a year overdue grazing biological opinion
3 for the Malheur National Forest allotments on the Malheur
4 National Forest and I've repeatedly heard concerns about the
5 process and concerns about the science used.

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

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

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

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

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

20 My understanding and -- my understanding is that there
21 are a couple of different ways. While there may be some
22 question about the three trampled reds threshold for
23 reinitiation, that was different or altered from the original

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1 one red per year that was at one point proposed.

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

6 The Chairman. You may have to become one.

7 Mr. Oliver. I am quickly becoming an expert on many of
8 these issues, sir.

9 The Chairman. Yes.

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

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

20 And so that was one of the issues that I know was
21 raised. But what we did change is that the stubble height
22 requirement would be considered in the context only of
23 individual -- only in individual pastures and therefore

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1 reinitiation would only occur for violations in successive
2 years on the same pasture and such that we would only
3 reinitiate consultation on the subject pasture as opposed to
4 the whole forest. So those were a few ways --

5 The Chairman. Welcome to my world.

6 Mr. Oliver. -- in which we addressed those concerns
7 and we certainly -- the other issue was to delay turnout
8 until July 1st in response to two incidences of
9 noncompliance. But we didn't want to delay that until July
10 1st, which is one of the reasons we got that finalized this
11 Friday on June 1st.

12 The Chairman. Thank you for that.

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

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

19 I mean, there's a lot of frustration out there, as you
20 know. The issue of stubble height -- and I've been through a
21 number of briefings out in my district and parts of the
22 planning process there were requirements initially for
23 stubble heights that, frankly, probably couldn't be achieved

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1 if nobody was within 100 miles because the grass just never
2 grows that high.

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

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

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

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

22 Mr. Griffith. I thank the chairman of the full
23 committee and I respectfully request great forgiveness for

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1 prior --

2 The Chairman. Did you want to revise and extend your
3 opening remarks?

4 Mr. Griffith. I do. Yes, sir. Absolutely. Thank you
5 very much.

6 I now recognize the gentleman from California, Mr.
7 McNerney, for five minutes.

8 Mr. McNerney. I thank the chair and I thank the
9 witnesses this morning.

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

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

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

23 Mr. Turpin. So after Oroville we had gone out to both

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1 request, of course, that DWR put up a forensics team and we
2 also stood up a team internally of independent consultants to
3 look at our own process to kind of go through the inspection
4 process, our review process to see is there something that we
5 could have done on our side that could have headed that off
6 or is something that we are routinely missing.

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

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

13 Mr. Turpin. Absolutely.

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

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

23 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
3 process so that folks can get the right data.

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

7 I think to do that you end up -- that one-size-fits-all
8 ends up with sort of an over complexity for a lot of projects
9 that isn't needed, and we tend to handle it with a minimum
10 level to 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
14 that don't let folks know what information it needs to have,
15 that tends to gum it up a bit.

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

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

22 Mr. Turpin. I think in every -- in every circumstance
23 I've seen language like that. I mean, there's a couple

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1 issues. So, first, the commission has routinely done that.

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

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

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

13 Mr. McNerney. Thank you.

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

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

22 The effect of that as well as the administration's
23 interest in infrastructure I think has really been to get

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1 agencies to pay attention to the sort of maybe smaller
2 activities that feed into the large licensing process. And
3 so we have seen a lot more diligence and a lot more turnover
4 in the information that comes in and then processes moving
5 forward.

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

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

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

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

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

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1 Mr. McNerney. Okay. Thank you, Mr. Chairman. I yield
2 back.

3 Mr. Griffith. I thank the gentleman.

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

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

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

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

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

22 In reading your testimony you referenced the need to
23 eliminate redundant unnecessary reviews, concurrences, and

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1 approvals. And so the question is what is and how is the
2 Corps going to accomplish this goal for FERC license
3 hydropower projects.

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

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

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

21 And we also want to do more public facing communication,
22 I think, with the applicant themselves. The Corps,
23 obviously, tracks these 408 requests and want to make sure

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1 that the applicants are aware of where their application is
2 in the process at any given time. So, hopefully, those will
3 reduce redundancies and move things quicker from the Corps
4 perspective.

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

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

20 Mr. Latta. Let me ask you another question, if I may.
21 You also state in your testimony that the Corps stands ready
22 to support the needs of non-federal hydropower developments.
23 You point to the Corps implementing improvements to the

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1 Section 408 review process for private entities to develop
2 hydropower and other alterations to Corps projects.

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

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

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

13 We are currently doing implementation plans as are the
14 other agencies. Those are -- those are due on the one
15 federal decision MOU in July.

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

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

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1 involved with Corps.

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

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

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

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

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

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

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

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

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

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

18 The Corps simply wants to continue working with those
19 applicants on the permit process, work with FERC. FERC is
20 the lead agency. We want to -- if somebody proposes to
21 modify a Corps project, our main objective there is to make
22 sure that those modifications are not impacting the flood
23 control -- flood risk management operations that affect

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1 downtown Pittsburgh there at the Point while at the same time
2 -- it's about balance, right.

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

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

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

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

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

20 Mr. Fisher. The MOU we've signed with them and just
21 recently renewed it in 2016, yes, it's about early
22 coordination, most definitely, and the two-phase approach
23 there with the FERC license as well as the Corps 408 review.

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1 And, certainly, a direct question was asked earlier about
2 insufficient information on applicant -- applications so I
3 would certainly also encourage that the applicants -- to
4 reach out early to your Corps district and make sure you're
5 providing the proper information to us as well.

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

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

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

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

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

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

8 Mr. Doyle. Mr. Fisher, you mentioned in your testimony
9 that the Corps recently made several changes to the Section
10 408-related non-federal use of Corps civil works process.
11 What's the time line for finalizing that draft policy?

12 Mr. Fisher. So as it relates to one federal decision, I
13 think all of our agencies are looking at July -- or July 9th,
14 I believe, is the deadline for that.

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

21 Mr. Doyle. Thanks.

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

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

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

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

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

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

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

22 Mr. Turpin. I would say that we approach that -- well,
23 fundamentally we are always looking for ways within the

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1 existing authority of the commission to make things move
2 along better.

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

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

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

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

23 All right. Sticking with you, Mr. Turpin, I also have a

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

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

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

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

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

23 But it's really up to the applicant who owns that land

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1 to then monitor and to be certain that those things occur
2 within their property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 try to get folks to the table early.

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

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

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

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

17 Mr. Tonko. Okay. Thank you.

18 And generally, how often is it used today?

19 Mr. Turpin. By regulation, it was -- it is the default
20 process. But only about a quarter of the projects use it.
21 About 68 percent of projects come in and request to use the
22 traditional licensing process.

23 I mean, it really is up to the applicant or the licensee

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1 to try to take their shot at saying which of the three
2 license processes best meets their circumstance and to work
3 with the stakeholders to sort that out.

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

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

12 Mr. Oliver.

13 Mr. Oliver. If I could comment, sir. We strongly
14 support the process and our experience when it's being used
15 is that, as I understand, it's a two-phase process and that
16 prelicensing part of the process where we are able to
17 interact with the other agencies that are involved with state
18 entities, municipalities, tribal interests, environmental
19 group interests, other stakeholder/landowner interests, when
20 you're able to effectively engage in that part of the process
21 and very clearly resolve a lot of issues and define the
22 environmental impacts and alternatives, that makes the second
23 part of the process where we actually have to do the NEPA

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1 analysis and the Endangered Species Act consultation much
2 more timely and smooth process.

3 Mr. Tonko. Well, that's good to hear, because it seems
4 to me that the ILP can speed up the process because it does
5 front load information gathering and consultations, and
6 enables the state and tribal governments and federal resource
7 agencies and other interested stakeholders to start
8 coordinating much earlier in the process this includes
9 putting licensees on notice about the information and studies
10 required in order for agencies to review the application.

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

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

20 I am sure that there are things that can be done to
21 improve the ILP process but we should be looking at ways to
22 further encourage its use rather than strictly seeking to
23 weaken environmental laws or severely limiting federal,

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1 state, or tribal partners from completely -- totally from
2 their reviews.

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

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

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

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

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

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

20 But the president has recognized this need and the
21 president's fiscal year 2019 proposed budget he's proposed an
22 increase for energy consultation for the very type of work
23 that you're describing, and if that makes its way through

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1 Congress I think it will only broaden our ability to react
2 timely and make sure that we have this staffed in the way
3 that we need.

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

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

8 Mr. Johnson. Thank you, Mr. Chairman.

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

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

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

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

23 So if there's a lock and dam on the Ohio River and you

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1 have an applicant that wants to put a hydropower at the foot
2 of that dam, we certainly have a water quality staff that
3 looks at these things.

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

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

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

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

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

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

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

23 Mr. Fisher. Sure.

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1 Mr. Johnson. Can you guys communicate so that it
2 doesn't 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
5 with all of our information and vice versa and then make sure
6 that 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
12 to ensure that your agency's license conditions are
13 achievable and cost effective, given the age of some of our
14 dam infrastructure?

15 Mr. Sheehan. Thank you.

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

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

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

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

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

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

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

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

23 Yesterday, I had a good phone call with our California

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1 field office -- the individuals working on that to try to get
2 to the bottom of is this something that's being caused by
3 Fish and Wildlife Service or other partners through this
4 process.

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

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

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

16 Mr. Johnson. I would encourage -- I would encourage the
17 agency to look at how to do that.

18 Mr. Sheehan. Thank you for that suggestion.

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

20 Mr. Griffith. I thank the gentleman for yielding back.
21 I now recognize the gentleman from Iowa, Mr. Loeb sack,
22 for five minutes.

23 Mr. Loeb sack. Thank you, Mr. Chair, and I do want to

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1 thank the panel for being here today.

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

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

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

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

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

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

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1 visited that plant in the past.

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

5 I've been there at least a few times since that began,
6 and when that's completed the project is estimated to produce
7 about 178,000 megawatt hours, or enough energy to power
8 18,000 homes. So it will be that -- much of that area if not
9 that entire area around Pella, Iowa.

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

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

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

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

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

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

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

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

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

22 So what are some of the challenges, if you will, of
23 adding hydropower generation to the existing dams,

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1 particularly some of the older ones on the upper Mississippi?

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

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

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

17 There's no question about it. These things are from the
18 1930s, you know, and we've got to be able to ship more grain
19 down the Mississippi and out to the Panama Canal and out to
20 our trading partners in other parts of the world so that we
21 are not out competed, if you will, by Brazil and various
22 folks.

23 But I just want to advocate for kind of a -- something

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1 comparable to the one-dig policy when we talked about
2 building roads and what have you and then making sure we
3 don't have to dig again to put fiber in and all the rest.

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

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

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

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

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

19 Mr. Long, five minutes for questions.

20 Mr. Long. Thank you, Mr. Chairman.

21 And Mr. Turpin, FERC, as you know, exercises
22 jurisdiction over non-federal hydropower projects and their
23 licensing. Do you think the current hydropower licensing

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1 process involves too many agencies with too little
2 accountability for making deadlines?

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

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

10 Other agencies are balancing other mandates and other
11 competing workloads and so I think --

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

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

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

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

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

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

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

11 Mr. Long. Okay. In your testimony you state that since
12 2010 FERC has issued 180 hydropower licenses and small
13 hydropower exemptions.

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

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

21 And so we are continuing looking for ways to improve the
22 process in-house and so to bring other resources to bear. So
23 we've been preparing for this and I think, I mean, depending

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1 upon what issues are raised it may be a different scenario in
2 each case. But I think, by and large, we've adequately
3 prepared.

4 Mr. Long. Okay. Is there a way to hold agencies
5 accountable when deadlines proposed by the president's
6 executive orders and interagencies' memorandums of
7 understanding or, I as I call them, memorandums of
8 misunderstanding, are not met?

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

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

19 Mr. Long. Okay.

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

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1 Can you explain the reason for these extensive delays?

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

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

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

21 We do over, I believe, 1,200 informal and over 300
22 formal consultations a year on various infrastructure
23 projects not limited to hydropower, obviously. So there are

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1 resource limitations and prioritization decisions we have to
2 make.

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

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

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

13 Mr. Olson. Thank you, Mr. Long.

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

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

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

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

9 You know, duplicative red tape, duplicative regulations,
10 duplicative agencies looking at the project not in a -- you
11 know, in a timely fashion -- red tape.

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

17 You know, we've been debating this for decades and in
18 that -- in that vein I think, you know, I applaud the
19 president's efforts and the administration established the
20 one federal decision policy by signing the Executive Order
21 13807. But there still, in my view, needs to be a
22 modernization of our existing infrastructure and particularly
23 in my -- the area I am talking about is in the non-powered

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1 dams and conversion of those to hydroelectric power.

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

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

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

18 So a couple questions. Mr. Turpin and Mr. Fisher, could
19 you -- what do you think the impact might be on powering --
20 potentially powering over the 50,000 suitable non-powered
21 dams across the country might have on our power grid and
22 also, honestly, might have on our emissions, because this is
23 clean renewable energy, as well as do you have any thoughts

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1 on what it might do in the job creation area and also in the
2 private investment area into our nation's infrastructure.

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

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

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

10 Mr. Turpin. So --

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

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

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

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

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

23 Mr. Bucshon. I guess, I mean -- I guess the point I am

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1 trying to make is that what you all do in the licensing
2 process is not just -- not just necessarily having an impact
3 on, you know, actually the direct impact that you might have
4 in getting projects completed but there is, you know, the
5 impact of getting the surrounding big infrastructure projects
6 in our country, as all of us know, whether that's on
7 hydroelectric power, whether that's bridges, whether that's
8 road, the overall economic impact of being able to produce
9 big infrastructure projects in a timely manner is a
10 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
13 quickly as we can get through the process the better it is
14 for all of us.

15 Thank you. I yield back.

16 Mr. Olson. Thank you.

17 The chair now calls upon the gentleman from Michigan,
18 Mr. 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,
22 as they say. But I would like to go to some specific
23 questions. That's what happens when you're so far down on

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1 the dais here.

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

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

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

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

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

21 Mr. Walberg. Because that can -- that can be just a
22 major problem, as I understand it, understanding what in the
23 world I am supposed to be taking care of to get that

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1 licensing received.

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

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

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

13 Mr. Walberg. Wouldn't regulation, though, provide
14 greater certainty?

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

22 Mr. Walberg. Okay. Okay.

23 There's been a regular group of licensees that have

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1 protected FERC's inclusion of certain costs related to non-
2 FERC agencies into their annual hydro bills from FERC.

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

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

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

12 Mr. Walberg. I appreciate that.

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

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

21 Mr. Walberg. Anything that stands in the way of making
22 that more efficient?

23 Mr. Turpin. No, it's really -- it really comes down to

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1 the willingness of the participants to collaborate and reach
2 the consensus.

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

4 Mr. Olson. Thank you.

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

8 Mrs. McMorris Rodgers. Thank you very much. I want to
9 thank the committee for hosting this hearing and everyone for
10 being here today.

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

16 Hydropower can be expanded nationwide by modernizing the
17 inefficient permitting process. According to a recent report
18 that was actually from the previous administration, only 3
19 percent of the dams actually produce hydroelectricity and we
20 could double hydropower in America without investing -- or by
21 simply investing in the turbines such that are needed to
22 convert dams into hydroelectric dams.

23 On average right now it takes 18 months to license a

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1 natural gas facility and it takes 10 years to relicense a
2 hydropower facility. We can do better.

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

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

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

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

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

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

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

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

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

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

22 Now to questions -- Mr. Oliver and Mr. Sheehan, data
23 from FERC shows that a number of hydro licensings are delayed

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1 waiting for a final EIS biological opinion from your
2 agencies.

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

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

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

18 Mr. Sheehan. Thank you, Congresswoman.

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

23 Whether it's through our biological opinions or other

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1 processes, it will force us to make sure that we are being
2 persistent and working with applicants or other co-operators
3 in these efforts.

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

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

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

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

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

23 So I am hopeful that that will go a long ways toward

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1 getting at some of these issues that are frustrating you and
2 other members of this committee.

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

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

11 Mr. Olson. Thank you.

12 The chair now calls upon himself for five hours.

13 [Laughter.]

14 You're paying attention. Five minutes.

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

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

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

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

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1 Mr. Oliver. Gig 'em.

2 Mr. Olson. Okay. As you all probably know, my home
3 state of Texas has only 23 hydropower dams. It's a minor
4 source of power for our state.

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

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

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

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

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

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1 meet those needs.

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

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

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

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

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

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

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

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

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

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

19 Mr. Olson. Thank you.

20 Mr. Fisher.

21 Mr. Fisher. I sound like a broken record here. I, too,
22 did not really come prepared to address specific legislation
23 but, I certainly want to work with the panellists here,

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1 huddle with Corps headquarters and to perhaps come back to
2 you with a fuller response.

3 Mr. Olson. Mr. Goodin, anything -- concerns you have
4 with, sir?

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

9 Mr. Olson. Okay. Great. Thank you, guys. We are out
10 of our time.

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

15 Without objection, so ordered.

16 [The information follows:]

17

18 *****COMMITTEE INSERT 9*****

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

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

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