



File Code: 2720

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Route To:

Subject: Forest Service Hydropower Program; Providing Capacity, Ensuring Appropriate Alignment

To: Regional Foresters

We want to take this opportunity to reemphasize the importance of the Forest Service Hydropower Program. We also want to share our intention to improve on the agency's responsiveness and capacity as well as ensure alignment as appropriate. It is vital that we are actively involved in Federal Energy Regulatory Commission (FERC) license proceedings in order to support rural and urban communities as well as provide for mitigation. We need to ensure that our requests for mitigation are coordinated with the WO and appropriately consistent.

Hydropower is receiving renewed interest by the Administration and by Congress as a means to diversify the nation's energy portfolio. As you are aware, hydropower is a non-carbon generation source and serves a unique role in meeting peak energy demand and maintaining the Nation's grid stability as more renewable energy sources such as wind, solar, biomass connect to the grid. National Forest System land significantly contributes to the Nation's hydropower capacity. There is currently about 96,000 megawatts (MW) of hydropower capacity in the U.S., contributing about 9 percent of the Nation's annual electrical production. FERC regulates 54,000 MW or about half of the national hydropower generation capacity. About one-third, or 18,000 MW, of production capacity under FERC's jurisdiction occurs on National Forest System land. The President signed two bills in 2013 that target increasing hydropower production in the U.S., and more legislation is anticipated to encourage additional development or improve efficiencies at existing facilities.

Agency Capacity

While we appreciate the critical importance of hydropower, it is important that we are appropriately involved in FERC proceedings to ensure that interests of the agency and expectations of the public are addressed primarily through implementation of the applicable land and resource management plan. Without agency involvement, those interests such as flat water recreation facilities, predictable whitewater recreation days, invasive species management, cultural resource protection, and flow regimes for fisheries would likely not be adequately addressed. Agency capacity has declined and the demands on staff assigned to each project have increased as a result of the loss of capacity.

Yet if we are not involved in these proceedings, opportunities to address recreation pressure and resource challenges may well be lost. In terms of addressing capacity, we are looking at our ability to expand funding options from different functions. We are also discussing legislative alternatives and implications of allowing the agency to retain cost recovery receipts.



FERC administered proceedings are procedurally and technically rigorous efforts. To provide staffing needed to address the concerns and opportunities, I have directed Greg Smith, Director of Lands, to work with the Regions on succession planning, training, and development of organizational options such as the Region 1 through 4 Interregional Hydropower Team in order to maintain agency presence and effectiveness in FERC proceedings.

Alignment

It is very important that the mitigation measures specified by the Forest Service are directly tied to impacts as specified in legislation, are *necessary and appropriate*, and are consistent across Forest and Regional boundaries.

We are concerned about alignment in the following areas: the appropriate use of cost recovery for FERC administered proceedings, policy boundaries, and the Washington Office review process. The Energy Policy Act of 2005 imposed two new requirements that the Forest Service must participate if petitioned by interested parties. These requirements include a formal Alternative Condition Review process and the Trial Type Hearing. Both processes require that agencies have the facts to support the imposition of license conditions and they can significantly increase the amount of effort and costs expended on individual cases. Therefore, it is important to efficiently, effectively, and consistently redeem our responsibilities while meeting FERC administered timelines and minimizing the need for the aforementioned review process and hearings where possible.

When a project is located on National Forest System lands, § 4(e) of the Federal Power Act (FPA) authorizes the Forest Service, as delegated from the Secretary of Agriculture, to submit conditions it deems necessary to FERC for inclusion in any license issued for the *adequate protection and utilization of such reservation*. When a project is not located on National Forest System lands, but affects National Forest System lands and resources, the Forest Service may make recommendations to FERC under §10(a) of the act to mitigate effects to National Forest System land and resources. The authority under § 4(e) provides the means to ensure projects are located, built, and operated in a manner consistent with Forest Plans and allows the Forest Service to mitigate for negative effects or to deliver beneficial outcomes.

Cost Recovery:

My 2770 letter of April 18, 2012, noted that costs associated with participating in FERC license proceedings are not recoverable under the Forest Service's cost recovery regulations at 36 CFR 251.58. The exception to this is time spent to process and issue the Special Use Permit. Forest Service cost recovery applies only to processing special use applications and monitoring compliance with those authorizations (36CFR251.58 (b)(1)-(b)(3) and (c)); (b)(4) and (d)).

All mitigation measures that affect project operations and economics are to be submitted for inclusion in a license typically under § 4(e). This creates the administrative record allowing FERC to conduct its economic analysis. Costs incurred due to agency staff participation in a license proceeding to develop the mitigation in a license are submitted to FERC in response to its request for Other Federal Agency costs. FERC has the lead under §10(e) of the Federal Power