

Subcommittee on Water, Power and Oceans

Doug Lamborn, Chairman

Hearing Memorandum

October 10, 2017

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Hearing: **Legislative hearing on H.R. 3144 (Rep. Cathy McMorris Rodgers, R-WA),**
To provide for operations of the Federal Columbia River Power System pursuant
to a certain operation plan for a specified period of time, and for other purposes.
October 12, 2017 at 10:00 a.m. in 1334 Longworth HOB

Bill Summary:

In order to provide certainty over the reliable management of the Federal Columbia River Power System (FCRPS or System), H.R. 3144 (Rep. McMorris Rodgers, R-WA) requires federal agencies to operate the System in a manner that is consistent with the current operations plan, while also protecting existing hydropower resources in the Pacific Northwest.

The hearing will also include consideration of one other bill.

Cosponsors:

Rep. Jamie Herrera Beutler (R-WA), Rep. Dan Newhouse (R-WA), Rep. Kurt Schrader (D-OR), and Greg Walden (R-OR)

Invited Witnesses (in alphabetical order):

Panel I

The Honorable Cathy McMorris Rodgers

Representative from the 5th District of Washington

Panel II

Ms. Liz Hamilton

Executive Director

Northwest Sportfishing Industry Association

Oregon City, OR

Ms. Beth Looney

President and CEO, PNGC Power

Portland, OR

Mr. Jack W. Heffling

President, United Power Trades Organization

West Richland, WA

The Honorable Ryan Zinke

Secretary, Department of the Interior

Washington, DC

Background:

Hydropower accounts for 7% of all domestic (overall renewable and non-renewable) electricity generation, divided equally between federal and non-federal output, and about 48% of all renewable generation.¹ For generations, it has provided millions of Americans with clean and low-cost energy and has formed the backbone of regional economies. In Washington state alone, hydropower accounts for almost 70% of electricity generation.² The Columbia Basin in the Pacific Northwest encompasses an area approximately the size of France, with 31 multi-purpose federally-owned dams along the Columbia and Snake Rivers.

Under Reclamation's policy, hydropower is first used to provide electricity to operate irrigation pumps. Any remaining Reclamation hydropower is then primarily sold by either of two federal agencies, the Bonneville Power Administration (Bonneville) or the Western Area Power Administration (Western), to wholesale customers. The wholesale electricity rates are designed to repay the federal capital investment – plus interest – in federal electricity generation and transmission facilities, annual operation and maintenance costs of such facilities, and federal staffing.³

Compliance with environmental mandates and replacement power services resulting from environmental regulation and litigation are also reflected in federal power rates. Federal court-mandated “spills” – an operation when water is bypassed from a hydropower producing turbine to aid fish passage – have led to significant lost hydropower generation and associated replacement power purchases of mainly fossil-based, higher cost energy. At a Water, Power and Oceans Subcommittee hearing last year, Mr. Christopher Downen, Senior Policy Analyst at the Public Power Council, which represents consumer-owned utilities in the Pacific Northwest, testified “[a]t \$757 million last year alone, this single category of costs accounted for about **30 percent** of Bonneville's costs charged in rates.”⁴



¹ <https://www.ferc.gov/legal/staff-reports/2017/hydropower-primer.pdf>

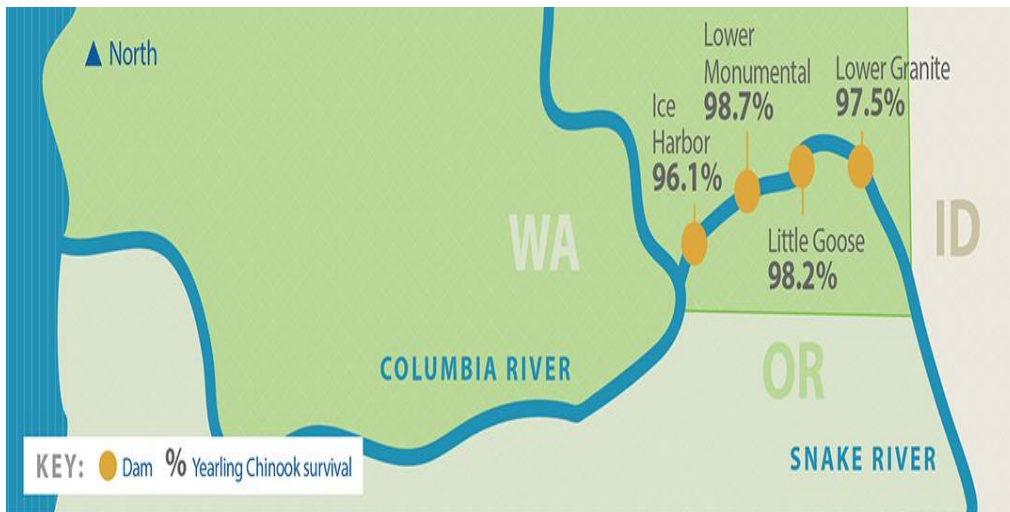
² <http://www.hydro.org/why-hydro/available/hydro-in-the-states/west/>

³ Id

⁴ Testimony of Mr. Christopher Downen, Senior Policy Analyst, Public Power Council, before the House Water, Power and Oceans Subcommittee, April 20, 2016.

In 1945, Congress authorized the U.S. Army Corps of Engineers to construct four large dams along the Snake River – Ice Harbor, Lower Monumental, Little Goose and Lower Granite – as part of the FCRPS to provide a number of benefits, including hydropower.⁵ Built in the 1960s and 1970s, the four dams on average produce enough energy to power a city the size of Seattle every year, with a total output capable of producing over 3,000 MW, enough energy to power 1.8 million homes.⁶ It would take two nuclear, three coal-fired, or six gas-fired power plants to replace the average annual power produced by the four lower Snake River dams.⁷

Hydropower not only provides power for baseload (full-time) needs and peak times, but also serves as a backup generation source for intermittent wind and solar power.⁸ It is generally low-cost compared to other generation sources.⁹ While some believe hydropower projects can have negative impacts on migratory fish, wildlife and their habitats as well as water quality,¹⁰



others point out that the survival rate of species that migrate through the four Snake River dams is 99.5 percent for certain species, with an average of 97 percent (See image 1).¹¹

Image 2: Survival Rates Through Lower Snake River Dams Source: Northwest RiverPartners

Despite these benefits, some litigious groups have focused on removing these four dams. According to Bonneville, replacing the dams would increase power costs by \$274 million to \$372 million per year.¹² In addition, replacing this power with natural gas generation would still increase the region’s carbon dioxide emissions by 2.0 to 2.6 million metric tons annually.¹³

⁵ Flood Control Act of 1945, P.L. 79-14.

⁶ <http://nwriverpartners.org/value-of-snake-river-dams>

⁷ Id.

⁸ <https://www.vox.com/2015/6/19/8808545/wind-solar-grid-integration>

⁹ <http://www.hydro.org/why-hydro/affordable/>

¹⁰ <https://www.nwcouncil.org/history/DamsImpacts>

¹¹ <http://nwriverpartners.org/value-of-snake-river-dams>

¹² <https://www.bpa.gov/news/pubs/FactSheets/fs-201603-A-Northwest-energy-solution-Regional-power-benefits-of-the-lower-Snake-River-dams.pdf>

¹³ Id.

Conservatively, this would be the equivalent of adding 421,000 passenger cars to the regions roads per year¹⁴

Federal Columbia River Power System (FCRPS) Litigation

For decades, there has been uncertainty over the operations of existing hydropower in the Pacific Northwest due to federal regulations, court orders and other administrative decisions. Long-standing litigation surrounding the FCRPS has caused major uncertainty on future power generation, rates, and reliability in the region.

The Endangered Species Act (ESA) requires the Army Corps of Engineers (ACOE), the Bureau of Reclamation (BOR or Reclamation), and Bonneville – the federal operators of the FCRPS (Action Agencies) – to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service within the Department of the Interior on how project operations may impact listed species. Following this consultation, NMFS issues a biological opinion (BiOp) specifying with either a jeopardy or no-jeopardy finding for the 13 separate species of salmon and steelhead that NMFS listed beginning in 1991.¹⁵ A finding of jeopardy requires NMFS to develop Reasonable and Prudent Alternatives (RPAs) to the proposed action in order to avoid jeopardy.

NMFS issued the first of three “no jeopardy” BiOps for FCRPS in April 1992. The District Court of Oregon (District Court) in *Idaho Department of Fish and Game v. National Marine Fisheries Service* found both the 1993 and 1994 BiOps to be flawed, and ordered NMFS and the Action Agencies to revise the 1994 BiOp. In 1995, NMFS issued the first BiOp (1995 BiOp) which concluded that FCRPS operations jeopardized the continued existence of listed species, and proposed RPAs in an attempt to avoid this finding.

NMFS issued a new BiOp in December 2000, which again found that the operations of the FCRPS dams were likely to jeopardize the existence of certain listed species, and proposed RPAs to mitigate these impacts. It was determined that jeopardy would not be avoided even after implementing the RPAs. Eventually, the cumulative effect of the RPA – coupled with off-site measures including hatchery and habitat initiatives – was determined to be sufficient to warrant a “no-jeopardy” opinion.¹⁶

In 2001, the National Wildlife Federation and others sued the federal government, challenging the 2000 BiOp over whether it complied with the ESA (*National Wildlife Federation v. National Marine Fisheries Service*).¹⁷ In 2003, then-Judge James A. Redden ruled that the

¹⁴ Id.

¹⁵ http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/

¹⁶ *National Wildlife Federation v. NMFS*

¹⁷ *National Wildlife Federation v. NMFS*, 254 F. Supp. 2d 1196

2000 BiOp failed to provide reasonable certainty that the off-site mitigation measures was not reasonably certain to occur, and ordered NMFS to issue a new BiOp by 2004.¹⁸ In addition, the district court required the modification of the FCRPS dam operations during the spring and summer of 2006, requiring certain dams to bypass hydroelectric turbines and spill water during this period. Environmental organizations and others believe the spill aids in fish passage, while others including water and power users counter that spill, costing tens of millions of dollars, decreases hydropower production and provide little benefit to these few salmon that may be in the river system during these months (the hottest months of the year).

Judge Redden would eventually go on to reject the 2004, 2008 and the 2010 Supplemental BiOps issued by NMFS.¹⁹ In a 2011 decision, Judge Redden wrote:

*“No later than January 1, 2014, NOAA Fisheries shall produce a new biological opinion that reevaluates the efficacy of the RPAs in avoiding jeopardy... and considers whether more aggressive actions, such as dam removal and/or additional flow augmentation and reservoir modifications are necessary to avoid jeopardy,”*²⁰

In addition, Judge Redden ordered the spill at the dams to continue during the spring and summer months, consistent with the court’s annual spill orders. After Judge Redden retired in late 2011, the case was assigned to Judge Michael Simon who found the 2014 Supplemental BiOp flawed, but allowed it to stay in place until a new BiOp can be completed. The 2014 Supplemental BiOp supplements, without replacing, the 2008 and 2010 BiOps.

In addition, the court found that the Action Agencies had relied on an Environmental Impact Statement (EIS) (required under the National Environmental Policy Act of 1969) that was “too stale” or too “narrowly focused,” and the Action Agencies were granted an extension to complete a new EIS by March 26, 2021.²¹ As part of this order, though not specifically mandating dam breaching, the Judge charged that the federal government had avoided taking a “hard look” at breaching, bypassing and removal of the dams.²² This is contrary to the more than \$22 million spent for extensive studies by the Army Corps in 1999 and again in 2010 on the impacts of removing dams in the Snake River.²³

Following arguments on environmental plaintiffs’ motions for temporary injunctive relief to block capital and maintenance expenditures at the dams and force substantially more spill, Judge Simon on March 27, 2017 ordered “tailored injunctive relief” including additional spill,

¹⁸ National Wildlife Federation v. NMFS, 254 F. Supp. 2d at 1216

¹⁹ <https://www.salmonrecovery.gov/BiologicalOpinions/FCRPSBiOp.aspx>

²⁰ National Wildlife Federation v. NMFS, 839 F. Supp. 2d 1117, 1131

²¹ Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., No. 3:01-cv-00640, 2016 U.S. Dist. LEXIS 59195, at *24-25, *235-36

²² <http://earthjustice.org/sites/default/files/files/1404%202065%20Opinion%20and%20Order.pdf>

²³ <http://www.nww.usace.army.mil/portals/28/docs/environmental/drew/social.pdf>. From 1999 to 2002, the Army Corps spent \$20.69 million on the impacts of alternatives relating to breaching the Snake River dams. In 2010, the Army Corps spent \$274,254 on a study regarding lower Snake River dam breaching.

but ordered the federal agencies to test the impacts of this spill before deciding how much would be mandated at each dam in 2018. In addition, the Judge ordered the federal agencies to disclose planned projects at the Snake River dams to the environmental plaintiffs in a “reasonable process and schedule.”

In response to the court’s order, four Members of Congress sent a bipartisan [letter](#) to Secretary of the Interior Zinke raising concerns over the impacts that additional spill requirements in the spring of 2018 would cause, including increased power costs and actual harm to endangered fish species. Under the Obama Administration, the Action Agencies concluded, “The 2008 BiOp biologically and legally sound, is based on the best scientific information, and satisfies the ESA jeopardy standard.”²⁴ Furthermore, the letter states that the 2008 BiOp “achieved consensus on a plan that has demonstrated for several years that it is working to improve salmon recovery while still allowing operation of the federal dams.”²⁵ The current biological opinion was defended in court, not just by the federal agencies, but also the states of Idaho, Montana, and Washington, several major utility customers of Bonneville, inland port associations, irrigation districts and others, as well as several Northwest tribes.

To that end, H.R. 3144 brings certainty to the operations of the FCRPS by requiring the system to be operated according to the 2014 Supplemental Biological Opinion issued by NMFS until 2022, or until certain conditions are met. In addition, the bill prohibits any structural modification or removal of the FCRPS hydropower dams, unless specifically and expressly authorized by an Act of Congress.

Major Provisions/Analysis of H.R. 3144

Section 2 requires the Action Agencies to operate the FCRPS consistent with the RPA set forth in the 2014 Supplemental Opinion issued by NMFS until the later of the following dates: 2022, or until a subsequent final BiOp for the FCRPS operations is issued after completion of the final EIS for FCRPS operations and is in effect with no pending further judicial review.

Section 4 prohibits any structural modification, action, study, or engineering plan that restricts hydroelectric generation at any FCRPS dam, or limits navigation on the Snake River unless specifically and expressly authorized by Congress.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

Administration Position: Unknown.

²⁴ Obama Administration Review and Guidance for the FCRPS BiOp, September 11, 2009. Link: https://www.salmonrecovery.gov/Files/BiologicalOpinions/Appendix%201_09_10_09%20.pdf

²⁵ Letter from Rep. McMorris Rodgers to Interior Secretary Ryan Zinke, May 2, 2017.