

30 September 2002

The Honorable W.J. "Billy" Tauzin, Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-1919

The Honorable Jeff Bingaman, Chairman
Senate Committee on Energy and Natural Resources
364 Dirksen Senate Office Building
Washington, DC 20510-6150

Re: Alternative Conditions and Fishways Provisions Before Energy Conference
Committee

Dear Representative Tauzin and Senator Bingaman:

Adoption of the Senate floor amendment Alternative Conditions and Fishways, Section 301, by the Energy Conference Committee would be a catastrophe for America's rivers and fisheries.

With this subtly written amendment to the Federal Power Act, the hydropower industry will evade the responsibility it has had since the industry's inception to provide fishways where its facilities block important fish runs, as well as, weaken its obligation to protect the federal lands that a dam impacts. The Senate amendment would end most of the fish passage improvements that nearly every state with hydropower facilities has obtained over the last decade as old dams have begun to be relicensed. In contrast, the House provision, which the House Energy and Commerce Committee unanimously accepted, adopts best practices and prevents any abuses that might occur. Please vote to adopt section 401 instead of Senate section 301.

The effects of the Senate provision are not apparent upon first reading and the Senate floor debate did not raise them. Yet, this amendment would change the fishway standard to emphasize hatcheries and off-site mitigation at a time when the Nation has learned that hatcheries are not a good substitution for access to the important spawning and rearing habitat of declining fish species. The amendment also stealthily attempts to ensure that the recommendations of a hydropower licensee will prevail over those of a federal agency secretary, states, tribes, and the effected public in administrative and judicial challenges.

House Section 401

Both the hydropower industry and the environmental community supported the positive changes House section 401 brings to the relicensing process and opposed all amendments to it in committee and on the floor. The provision preserves the responsibility and discretion of federal agencies to condition licenses as necessary to protect the resources they manage from the adverse impacts of a hydropower project and to prescribe fish passage above and below a dam if appropriate at that site.

Over the last hundred years federal agencies have both attempted to obtain too much with this authority and failed to exercise it at all, so the House provision allows all parties to a proceeding to propose alternatives to ensure that the best ideas and most reasonable approaches are brought forward and refined. The Secretary must accept an alternative so long as it provides as much protection and is either less costly to implement or will result in improved operation. As a result, the provision protects federal resources while ensuring that conditions and prescriptions are as inexpensive and efficient as possible. The provision is practical and based upon the experience the Nation gained when the licenses of over a hundred and fifty hydropower facilities expired in 1993.

Senate Section 301

The Senate section reduces the fish passage standard an alternative must meet by inserting the phrase "fish resources" and thereby diverting its emphasis to off-site mitigation and hatcheries instead of fishways. Under this provision a Secretary would have to accept alternatives proposed by a licensee, but not alternatives proposed by States and tribes, which have extensive expertise and responsibilities to protect water and fish resources. The provision also would allow a licensee to determine what level of resource protection the licensee believes is needed to protect federal lands that are impacted by the facility, rather than to meet the level of protection contained in the Secretary's proposal. It also provides a licensee decision criteria and litigation tools to force its determination on a Secretary.

Further, Senate section 301 attempts to ensure that the views and determinations of a license applicant will prevail in suits and administrative proceedings by inappropriately requiring a condition or fish passage prescription to be evaluated using broad public purpose criteria instead of the site-specific impacts of a hydropower facility. Once a project has met the requirements of state and federal environmental and natural resource statutes, state public utility and siting commissions use similar criteria to determine whether a license is in the public interest. However, substitution of these criteria at this stage in the licensing of an energy facility is inappropriate.

More generally, Oregon opposes efforts to weaken state and federal mandatory conditioning authority, especially state certification authority under section 401 of the Clean Water Act. Our experience is that most delay in the process is due to incomplete license applications. The appearance of delay on the part of states, which cannot act affirmatively on incomplete information, stems from the Federal Energy Regulatory Commission's decision to redefine the date at which a state's review begins. While applicants often complain about delay, they suffer no penalty from the delay they often

introduce, because the Commission annually extends expired licenses until an applicant completes the process. States dislike extended delay, because projects continue to operate under licenses that do not meet the requirements of modern environmental law and knowledge. Relicensing does not jeopardize the hydropower industry. Hydropower facilities are among the most valuable assets in a utility's portfolio, selling for far more than their book value.

The relicensing experience of the last ten years demonstrates that the Commission's process can be shortened and achieve broad public support when participants collaborate and respect each other's needs and responsibilities. Oregon is committed to being a good partner in hydropower relicensing and believes that the desired streamlining and efficiency can be achieved without reducing protections for the natural resources impacted by hydropower facilities. I urge you to adopt section 401 of the House-passed version of HR 4 in place of section 301 of the Senate-passed version of the bill.

Sincerely,

John A. Kitzhaber, M.D.

cc: Members of the House and Senate Energy Conference Committee



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
601 Locust Street
Redding, California 96001
(530) 225-2300



September 30, 2002

RECEIVED

OCT 15 2002

PFMC

Mr. Dave Sabo, Area Manager
Klamath Basin Area Office
U.S. Bureau of Reclamation
6600 Washburn Way
Klamath Falls, Oregon 97603

Dear Mr. Sabo:

Water Quality of Emergency Flow Releases
Iron Gate Reservoir to the Klamath River

The Department of Fish and Game (DFG) understands that flow releases were increased from 760 cfs to 1300 cfs at midnight on Friday, September 27, 2002, from Iron Gate Dam. This emergency release is in response to the major fish kill occurring in the lower Klamath River. It is not clear if flows from upper Klamath Lake and other associated reservoirs were also increased concurrently. DFG is extremely concerned that releases from Iron Gate Dam alone will rapidly deplete the epilimnion and lead to significant water quality degradation in the Klamath River. Depletion of the epilimnion without replenishment of flows from upstream will result in releases from the anoxic hypolimnion. Specifically, hypolimnion releases may lead to low dissolved oxygen, high biological oxygen demand, high pH and high ammonia concentrations which could result in further fish kills in the river. In addition, depletion of the epilimnion will result in the loss of suitable oxygenated habitat for fish in Iron Gate and could lead to a fish kill in the reservoir itself.

It is imperative that releases from Iron Gate Dam are coordinated with upstream releases from the Klamath Project as would occur under normal project operations. The DFG also believes that releases in accordance with past operating standards will result in the best opportunity to protect fishery resources given the existing circumstances.

Sincerely,

Donald B. Koch
Regional Manager

Mr. Dave Sabo
Page Two
September 30, 2002

cc: Mr. Kirk Rogers, Regional Director
Mid-Pacific Region
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1846

Mr. Bob Davis
Klamath Basin Area Office
U.S. Bureau of Reclamation
6600 Washburn Way
Klamath Falls, OR 97603

Mr. Rod McInnis
Acting Regional Administrator
and Mr. Jim Lecky
Southwest Region
National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213

Mr. Joe Blum
National Marine Fisheries Service
650 Capitol Mall, Suite 6070
Sacramento, CA 95814-6070

Ms. Irma Lagomarsino, Supervisor
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521

Messrs. Steve Thompson,
John Engbring, and
Ms. Mary Ellen Mueller
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846

Mr. Bruce Halstead, Project Leader
Arcata Fish and Wildlife Office
U.S. Fish and Wildlife Service
1655 Heindon Road
Arcata, CA 95521

Mr. Phil Dietrich
Yreka Fish and Wildlife Office
U.S. Fish and Wildlife Service
1829 South Oregon Street
Yreka, CA 96097

Mr. Steve Lewis
Klamath Ecosystem Restoration Office
U.S. Fish and Wildlife Service
6610 Washburn Way
Klamath Falls, OR 97603

Mr. Doug Tedrick
U.S. Bureau of Indian Affairs
1849 C Street, N.W., MS 3061-MIB
Washington, DC 20240

Mr. Scott Bergstrom
U.S. Department of Interior
Office of the Solicitor
1849 C Street, N.W., MS 6456
Washington, DC 20240

Ms. Susan Masten, Chairperson
Yurok Tribe
1034 Sixth Street
Eureka, CA 95501

Mr. Duane S. Sherman, Chairperson
Hoopa Valley Tribe
Post Office Box 1348
Hoopa, CA 95546

Mr. Alvis Johnson, Chairperson
Karuk Tribe
Post Office Box 1016
Happy Camp, CA 96039

Mr. Allen Foreman, Chairperson
Klamath Tribes
Post Office Box 436
Chiloquin, OR 97624

Mr. Dave Sabo
September 26, 2002
Page Three

cc: Mr. Jim Lone, Chairperson
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

Mr. Glen Spain
Northwest Regional Director
Pacific Coast Federation of
Fisherman's Associations
Post Office Box 11170
Eugene, OR 97440-3370

Dr. Thomas B. Hardy, Director
Institute for Natural Systems
Engineering
Utah State University
Logan, UT 84322-4110

Mr. Roger Smith
Oregon Department of Fish and Wildlife
1850 Miller Island Road West
Klamath Falls, OR 97603

Mr. Zeke Grader
Pacific Coast Federation of
Fisherman's Association
3000 Bridgeway, Suite 104
Sausalito, CA 94966

Mr. Curtis Knight
California Trout
205 North Mt. Shasta Boulevard
Mt. Shasta, CA 96067

Mr. Tom Weseloh
California Trout
1976 Archer Road
McKinleyville, CA 95521

Mr. Dwight Russell, Chief
Northern District
Department of Water Resources
2440 Main Street
Red Bluff, CA 96080-2398

The Honorable Dick Dickerson
Assembly Member, Second District
100 East Cypress Avenue, Suite 100
Redding, CA 96002

Mr. Robert C. Hight, Director
Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Mr. Michael R. Valentine, Chief Counsel
Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Mr. Robert Treanor, Executive Director
California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

The Honorable LaVada Erickson, Chairperson
Siskiyou County Board of Supervisors
Post Office Box 1179
Mt. Shasta, CA 96067-1179

The Honorable Bonnie Neely, Chairperson
Humboldt County Board of Supervisors
825 Fifth Street
Eureka, CA 95501

Mr. Dave Sabo
September 26, 2002
Page Four

cc: The Honorable Chuck Blackburn, Chairperson
Del Norte County Board of Supervisors
583 G Street, Suite 1
Crescent City, CA 95531

The Honorable Chris Erickson, Chairperson
Trinity County Board of Supervisors
Post Office Drawer 1258
Weaverville, CA 96093-1258

Mr. Blair Hart, Chairperson
Shasta River Coordinated Resources
Management Planning Group
Post Office Box 459
Montague, CA 96064-0459

Mr. Gareth Plank, Chairperson
Scott River Watershed Council
Post Office Box 268
Etna, CA 96027

Mr. George Thackery, President
Board of Directors
Siskiyou County Resource
Conservation District
Post Office Box 268
Etna, CA 96027