

**[DISCUSSION DRAFT]**

SEPTEMBER 22, 2003

1     **TITLE \_\_\_\_\_—HYDROELECTRIC**  
2     **Subtitle A—Alternative Conditions**

3     **SEC. \_\_\_\_ 01. ALTERNATIVE CONDITIONS AND FISHWAYS.**

4         (a) FEDERAL RESERVATIONS.—Section 4(e) of the  
5 Federal Power Act (16 U.S.C. 797(e)) is amended by in-  
6 serting after “adequate protection and utilization of such  
7 reservation.” at the end of the first proviso the following:  
8 “The license applicant shall be entitled to a determination  
9 on the record, after opportunity for an agency trial-type  
10 hearing of any disputed issues of material fact, with re-  
11 spect to such conditions.”.

12         (b) FISHWAYS.—Section 18 of the Federal Power Act  
13 (16 U.S.C. 811) is amended by inserting after “and such  
14 fishways as may be prescribed by the Secretary of Com-  
15 merce.” the following: “The license applicant shall be enti-  
16 tled to a determination on the record, after opportunity  
17 for an agency trial-type hearing of any disputed issues of  
18 material fact, with respect to such fishways.”.

19         (c) ALTERNATIVE CONDITIONS AND PRESCRIP-  
20 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a  
21 et seq.) is amended by adding the following new section  
22 at the end thereof:

1 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

2 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any  
3 person applies for a license for any project works within  
4 any reservation of the United States, and the Secretary  
5 of the department under whose supervision such reserva-  
6 tion falls (referred to in this subsection as ‘the Secretary’)  
7 deems a condition to such license to be necessary under  
8 the first proviso of section 4(e), the license applicant may  
9 propose an alternative condition.

10 “(2) Notwithstanding the first proviso of section 4(e),  
11 the Secretary shall accept the proposed alternative condi-  
12 tion referred to in paragraph (1), and the Commission  
13 shall include in the license such alternative condition, if  
14 the Secretary determines, based on substantial evidence  
15 provided by the license applicant or otherwise available to  
16 the Secretary, that such alternative condition—

17 “(A) provides for the adequate protection and  
18 utilization of the reservation; and

19 “(B) will either—

20 “(i) cost less to implement; or

21 “(ii) result in improved operation of the  
22 project works for electricity production,  
23 as compared to the condition initially deemed nec-  
24 essary by the Secretary.

25 “(3) The Secretary shall submit into the public  
26 record of the Commission proceeding with any condition

1 under section 4(e) or alternative condition it accepts under  
2 this section, a written statement explaining the basis for  
3 such condition, and reason for not accepting any alter-  
4 native condition under this section. The written statement  
5 must demonstrate that the Secretary gave equal consider-  
6 ation to the effects of the condition adopted and alter-  
7 natives not accepted on energy supply, distribution, cost,  
8 and use; flood control; navigation; water supply; and air  
9 quality (in addition to the preservation of other aspects  
10 of environmental quality); based on such information as  
11 may be available to the Secretary, including information  
12 voluntarily provided in a timely manner by the applicant  
13 and others. The Secretary shall also submit, together with  
14 the aforementioned written statement, all studies, data,  
15 and other factual information available to the Secretary  
16 and relevant to the Secretary's decision.

17       “(4) Nothing in this section shall prohibit other inter-  
18 ested parties from proposing alternative conditions.

19       “(5) If the Secretary does not accept an applicant's  
20 alternative condition under this section, and the Commis-  
21 sion finds that the Secretary's condition would be incon-  
22 sistent with the purposes of this part, or other applicable  
23 law, the Commission may refer the dispute to the Commis-  
24 sion's Dispute Resolution Service. The Dispute Resolution  
25 Service shall consult with the Secretary and the Commis-

1 sion and issue a non-binding advisory within 90 days. The  
2 Secretary may accept the Dispute Resolution Service advi-  
3 sory unless the Secretary finds that the recommendation  
4 will not adequately protect the reservation. The Secretary  
5 shall submit the advisory and the Secretary's final written  
6 determination into the record of the Commission's pro-  
7 ceeding.

8       “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever  
9 the Secretary of the Interior or the Secretary of Commerce  
10 prescribes a fishway under section 18, the license appli-  
11 cant or licensee may propose an alternative to such pre-  
12 scription to construct, maintain, or operate a fishway.

13       “(2) Notwithstanding section 18, the Secretary of the  
14 Interior or the Secretary of Commerce, as appropriate,  
15 shall accept and prescribe, and the Commission shall re-  
16 quire, the proposed alternative referred to in paragraph  
17 (1), if the Secretary of the appropriate department deter-  
18 mines, based on substantial evidence provided by the li-  
19 censee or otherwise available to the Secretary, that such  
20 alternative—

21               “(A) will be no less protective than the fishway  
22       initially prescribed by the Secretary; and

23               “(B) will either—

24                       “(i) cost less to implement; or

1                   “(ii) result in improved operation of the  
2                   project works for electricity production,  
3                   as compared to the fishway initially deemed nec-  
4                   essary by the Secretary.

5                   “(3) The Secretary concerned shall submit into the  
6 public record of the Commission proceeding with any pre-  
7 scription under section 18 or alternative prescription it ac-  
8 cepts under this section, a written statement explaining  
9 the basis for such prescription, and reason for not accept-  
10 ing any alternative prescription under this section. The  
11 written statement must demonstrate that the Secretary  
12 gave equal consideration to the effects of the condition  
13 adopted and alternatives not accepted on energy supply,  
14 distribution, cost, and use; flood control; navigation; water  
15 supply; and air quality (in addition to the preservation of  
16 other aspects of environmental quality); based on such in-  
17 formation as may be available to the Secretary, including  
18 information voluntarily provided in a timely manner by the  
19 applicant and others. The Secretary shall also submit, to-  
20 gether with the aforementioned written statement, all  
21 studies, data, and other factual information available to  
22 the Secretary and relevant to the Secretary’s decision.

23                   “(4) Nothing in this section shall prohibit other inter-  
24 ested parties from proposing alternative prescriptions.

1       “(5) If the Secretary concerned does not accept an  
2 applicant’s alternative prescription under this section, and  
3 the Commission finds that the Secretary’s prescription  
4 would be inconsistent with the purposes of this part, or  
5 other applicable law, the Commission may refer the dis-  
6 pute to the Commission’s Dispute Resolution Service. The  
7 Dispute Resolution Service shall consult with the Sec-  
8 retary and the Commission and issue a non-binding advi-  
9 sory within 90 days. The Secretary may accept the Dis-  
10 pute Resolution Service advisory unless the Secretary  
11 finds that the recommendation will not adequately protect  
12 the fish resources. The Secretary shall submit the advisory  
13 and the Secretary’s final written determination into the  
14 record of the Commission’s proceeding.”.

## 15 **Subtitle B—Additional Hydropower**

### 16 **SEC. \_\_\_\_ 21. HYDROELECTRIC PRODUCTION INCENTIVES.**

17       (a) INCENTIVE PAYMENTS.—For electric energy gen-  
18 erated and sold by a qualified hydroelectric facility during  
19 the incentive period, the Secretary of Energy (referred to  
20 in this section as the “Secretary”) shall make, subject to  
21 the availability of appropriations, incentive payments to  
22 the owner or operator of such facility. The amount of such  
23 payment made to any such owner or operator shall be as  
24 determined under subsection (e) of this section. Payments  
25 under this section may only be made upon receipt by the

1 Secretary of an incentive payment application which estab-  
2 lishes that the applicant is eligible to receive such payment  
3 and which satisfies such other requirements as the Sec-  
4 retary deems necessary. Such application shall be in such  
5 form, and shall be submitted at such time, as the Sec-  
6 retary shall establish.

7 (b) DEFINITIONS.—For purposes of this section:

8 (1) QUALIFIED HYDROELECTRIC FACILITY.—

9 The term “qualified hydroelectric facility” means a  
10 turbine or other generating device owned or solely  
11 operated by a non-Federal entity which generates  
12 hydroelectric energy for sale and which is added to  
13 an existing dam or conduit.

14 (2) EXISTING DAM OR CONDUIT.—The term

15 “existing dam or conduit” means any dam or con-  
16 duct the construction of which was completed before  
17 the date of the enactment of this section and which  
18 does not require any construction or enlargement of  
19 impoundment or diversion structures (other than re-  
20 pair or reconstruction) in connection with the instal-  
21 lation of a turbine or other generating device.

22 (3) CONDUIT.—The term “conduit” has the  
23 same meaning as when used in section 30(a)(2) of  
24 the Federal Power Act.

1 The terms defined in this subsection shall apply without  
2 regard to the hydroelectric kilowatt capacity of the facility  
3 concerned, without regard to whether the facility uses a  
4 dam owned by a governmental or nongovernmental entity,  
5 and without regard to whether the facility begins oper-  
6 ation on or after the date of the enactment of this section.

7 (c) ELIGIBILITY WINDOW.—Payments may be made  
8 under this section only for electric energy generated from  
9 a qualified hydroelectric facility which begins operation  
10 during the period of 10 fiscal years beginning with the  
11 first full fiscal year occurring after the date of enactment  
12 of this subtitle.

13 (d) INCENTIVE PERIOD.—A qualified hydroelectric  
14 facility may receive payments under this section for a pe-  
15 riod of 10 fiscal years (referred to in this section as the  
16 “incentive period”). Such period shall begin with the fiscal  
17 year in which electric energy generated from the facility  
18 is first eligible for such payments.

19 (e) AMOUNT OF PAYMENT.—

20 (1) IN GENERAL.—Payments made by the Sec-  
21 retary under this section to the owner or operator of  
22 a qualified hydroelectric facility shall be based on  
23 the number of kilowatt hours of hydroelectric energy  
24 generated by the facility during the incentive period.  
25 For any such facility, the amount of such payment

1 shall be 1.8 cents per kilowatt hour (adjusted as  
2 provided in paragraph (2)), subject to the avail-  
3 ability of appropriations under subsection (g), except  
4 that no facility may receive more than \$750,000 in  
5 one calendar year.

6 (2) ADJUSTMENTS.—The amount of the pay-  
7 ment made to any person under this section as pro-  
8 vided in paragraph (1) shall be adjusted for inflation  
9 for each fiscal year beginning after calendar year  
10 2003 in the same manner as provided in the provi-  
11 sions of section 29(d)(2)(B) of the Internal Revenue  
12 Code of 1986, except that in applying such provi-  
13 sions the calendar year 2003 shall be substituted for  
14 calendar year 1979.

15 (f) SUNSET.—No payment may be made under this  
16 section to any qualified hydroelectric facility after the ex-  
17 piration of the period of 20 fiscal years beginning with  
18 the first full fiscal year occurring after the date of enact-  
19 ment of this subtitle, and no payment may be made under  
20 this section to any such facility after a payment has been  
21 made with respect to such facility for a period of 10 fiscal  
22 years.

23 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
24 are authorized to be appropriated to the Secretary to carry

1 out the purposes of this section \$10,000,000 for each of  
2 the fiscal years 2004 through 2013.

3 **SEC. \_\_\_ 22. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

4 (a) INCENTIVE PAYMENTS.—The Secretary of En-  
5 ergy shall make incentive payments to the owners or oper-  
6 ators of hydroelectric facilities at existing dams to be used  
7 to make capital improvements in the facilities that are di-  
8 rectly related to improving the efficiency of such facilities  
9 by at least 3 percent.

10 (b) LIMITATIONS.—Incentive payments under this  
11 section shall not exceed 10 percent of the costs of the cap-  
12 ital improvement concerned and not more than one pay-  
13 ment may be made with respect to improvements at a sin-  
14 gle facility. No payment in excess of \$750,000 may be  
15 made with respect to improvements at a single facility.

16 (c) AUTHORIZATION.—There is authorized to be ap-  
17 propriated to carry out this section not more than  
18 \$10,000,000 for each of the fiscal years 2004 through  
19 2013.

20 **SEC. \_\_\_ 23. SMALL HYDROELECTRIC POWER PROJECTS.**

21 Section 408(a)(6) of the Public Utility Regulatory  
22 Policies Act of 1978 is amended by striking “April 20,  
23 1977” and inserting “March 4, 2003”.

1 **SEC. \_\_\_\_ 24. INCREASED HYDROELECTRIC GENERATION AT**  
2 **EXISTING FEDERAL FACILITIES.**

3 (a) IN GENERAL.—The Secretary of the Interior and  
4 the Secretary of Energy, in consultation with the Sec-  
5 retary of the Army, shall jointly conduct a study of the  
6 potential for increasing electric power production capa-  
7 bility at federally owned or operated water regulation,  
8 storage, and conveyance facilities.

9 (b) CONTENT.—The study under this section shall in-  
10 clude identification and description in detail of each facil-  
11 ity that is capable, with or without modification, of pro-  
12 ducing additional hydroelectric power, including esti-  
13 mation of the existing potential for the facility to generate  
14 hydroelectric power.

15 (c) REPORT.—The Secretaries shall submit to the  
16 Committees on Energy and Commerce and Resources of  
17 the House of Representatives and the Committee on En-  
18 ergy and Natural Resources of the Senate a report on the  
19 findings, conclusions, and recommendations of the study  
20 under this section by not later than 18 months after the  
21 date of the enactment of this Act. The report shall include  
22 each of the following:

23 (1) The identifications, descriptions, and esti-  
24 mations referred to in subsection (b).

25 (2) A description of activities currently con-  
26 ducted or considered, or that could be considered, to

1 produce additional hydroelectric power from each  
2 identified facility.

3 (3) A summary of prior actions taken by the  
4 Secretaries to produce additional hydroelectric power  
5 from each identified facility.

6 (4) The costs to install, upgrade, or modify  
7 equipment or take other actions to produce addi-  
8 tional hydroelectric power from each identified facil-  
9 ity and the level of Federal power customer involve-  
10 ment in the determination of such costs.

11 (5) The benefits that would be achieved by such  
12 installation, upgrade, modification, or other action,  
13 including quantified estimates of any additional en-  
14 ergy or capacity from each facility identified under  
15 subsection (b).

16 (6) A description of actions that are planned,  
17 underway, or might reasonably be considered to in-  
18 crease hydroelectric power production by replacing  
19 turbine runners, by performing generator upgrades  
20 or rewinds, or construction of pumped storage facili-  
21 ties.

22 (7) Any additional recommendations to increase  
23 hydroelectric power production from, and reduce  
24 costs and improve efficiency at, federally owned or



- 1 tion of the Secretary to provide electric power, water, or
- 2 other benefits from Bureau of Reclamation facilities.