



July 3, 2023

Docket Number CEQ–2023–0002

Council on Environmental Quality
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Re: NWAHA Comments in Response to CEQ Request for Information Regarding Columbia River Salmon and Other Native Fish Restoration

To Whom It May Concern:

The Northwest Hydroelectric Association (“NWAHA”) appreciates the opportunity to respond to the Council on Environmental Quality’s (“CEQ”) request for information regarding Columbia River salmon and other native fish restoration. 88 Fed. Reg. 28,532 (May 4, 2023) (the “RFI”).

NWAHA is dedicated to the promotion of the Northwest region’s waterpower as a clean, efficient energy source while protecting the fisheries and environmental quality that characterize the Northwest region. NWAHA supports 125 members representing all segments of the hydropower industry: public and private utilities; independent developers and energy producers; manufacturers and distributors; local, state, and regional governments including water and irrigation districts; consultants; and contractors.

Hydropower is an important source of renewable energy that involves the management of large water systems, dam operations, and significant areas of surrounding property to generate carbon-free energy. The hydropower industry understands the importance of protecting wildlife and habitat, including salmon and other fish species. This occurs through conditions in operating licenses, agreements with stakeholders, implementation of biological opinions and fish passage prescriptions, and close coordination with state and federal wildlife agencies as well as tribal resource managers. The conditions included in the licenses require implementation of protection, mitigation and enhancement measures, including developing species management plans to address species within specific project areas as appropriate.

BRENNA VAUGHN
Executive Director

PO Box 441
Lake Oswego, OR 97034

(503) 502-7262
(866) 329-6525 Fax

www.nwhydro.org
brenna@nwhydro.org

*For a list of Directors,
please visit our website.*

I. Background and Context for this RFI

A. The RFI Arises out of Ongoing Litigation

This RFI is issued for the purposes of providing information to an ongoing mediation to resolve a litigation matter. The litigation was originally initiated in 2001 in the U.S. District Court for Oregon. *National Wildlife Federation v.*

National Marine Fisheries Service, Docket No. 3:01-cv-00640. The litigation relates to Endangered Species Act (“ESA”) and National Environmental Policy Act (“NEPA”) compliance for the Columbia River System Operations (“CRSO”).

Most recently, on July 24, 2020, National Marine Fisheries Service (“NMFS”) issued its ESA Section 7(a)(2) Biological Opinion for continued operation and maintenance of the CRSO (“2020 CRSO BiOp”). Additionally, the U.S. Army Corps of Engineers (“Corps”) and the Bureau of Reclamation (“BOR”) issued a Final Environmental Impact Statement for CRSO (“CRSO FEIS”) pursuant to NEPA to evaluate the environmental effects of the CRSO in a manner that would support the issuance of an incidental take statement under the ESA, responding to the U.S. District Court for the District of Oregon’s Opinion and Order.¹ On September 28, 2020, the Corps, BOR and the Bonneville Power Administration issued a Joint Record of decision for the CRSO.

Unfortunately, this extensive effort did not resolve the litigation and the plaintiffs filed their Eighth Supplemental Complaint for declaratory and injunctive relief challenging the 2020 CRSO BiOp, the CRSO FEIS and the 2020 ROD under the ESA, NEPA and the Administrative Procedures Act.

As a result of the continued discord, the NWF, the State of Oregon, the Nez Perce Tribe and the United States asked the court to stay the proceedings so that the parties could pursue a settlement agreement. The Court granted the motion and ordered the parties to file a status report by July 31, 2022.

In August 2022, the court extended the litigation stay through August 31, 2023. The United States retained the Federal Mediation and Conciliation Service (“FMCS”) to facilitate a comprehensive solution.

It is against this backdrop that CEQ issued its RFI.

B. Value and Benefits of Hydropower

The Department of Energy has recognized hydropower as a clean, renewable source of energy.² It provides low-cost electricity, reliability and durability as compared to other energy sources. Hydropower provides benefits beyond electricity generation by providing flood control, irrigation support, and clean drinking water. Many hydropower projects include reservoirs that offer recreational opportunities such as fishing, swimming and boating.³

Hydropower meets three critical needs in the transition from fossil fuels. First, hydropower itself is a renewable energy source, providing carbon-free energy to approximately 30 million Americans. An estimated 40% of the United States’ current renewable electricity portfolio

¹ *National Wildlife Federation, et al. v. National Marine Fisheries Service (NMFS), et al.*, 184 F. Supp. 3d 861 (D Or. 2016).

² <https://www.energy.gov/eere/water/benefits-hydropower>.

³ *Id.*

comes from hydropower.⁴ Second, hydropower is critical to integrating increasing amounts of wind and solar energy onto the grid. Hydropower offers flexibility in addressing electricity generation in response to changes in demand, and changes in generation caused by weather conditions. Third, hydropower provides grid stability. Hydropower plants can generate power to the grid immediately, and so provide essential backup power during major electricity outages or disruptions. When it comes to instantaneous grid response, stability, and reliability, the only currently viable alternatives to hydropower are fossil fuels and nuclear power.

C. Value and Benefits of Hydropower in the Northwest

Throughout the Northwest, hydropower is a central component of not only meeting energy needs but also facilitating the achievement of stated climate goals. Separate and apart from the energy-related benefits of these projects, they also provide benefits such as recreation, water supply and flood management.⁵

In the Pacific Northwest, where the projects at issue in the RFI are located, hydropower provides approximately 50% of the energy generation and 54% of flexible capacity of the grid.⁶ This means that, in addition to providing a reliable, low-cost energy source to meet energy needs,⁷ hydropower is vital to meeting energy needs during times of peak demand.

The Pacific Northwest National Laboratory (“PNNL”) found that hydropower is critical in stabilizing the Western Interconnection after sudden large losses of generation occur.⁸ A 2021 report conducted by PNNL concluded that hydropower is consistent across different conditions (e.g., season, system loading, and water availability conditions), providing a major resource for inertial and governor response during extreme events.⁹ The report examined hydropower’s role within the U.S. Western Interconnection using a combination of stimulation-based analysis and historical data under two scenarios: 1) a sudden loss of large generation assets; and 2) changes in net load due to extreme weather. The conclusions of this report have been borne out in real world examples such as the Northwest’s deadly heat domes of 2021 and 2022 and cold snap of December 2022. Hydropower was critical to grid stability during these events.

⁴ See, e.g., U.S. Department of Energy U.S. Hydropower Market Report, January 2021,

<https://www.energy.gov/sites/prod/files/2021/01/f82/us-hydropower-market-reprot-full-2021.pdf>.

⁵ Although the dams at issue in the litigation are federal dams are not subject to the FERC licensing process, the goals of Congress established in the FPA are reflective of the balancing of interests that must be considered in addressing the issues raised in the litigation. For example, Section 4(e) of the FPA provides that FERC is to consider not only the power and development purposes for which licenses are issued, but also “the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.” 16 U.S.C. § 797(e). Section 10(a) of the FPA then gives FERC the authority to include conditions in hydropower licenses to ensure the balancing of the beneficial uses spelled out in Section 4(e) and a comprehensive plan of developing the water way for such uses. 16 U.S.C. § 803(a).

⁶ See, e.g., Northwest Power and Conservation Council, <https://www.nwcouncil.org/energy/energy-topics/hydropower/>.

⁷ In 2022, Washington had some of the lowest average electricity prices as compared to other states. See, e.g., U.S. Energy Information Administration Washington State Energy Profile, <https://www.eia.gov/state/pring.php?sid=WA>.

⁸ PNNL, “Hydropower’s Contributions to Grid Resilience” (October 2021) at https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-30554.pdf

⁹ *Id.*

While wind is also an important renewable energy source for the region, it relies on hydropower to ensure continuous and reliable electric power generation. Thus, hydropower is integral to the transition to clean energy, a transition that has been accelerated with the passage of legislation such as the Climate Commitment Act in Washington.¹⁰ Hydropower projects play a significant role in helping preference customers in Washington meet their 100% clean energy goals, as required by law.

The specific projects at issue – the Lower Snake River dams - provide significant grid benefits. The Western Interconnect relies on these facilities. Removing their generation capacity and flexibility could put the entire grid at risk for load shed. The Lower Snake River dams also provide great direct benefits to the region, producing approximately 1,000 average MWs of power, or enough energy to power 800,000 average U.S. homes. Removal, without a plan to replace their numerous grid benefits, could harm the regional population at great environmental and financial expense. Additionally, the location of the four Lower Snake dams on the east side of the Cascades and the size of their generators makes these dams a critical link in the synchronized operation of the Northwest’s federal hydropower system.

II. NWA Concerns about the CEQ RFI Process

A. Improper for CEQ to Intervene in a Litigation Matter

This is an ongoing litigation matter that implicates the scientific and professional judgment of expert agencies. Although several federal agencies are parties to the litigation, CEQ is not. The questions in the litigation are limited to the adequacy of the biological opinion and NEPA review conducted for these projects.

The resolution of the litigation does not rest on open-ended policy questions posed in the RFI. As both the biological opinion and NEPA review involve complex scientific and technical analysis of site-specific issues, the adequacy of those documents is not determined by political views or public perception. Thus, it is improper for CEQ – a nonparty to the litigation – to solicit feedback from the general public – the majority of which are also not parties to the litigation - on how to resolve the issues raised in the litigation.

B. National Forum is Wrong Platform for Resolving this Regional Issue

As noted above, this litigation relates to a specific water system and specific hydropower projects in the Northwest. There are regional stakeholders involved in the hydropower management process and in the litigation itself. This regional stakeholder input is the vital input needed to resolve concerns regarding the CRSO more holistically and outside of the litigation context. Regional stakeholders are the ones that have the site-specific and relevant information regarding the health of the river system, the species within that system, and the natural and cultural resource impacts of the projects.

¹⁰ Washington Climate Commitment Act, RCW 70A.65.260; *see also* <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act>.

Seeking open public input on issues that are regional in nature is inappropriate. It has the effect of elevating input from those outside the region – with more limited knowledge and information about the issues raised here – to be equivalent with regional input. It also converts legal questions specific to the environmental reviews associated with specific projects into a policy debate about how the United States should deal with climate change.

NWHA urges CEQ to allow the negotiations to proceed as between the parties, relying on their knowledge and information about the river system, the projects at issue, and the natural and cultural resources in the area.

C. Improper Framing of the Requests

The requests for information issued by CEQ are improperly framed. The litigation relating to these projects has been ongoing since 2001. The CEQ RFI does not provide sufficient background or context to inform potential commenters. Rather, CEQ's RFI includes a cursory overview of the issues, focused more on the efforts to restore fish than on the environmental reviews that are the subject of the litigation.

Moreover, the background that is provided and the questions posed are framed in such a way that suggests that it is the dams in the river that are causing a decline in the fish populations. But the outcome here is not so binary. This is not a dams vs. salmon equation. There are solutions in which dams and salmon can coexist. Collaborative recovery efforts, including addressing habitat, predation and management are available, and likely provide a better approach than dam removal. Moreover, the benefits that hydropower brings to the climate change strategy will also result in long term benefits to salmon and other fish species through addressing factors that cause natural increases in temperature.

CEQ itself acknowledges in the RFI that “[c]ommunities across the Northwest have come to rely on these dams for reliable and affordable electricity, flood risk management, water supply, irrigation, navigation and recreation.” CEQ RFI, 88 Fed. Reg. at 28,532. Yet none of the questions posed in the RFI address these other beneficial uses. Instead, all of the questions are focused on restoration of fish populations. This is not the only consideration in resolving the litigation or meeting the requirements of the ESA and NEPA.

The focus of the questions ignores other important considerations, such as the costs associated with the removal of the dams, as well as the cost and ability of finding replacement energy sources if these projects are eliminated. For example, the cost to breach the four lower Snake River dams is estimated to range from \$1.3 billion to \$2.6 billion.¹¹ Estimates of power supply replacement at up to \$16 billion.¹²

¹¹ Corps of Engineers, Final Feasibility Study and Environmental Impact Statement, 1998, Annex X, pg. D-X-3. Costs converted to 2015 dollars using CPI calculator <http://data.bls.gov/cgi-bin/cpicalc.pl>

¹² Columbia River System Operations Environmental Impact Statement, 2020.

Finally, the CEQ RFI frames the questions as if this is a policy debate. It is not. The decisions to be made here are scientific and technical in nature. The ESA and NEPA processes outline the applicable evaluations. These statutes govern the litigation and provide the framework for the settlement negotiations. Thus, asking questions like “what considerations should inform the Federal Government’s approach to supporting the Upper Columbia River Tribes’ reintroduction plan” is not appropriate. That is more of a policy question that is not relevant to the issues posed in the litigation. The ESA and NEPA frameworks apply here and should guide the resolution of the litigation.

Thank you for your consideration of the concerns of NWhA regarding this process and the need to address the issues in the litigation on a regional basis, with the parties involved, and under the legal framework of the ESA and NEPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenna Vaughn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brenna Vaughn
Executive Director
Northwest Hydroelectric Association
Brenna@nwhydro.org
503-502-7262