

Toward Responsible Small Hydro Development

Session 4A

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Corps of Engineers Primary Water Resources Mission

- Flood risk reduction and damage mitigation
- Sustain commercial navigation
- Mitigate environmental impacts from water resources activities



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Corps of Engineers Policy on Non-Federal Hydropower Development

“The Corps supports hydropower development at its projects that is consistent with authorized project purposes and water control and water quality management objectives. This support neither relieves the developer of any risks and responsibilities nor suggests that the needs of other users be compromised to suit developer demands.”

ER 1110-2-1462, Water Quality and Water Control Considerations for Non-Federal Hydropower Development at Corps of Engineers Project, 20 Feb 1991

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Corps of Engineers Policy on Non-Federal Hydropower Development

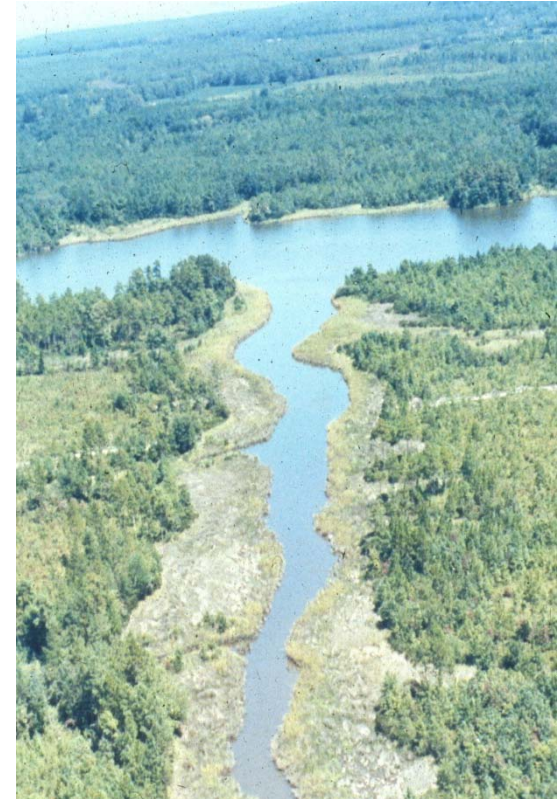
“The Corps supports suitable non-Federal hydropower plant construction at its water resources projects. This will be accomplished by adherence to the requirements of the ER and to the provisions of the interagency Memorandum of Understanding (MOU) between the Department of the Army and FERC.”

ER 1110-2-1454, Corps Responsibilities for Non-Federal Hydroelectric Power Development Under the Federal Power Act, 15 July 1983

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Primary Governing Laws

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act [33 U.S.C. 1344]
- 33 USC 408 Alterations to Federal facilities



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USACE Regulatory Authorities

- Section 10 of the Rivers and Harbors Act
 - All work in navigable waters including “dredging”
 - All construction in navigable waters “docks, marinas, etc”
 - Pipelines etc over and under navigable waters
- Section 404 of the Clean Water Act
 - Discharge of dredged or fill material into “waters of the US”
 - “Waters” include streams, lakes, wetlands



- EPA has oversight and ability to elevate or “veto” specific permit decision

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Title 33, US Code §408 Requirements

- Detailed Description of Proposed Modification
- GeoTechnical Evaluation
- Structural Analysis
- Hydraulic & Hydrology Implications
- O&M Requirements
- Real Estate Analysis
- Residual Risk
- Administrative Records



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Since NHA 2009

- Corps FERC Coordinators met in Cincinnati Nov 2009
- FERC Coordinator's Sub-Community of Practice
- A FERC Coordinator in Every District
- Funding/Staffing the FERC Mission
- Internal Corps Coordination between Operations, Regulatory, and Engineering & Construction
- Dam Safety
- Corps/FERC MOU Revision

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Corps/FERC MOU Revision

- Work together and with applicants and other stakeholders, as appropriate, including during the pre-filing scoping and study determination phase and before complete applications for the necessary authorizations are filed;
- Identify and resolve issues as quickly as possible;
- Attempt to build a consensus among governmental agencies and their stakeholders;
- Provide for the effective and efficient pre-filing and post-filing environmental review for non-Federal hydropower development.





EC 1165-2-209 Civil Works Review Policy

Establishes an accountable, comprehensive, life-cycle review strategy for Civil Works products by providing a seamless process for review of all Civil Works projects from initial planning through design, construction, and Operation, Maintenance, Repair, Replacement and Rehabilitation.

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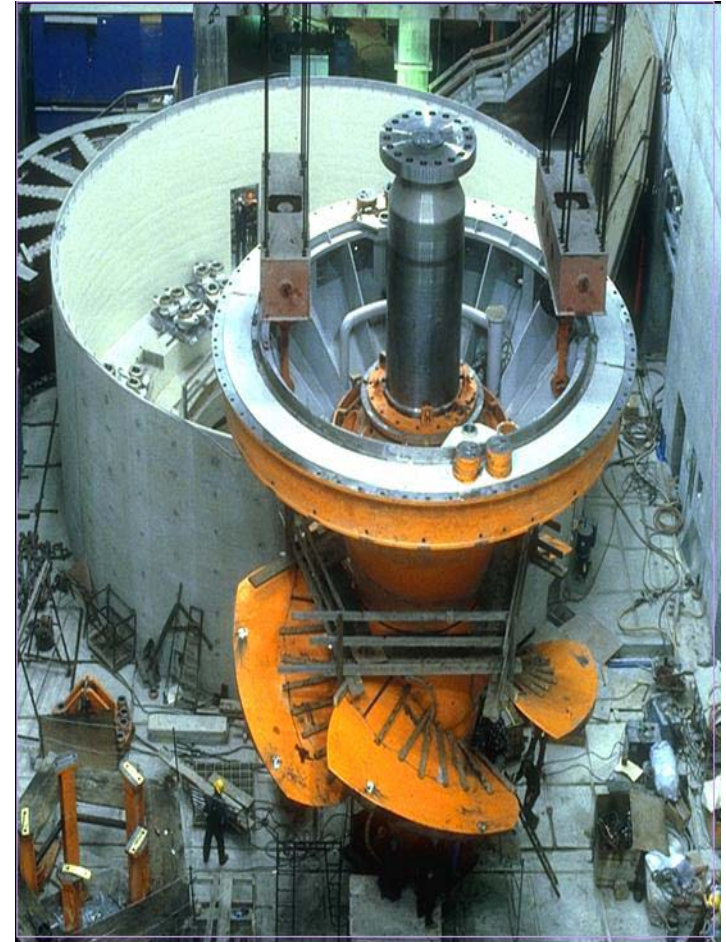
Special Cases Independent External Peer Review (IEPR)

Section 13 of EC 1165-2-209

- a. Special cases exist where non-Federal interests undertake the study, design, or implementation of a Federal project or a modification of a USACE project. Authorities for such actions include, but not limited to , 33 USC 408, Sections 203 and 204 of WRDA 1986, Section 206 of WRDA 1992, and Section 211 of WRDA 1996.
- b. When a non-Federal interest undertakes a study, design, or implementation of a Federal project, or requests permission to alter a Federal project, the non-Federal Interest is required to undertake, at its own expense, an IEPR that the Government determines would have been required if the Government were doing the work...
- c. Any IEPR undertaken by a non-Federal Interest shall be submitted as part of the Decision package for review by USACE and ultimate action by USACE or Army.

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Questions!



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