

MEMORANDUM

TO: Water Resources Commission

FROM: Dick Bailey, Administrator
Water Rights/Adjudication Division

SUBJECT: Water Resources Commission Work Session
Item 1, August 8, 2002

Hydroelectric Program Update

I. Issue

This staff report provides an update on the Department's hydroelectric program activities. The report includes an overview of hydroelectric program authorization and reauthorization issues and the status of major hydroelectric projects. *This is an informational report only; no Commission action is required.*

II. Background

The state authorizes new hydroelectric projects and reauthorizes hydroelectric projects with expiring licenses. Oregon's hydroelectric authorization and reauthorization program includes projects subject only to state jurisdiction and projects under both state and federal jurisdiction. Projects under federal jurisdiction are those licensed by the Federal Energy Regulatory Commission (FERC). Approximately 123 of the 170 state-authorized hydroelectric projects fall entirely under state jurisdiction and are not licensed by FERC.

The state issues water rights for a term of up to 50 years for new privately-owned projects, and grants permanent, non-expiring water rights for new public projects. The state has authorized new hydroelectric projects since 1931, but only began to reauthorize hydroelectric projects in 1997. The state's attention turned toward project reauthorization in 1995 when the Oregon Legislature enacted House Bill (HB) 3087. At that time, a majority of state-authorized hydroelectric project licenses were expiring within 15 years. This bill repealed the 1931 statute that required the state to take over hydroelectric facilities when the current owners had fully recovered their investments. HB 3087 further directed the Department to convene a task force to develop a process for reauthorizing projects with expiring licenses.

Based on task force recommendations, the 1997 Legislature created a new state hydroelectric reauthorization program enacted as HB 2119. Three concepts are at the core of the new program:

- 1) interagency working groups called Hydroelectric Application Review Teams (HARTs);
- 2) development of a Unified state position (USP) for each FERC project undergoing reauthorization; and
- 3) issuance of a conditioned water right for a reauthorized project, rather than a license.

HARTs are established for each hydroelectric project with a water right about to expire. Core membership of each HART includes WRD as the lead agency, the Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW). HARTs can also include other state agencies with a specific interest in the project such as the Parks and Recreation Department, Marine Board, Division of State Lands, Department of Geology and Mineral Industries, and Public Utility Commission. The WRD hydroelectric program employs 4.5 staff persons. Each major project is assigned at least one staff person for technical work with additional staff time for policy coordination.

The standard for review of a hydroelectric project application is a public interest determination. The HART reviews the hydroelectric project application, collaboratively addresses interagency issues and conflicts related to the application, develops the USP, modifies the USP based on public comment, and makes recommendations to WRD regarding reauthorization of the project. There is also an opportunity for the public to protest the HART recommendations.

“Unified state positions” are only required for projects that are under FERC jurisdiction. The concept of the USP was designed to assure utilities and other applicants that the state would speak with one voice. Previously, applicants worked separately with each state agency, which occasionally led to conflicting requirements. Development of the USPs is an iterative process and includes a provisional, second and final USP. The statute requires that all state conflicts be resolved prior to the issuance of the second USP.

The USP includes the following determinations: 1) WRD issuance of the water right and any conditions on the water right; 2) compliance with Clean Water Act Section 401 administered by DEQ, with conditions as appropriate; and (3) ODFW’s “10(j)” recommendations with regard to fish passage. (State agency fish passage recommendations are provided under Section 10(j) of the Federal Power Act.)

Additional recommendations from the Task Force were adopted by the legislature in 1999 (HB 2162). Changes included a long-term fee structure to fund the hydroelectric program and

other recommended procedural changes. Statutory changes also require that, when a hydroelectric facility is decommissioned, its water right is converted to an instream right held in trust by WRD. The Water Resources Commission partially addressed these statutory changes in March 2001 by adopting rules for the decommissioning of projects not subject to FERC jurisdiction. The 2001 Legislature made additional changes with the passage of Senate Bill 319. This bill made several procedural changes to improve program implementation.

Since revisions to the hydroelectric reauthorization program in 1995, twenty projects under state jurisdiction have received HART review and certificated water rights. The state has not yet reauthorized any of the 47 FERC projects. Currently, HARTs are also working on two new projects.

III. Major Issues

Reauthorization of a hydroelectric project presents a broad range of complex resource, social, and economic issues. One frustrated facilitator noted, "If you can think of a natural resource issue . . . it is present, in some form, in the context of a hydro licensing process." A few of the key issues being addressed in the various reauthorization efforts are discussed below.

A. Fish Passage

In all of the major project reauthorization efforts, fish passage is a significant issue. Many of the dams were built at a time when the passage of anadromous species was not considered or was not understood. Today, dams of all sizes can hinder or stop the migration of these species, including species listed as threatened or endangered under the Endangered Species Act. Providing fish passage, by whatever mechanism, is very expensive. Discussions are wide-ranging and deal with such topics as available habitat, water quality, return rates, predation, fish screening, and mitigation.

B. Water Quality

All FERC hydroelectric projects must receive certification from DEQ that the project meets or will meet the water quality requirements of Section 401 of the Clean Water Act (CWA). These water quality criteria deal with such issues as water temperature, dissolved gases, turbidity and other parameters. Major points of debate include concepts of mitigation, adaptive management, monitoring, study plan design and implementation.

C. Mitigation

Project operators cannot always prevent adverse impacts to the resource caused by the operation of the facility. Therefore, mitigation for project impacts may be negotiated and included in the federal license and the state water right. Mitigation can be expensive and often includes the project owner funding habitat restoration efforts, water quality programs, wetlands restoration or providing for flow augmentation.

D. Term of Water Right

Water rights may be issued for up to 50 years. Recognizing that we probably would not make the same decisions today regarding siting and construction of these facilities as we did fifty years ago, the state's policy is to limit the length of the license. Limiting the length of licenses allows the state to apply new knowledge and technology in the future, minimizing the impact of projects and the risk to public resources. Applicants prefer longer license terms which allow more time to amortize project costs.

E. Public Interest

Under ORS 543A.025, a public interest standard guides the decision whether to issue a water right for continued operation of an existing hydroelectric project. This standard requires the Department to consider the economics of the project, the highest and best use of the water, maximum economic development of the waters involved, impacts to fish, wildlife and other resources, wetlands protection, cost to the public, and the need for electricity.

F. Recreation

Reservoirs behind hydro dams serve several purposes such as storing water for the generation of electricity, providing water for recreational boaters and fishermen, creating lakesides for campers and protecting against floods. Because full reservoirs make cheaper and more profitable electricity, it is in the interest of the operator to maintain levels as high as possible. Flat-water recreation facilities also support this interest as well. In contrast, those wanting flexibility to deal with flows for fish or river boating may wish to draw down the reservoir during low flow periods.

G. Other Issues

Other issues include habitat restoration, flow augmentation, ramping rates, terrestrial connectivity, cultural and historic issues, peripheral economic impacts, bypass flows, subordination, adaptive management, and interim measures.

IV. Status of Projects

The status of major reauthorization and decommissioning projects is described below with the locations of the projects shown in the Attachment.

A. North Umpqua C PacifiCorp

(199 megawatt facility located on the N. Umpqua River)

State and federal agencies have signed a settlement agreement that includes conditions for a new license. In March 2002, the HART issued the project's second USP for public comment, which closed in May 2002. The second USP was consistent with the settlement agreement. The CWA Section 401 certification was signed in June 2002 and the final USP, water right Proposed Final Order, and draft water right certificate are expected to be issued in September 2002.

Environmental interests who were initially a party to the settlement negotiations left negotiations before the completion of the settlement agreement. However, opportunities exist for these interests to participate further in both the state and federal process.

B. Pelton - Round Butte C Portland General Electric (PGE)/Confederated Tribes of the Warm Springs Reservation

(382.5 megawatt facility on the Deschutes River)

The HART issued the project's second USP in March 2002 and the public comment period closed in May 2002. In June 2002, the CWA Section 401 certification was signed. The final USP, water right proposed final order, and draft water right certificate should be issued in October 2002. Discussions between the HART and the applicants regarding mitigation are not complete and may have an impact upon the issuance date of the state's final USP.

C. Hells Canyon C Idaho Power Company

(1200.4 megawatt facility on the Snake River)

Idaho Power has requested and received permission from the state to file its draft application several months late. The draft application is expected to be submitted in September 2002. Idaho Power has been conducting studies and discussions using a collaborative team approach for several years in anticipation of its application, and has included the HART in these efforts. Upon submission of Idaho Power's draft application, the utility will likely change to a more traditional FERC licensing approach as opposed to the more collaborative approach taken in recent years.

D. Klamath Project C PacifiCorp

(150 megawatt facility on the Klamath River)

PacifiCorp is conducting a traditional FERC relicensing process for this bi-state project. A HART has been established and is working through the issues presented by this complex re-authorization effort. Studies relative to the operations of the project and its impact upon resources are ongoing. PacifiCorp holds monthly meetings for both a general audience and a technical working group to address study design and progress. It is anticipated that the state's provisional USP will be issued for comment early next year. This project, like many others, requires a significant amount of staff time to address both technical and policy issues. Significant issues on this project include bi-state concerns, ongoing water quality problems in the basin, and the Klamath Basin Adjudication.

E. Clackamas River (Oak Grove and North Fork) Project C PGE

(188 megawatt facility on the Clackamas River)

The licenses for these two projects expire on August 31, 2006. A HART has been formed and is working with PGE and other stakeholders in the design and implementation of studies and identification of issues. A draft application combining the two projects will be issued in August 2003.

F. Willamette Falls C PGE

(27.6 megawatt facility on the Willamette River)

PGE submitted its draft application in December 2001. The HART provided comments on the draft application in March 2002. The final license application will be filed in late December of this year. The relicensing participants are attempting to reach resolution of issues that were raised as a result of the draft application filed last year.

G. Prospect Project C PacifiCorp

(77.1 megawatt facility on the Middle and South Forks of the Rogue River and Red Blanket Creek)

The draft application for this project was due in July 2002, but PacifiCorp requested and was granted an extension until October 2002. HART is currently working with PacifiCorp and other stakeholders to design and implement studies and identify key areas of concern.

H. Powerdale Decommissioning C PacifiCorp

(6 megawatt project on the Hood River)

The licensing of this project was well underway before the state passed its reauthorization statutes. A HART was formed and worked with PacifiCorp on its final application to FERC. PacifiCorp recently requested FERC suspend consideration of its application in anticipation of PacifiCorp submitting a surrender application in late July to decommission its project. PacifiCorp has notified the state that it intends to share a draft surrender application later this month. Recent discussions with PacifiCorp indicate the utility is willing to work collaboratively with the state and other interests in developing its final surrender application.

I. Marmot Decommissioning C Portland General Electric

(21 megawatt project on the Sandy and Little Sandy Rivers)

Approximately three years ago PGE jointly announced with the state, the National Marine Fisheries Service, and the City of Portland their intent to decommission the Marmot project. Over time, decommissioning discussions stalled. Last fall PGE decided to attempt a settlement agreement rather than have the project orphaned by FERC. A settlement agreement must be completed by November 15, 2002. State agencies have been working with PGE, federal agencies, environmental interests and others to craft a decommissioning settlement agreement

before the deadline. It is likely that a settlement will be reached. However, instream conversion of the hydroelectric project water right, a pre-1909 surface water registration, remains one of the unresolved issues.

V. Summary

The Department's hydroelectric staff are working on seven major reauthorization projects under both federal and state jurisdiction and decommissioning of two major projects. Staff are also working on 22 state jurisdictional reauthorizations and four new projects. The issues associated with each of these hydroelectric projects are complex but are carefully considered through the state's HART process.

VI. Recommendation

This is an informational report. No commission action is required.

Attachment:

Major Hydroelectric Reauthorization and Decommissioning Projects in Oregon

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