

**CLIENT ALERT: RENEWABLE ENERGY**  
**RECENT FEDERAL ACTIONS ENCOURAGE DEVELOPMENT**  
**OF HYDROELECTRIC CAPACITY AT EXISTING FEDERAL DAMS**

Installation of generation capacity at existing dams that lack such capacity offers great potential for producing substantial amounts of carbon-free energy in the Pacific Northwest. Two recent actions involving federal agencies that operate dams in our region are aimed at encouraging generation retrofits at those dams.

First, on March 31, the U.S. Bureau of Reclamation ("BOR") issued a comprehensive report assessing the potential for hydroelectric development at the BOR's Western dams. Starting with a list of 530 BOR projects, the BOR report identifies 70 BOR projects in 17 Western states where hydroelectric development is likely to prove cost-effective. In total, these projects could provide 225 MW of new generation capacity and could be expected to produce more than one million MWh per year. Among these are 13 BOR projects in the Pacific Northwest, including some of the most promising sites identified in the BOR study, with a combined total potential capacity of nearly 30 MW. The report uses an open Hydroelectric Assessment Model, which is likely to be of interest to developers who will be able to test BOR's conclusions about the potential project economics at BOR sites using varying assumptions. The report also identifies incentives that are available from both federal and state governments that are likely to improve the economics of generation development at particular BOR sites.

Developers interested in installing hydroelectric generators at BOR sites can do so under a Lease of Power Privilege Agreement with BOR, which gives the lessee the right to operate hydroelectric facilities at a specified BOR site for up to 40 years. Such leases are authorized by the Reclamation Act of 1939 and require a competitive process to identify the proposal best suited to development of a particular site, although municipalities and rural electric co-ops are accorded preference in such competitions.

The second notable federal action regarding development of hydroelectric resources at existing federal dams also occurred at the end of March when the Federal Energy Regulatory Commission ("FERC") and the U.S. Army Corps of Engineers ("Corps") entered into a Memorandum of Understanding ("MOU") governing the process for non-federal entities to obtain the federal permits and licenses necessary to install new generation on Corps-

operated dams and water projects. In the MOU, the agencies agreed that FERC will assume the role of "lead agency" for purposes of compliance with the National Environmental Policy Act, and that the Corps and FERC will cooperate throughout this process to ensure that both agencies will meet their regulatory obligations while minimizing compliance burdens and avoiding duplication of effort. For example, the agencies agreed to cooperate in the FERC pre-licensing process to identify all necessary environmental studies, to obtain necessary information from the Corps about the specific configuration of the project where a license is sought, and to identify all interest groups that should be invited to participate in the licensing process. The MOU promises to substantially reduce the regulatory burdens and delays faced by entities seeking to install new hydroelectric facilities at existing Corps-owned dams and water projects.

These developments are welcome news for the region's utilities, developers, and power consumers because hydroelectric generation is one of the oldest and most well-understood generation technologies, and it therefore avoids the technological risk associated with many newer technologies. In addition, hydroelectric generation is in many cases substantially less expensive than newer renewable technologies. And, because incremental hydro uses existing dams and related structures instead of requiring the construction of new dams, it can usually be built with little or no environmental impact. Finally, unlike most generation powered by fresh water, new generation installed at existing dams can in some circumstances qualify as a "renewable resource" under Washington's Initiative 937, and therefore can be used by Washington utilities to satisfy I-937's renewable portfolio obligations.

**For additional information on how these developments may affect your business, contact one of our Renewable Energy Group lawyers:**

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