Non-Federal Development of Hydropower at Army Corps of Engineers Projects

Jim Gibson
Vice President HDR Engineering

Overview

- Antidegradation Policy
- Section 14 of the River and Harbors Act
- Additional Aspects
  - Modified Rule Curves
  - Preliminary Permits
  - Security Policies
  - Cumulative Impacts
- Best Practices

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USACE Antidegradation Policy

- Engineer Regulation 1110-2-1462
- Enacted on February 20, 1991
- Specific to non-Federal hydropower development at Corps facilities
- Corps' ER is based on the Clean Water Act Antidegradation Policy (40 CFR § 131.12) and Executive Order 12088
- Independent from State Water Quality Standards, Designated Uses, or Existing Uses

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CWA Antidegradation Policy

Goals

- Ensure that no activity will lower water quality to support existing uses
- Maintain and protect high quality waters

Tiered Framework

- Tier 1 – protect existing uses
- Tier 2 – maintain high quality waters
- Tier 3 – protect outstanding waters

CWA Antidegradation Policy

Tier 1

- Existing uses are those uses that are actually attained in the water body
- Allows for Federal and State actions that are consistent with existing use
- Tied to State-established Water Quality Standards

Tier 2

- Requires designation by controlling authority (State agency)
- **Allows for lower water quality to accommodate for economic or social development – Consistent with NEPA evaluation**
- Allows for *de minimis* discharges

Tier 3

- Waters that represent an outstanding national resource
- "Absolutely" no degradation is allowed – *de minimis* allowances

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USACE Antidegradation Policy

- Does not acknowledge tiered approach or state designations
- "…those waters will be maintained and protected unless there is compelling evidence that to do so will cause significant national economic and social harm." (*ER 1110-2-1462)*
- Requires update to align with State designated uses, existing uses, and promulgated water quality standards

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Section 14 River and Harbors Act

- Section 408 Permit
- November 17, 2008 Corps Clarification Guidance
- Appropriate for activities that do not require a Federal Action
- 408 process is redundant for hydropower development at Corps navigation locks and dams given Section 4(e) approval requirements and standard articles
- 2011 MOU is clear that Section 10 of the River and Harbors Act is addressed through Section 4(e)
- Allows for additional NEPA analysis

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Additional Aspects

- Modified Rule Curves
- Preliminary Permits
- Security Policies
- Cumulative Impacts

Best Practices

Intensive upfront consultation

- Waiver of the Draft License Application
- Combining the Draft License Application with the Pre-Application Document
- Educating stakeholders and agencies