Statement of William Bettenberg
Deputy Director, Office of Policy Analysis
U.S. Department of the Interior

Before the
Senate Committee on Energy and Natural Resources
on S. 597, S. 388, and S. 71
and Matters Related to the Hydropower Licensing Process

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Good morning. My name is William Bettenberg. I am Deputy Director of the Office of Policy Analysis in the Department of the Interior and currently serve as the Hydropower Coordinator for the Department, as well. On behalf of Secretary Norton, I wish to reaffirm the commitment of the Department of the Interior (Department or Interior) to improve and streamline the hydropower licensing process. The Secretary takes very seriously her charge to efficiently and effectively balance national interests in natural resource and environmental preservation with energy needs, and to do so through timely, cooperative, and efficient processes. I will present the views of the Department on hydropower issues and legislation, and I have also been asked to speak to the practices of the U.S.D.A. Forest Service (USDA/FS) today.

In this review, I will address S. 597, the Comprehensive and Balanced Energy Policy Act of 2001, S. 388, the National Energy Security Act of 2001, and S. 71, the Hydroelectric Licensing Process Improvement Act of 2001, all as they relate to hydropower. Because of its relevance, I will also refer to the Energy Advancement and Conservation Act of 2001 as marked up by the House Energy and Commerce Committee on Tuesday.

The President's National Energy Policy (NEP) supports actions to streamline and improve the hydropower licensing process. I am pleased to report to you on the status of the progress being made by the resource agencies in effecting such improvements, to share with you the positions of the resource agencies on the legislation being considered by this Committee, and to suggest several additional legislative steps that could improve the licensing process. To begin, I will provide the Committee with some background on hydropower and a description of the responsibilities of resource agencies in the hydropower licensing process to place the issues in context.

A. Background

Hydropower represents about 7 percent of annual generation and is almost always the lowest-priced source of electricity when compared to any other means of producing electricity. While subject to the vagaries of river flows and droughts, hydrogeneration plays a unique role in meeting power demands. While often presenting serious problems for fish migration and spawning, hydropower avoids production of air pollutants and a variety of other concerns compared to the use of other energy resources.

About 45 percent of hydropower generation is administered by the Department's Bureau of Reclamation, the Corps of Engineers (Corps), and other Federal agencies. Non-federal projects account for the remaining 55 percent of hydropower generation and about 4 percent of the nation's total electricity supply. The use of navigable rivers for non-federal hydropower is conditioned through licenses issued by the Federal Energy Regulatory Commission (FERC). These licenses also contain conditions set by Interior bureaus and the USDA/FS to address effects of the hydropower projects on Federal and Indian lands, by the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA) with regard to fish passage, by the Corps with regard to navigation, and by States with regard to water quality. The process for obtaining a license can be time consuming and contentious. The licensing process, however, is itself complex. From the standpoint of the resource agencies - Interior, Agriculture and Commerce - it is important to ensure that appropriate safeguards are put in place, particularly given the fact that hydropower licenses authorize the use of public resources for 30 to 50 years. We believe substantial advances have been made recently in improving the process; more can be done and we are working together on that.

Federal Power Act

The resource agencies have the important assignment under the Federal Power Act (FPA) to participate directly in the hydropower licensing process. Our participation is intended not to interfere with licensing, but to ensure that key resources for which the resource agencies are responsible are protected when navigable waterways are used for hydropower generation.

Since enactment of the FPA in 1920, it has been the responsibility of the Departments of the Interior and Agriculture to establish conditions for non-Federal hydropower licenses as necessary to protect the lands and resources that we administer. These lands include Federal reservations such as Indian lands, National Wildlife Refuges, Bureau of Reclamation projects, National Forests, some units of the National Park System, and certain lands and projects managed by the Bureau of Land Management. This responsibility includes protecting the structural integrity of Department of the Interior dams and canals, meeting trust responsibilities on behalf of Indian tribes and individuals, and otherwise assuring compatibility with the purpose for which the Federal reservation was made. These conditions are set pursuant to section 4(e) of the FPA.

Also, since 1920, FWS and NOAA (or their predecessor agencies) have had responsibility for establishing the terms for safe passage of fish at licensed hydropower facilities. This authority is somewhat analogous to conditions set by the Corps to ensure passage of boats for navigation. Most hydropower facilities received their original licenses roughly 30 to 50 years ago; many of those facilities had actually been put in place many decades before then, long before the advent of national concern for environmental resources including fish, or widespread recognition of the cumulative impact of dams on fish resources. Of the dams licensed by FERC, only 9.5 percent include upstream fish passage; only 13 percent included downstream fish passage other than over the spillways or

through the turbines.[1] This responsibility for establishing conditions for fishways is carried out under section 18 of the FPA.

These agencies also make recommendations to FERC for other environmental protections which they believe should be considered for inclusion in hydropower licenses. These include additional recommendations for protection, mitigation, and enhancement of fish and wildlife resources, as well as recommendations related to recreation, cultural resources, and irrigation. This is done under sections 10(a) and (j) of the FPA.

Hydropower License Conditions Frequency, Timeliness, and Contested Cases:

The licensing process has often been complex and resource intensive for all parties, including energy producers, property owners, recreationists, fisherman, and conservationists. Recently, the Department examined all licenses issued between 1994 and 2000, and found that the average processing time, from the time an application is filed with FERC to the time a license is issued, is just over four and a half years. A copy of that analysis is attached to this testimony. There are many steps that contribute to this lengthy process:

- The average time from filing by the applicant to acceptance of the application by the Commission is about one year;

- The average time from acceptance of the application by the Commission to the declaration by the Commission that the project is Ready for Environmental Analysis (REA) is about 11 months; and

- The average time to conduct the environmental analysis and issue the license is a little over 2.5 years following issuance of the REA notice.

- Even after the license is issued, there are often motions for rehearing with the Commission, and sometimes even challenges in court.

Ninety-one percent of new licenses at existing projects covered by the Department's analysis (144 of 155) were issued after the existing license expired, and 61 percent were issued more than one year after the expiration date. Clearly, there is room for improvement in this process.

Many of the recent reform proposals have focused on federal agency conditions. While attention to the conditioning process is warranted, we believe that it may be too narrowly focused. Departmental conditions are issued less frequently and contested less frequently than may be commonly supposed. For the 157 new and existing projects licensed from 1995 through 2000, the Department established

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[1]Environmental Mitigation at Hydroelectric Projects, Volume II, Idaho National Engineering Laboratory, January 1994, DOE/ID - 10360(V2)

section 4(e) conditions for only 9 projects - about six percent of the projects licensed by FERC during that period.[2] Section 18 fishway conditions were established by FWS or NOAA for 32 projects, or 20 percent of the 157 projects licensed. When these Interior numbers (both section 4(e) and 18) are combined with those for NOAA, they still only account for about 25 percent of the projects licensed during the period studied.

Interestingly, the process of Interior bureaus and NOAA establishing conditions does not appear to have lengthened the overall licensing process. The Department's analysis found that there was no significant difference between the time it took to process license applications for which mandatory conditions under Sections 4(e) and 18 of the FPA were established, and the time to process those for which prescription authority was not exercised. FERC corroborated this conclusion in their May 8th Section 603 report.[3]

Also interesting is that of the 157 licenses issued during this period, 57 - slightly more than one-third - were contested by the applicants; only 13 of those contested included Interior and NOAA conditions. The 13 challenges to Interior and NOAA conditions represent 8 percent of the licenses issued. There were no contests of USDA/FS conditions at FERC during this period. Our understanding is that no relicensing applicant has rejected a license due to the setting of conditions by the resource agencies.

What these numbers point to is that the length of the hydropower licensing process and the extent of contested licenses are less a function of the processes by which the resource agencies establish conditions, or even the nature of those conditions themselves, than they are a more pervasive artifact of the overall hydropower licensing process. The net needs to be cast more broadly to effectively streamline the process.

Recent Progress on Improving the Hydropower Licensing Process

In 1998, the Federal agencies responsible for key parts of the Nation's hydropower licensing process created the Interagency Task Force to Improve Hydroelectric Licensing Processes (ITF) to develop practical ways to improve the licensing process across all the agencies. The ITF was a coordinated effort between FERC, the Departments of Interior, Commerce, and Agriculture, the Environmental Protection Agency, and the Council on Environmental Quality. To ensure review and comment on the ITF work products by all stakeholders, the ITF convened an advisory committee comprised of

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[2]Note that this differs from the 10 cited in the attached letter; the difference is that a proposed National Park Service 4(e) condition was converted to a settlement term.

[3] Report on Hydroelectric Licensing Policies, Procedures, and Regulations, Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000, prepared by the staff of the Federal Energy Regulatory Commission, May 2001 (cited hereafter as FERC 603 report), p. 38.

industry, non-governmental organizations, tribes, and local, State, and Federal agencies. Numerous recommendations were developed and commitments made in a series of agency guidance documents that are posted on the www.doi.gov/hydro website. Most significantly, the commitments include:

(1) the commitment of the Commission to alert the public and other agencies of proposed hydropower licensing actions to expedite issuance of notices and improve overall communication among Federal agencies;

(2) the commitment of the Commission and resource agencies to changes that will facilitate better coordination among Federal agencies and enable all interested parties to understand and more efficiently work within the National Environmental Policy Act (NEPA) process;

(3) the commitment of the Commission and resource agencies to provide basic guidelines on how to identify resource issues, identify and conduct necessary studies during the pre-filing stage, resolve disputes over studies, and address issues related to post-filing studies, making the licensing process more efficient and eliminating disputes early in the process. For example, the resource agencies have committed to identifying in any study request the nexus between study requests and licensing conditions and recommendations, on the one hand, and project operations and resource impacts on the other. In addition, in developing its conditions and prescriptions, the Departments have committed to reviewing alternatives including those submitted by the license applicant, and selecting the least cost alternative which meets the Department's management goals;

(4) the commitment of the Commission and resource agencies to streamline the process by which they coordinate section 7 consultation under the Endangered Species Act and integrate it into the licensing process in order to facilitate timely licensing actions;

(5) the commitment of the Departments of the Interior and Commerce to the publication of review procedures for their exercise of mandatory conditions under sections 4(e) and 18 of the FPA, and the Commission's commitment to identify and follow consistent procedures in implementing recommendations that it receives under section 10(j) of the Federal Power Act; and

(6) the Commission's and resource agencies' guidance and recommendations for all participants in the newly evolving alternative licensing process.

In the coming year we expect to realize further reductions in processing time as a result of continuing administrative reforms. Recent initiatives such as those stemming from the ITF have affirmed a commitment to collaborative processes, to setting and meeting deadlines, and to providing timely notifications. The Commission has already reported a noticeable reduction in the number of Additional Information Requests which they have had to issue.[4] The Department and NOAA are

[4]Personal communication with FERC staff.

committed to adhering to set deadlines for establishing their conditions under sections 4(e) and 18; preliminary requirements are provided within 60 days of FERC's REA notice, and any needed modifications are provided within 60 days of the close of the Draft NEPA document comment period. All reserve the authority to make final modifications when the final Environmental Impact Statement (EIS) is completed and reviewed, but changes at this point are rare.

Both the Department and NOAA also now require that the conditions be the least-cost means of achieving the objectives. FWS and NOAA are also working on a fishway policy that will provide clearer guidance for the prescription process and improve consistency between the Departments of the Interior and Commerce. We are optimistic that the implementation of these and other administrative reforms will facilitate the licensing process.

The established expiration dates for licenses make the licensing workload predictable. Over the next decade, about 220 FERC hydropower licenses will expire. These projects have a combined capacity of about 22,000 megawatts, or 20 percent of the Nation's installed hydropower capacity. The relicensing process is focused primarily on bringing the 30 to 50 year old projects into balance with current national standards. It also serves to remind operators to consider upgrades to their generating capacity. Compliance with current standards comes at a price, though the effect on generation is not as large as one might expect. FERC's estimate of the average annual generation loss due to new conditions established through licensing is 1.59 percent.[5] This is substantially less than the annual variation in generation caused by changes in hydrologic conditions. This year's extreme drought in the Northwest is expected to adversely affect generation in that region by 25 percent, and national hydroelectricity production by 4 percent.

B. Implementation of the President's National Energy Policy

The Administration's National Energy Policy report included recommendations for hydropower reform. The Report recommended that the President encourage FERC, and direct Federal resource agencies, to pursue administrative and legislative reforms to make the licensing process more clear and efficient, while preserving environmental goals. More specifically, the NEP report called for federal resource agencies to reach interagency agreement on conflicting mandatory license conditions before they submit their conditions to FERC for inclusion in a license, and for FERC to adopt appropriate deadlines for its own actions during the licensing process.[6]

The Department intends to implement the National Policy Group's recommendations by taking the following steps to continue to streamline the Department's actions and increase the consistency of decision-making and transparency of process for establishing hydropower licensing conditions:

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[5]FERC 603 Report, p. 50.

[6]President's National Energy Policy Report, May 2001, p. 5-18.

1. The Department will continue implementation of an accelerated decision and documentation schedule for establishment of mandatory conditions and prescriptions. The Departments of the Interior and Commerce have implemented the commitments made in the ITF including, particularly, implementation of deadlines for filing preliminary and modified conditions and prescriptions with FERC: within 60 days of FERC's REA Notice and within 60 days after the close of the Draft NEPA comment period, respectively. These deadlines expedite the Department's timing for developing conditions and dovetail with FERC's existing regulations and NEPA process. These commitments also include better and more consistent documentation of the basis for the conditions. These commitments are just beginning to be applied in individual proceedings. Interior has been conducting a review of guidance on these and other recently implemented measures to identify additional steps to streamline licensing decisions and to make those decisions and the decision process more transparent.

2. The Department will continue implementation of public input processes. Departmental procedures contain provisions for participants in the licensing process and the general public to comment on departmental conditions, and require the Department to set forth the rationale for the preliminary conditions and prescriptions. They also provide for the review and signature of modified conditions and prescriptions at a level at least as high as the State director, regional director, or regional administrator. This approach encourages greater collaboration among agencies and licensees earlier in the process, thereby avoiding needless delays and costly litigation.

3. The Department will increase consistency and transparency in fishway prescriptions. A joint Fishway Policy of the Departments of the Interior and Commerce was proposed to standardize general agency practices and procedures for developing fishway prescriptions. This proposed policy was intended to help facilitate consultation among the Departments, license applicants, and other interested parties in developing fishway prescriptions, and to ensure a consistent and effective fishway prescription process. The proposed policy outlines an interactive, collaborative process for arriving at fishway prescriptions. By providing clear guidance on how the fishway prescription process works, it was intended that the policy would improve predictability, ensure uniformity, and reduce uncertainty for applicants. The public comment period on the proposed Fishway Policy closed in February 2001. The agencies are in the process of reviewing and responding to the comments received. Particular attention in this review is being paid to the definitions of "fish" and "fishway." The proposed definitions generated substantial comment and controversy.

4. The Department will continue to work with other agencies and process participants to identify additional opportunities for streamlining and process improvements. The Department will identify additional opportunities for streamlining and improving license processes with other agencies as well as continue efforts to identify improvements through collaborative, multi-stakeholder forums such as the National Review Group convened by the Electric Power Research Institute (EPRI). Representatives from industry, environmental organizations, FERC, and the three resource agencies are currently participating in an EPRI-sponsored forum examining some of the more difficult process issues.

5. The resource agencies will develop an interagency consistency mechanism. Pursuant to the NEP, Interior will work with other resource agencies to develop a streamlined, interagency, issue-resolution process to resolve any inconsistencies that might develop between agencies in making recommendations or in establishing conditions. I expect that we will get this completed yet this year.

6. Interior will issue more specific guidance and a hydropower licensing handbook to its bureaus and field offices to standardize and expedite its processes for establishing conditions and making recommendations. Initial training of management and field staff in new processes and commitments from the ITF process was just completed this spring. These will be reinforced with regular training sessions, specific departmental guidance, and a hydropower licensing handbook to better standardize the process, document considerations and expedite decisions throughout the Department. These are expected to be completed and implemented before the end of the year.

7. Interior will examine alternative review mechanisms and criteria for its exercise of conditioning authority. Two issues that have received substantial comment involve the extent of the factors to be taken into account in establishing mandatory conditions and opportunities to contest those conditions. In the first case, the question is how project economics and other factors should be taken into account in the decision process. All three resource agencies now require that the least-cost alternative condition or prescription that achieves the agencies' objectives be adopted. Our bureaus also report that they take project scale and economics into account when establishing their conditions. This latter element is less transparent, however, and is being reviewed. Recent administrative changes and the anticipated fishway policy also provide an iterative process for consideration of alternative conditions and prescriptions proposed by project applicants and others, and consideration of those recommendations at the regional director level. This approach is also being reviewed and alternatives will be considered. For instance, it has long been the practice of USDA/FS to provide iterative comment and appeal opportunities regarding its mandatory conditions through both the FERC process and its own NEPA appeals process. As we see it, there are many alternative approaches to be considered in addressing these issues that would be consistent with agency responsibilities and good environmental practice, and they will be examined. We have had preliminary discussions about them, but have substantial work ahead of us.

C. Discussion of Legislative Proposals

There are a number of bills before this Committee and a bill marked up by the House Committee on Energy and Commerce on Tuesday dealing with hydropower licensing. Also, I should note that the issues identified below may not be an exhaustive list of all of the concerns of the agencies with provisions of various bills. Rather than take them up sequentially and in detail, I would like to address them more topically. Our sense is that members of Congress may be converging in their approaches. We would like to work constructively with both Houses and members on both sides of the aisle to produce legislation that will improve the hydropower licensing process.

1. Alternative Conditions: All of the bills share one thing in common - they have as a major element a means of petitioning the resource agencies to modify their proposed conditions. Indeed,

this is the core element of the bills. Both Sec. 701 of S. 597, and Sec. 201 of the House bill accomplish this, with minor variations in wording, by providing opportunity for a petitioner to propose an alternative set of conditions. Generally, if the alternative is at least as effective in meeting the objectives as that proposed by a resource agency, and less costly, then it must be adopted. Implicitly in S. 597 and H.R. 2458 and explicitly in S. 71 and S. 388, the basis of the decision must be documented. The House bill also provides a requirement to establish by regulation a means of resolving disputes if the decision on the petitioners' proposal is contested.

We do not believe this approach can substitute for the give and take between applicants, agency resource personnel and others in attempting to examine alternatives and to fine tune the establishment of conditions, including reassessing goals, while proposals are being formulated. Once conditions are proposed by the resource agencies, however, we find the approaches in these bills to provide a reasonable balance between agency actions and an applicant's ingenuity, and they allow sufficient flexibility to craft a well-considered and expeditious review process. We would like to work with the Committee on wording - for instance, we believe proposal of the alternative condition should be limited to the applicant - but can generally endorse this approach. We also believe that there should be a time requirement for presentation of the alternative condition. Under the Department's and NOAA's current policies, draft conditions are due within 60 days of FERC's issuance of the REA notice and proposed final conditions are due within 60 days of the close of the comment period on a draft NEPA document. None of these bills specify a time period for filing alternative proposals, suggesting that alternatives can be proposed possibly after the NEPA process and long after the resource agencies have provided their conditions and prescriptions. All stakeholders should be consistent in early and full disclosure of alternative preliminary terms and conditions, both pre- and post-filing of licensing, and one party should not be given special approval or exemption to file alternatives late. Also, to help maintain an expedited process, we have attempted to nest the process for establishing conditions within the timetable established by the FERC regulatory process. Any proposed alternative conditions process should attempt to similarly minimize the amount of delay in FERC's process.

Sec. 4 of S. 71 and the comparable section of S. 388 use a different approach, setting a requirement that conditions be established three months before an application for a license is submitted and establishing an expedited appeals process before an administrative law judge. If the administrative law judge doesn't render a decision within 6 months, the condition is converted into a section 10(j) recommendation. If the administrative law judge upholds the agency decision, it appears that it can still be overturned by FERC, though under more stringent criteria. This section also requires that all conditions be subjected to "substantiated" scientific review and establishes an extensive list of reviewable criteria that must be considered on the record in setting conditions.

We think it would be extremely difficult, costly, and problematic to develop appropriate preliminary conditions, weigh and document the consideration of all of the factors set out in amended Sec. 32, subject the conditions to scientific peer review, and publish them three months before an application is filed. Currently, as documented earlier in this statement, it takes FERC approximately two years after the filing of a license application to conclude that the application is complete and that it is ready

for environmental analysis. The filing of a final license applications formally commences the licensing proceeding, as well as FERC's preparation of environmental review of the application. Accordingly the final license applications contain the complete project proposal, from which the agencies measure the impacts of the proposed project on resources of concern. The Department's conditions are based upon the need to mitigate against such impacts. Among other things, many of the studies required to make condition and prescription determinations may not have been completed by the time of filing. We are also concerned that none of the factors to be weighed include protection of the resources for which the reservation was made or the need for fish passage.

Also, the caseload and backlogs of the administrative law judges in Interior, at least, lead us to believe that it would be unlikely that review decisions could routinely be issued within 6 months. Indeed, the provision may create an incentive for the applicant to effect delay in the appeals process for the purpose of defeating the possibility of conditions. The effect is likely to be that all or most conditions are downgraded to the status of Sec. 10(j) recommendations.

Additionally, the peer review requirement raises an additional concern in the case of Indian trust property held by the United States, and could conflict with the Secretary's role as a trustee. This is particularly problematic when the issue involves cultural resources or financial conditions.

2. Coordinated Environmental Review Process: Amended Sec. 33 of S.71 calls for a single environmental review process. Subject to several reservations, we support such a single review process. Generally, the Department and NOAA rely on FERC's NEPA process, though somewhat reluctantly. We have not been willing to join that process as a cooperator because we would lose our right to intervene to contest a FERC license decision (among other things, this has particular relevance to decisions affecting Indian reservations). USDA/FS conducts its own NEPA review, but would be willing to use FERC's NEPA process if they could be treated as a cooperator in the development of the EIS without losing their right to intervene. In both cases, the agencies would want to assure that issues important to their decisions are covered in the single NEPA analysis.

The executive branch agencies routinely conduct joint NEPA reviews for the purpose of assessing the effect of various alternatives before making decisions. FERC's interpretation of its *ex parte* communication requirements as an independent regulatory agency, however, has led FERC to insist that becoming a cooperator in their NEPA review comes at the cost of losing intervention rights. None of the resource agencies has been willing to pay this price. However, the resource agencies believe the intervention issue could and should be remedied so that a single, cooperative NEPA review could be conducted. We are willing to work with the Committee on language for that purpose. We would also like clarification in amended Sec. 33(b) that the broadly stated "environmental review" references reviews under NEPA, and would not be construed to eliminate the right of the agencies to conduct environmental studies and assessments as they develop their Sec. 4(e) and 18 conditions, and 10(j) recommendations.

3. Disposition of Hydroelectric Charges: Sec. 702 of S. 597 changes the disposition of charges collected from licensees for the government's cost of administering hydropower licensing programs

and for the occupation of government lands. Collected revenues would go directly to the agencies to reimburse them for their expenses or to protect and improve certain environmental resources in the reservation areas covered under Sec. 4(e). The administration is reviewing this provision, and it may have scoring implications.

4. Relicensing Study: Sec. 703 of S. 597 directs FERC, in consultation with the Departments of Commerce, Interior, and Agriculture, to study all licenses issued since 1994, analyzing: the length of time that FERC has taken to issue new licenses, the additional cost to the licensees attributable to new license conditions, the change in generating capacity attributable to conditions, the environmental benefits achieved by conditions, and litigation arising from conditions. The Department recently offered to conduct a somewhat similar study jointly with FERC (see attachment, page 9). The length and complexity of the licensing process make it a challenge to analyze and to determine the causes of specific outcomes. For this reason, we suggested applying an analytic technique known as "event history analysis" to the problem. We believe that this study would benefit from having all four agencies (FERC, Commerce, Interior, and Agriculture), as well as EPA, intimately involved in its execution. We find "consultation" as practiced by FERC as an independent agency to be much less inclusive than we expect of ourselves when we consult with other parties as executive branch agencies. Hence, we recommend amending section 703 to provide for the study to be done "jointly" rather than "in consultation."

5. FERC Data: Sec. 202 of the House bill would require FERC to revise its data collection procedures to provide much improved information about the licensing process. We suspect this section resulted from consideration of a recent report of the General Accounting Office indicating that systematic data for management decision-making on the licensing process was not available. We at Interior have been frustrated similarly by the lack of consistent time-series and other analytic data that would help us better understand the causes of process delays and uncertain schedules, and would welcome this requirement. We would suggest, however, that the requirement be bolstered by requiring that the data be made available to the public and the resource agencies routinely and regularly. It would also be useful to seek public and interagency comment on the most useful data to maintain.

D. Interior Proposals

Although we acknowledge the complexity of the process, the Department is optimistic about the prospects for improvement. We are encouraged by the administrative reforms now being implemented by FERC and the resource agencies. We expect the cumulative effect of these initiatives to significantly improve the timeliness of the licensing process, the quality and cost-effectiveness of the decisions made through that process, and the promptness with which mitigation is implemented. Although the recent Interagency Task Force did not address all of the issues of concern, we believe that remaining issues are amenable to resolution through administrative reform. However, we have identified areas which warrant consideration for legislative action.

Settlements: One of the great reforms of the past decade for the relicensing process was FERC's

establishment of an alternative licensing process designed to bring participants together well before the license filing deadline to develop project conditions in a cooperative manner. While resource intensive at the front-end, substantial time and cost savings often result once the application is filed, and appeals and litigation are substantially reduced. The Department has participated in several landmark settlements within both the traditional and alternative processes and is committed to resolving complex licensing matters through settlement. Several recent FERC decisions, however, have created a high level of uncertainty as to which parts of an agreement become enforceable terms of the issued license. Because FERC maintains that its enforcement jurisdiction extends only to the licensee, it will not enforce any settlement provision that binds parties other than the licensee, such as provisions governing dispute resolution and management committees. This has impacted the Department's ability to effectuate meaningful settlements. Industry and NGOs share the view that uncertainty as to which elements of a settlement will ultimately be included as enforceable license terms is a deterrent to successful negotiations. We believe that it would be helpful if Congress authorized and required FERC to enforce settlement provisions entered into voluntarily by the parties. Doing so will help ensure the enforceability of settlements, thereby providing certainty, reducing litigation and streamlining the FERC licensing process.

Studies: One of the more contentious and difficult to resolve issues is the extent and nature of the studies required to be completed by license applicants. FERC, States, and the resource agencies rely on the information generated by these studies to make decisions regarding potential license conditions. Unfortunately, licensees often fail to complete required studies in a timely manner or, alternatively, their timely studies fail to contain necessary data. In either case, delays in the process result. Applicants, on the other hand, complain that the studies can be expensive and that FERC and the resource agencies ask for more information than is necessary. In addition, FERC and the resource agencies also occasionally disagree about what studies need to be completed. In an attempt to address these conflicts, the Department, through the ITF process, has agreed on criteria designed to minimize its study requirements and ensure that they are based only on information needed for the decisions at hand. Still, issues remain. The Department would welcome a dialogue with Committee staff on whether a fair and expeditious approach could be developed - legislatively or administratively - that would reduce the level of contention surrounding this issue, while assuring that adequate information is provided in a least-cost, but timely manner.

Deadlines: To ensure that the Department exercises its conditioning authorities without delaying the licensing process, the Department has adopted and is implementing tight schedules for submitting it conditions that coincide with deadlines contained in FERC's regulations. Through those regulations, FERC imposes strict deadlines on all participants in the licensing process except itself. The result is that both licensees and resource agencies are forced to provide information to FERC in a timely manner, only to wait indefinitely for FERC to respond. FERC's lack of deadlines is particularly problematic for resource agencies because, in many instances, FERC's eventual response triggers another set of deadlines to which agencies must respond. In these instances, because resource agencies are unable to predict FERC's actions, they are at a disadvantage in attempting to anticipate the timing of actions they may need to take in the future. The Department is of the view that the establishment of both deadlines and clearer process schedules for FERC would

help streamline the licensing processes by establishing expected completion dates for various steps in the process, as well as help the resource agencies allocate resources. This proposal is entirely consistent with the National Energy Policy which recommended that FERC should be encouraged to adopt appropriate deadlines for its own actions.

Basin-wide Assessments: FERC has a general policy encouraging the use of basin-wide assessments for the purpose of relicensing multiple projects in the same river basin. This policy is not applied in most cases, however. Instead, FERC typically treats each individual project licensing in a serial fashion according to the order in which individual project licenses expire. The resource agencies believe that there is opportunity for both efficiency and resource protection gains in the licensing process from basin-wide permitting. Studies can be consolidated and conditions, if needed, may be amenable to a more distributed approach. The resource agencies view is that Congress should require a basin-wide approach unless FERC can demonstrate that it is clearly not in the public interest to employ such an approach as compared to processing each license in the river basin individually. This might reasonably be limited to basins where the project licenses expire within 7 years of one another, with allowance for extension of the earlier licenses to the termination date of the later licenses. Our review of the data indicates that this would cover all of the licensed facilities in most river basins.

Indian Trust Responsibility: Finally, executive branch agencies separately address the manner in which their decisions affect Federal trust and treaty responsibilities to Indians. Normally, this is done in NEPA analyses and records of decision. It is our view that this practice should apply to FERC decisions, and that Congress should require FERC to include in its FPA process specific and separate consideration of project effects on trust property, and its trust responsibility.

Mr. Chairman, this concludes my prepared remarks. Again, we are available to work with the Committee on legislation to improve the licensing process. I will be happy to answer any questions you or other Committee members may have.