

**STATEMENT
OF
PAUL BROUHA
ASSOCIATE DEPUTY CHIEF
NATIONAL FOREST SYSTEM
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE
Before the
House, Committee on Commerce
Subcommittee on Energy and Power
March 30, 2000
Concerning Various Hydropower Bills**

Good morning Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to testify regarding hydropower legislation currently under your consideration. My name is Paul Brouha, Associate Deputy Chief for the National Forest System. With me is Mona Janopaul, National Hydropower Program Manager.

Background

The Department of Agriculture and the Forest Service have made the licensing of hydropower projects on National Forest System (NFS) lands a very high priority. Of the approximately 200 federally licensed projects due for relicensing in the next ten years, more than half are partially or wholly within national forests, while most of the remainder lie in watersheds that contain national forests. The Forest Service is responsible for conditions in hydropower licenses “necessary for the adequate protection and utilization of” the national forest (Section 4(e) Federal Power Act (FPA)), and Wild and Scenic rivers (Section 7, FPA).

We recognize that hydropower is a valid use of NFS lands, however, without appropriate protections hydropower projects can have adverse impacts upon NFS resources, including water quality, fisheries, and wildlife.

Since hydropower licenses are for terms of 30 to 50 years, it is important that we exercise our conditioning authority, as necessary, at the time of licensing to insure that adequate resource protection measures are included in the license. The Forest Service is very active in these licensings, working with the licensees, other federal and state resource agencies, the Federal Energy Regulatory Commission (FERC), and other users of NFS lands to reduce the negative environmental and recreational impacts of hydropower projects and create partnerships with others that will protect and enhance NFS resources.

In addition, we have created national and regional Hydropower Assistance Teams that facilitate the involvement of the national forests with licensees, national forest system stakeholders, and other agencies. The Forest Service is determined to effectively participate in both alternative and traditional licensings. To date, we have been able to provide sufficient staff and resources to accept all licensee invitations to participate in collaborative licensing processes.

Along with other federal agencies, USDA and the Forest Service are taking an active role in a number of ongoing national processes that are aimed at improving hydropower licensing, industry relationships, and protecting our natural resources. National processes include the Interagency Task Force and its Federal Advisory Committee, as well as the hydropower-industry sponsored Electric Power Research Institute's National Review Group. In addition, many of our staff have met with various members of the hydropower industry and attended industry conferences around the country. During this year's review for our regional hydropower programs, the Forest Service invited licensees and other stakeholders to participate and comment on the Forest Service's performance in hydropower licensing.

In the interest of good communication and improved hydropower licensing, the Forest Service ensures at least three opportunities to comment on its license terms and conditions before such conditions are finalized. The first opportunity is provided through the FERC licensing process when parties to the FERC licensing can comment upon the

Forest Service preliminary conditions in response to the license application. The second opportunity for comments to FERC is upon draft conditions in response to FERC's NEPA process. The third opportunity for comment is offered to the general public in the established Forest Service NEPA process.

HYDROPOWER BILLS

The Forest Service joins in the concerns raised by Department of the Interior and NOAA on H.R. 2335, H.R. 1262, H.R.3852, S.422, and S.1236 and defer to their positions on these bills. We also offer the following additional comments on these bills.

H.R. 2335

H.R. 2335 would create onerous, costly, and time-consuming burdens on the Forest Service that would lead to additional complexity and possible conflicts in authority and law.

Far from streamlining or improving the FERC licensing process, this bill would create delays, conflicts, confusion and impossible requirements. The bill does not fully recognize the different responsibilities of each agency or the potential impacts of hydropower generation. Some of our specific objections include:

- **Section 32(b)**

Section 32(b) would eliminate consideration of measures necessary for the protection of NFS resources, and instead direct the Forest Service to consider issues outside its realm of expertise and outside NFS lands, e.g., economic and power values, electricity generation, capacity and reliability, air quality, flood control, and compatibility with other agencies' terms and conditions. Forest Service analyses would also be duplicative of other resource agencies and FERC analyses. The bill would undermine Forest Service authority over NFS lands and introduce a possible conflict between the FPA and Federal Land Policy and Management Act that was resolved by Congress in the 1992 amendments to the FPA.

- **Section 32(c):**

Section 32 (c) would require that each condition proposed by the Forest Service or other agencies be subject to “appropriately substantiated scientific review.”

This proposed standard is nebulous and untested. In contrast, the current standard for determining the adequacy of conditions and recommendations in licenses is whether they are supported by “substantial evidence,” and is well-settled in law. The Forest Service makes science-based decisions, and we must retain the final decision-making authority and comport with individual Forest Plans when issuing mandatory terms and conditions designed to protect NFS resources.

- **Section 32(e):**

Section 32 (e) would require that agencies issue their terms and conditions before the licensee has filed its application. An agency cannot adequately assess conditions appropriate for a license before the license application is filed. Based upon each license application, the Forest Service creates specific terms and conditions for that hydropower project. The responsibility to manage NFS lands cannot be delegated to any other entity by creating an additional reviewing authority over Forest Service conditions. As the Ninth Circuit Court of Appeals has observed, if the license applicant desires to construct or operate a hydropower project on NFS lands, the applicant should rightly answer to the Forest Service.

This Section would also delay licensing by adding a six-month appeal process (before an administrative law judge or other independent reviewing body) prior to the finalization of agency conditions and separate economic analysis by FERC of each term and condition. This Section would open the door to significant harm to NFS resources by reducing mandatory conditions regarding fish, wildlife, habitat, and other resources to mere recommendations if the independent reviewer takes more than 180 days to complete the review. Finally, this Section would duplicate the appeal process available to the general public under the Forest Service NEPA process.

- **Section 6:**

This section is unnecessary. Under the FPA, when FERC is considering an exemption from licensing for a small hydropower project, the Forest Service is allowed to participate and condition the exemption so as to protect NFS resources. These existing FPA provisions regarding exemptions for small hydroelectric projects are sufficient and further study of a separate licensing process for such facilities is not warranted.

If a study were conducted and a new procedure for licensing small hydropower projects were enacted into law, the Forest Service would oppose any procedure that would diminish our role in the protection of NFS resources under such licensings

S. 422:

The Forest Service has previously testified in opposition to this proposal to eliminate protections for NFS resources by removing small hydropower projects in Alaska from FERC jurisdiction.

This bill would significantly impair the ability of the Forest Service to manage NFS lands, and eliminate comprehensive fisheries management in Alaska. The bill creates a confusing configuration of state and federal jurisdictions. As stated above, regarding Section 6 of H.R. 2335, the FPA already provides for special treatment of small hydropower while maintaining the ability of the Forest Service to protect NFS resources.

S. 1236 and H.R. 1262, and H.R. 3852:

These bills provide for special exemptions for particular hydropower projects, and the Forest Service objects to such measures. The Forest Service NEPA process provides for public participation and timely environmental analysis. By extending a construction period or eliminating licensing altogether, Congress would be impairing the public's opportunity to participate in the process and to receive electric power from a more efficient licensee. Such extensions take the matter beyond the scope of the original environmental review, and may lead to conflicts with ESA and other statutory

obligations. Eliminating applicability of FPA to a non-federal hydropower project, as proposed in H.R. 3852, defeats the FPA's purpose of development of the waterway and protection of its resources.

Thank you. I would be happy to answer any questions.