

Section 12

FUTURE HYDROELECTRIC DEVELOPMENT

Much of this program has focused on mitigating damage done to Columbia River Basin fish and wildlife by hydropower development and operations in the past. But the future is equally important. The Corps of Engineers and the Bureau of Reclamation continue to study the need for additional federal hydroelectric projects and to plan for new development in the basin. The Federal Energy Regulatory Commission has many permits and applications pending for hydroelectric development in Idaho, Oregon, Montana and Washington. Many of those applications and permits are for projects throughout the Columbia River Basin. Dozens of small or medium-sized hydroelectric projects are proposed for tributary drainage basins that contain important anadromous fish habitat. However, most new hydroelectric development will be accomplished by private or non-federal public entities licensed by the Federal Energy Regulatory Commission.

Many of the proposals are for hydroelectric projects that would produce less than 5 megawatts of electricity. Although individual small projects may have no significant adverse effects on the fish and wildlife resources of the basin, the cumulative effects of such development throughout a river basin could be quite harmful. These cumulative effects need to be taken into account fully.

The Council estimates that 4,600 stream miles of Columbia River Basin salmon and steelhead spawning and rearing habitat have been lost to development, not including losses of migration routes and of resident fish and wildlife habitat. Minimizing further habitat loss is especially important in view of the Council's goal of doubling salmon and steelhead runs in the Columbia River Basin consistent with system policies (see Sections 2 and 4). Development in critical fish and wildlife areas leads to divisive and expensive conflicts that the Council believes can be avoided through resource planning.

The Council finds that future hydroelectric developers in the basin should be required to mitigate harm to fish and wildlife and has adopted program measures calling for such mitigation. New hydroelectric development has the potential to cause further damage to the basin's fish and wildlife resources as well as to negate ongoing Council efforts to remedy damage caused by the existing hydropower system. Federal agencies also should assess and mitigate the cumulative effects on fish and wildlife of multiple hydroelectric projects.

The Council also intends to continue to review applications for Federal Energy Regulatory Commission permits and licenses and for Corps of Engineers and Bureau of Reclamation proposals for hydroelectric development. The purpose of this review is to identify program measures related to the proposed development to ensure that any new development in the basin is consistent with this fish and wildlife program and the Council's Northwest Power Plan. The Council's reviews would complement and recognize, not supplant, the role of the fish and wildlife agencies and tribes in reviewing proposals for hydroelectric projects.

12.1 FUTURE HYDROELECTRIC DEVELOPMENT

12.1A Conditions

Federal Energy Regulatory Commission, Corps of Engineers, Bureau of Reclamation and Bonneville

- 12.1A.1 Do not license, exempt from license, relicense, propose, recommend, agree to acquire power from, grant billing credits

for, or otherwise support any hydroelectric development in the Columbia River Basin without providing for:

- consultation with the fish and wildlife agencies and tribes and the Council throughout study, design, construction and operation of the project;
- specific plans for flows and fish facilities prior to construction;
- the best available means for aiding downstream and upstream migration of salmon and steelhead;
- flows and reservoir levels of sufficient quantity and quality to protect spawning, incubation, rearing and migration;
- full compensation for unavoidable fish losses or fish habitat losses through habitat restoration or replacement, appropriate propagation, or similar measures consistent with the provisions of this program;
- assurance that the project will not inundate the usual and accustomed fishing and hunting places of any tribe;
- assurance that the project will not degrade fish habitat or reduce numbers of fish in such a way that the exercise of treaty rights will be diminished; and
- assurance that all fish protection measures are fully operational at the time the project begins operation.

12.1A.2 Do not license, relicense, exempt from license, propose, recommend, agree to acquire power from, or otherwise support any hydroelectric development in the Columbia River Basin without specifically providing for these development conditions:

- consulting with the wildlife agencies and tribes and the Council throughout study, design, construction and operation of the project;
- avoiding inundation of wildlife habitat, insofar as practical;
- timing construction activities, insofar as practical, to reduce adverse effects on nesting and wintering grounds;
- locating temporary access roads in areas to be inundated;
- constructing subimpoundments and using all suitable excavated material to create islands, if appropriate, before the reservoir is filled;
- avoiding all unnecessary or premature clearing of land before filling the reservoir;
- providing artificial nest structures when appropriate;
- avoiding construction, insofar as practical, within 250 meters of active raptor nests;
- avoiding critical riparian habitat (as designated in consultation with the fish and wildlife agencies and tribes) when clearing, riprapping, dredging, disposing of spoils and wastes, constructing diversions, and relocating structures and facilities;
- replacing riparian vegetation if natural revegetation is inadequate;
- creating subimpoundments by diking backwater slough areas, creating islands and nesting areas;
- regulating water levels to reduce adverse effects on wildlife during critical wildlife periods (as defined in consultation with the fish and wildlife agencies and tribes);
- improving the wildlife capacity of undisturbed portions of new project areas (through such activities as managing vegetation, reducing disturbance, and supplying food, cover and water) as compensation

for otherwise unmitigated harm to wildlife and wildlife habitat in other parts of the project area;

- acquiring land or management rights where necessary to compensate for lost wildlife habitat at the same time other project land is acquired and including the associated costs in project cost estimates;
- funding operation and management of the acquired wildlife land for the life of the project;
- granting management easement rights on the acquired wildlife lands to appropriate management entities; and
- collecting data needed to monitor and evaluate the results of the wildlife protection efforts.

12.1A.3 Ensure that all licenses for hydroelectric projects or documents that propose, recommend or otherwise support hydroelectric development explain in detail how the provisions of Sections 12.1A.1 and 12.1A.2 will be accomplished or the reasons why the provisions cannot be incorporated into the project.

12.2 PROTECTED AREAS

From the inception of this program, the Council has supported the concept of protecting some streams and wildlife habitats from hydroelectric development, where the Council believes such development would have major negative impacts that could not be reversed. Beginning in 1983, the Council directed extensive studies of existing habitat and has analyzed alternative means of protection. In 1988, the Council concluded that: 1) the studies had identified fish and wildlife resources of critical importance to the region; 2) mitigation techniques cannot assure that all adverse impacts of hydroelectric development on these fish and wildlife populations will be mitigated; 3) even small hydroelectric projects may have

unacceptable individual and cumulative impacts on these resources; and 4) protecting these resources and habitats from hydroelectric development is consistent with an adequate, efficient, economical, and reliable power supply. The Council, relying on these studies, designated certain river reaches in the basin as “protected areas,” where the Council believes hydroelectric development would have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity or their habitat.

River reaches to be protected are those reaches or portions of reaches listed on the “Protected Areas List” adopted by the Council on August 10, 1988, and subsequently. For each river reach listed on the Protected Areas List, the fish and wildlife to be protected are those on the list. The Council will supply a copy of the Protected Areas List to any party free of charge.

12.2A Protect Areas From New Hydropower Development

The following are not affected by protected areas:

- any hydroelectric facility or its existing impoundment that as of August 10, 1988, had been licensed or exempted from licensing by the Federal Energy Regulatory Commission;
 - the relicensing of such hydroelectric facility or its existing impoundment;
 - any modification of any existing hydroelectric facility or its existing impoundment; and
 - any addition of hydroelectric generation facilities to a non-hydroelectric dam or diversion structure.
- **Transition projects:** The Council recognizes that there exist, as of August 10, 1988, applications for hydroelectric projects that are in various stages of completion before the Federal Energy Regulatory Commission. In many cases the applicants have made substantial

investments and have completed, or nearly completed, agreements with all interested parties, including state fish and wildlife agencies. The Council recognizes that the Federal Energy Regulatory Commission may be obligated to complete its processes on these applications, but expects where possible that this measure will be taken into account to the fullest extent practicable.

The Council recognizes that there may exist preliminary permits or applications for licenses or exemptions for hydroelectric projects at sites which were not previously within protected areas but which may be included within protected areas as a result of amendments approved by the Council. An important purpose of protected areas is to encourage developers to site projects outside protected areas. The Council therefore exempts from the effect of an amendment that designates a previously unprotected area as protected, any project for which the developer had obtained a preliminary permit or filed an application for license or exemption prior to the date on which the Council entered rulemaking on the amendment. However, it is the Council's intention that the Federal Energy Regulatory Commission give full consideration to the protection of fish and wildlife resources located at these project sites and provide suitable protection and mitigation for such resources in the event that a license or exemption is approved.

- **Effect on water rights and riparian areas:** This measure should not be interpreted to authorize the appropriation of water by any entity or individual, affect water rights or jurisdiction over water, or alter or establish any water or water-related right. The Council does not intend this measure to alter or affect any state or federal water quality classification or standards, or alter any management plan

developed pursuant to the national Forest Management Act, 16 U.S.C. 1601, et seq., or the Federal Land Policy Management Act, 43 U.S.C. 1701, et seq., except to the extent planning decisions are directly related to hydropower licensing and development. Nor should this measure be interpreted to alter, amend, repeal, interpret, modify, or conflict with any interstate compact made by the states. If this measure is found by a court or other competent authority to conflict with any other interstate compact, this measure will terminate with respect to the area involved, without further action of the Council.

This measure applies to river reaches, or portions of river reaches, and to river banks or surrounding areas only where such areas would be directly affected by a proposed hydroelectric project. In adopting this measure, the Council has not attempted to balance all the factors that may be relevant to land management determinations.

Bonneville Power Administration

- 12.2A.1 Do not acquire power from hydroelectric projects located in protected areas. The Council believes that the Long-Term Intertie Access Policy's reliance on protected areas is consistent with the Council's power plan and fish and wildlife program as they apply to fish and wildlife in the Columbia River Basin. The Council continues to recommend that Bonneville adopt a similar policy with respect to protected areas outside the Columbia River Basin.

Federal Energy Regulatory Commission

- 12.2A.2 Under the Northwest Power Act, the Federal Energy Regulatory Commission,

and all other federal agencies responsible for managing, operating, or regulating federal or non-federal hydroelectric facilities located on the Columbia River or its tributaries are required to take protected area designations into account to the fullest extent practicable at all relevant stages of decisionmaking processes. The Council recognizes that the Federal Energy Regulatory Commission makes licensing and exemption decisions for nonfederal projects, and does not expect that the Commission will abandon its normal processes with regard to projects located in protected areas. Rather, consistent with Section 4(h)(11) of the Northwest Power Act, the Council expects that the Federal Energy Regulatory Commission will take the Council's judgment into account, and implement that judgment in licensing and exemption decisions unless the Federal Energy Regulatory Commission's legal responsibilities require otherwise.

12.3 ADDITIONAL PROTECTIONS AND CONSISTENCY OF HYDROPOWER DEVELOPMENT

12.3A Cumulative Effects

Federal Project Operators and Regulators

- 12.3A.1 Review simultaneously all applications or proposals for hydroelectric development in a single river drainage, through consolidated hearings, environmental impact statements or assessments, or other appropriate methods. This review shall assess cumulative environmental effects of existing and proposed

hydroelectric development on fish and wildlife.

12.3B Ensure Consistency With This Program

Federal Energy Regulatory Commission

- 12.3B.1 Require all applicants for licenses (including license renewals, amendments and exemptions) and preliminary permits in the Columbia River Basin to demonstrate in their applications how the proposed project would take this program into account to the fullest extent practicable.
- 12.3B.2 Provide the Council with copies of all applications for licenses (including license renewals, amendments and exemptions) and preliminary permits in the Columbia River Basin so that the Council can comment in a timely manner on the consistency of the proposed project with this fish and wildlife program. This provision is not intended to supplant review of such applications by the fish and wildlife agencies and tribes.

Federal Land Managers and Federal and State Fish and Wildlife Agencies

- 12.3B.3 Incorporate pertinent elements of the fish and wildlife program in the terms and conditions they apply to projects exempted from licensing under Federal Energy Regulatory Commission

exemption procedures. The Council also requests federal land managers to incorporate this program into their permit procedures related to hydroelectric development on lands they manage.

Corps of Engineers, Bureau of Reclamation, and any Other Federal Agency Studying or Proposing Hydroelectric Development in the Columbia River Basin

- 12.3B.4 Provide opportunity for Council review and comment.

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