

1SUPPORTING STATEMENT A

7 CFR Part 1; 43 CFR Part 45; 50 CFR Part 221; The Alternatives Process in Hydropower Licensing OMB Control Number 1094-0001

Terms of Clearance: None

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

Under the Federal Power Act, as amended, hydropower licenses must be adapted to a comprehensive plan for improving or developing affected waterways, including protection of fish and wildlife. (See, for example, 16 U.S.C. Sections 4(e) and 811.) When Federal lands are involved, the relevant agency will also be able to participate in the review and development of conditions. The agencies potentially having such review collaboration are the Departments of Interior, Commerce, and Agriculture.

Under the Energy Policy Act of 2005, a license applicant for a new hydropower project may submit an alternative means of protecting a fishway from what was originally recommended by the Federal Energy Regulatory Commission during the licensing process. For these alternative process submissions that may be proposed on federally owned or managed land, particular information must be provided to the relevant agency, which will be one of the three aforementioned agencies. It is the development and provision of this particular information to pursue an alternative process that is the subject of this information collection, 1094-0001. The Department of the Interior manages and submits this information collection renewal request to OMB on behalf of the three agencies. The agencies have also published regulations implementing these statutory processes, including the alternatives process in hydropower licensing.

In sum, the specific statutory and regulatory authority for this information collection is the Federal Power Act (FPA), 16 U.S.C. 797(e), 811, the Energy Policy Act of 2005 (EPAAct), Pub. L. 109-58, particularly Section 241 which amended the FPA to add the alternatives process, and the implementing regulations by the three agencies, 7 CFR Part 1, 43 CFR Part 45, and 50 CFR Part 221, to implement section 241.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The Secretary of the agency involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, that:

- (a) the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and

- (b) the alternative will either cost significantly less to implement or result in improved operation of the project works for electricity production.

In order to make this determination, the regulations require the submission of all of the following information, and hence that all of the following information be collected in this information collection:

- (1) A description of the alternative, in an equivalent level of detail to the bureau's preliminary condition or prescription;
- (2) An explanation of how the alternative:
 - (i) If a condition, will provide for the adequate protection and utilization of the Reservation; or
 - (ii) If a prescription, will be no less protective than the fishway prescribed by the bureau;
- (3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:
 - (i) Cost significantly less to implement; or
 - (ii) Result in improved operation of the project works for electricity production.
- (4) An explanation of how the alternative or revised alternative will affect:
 - (i) Energy supply, distribution, cost, and use;
 - (ii) Flood control;
 - (iii) Navigation;
 - (iv) Water supply;
 - (v) Air quality; and
 - (vi) Other aspects of environmental quality; and
- (5) Specific citations to any scientific studies, literature, and other documented information relied on to support the proposal.

Each submission of information collected under the current collection has triggered that process authorized by the EPCRA and the Interim Final Rules revised on March 31, 2015, and the revised rules as final on March 31, 2016, originally published in November 17, 2005. The Department receiving the information submission acknowledges it, in writing, advising the submitter of its receipt, and provides a schedule of planned actions based on the receipt of the proposed alternative conditions and prescriptions. In its initial acknowledgement letter, the Department also notifies the submitter that because the Department must consider any findings of the Administrative Law Judge on disputed issues of material fact pertaining to the conditions or prescriptions for which the alternatives were submitted, that it – in effect – cannot file its response to the proposed alternatives and any potential modified conditions or prescriptions

until after receiving notice of the Administrative Law Judge's final rulings. (Note: The schedule of planned actions typically states that the Department will file its response to the proposed alternatives and any potential modified conditions or prescriptions within 60 days after receiving notice of the Administrative Law Judge's final rulings.)

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

The regulations provide for filing of alternatives on diskette or compact disc. It is expected that all alternatives will be filed in such manner. However, for legal reasons, the original document must also be filed and served in non-electronic format.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This information is not collected by any Federal agency other than the 3 identified (Departments of Interior, Commerce, and Agriculture).

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The Departments certify that this information collection will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

According to the Small Business Administration, for NAICS code 221111, hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Although the regulated community of FERC licensees does include a substantial number of small entities, the number of affected entities in a given year is likely to very small, at most 1 per year.

More importantly, the effect of the rules on small entities will not be significant. Any entity affected by these rules will have already been heavily involved in a FERC hydropower licensing proceeding, submitting and commenting on information in the record of that proceeding. These rules merely provide an additional administrative procedure, should the entity choose to use it, to obtain a definitive ruling on disputed issues of material fact with respect to conditions and prescriptions to be included in the license. Any cost to the entity will be incurred only when it decides that the cost will be justified by the benefits of the process.

The Departments have also determined the information collected is the minimum necessary to specify, and properly consider, an alternative.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information was not collected in accordance with the identified regulations, the requirements of the EPA Act could not be met.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that would require exceptions to 5 CFR 1320.5(d)(2).

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The Department of the Interior's notice seeking public comments was published May 16, 2018 ([83 FR 22702](#)). No public comments were received in response to that notice. Additionally, comments have not been received regarding the information collection over the past three years.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Between June 12, 2018, and July 10, 2018, attorneys from the following firms were contacted:

Winston and Strawn, LLP, 1700 K Street, N.W., Washington, D.C. 20006. Recently, attorneys at Winston and Strawn, LLP, pursued alternatives submission for the Don Pedro Hydroelectric Project with the Federal Government and provided an estimate of 500-600 total hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government.

Winston and Strawn, LLP, 1700 K Street, N.W., Washington, D.C. 20006. Attorney, at Winston and Strawn, LLP, represented the Drum Spaulding Project pursuing alternatives process submissions with the Federal Government, reconfirmed 225 to 300 hours.

Holland & Knight, 800 17th Street, NW, Suite 1100, Washington, D.C. 20006. Attorney with Holland & Knight represented the Merced Irrigation District and the East Texas Electric Cooperative, Inc. and pursued alternatives process submissions with the Federal Government. In response to the question what is an estimate of the total number of hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government, their previous submission of 450 hours was reconfirmed.

Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW, Washington, D.C. 20007. Attorney from the Van Ness Feldman, P.C., pursued alternatives process submissions to the Federal Government. In response to a telephone call, the Attorney reconfirmed his previous estimate of 1,000 total hours, including the civil engineering, research, development of documentation, etc. to present a submission of this type to the Government. These estimates are based on his experience in pursuing alternative process submission for the Klamath Hydroelectric Project, a complicated case. According to him, a case with one or two issues would require much less work.

Taking these four estimates together, and recognizing that there is a team effort on behalf of a company to prepare such a submission, we have determined that 500 hours is a good estimate to capture the range between the simpler versus the more complex projects.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None of the information requested is considered sensitive.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

We estimate that we will receive **5 responses** totaling **2,500 burden hours**. We estimate the annual dollar value of the burden hours is **\$158,875** (rounded).

We polled the three Departments that participate in the review (Interior, Commerce, and Agriculture) and development of hydropower licensing conditions. The expected annual total for all three agencies combined, based on actual experience and on best predictions going forward, is five (5) per year.

The estimated 500 hours of burden on the public for each such submission was derived by polling four persons who had worked on such submissions and approximating an average of their experienced number of hours. The amounts varied from a low of 100-115 hours to a high of 1,000 hours, with an intermediate 500 hours. The respondents explained that the complexity of the proposed alternative project varied, which is why the times to prepare their submissions varied. Based on all four of the explanations, it was determined that 500 hours was a reasonable summation of the different levels of experience.

Since there are an estimated 5 collections per year, that yields an hour burden to the public of an estimated 2,500 hours.

- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

We used Bureau of Labor Statistics (BLS) Occupational Employment and Wages (May 2017) to obtain the National Industry-Specific Occupational Employment and Wage Estimates for NAICS 17-2051, "[Civil Engineers](#)" which lists a mean hourly wage rate as \$44.13. In accordance with BLS News Release [USD-18-0944](#), dated June 8, 2018, we multiplied this rate by 1.44 to obtain a fully burdened hourly rate of \$63.55. This hourly rate, multiplied by the total number of 2,500 hours (500 hours x estimated 5 annual submissions) yields a total burden of \$158,875.

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Not applicable. We have identified no reporting or recordkeeping “non-hour” cost burdens for this collection of information.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate the annual cost to the Federal government to be **\$74,213** (rounded).

We used the Office of Personnel Management Salary Table [2018-DCB](#) to determine the hourly wage rate for a GS-14, step 5. To calculate benefits, we multiplied the hourly rate (\$62.23) by 1.59 to account for benefits in accordance with News Release [USDL-18-0944](#), June 8, 2018, Employer Costs for Employee Compensation—March 2018, resulting in an hourly cost factor of \$98.95. Taking this hourly rate of \$98.95, multiplying by 150 hours per review, yields \$14,842.50 per case; this sum multiplied by the expected 5 occurrences per year yields a total cost to the Government of \$74,212.50 annually.

We estimate the annual cost of the data collection based on the agencies' experience with analyzing and considering each alternative. We considered each information collection reviewed in relation to a single alternative review. Such time includes initial review and analysis, efforts to generate a response, and a reasonable amount of time to deal with issues that flow from the submission. Although there is variation in the review time for different

projects, some reportedly taking as little as 60 hours, and some taking more than 300 hours, in assessing the reports of the different reviewers, it was determined that 150 hours is a good measure of the typical range of time expended per project review. Any variation is due to the differences in levels of complexity between projects, and the varying amounts of necessary follow up and discussion.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

There are no program changes. The burden remains to 2,500 hours for 5 estimated annual number of respondents.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans for tabulation and publication of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There is no practical place to display it because parties proposing an alternative to a condition or prescription that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the FPA are not required to do so using any specific agency-developed form or information collection instrument.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

We are not requesting exceptions to the certification statement.