

**National Park Service Hydropower Program
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**NPS Mission: Preserve Unimpaired For Future
Generations**



National Park Service Hydro Related Roles & Responsibilities

The National Park Service (NPS) participates in the Federal Energy Regulatory Commission (FERC) licensing proceedings to enhance recreation opportunities and improve environmental and cultural resources protection at new and existing hydropower facilities across the nation, both within and outside the National Park System.

Within national parks, the NPS supports hydropower technologies that can meet park energy needs without adverse impacts on natural and cultural resources and visitor opportunities.

In FERC hydropower proceedings, the NPS advises on flow requirements to protect recreation resources, natural habitats, and aesthetic resources.

The NPS works to improve environmental conditions, cultural resources protection, and recreational opportunities at existing hydropower facilities, and to ensure that biological diversity, ecosystem function, natural and cultural heritage, and recreational opportunities are incorporated into the assessment and development of new hydropower capacity.

The NPS strives to ensure that nationally significant protected areas and some geographic locations are recognized as not appropriate for hydropower/hydrokinetic development and testing.

<http://www.nps.gov/hydro/>.

National Park Service Hydropower Assistance Program

<http://www.nps.gov/ncrc/programs/hydro/info.htm>

Major Authorities

Federal Power Act, regulations as amended - requires consultation with NPS (18 CFR 4.38(a); 18 CFR 5.1 (d); and 18 CFR 16.8(a)); identifies topics for consultation with NPS (18 CFR 4.51(f)(4) & 18 CFR 4.51(f)(5)).

Outdoor Recreation Act of 1963, PL88-29 - NPS technical assistance relative to outdoor recreation resources (16 USC 4601-1)

Wild and Scenic Rivers Act of 1968, PL90-542 - FERC license restrictions related to the National Wild and Scenic Rivers System (Sec.7(a) and (b), 16 USC 1278(a) and (b)); NPS assistance related to river resources (Sec.11(b), 16 USC 1282(b)); and Federal agency consideration for potential (study segments) wild, scenic, and recreational river areas (Sec.5(d), 16 USC 1276(d)).

National Trails System Act of 1968, P.L. 90-543, as amended through P.L. 107-325, December 4, 2002 - NPS technical assistance relative to National Recreation Trails (Sec. 11, 16 USC 1250). Includes the Appalachian Trail.

The NPS Organic Act, "...conserve the scenery and the natural and historic objects and the wildlife..." (54 USC 100101(a) et seq). PL 113-287 codified as positive law.

NPS Mission, "Preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world."

Wild & Scenic Rivers <http://nature.nps.gov/water/wsr.cfm>

National Wild and Scenic Rivers (WSRs) are federally-protected areas designated by Congress or by the Secretary of the Interior under the 1968 Wild and Scenic Rivers Act (Act). The National Park Service (NPS) is responsible for managing rivers throughout the United States. The Act requires the NPS to protect and enhance a designated river's free-flowing condition, water quality, and outstandingly remarkable values. To meet these responsibilities the NPS National Leadership Council approved the formation of a service wide Wild and Scenic Rivers (WSR) Program in May 2007.

As of Dec. 2014, NPS has responsibilities for 60 of the 208 National Wild and Scenic Rivers. NPS works closely with USFS, BLM, USFWS through the Interagency Wild and Scenic Rivers Coordinating Council for consistency on WSR issues. <http://www.rivers.gov/>

Under Sec. 7 of the WSR Act FERC is prohibited from licensing construction of dams and other projects works on or directly affecting designated rivers or Congressionally authorized study rivers....it gets more complicated for pre-existing projects on designated rivers and for projects that are upstream/downstream/or on tributaries of designated or study rivers.

Additional links: <http://www.rivers.gov/documents/federal-agency-roles.pdf>

<http://www.rivers.gov/documents/section-7.pdf>

Nationwide Rivers Inventory Program. <http://www.nps.gov/ncrc/programs/rtca/nri/index.html>

The Nationwide Rivers Inventory (NRI) is a listing of more than 3,400 free-flowing river segments in the United States that are believed to possess one or more "outstandingly remarkable" natural or cultural values judged to be of more than local or regional significance. Under a 1979 [Presidential Directive](#), and related [Council on Environmental Quality procedures](#), all federal agencies must seek to avoid or mitigate actions that would adversely affect one or more NRI segments.

[Click here for instructions on the process of consulting with the NPS on projects potentially affecting NRI segments.](#)

The NRI is a source of information for statewide river assessments and federal agencies involved with stream-related projects. For any group concerned with ecosystem management, the inventory can provide the location of the nearest naturally- functioning system which might serve as a reference for monitoring activities. It also serves as a listing of plant and animal species for restoration efforts on a similar section of river. For the recreationalist, it provides a listing of free-flowing, relatively undisturbed river segments. The NRI is managed by the [Rivers, Trails, & Conservation Assistance Program](#).

The Oak Ridge National Laboratory (ORNL) National Hydropower Asset Assessment Program (NHAAP) is an integrated energy, water, and ecosystem research and geospatial data integration effort for efficient, sustainable, and environmentally friendly hydroelectricity generation and water management. Our partners include state and federal agencies, non-governmental organizations, technology and resource developers, utilities, and researchers. NHAAP is sponsored by the US Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE). One core objective is to provide an up-to-date comprehensive US hydropower geospatial database that includes information on existing hydropower facilities, infrastructure, future resources, hydrography, water availability, and environmental attributes related to hydropower development and generation. Ideally this will include NPS Units, WSRs (designated and study segments) and NRI segments. <http://nhaap.ornl.gov/>

What to look for when answering the question: Is there an NPS unit potentially affected by this project.

<http://www.nps.gov/news/upload/NPS-Park-Anniversaries-12-23-2014.pdf>

Total now at 409 as of February 18 with additional of 3 new NMs, 2 of which will be managed by NPS.

59 Are designated as National Parks. Categories include National Monuments, National Battlefields, National Recreation Areas and “Other” which contains 11 such places as The White House, The National Mall, Wolf Trap Center for the Performing Arts and the Rock Creek Parkway.

Non NPS units such as National Historic Landmarks administered by NPS as Keeper of the National Register of Historic Places. <http://www.nps.gov/nr/research/>

National Natural Landmarks, National Heritage Rivers and Corridors

National Recreation Trails are designated by Secretary of DOI, but are not formal NPS units. NPS manages the National Water Trails System, established by former Secretary Salazar, which is a class of National Recreation Trails under the National Trails System Act of 1968. <http://www.americantrails.org/resources/water/National-Water-Trails-overview.html> An example is the Hudson River Greenway Water Trail.

Electric Consumers Protection Act of 1986 was the genesis of NPS participation in the FERC hydro process. Congress recognized NPS' expertise in recreational use, public access, aesthetics and land management. Class of 1993 relicensings engaged Resource Agencies, NGO's and the public in advocating for non power values.

NPS provides comments during various stages of the proceedings from SD1 through study plan development, revisions, conduct, evaluation and conclusions. Users surveys, studies associated with whitewater suitability, aesthetic flows, recreational use and access (existing, improved and potential, unused or obsolete). NEPA process comments.

Path towards land protection becoming part of the mitigation for hydro relicensings:

- Numerous RA and NGO practitioners saw opportunities for preservation during the early and mid 1990s through large land holdings of many licensees.
- Power companies with cognizance of their role as environmental stewards.
- Widely considered to be appropriate mitigation with nexus to project operations in many cases. Protection of WQ, riparian zone, recreational use and opportunities and aesthetic values.
- FERC has accepted settlement agreements involving the transfer of project lands outside project boundaries where recipient is a Qualified Conservation Organization, including land trusts, county, state and in some cases Federal land management agencies.
- Provides opportunity for licensee to offset other mitigation costs through tax benefits.

Post licensing recreation and land management plans and condition compliance. Includes Form 80 process reviews every 6 years. **Post licensing work is cumulative and constitutes the majority of NPS Hydro Program activities.**

Examples of Hydro Settlement and Licensing Provisions Addressing NPS Concerns

FERC Guidance on Settlement Agreements <http://www.ferc.gov/whats-new/comm-meet/092106/H-1.pdf>

Recreation:

- Access facilities including boat ramps, portages, mobility impaired access, improved shoreline fishing access, trails (multiple and limited use), changing areas, sanitation facilities, parking, shore accessible and water access only campgrounds.
- Flows for scheduled whitewater releases, improved navigability, fishing flows, release schedules, reduced conflicts between fishing and boating.
- Funds including access fee agreements, recreation facility maintenance.
- Education e.g., recreational/historical brochures, interpretive displays.

Land Protection:

- Donation of project lands (fee and/or easement) for conservation and public use. Term and permanent. FMV, Bargain sale, outright donation. Can include lands outside existing project boundary.
- Funded acquisition of project lands for conservation and public use.
- Protection of culturally significant sites including archaeological resources.
- Protection of critical NPS viewsheds.
- PILOT funds can be set up to offset local tax revenues.

Aquatic Habitat:

- Increased minimum flows, Increased operational flexibility, Habitat restoration funds, Habitat improvements for fish, mussels, invertebrates and other aquatic life, Remediation of erosion, Wetlands restoration, Reduced winter drawdown, Reduced spring impoundment fluctuation, Replace flashboards with inflatable rubber dam.

Enhancement Funds:

- Protection, mitigation, enhancement funding
- Research and monitoring
- Water quality education
- Recreation facility maintenance
- Environmental education
- Dam removals

Settlement Enforceability:

- Language to clarify alternative courses of action if FERC doesn't accept key provisions of Offers of Settlement or rejects agreement.

Enforceable in state court, private contractual agreement between the parties.

Numerous **Settlement Agreements** have been achieved through the FERC process, both in the context of relicensings and amendments. FERC includes a section on SAs at <http://www.ferc.gov/legal/settlements.asp> and provides their Policy on these agreements at <http://www.ferc.gov/whats-new/comm-meet/092106/H-1.pdf> SAs can range from specific issues to broad agreements including lands both inside and outside project boundaries. Key to set up so agreement can be enforceable outside of FERC process, i.e. state court. Not limited to shorelands.

The Hydropower Reform Coalition provides an overview of Settlement Agreements to come out of the FERC process. <http://www.hydroreform.org/hydroguide/shorelands/3-2-settlement-agreements>. Several Northeast case examples are included. <http://www.hydroreform.org/hydroguide/shorelands/chapter-5-case-examples>

Vermont & New Hampshire Connecticut River: 15 Mile Falls (FERC 2077) Permanent protection of almost 12,000 acres of land in VT and NH and the establishment of a \$15 Million Enhancement and Mitigation Fund. <http://www.hydroreform.org/hydroguide/shorelands/5-3-fifteen-mile-falls-connecticut-river-new-hampshire-and-vermont-ferc-2077>

Vermont & Massachusetts Deerfield River (FERC 2323) Permanent protection of over 18,000 acres and the establishment of scheduled whitewater boating flows. <http://www.hydroreform.org/hydroguide/shorelands/5-1-new-england-power-now-usgen-pg-e-deerfield-river-vermont-and-massachusetts-ferc-2323>

Maine, Androscoggin River: Riley Jay Livermore (FERC 2375, 8277) Permanent protection of over 1200 acres of licensee-owned land in ME not within project boundaries on and around the project, and another 180 acres at an upstream headwater storage reservoir (owned by another company) was purchased and added to a state park. <http://www.hydroreform.org/hydroguide/shorelands/5-2-international-paper-androscoggin-river-maine-ferc-2375-and-8277>

Maine, Penobscot River: (Veazie, 2403, Milford 2534, Medway 2666, Orono 2710, Stillwater 2712, Howland 2721, Basin Mills 10981, Great Works 2312, and West Enfield 2600) involved the purchase by a newly formed NGO of three dams, removal of Veazie and Howland and creating a bypass around New Milford on the Penobscot River in ME. Restoration of significant Atlantic Salmon habitat associated with the Penobscot Indian Nation. <http://www.penobscotriver.org/content/4003/the-project>

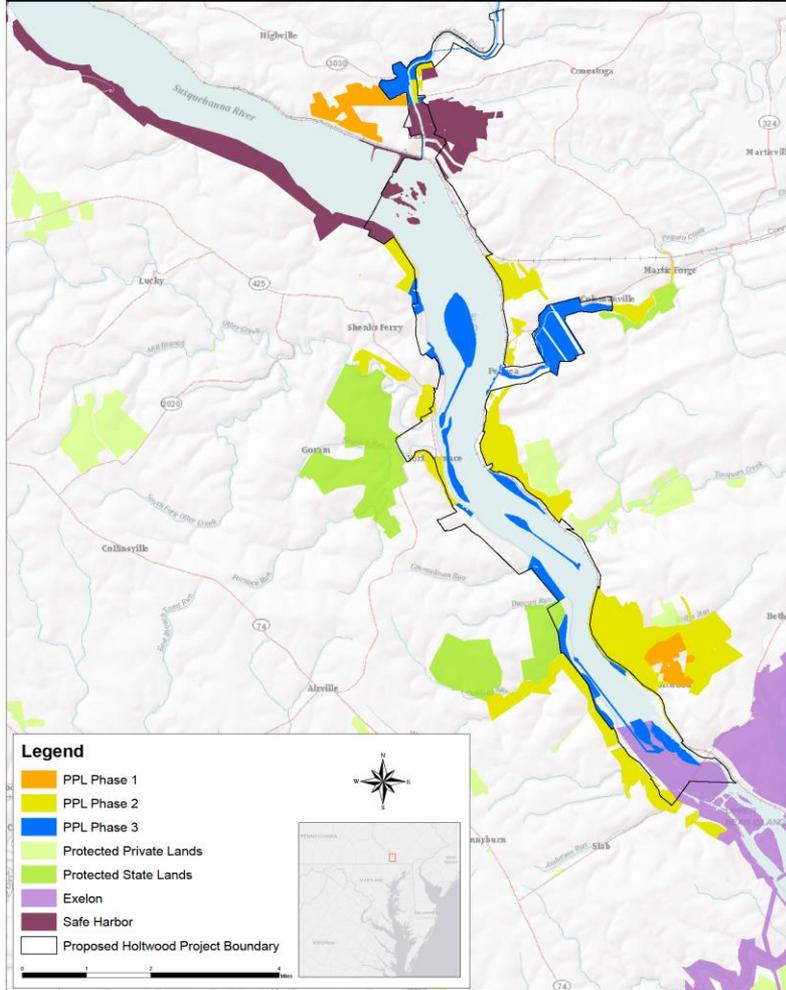
Pennsylvania Susquehanna River: Holtwood (FERC 1881) Permanent protection of over 3600 acres of land, including removal of over 1700 acres of land from existing project boundaries to allow for permanent protection. \$6 Million endowment for long term management. <http://www.susquehannagreenway.org/feds-approve-land-transfer-conservation>

Trend is away from local and regionally owned power companies to national and in many cases, international corporations with little if any connection to local communities and resources. NEP now TRP. CMP now FPL. CL&P now First Light/GDF Suez.

Others have included land transfers (fee and easements) to NPS associated with protection of lands adjacent to the Appalachian Trail. Yards Creek Pumped Storage Project in NJ (FERC 2309) and Housatonic River Hydro Project (Bulls Bridge Development) in CT (FERC 2576).

PPL Land Transfers - Holtwood

Map produced by Andrew Fitch
with Chesapeake Bay Office
February 7, 2012



- A Settlement Agreement was reached on the Holtwood Project (1881) providing for permanent protection of 3,646.14 acres through bargain sale fee transfers and granting of permanent conservation easements from Pennsylvania Power & Light (PPL) to the Lancaster County Conservancy (LCC), York County (York Co) and the PA Dept. of Conservation and Natural Resources (PADCNR).
- FERC Approval December 2012.
- Separate agreement for white water boating access and use.
- <http://www.susquehannagreenway.org/feds-approve-land-transfer-conservation>

Hydropower Project Example, Northeast Region

Monongahela River Hydro Projects at ACOE Locks & Dams

Rationale for NPS Hydro Program Involvement:

NPS Hydro Program involvement requested fall of 2013 due to potential impacts to the 46-mile Monongahela River, Caperton and Deckers Creek Trails, designated as a component of the NRT System in 2006. Powerhouse was initially proposed to be located directly on the trail at the City of Morgantown L&D Project location. This would have blocked the trail and caused issues related to its having been railbanked.

NPS Hydro Program Staff coordinated stakeholder and host community input and filed comments in January 2014 on the Draft Application, Revised Planned Studies Document (RPSD), and Recreation Resources Management Plan (RRMP). Numerous meetings and conference calls between stakeholders and the applicant, Free Flow Power resulted in the redesign and proposed relocation of the Morgantown project powerhouse off the trail and into the river.

The applicant Rye Development, formerly Free Flow Power has also proposed to relocate the initial construction access road associated with the Point Marion L&D Project to a location where it will not interfere with the impending construction (grant from PADCNR awarded in 2013) of the Sheepskin Trail which would constitute the northernmost section of the existing NRT.

Projects include the following: Opekiska Lock and Dam Hydroelectric Project (P-13753); Morgantown Locks and Dam Hydroelectric Project (P-13762); Point Marion Lock and Dam Project (P-13771), Grays Landing Lock and Dam Project (P-13763), Maxwell Lock and Dam Project (P-13766) and Monongahela Lock and Dam Number four Hydroelectric Project (P-13767); Monongalia County, West Virginia and Fayette, Greene, and Washington Counties, Pennsylvania.

City of Morgantown Lock & Dam Abutting National Recreation Trail

