



Hydropower Dams and Licenses 101

1. When did PacifiCorp's license on Condit Dam expire?

PacifiCorp operates Condit Dam under a license that expired in 1993. It was originally issued in 1968. Hydropower dam licenses are issued and overseen by the Federal Energy Regulatory Commission (FERC). Since the license expired in 1993, PacifiCorp has operated Condit Dam on "annual licenses," which are automatic one-year extensions of the expired license.

2. What law requires hydropower dams to be licensed by FERC?

The Federal Power Act (FPA) governs FERC's licensing and relicensing of non-federal hydropower dams.

3. What law requires hydropower dams to include fish passage?

The Federal Power Act (FPA) requires that FERC meet fish passage requirements of federal fish agencies. Section 18 of the FPA provides that FERC "shall require the construction, maintenance, and operation by a licensee at its own expense of such ... fishways as may be prescribed by" the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS).

Congress amended the FPA in the 1986 Electric Consumer Protection Act to require FERC to provide equal consideration to power and non-power benefits (conservation, recreation) when it issues a license. Congress also instructed FERC to include license conditions to "protect, mitigate damages to, and enhance, fish and wildlife" affected by a hydropower project based on recommendations from NMFS, FWS, and state fish and wildlife agencies.

4. Is Condit Dam's removal now at FERC's discretion?

The dam removal cannot go forward until FERC issues an order to decommission Condit Dam. FERC will issue the decommissioning order once the Washington Dept. of Ecology and the Army Corps of Engineers issue their respective permits (see below).

5. Where are we in the licensing process?

Completed Stages of the licensing process:

- ✓ National Environmental Policy Act (NEPA) review, FERC, 2002. Condit Dam removal qualifies as a 'federal action significantly affecting the human environment.' FERC produced a 2002 Final Supplemental Final Environmental Impact Statement that supports the settlement agreement and dam removal.
- ✓ Approval from U.S. Forest Service (USFS). Section 14(d) of the Columbia Gorge National Scenic Area Act requires that the agency responsible for administering the scenic area (USFS) determine whether a federal action within the scenic area will protect and enhance the area's natural, cultural, and recreational resources. The USFS determined separately that the dam removal proposal was consistent with the Wild and Scenic Rivers Act. The latter protects two sections of the White Salmon River.

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✓ Approval from the state Historic Preservation Officer. Since Condit Dam is eligible for listing on the National Register of Historic Places FERC must consult with the Washington State Historic Presentation Officer.

✓ Final Biological Opinion, FWS, 2005. Concluded that dam removal is not likely to destroy or adversely modify bull trout critical habitat.

✓ Final Biological Opinion, NMFS, 2006. Stated 'impact of sediment release is temporary. . . Removal will benefit threatened salmon and steelhead in the long run and won't jeopardize their survival.' Endangered Species Act (ESA) consultation with FWS or NMFS was required due to the presence of threatened and endangered species. Section 7 of the ESA prohibits federal actions that jeopardize the continued existence of listed species or that destroy or adversely modify critical habitat.

✓ Final State Environmental Policy Act (SEPA) Supplementary Environmental Impact Study (SEIS) from Washington Dept. of Ecology, 2007. This document stated that, "Removing Condit Dam and restoring a free-flowing White Salmon River will have significant benefits to salmon and steelhead and overall river health. Benefits of dam removal include "increasing the run size and long-term viability by anadromous salmonid populations in the White Salmon River."



Stages remaining in the licensing process:

- WA Dept of Ecology Clean Water Act Section 401 Certification. Expected 2007-2008. This certification determines whether Ecology has reasonable assurance that water quality standards will be met. This Department's 2007 SEPA SEIS stated that the 'long term' period when benefits outweigh 'short term' damage may begin as early as 6 to 12 months after dam breaching.
- Army Corps of Engineers Clean Water Act Section 404 Certification and Section 10 of the Rivers and Harbors Act. Expected 2007-2008. CWA Section 404 regulates federally approved activities which discharge dredged or fill material into waters of the U.S. Section 10 of the Rivers and Harbors Act governs work in or affecting navigable waters of the U.S.
- License Surrender order from FERC to PacifiCorp. Expected Spring 2008. The surrender order from FERC will spell out all remaining actions legally required to remove Condit Dam.

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