



March 11, 2014

**BY ELECTRONIC MAIL  
AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mark Gabriel  
Administrator  
Western Area Power Administration  
PO Box 281213  
Lakewood, CO 80228  
[gabriel@wapa.gov](mailto:gabriel@wapa.gov)

**RE: Integrated Resource Planning, National Environmental Policy Act and Endangered Species Act Compliance Concerns**

Dear Administrator Gabriel:

WildEarth Guardians, a nonprofit environmental organization dedicated to protecting and restoring wildlife, wild places, and wild rivers, and safeguarding the climate in the American West, writes to express concerns over the Western Area Power Administration's ("WAPA's") process of reviewing and approving customers' Integrated Resource Plans ("IRPs") and whether the Administration is complying with relevant provisions of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*, and Endangered Species Act ("ESA"), 16 U.S.C. § 1531, *et seq.* WAPA, an agency within the Department of Energy, is charged with selling power generated from federal facilities in 11 states at cost to co-op and municipal customers in 15-state region of the western and central U.S.<sup>1</sup>

With more than 50,000 members and supporters in the American West and offices in eight western states, WildEarth Guardians has a vested interest in ensuring WAPA is appropriately doing business with utilities in the west. As part of its Climate and Energy Program, WildEarth Guardians has a vested interest in ensuring that WAPA plays a role in advancing clean energy and addressing the impacts of energy production and consumption throughout the region. To this end, we are greatly concerned that the Administration may not be appropriately taking into account the environmental impacts of its IRP approvals, including impacts to species listed as threatened or endangered and their critical habitats. In doing so,

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<sup>1</sup> WAPA's generating resources primarily include federal hydropower projects, but also include 547 megawatts generated by the coal-fired Navajo Generating Station in northern Arizona. See "WAPA Power Projects," website available at <http://ww2.wapa.gov/sites/Western/about/power/Pages/default.aspx>.

WAPA may be missing key opportunities to more effectively advance clean energy and safeguard the American West.

Through an August 2013 Freedom of Information Act request to your agency (FOIA No. WAPA-2013-01516-F), we learned that in approving IRPs for several co-op and municipal utility customers, WAPA may not be meeting the requirements of NEPA and the ESA. Specifically, WAPA communicated in its September 23, 2013 response that the Administration believes it is not required to analyze or assess the impacts of reviewing and approving customer IRPs under NEPA, or consult with appropriate agencies in accordance with section 7 of the ESA. This position does not seem consistent with the requirements of the IRP process, including its statutory underpinnings, as well as the plain requirements of the NEPA and the ESA. Accordingly, we strongly urge you to assess WAPA's IRP review and approval process to ensure it is conducted in accordance with the environmental and health safeguards afforded by NEPA and the ESA. Below, we explain the basis for our concerns and request.

### **The IRP Process**

Under the Energy Policy Act of 1992, as a condition of purchasing wholesale electric energy through WAPA under a long-term firm power service contract, customers must prepare, submit, and implement IRPs. *See* 42 U.S.C. §§ 7276(a) and 7276b(a); 10 C.F.R. § 905.10(a).<sup>2</sup> The integrated planning process is a “process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, to provide adequate and reliable service to a customer’s electric consumers at the lowest system cost.” 42 U.S.C. § 7275(2); 10 C.F.R. § 905.2. The requirement that IRPs be prepared and implemented was enacted in 1992 to promote investment in conservation, energy efficiency, and renewable energy resources.

Among other things, IRPs must identify available resource options (including all practicable energy efficiency and energy supply resource options), designated least cost resource options (taking into account life-cycle system costs and giving priority to energy efficiency and renewable resources, to the extent practicable), describe specific actions that will be taken to implement the IRP, minimize adverse environmental effects, including the effects of new resource acquisition, and provide for public participation. *See* 42 U.S.C. § 7276b(b); 10 C.F.R. § 905.11(b). IRPs must be revised and submitted to WAPA every five years. *See* 42 U.S.C. § 7276b(a).

WAPA is charged with reviewing IRPs, including revised IRPs, to determine whether they meet the specific statutory and regulatory criteria set forth at 42 U.S.C. § 7276b(b)(1)-(8) (also set forth at 10 C.F.R. § 905.11(b)(1)-(6)). 42 U.S.C. § 7276b(a). If an IRP meets the criteria set forth at 42 U.S.C. § 7276b(b) and 10 C.F.R. § 905.11(b), it must be approved.

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<sup>2</sup> A long-term firm power service contract is any contract for the sale of power by WAPA of firm capacity, or energy capacity that is guaranteed to be available 24 hours a day, which is to be delivered over a period for more than one year. *See* 42 U.S.C. § 7275(4).

Approval of an IRP means that WAPA may enter into a long-term firm power service contract for the purpose of selling electric energy to the customer.

If an IRP does not meet the criteria set forth under 42 U.S.C. § 7276b(b) and 10 C.F.R. § 905.11(b), WAPA must “disapprove” the IRP. *See* 42 U.S.C. § 7276b(b); 10 C.F.R. § 905.18(b). Disapproval subjects the customer to penalties. *See* 42 U.S.C. § 7276b(e)(1); 10 C.F.R. § 905.20(b). A surcharge of 10% of the purchase price of power initially applies if a plan is not submitted and approved within 12 months of disapproval. *See* 10 C.F.R. § 905.20(d)(1). Where a plan is not submitted and approved within a second 12-month period, a 20% surcharge applies, and a surcharge of 30% applies every year thereafter that a plan is not approved. *See Id.* WAPA also has the option of curtailing the amount of power sold to a customer if it would be “more effective to ensure customer compliance.” 10 C.F.R. § 905.20(d)(3)(i). WAPA has the option of reducing the amount of power delivered to a customer under a long-term firm power contract by 10% following the first 12 months after disapproval and imposition of the 10% surcharge. *Id.* Ultimately, penalties apply until the customer’s contract terminates. *See* 42 U.S.C. § 7276b(e)(1).

The IRP process therefore is a critical, statutorily endorsed means for WAPA to leverage wholesale power sales to compel its customers to afford greater and more objective attention to environmental impacts, to energy efficiency and renewable energy resources, and to public process. Given that the purchase of wholesale power from the federal government is a major portion of many customers’ generating portfolios, the IRP process is, in effect, an important incentive program. In exchange for the opportunity to secure cheap, reliable, and long-term power, customers need only exhibit basic accountability to the environment, to a full range of resource options, to giving full consideration to life-cycle resource costs, and to the public. If customers do not wish to meet these requirements, they foreclose the opportunity to enter into long-term firm power service contracts with WAPA.

### **The IRP Process and its Clear Relation to NEPA**

In the context of WAPA’s duty to ensure customer IRPs effectively minimize adverse environmental impacts, consider a range of resource alternatives, and involve the public, it greatly concerns us that the Administration believes NEPA does not apply to review and approval of IRPs. Indeed, it appears WAPA approval of IRPs is exactly the kind of action that must be guided by NEPA.

“NEPA is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). It is meant to “foster excellent action,” intended to “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c). At a basic level, NEPA requires that, prior to undertaking an action that affects the environment, federal agencies analyze and assess environmental consequences (i.e., effects), consider a range of reasonable alternatives, and make a well-informed decision based on these considerations. To this end, NEPA requires that “high quality” environmental information be relied upon and made available to the public before actions are taken, noting that that “accurate scientific analysis, expert agency

comments, and public scrutiny” are essential components of NEPA compliance. 40 C.F.R. § 1500.1(b).

More specifically to WAPA, Department of Energy regulations explain that NEPA “applies to any [WAPA] action affecting the quality of the environment of the United States[.]” 10 C.F.R. § 1021.102(b).<sup>3</sup> An action includes a “project, program, plan, or policy” that is subject to WAPA control and responsibility. 10 C.F.R. § 1021.104(b). Before carrying out an action, WAPA must determine the level of NEPA analysis required. One of three levels of analysis may be required, depending on the significance of the impacts: 1) An “environmental impact statement” (“EIS”), which is required for any action that may significantly impact the environment; 2) An “environmental assessment” (“EA”), which is required for any action that does not significantly impact the environment; and 3) A “categorical exclu[sion],” which is required for actions that do not require an EIS or EA. 40 C.F.R. § 10.1021.300(a). An EIS must be prepared in accordance with procedures at 10 C.F.R. §§ 1021.310-1021.315, including that WAPA provide adequate public notice and opportunity for comment. An EA must be prepared in accordance with procedures at 10 C.F.R. §§ 1021.320-1021.322, including that WAPA provide adequate public notice. Documentation and public notice does not need to be given for categorical exclusions that apply to “general agency actions,” but documentation and public notice of categorical exclusions that apply to “specific agency action” must be provided. 10 C.F.R. § 1021.410(e).

Here, WAPA action to approve or disapprove IRPs is an “action” as defined by 10 C.F.R. § 1021.104(b). Approval or disapproval of IRPs is a “project” or “plan” subject to WAPA control and responsibility. Furthermore, it is not a “ministerial” action for which WAPA has no discretion, which is not considered an “action” under Department of Energy rules. Under the plain language of the Energy Policy Act of 1992, as well as WAPA’s own regulations, the Administration must exercise discretion in reviewing customer IRPs to ensure they meet relevant criteria. WAPA’s assessment of whether a customer “to the extent practicable, minimized adverse environmental effects of new resource acquisitions” in accordance with 42 U.S.C. § 7276b(b)(4) is a clear example of where Administration discretion is invoked.

The fact that the Energy Policy Act of 1992 explicitly contemplates disapproval of IRPs, as well as the imposition of penalties and potentially even the termination of a long-term firm power service contracts with WAPA, further indicates the Administration’s review involves the application and exercise of discretion. Review and approval of IRPs is not a ministerial action or a foregone conclusion; it requires analysis and application of judgment that only WAPA can provide.

WAPA action to approve or disapprove IRPs also clearly poses effects to the quality of the environment. The Energy Policy Act of 1992 expressly states that in assessing and designating a “least cost option,” that “life-cycle system costs, including adverse environmental effects,” be minimized to the extent practicable (42 U.S.C. § 7275(3)), indicating that

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<sup>3</sup> Department of Energy NEPA regulations apply to “all organizational elements of DOE except the Federal Energy Regulatory Commission.” 10 C.F.R. § 1021.102(a). Thus, WAPA, as an organizational element of the Department of Energy, must comply with the Department’s relevant NEPA regulations.

environmental impacts are an expected outcome of IRP approval. To this end, in assessing existing and future resource options (including supply-side and demand-side options), WAPA rules expressly state that “environmental impacts,” among other factors, may be considered. 10 C.F.R. § 905.11(b)(1)(iii). The Energy Policy Act further contemplates that customer acquisition of new resources poses environmental effects. The law explicitly requires that the adverse environmental impacts of new resource acquisition be “minimized” to the extent practicable. 42 U.S.C. § 7276b(b)(4).

The fact that the Energy Policy Act not only contemplates, but demands, that WAPA disapprove IRPs if customers do not appropriately address environmental impacts, including minimizing life-cycle system costs and the adverse environmental effects of new resource acquisitions, clearly indicates that WAPA action on an IRP poses direct, indirect, and cumulative impacts. Indeed, WAPA disapproval of an IRP is likely to compel a customer to further minimize adverse environmental impacts in order to secure the privilege of purchasing wholesale power, or at least prevent the federal government from subsidizing (through the sale of wholesale power) unacceptable adverse environmental consequences.<sup>4</sup>

The potentially significant effects of IRP approval can be seen with regards to one of WAPA’s largest customers, Tri-State Generation and Transmission (“Tri-State”). According to Tri-State’s most recent IRP, 12% of its power comes from wholesale purchases from WAPA. *See* Tri-State Generation and Transmission, “Integrated Resource Plan/Electric Resource Plan” (Nov. 2010), available online at [http://www.tristategt.org/ResourcePlanning/documents/Tri-State\\_IRP-ERP\\_Final.pdf](http://www.tristategt.org/ResourcePlanning/documents/Tri-State_IRP-ERP_Final.pdf) (last accessed March 7, 2014). This is not an insignificant amount of power and indicates that Tri-State relies heavily on WAPA to meet its power needs. At the same time, the company’s IRP shows that the majority of its power comes from coal-fired generating facilities, which pose some of the most significant environmental impacts of any form of electricity generation. Tri-State’s own IRP actually discloses that under its coal dominated resource portfolio, emissions of harmful air pollutants, including mercury and carbon dioxide, will increase under its resource plan. *See* IRP at 151-153. Other impacts, including increased water consumption, are also projected to occur. *See id.* In spite of these impacts, Tri-State’s IRP maintains all coal-fired generating resources and even includes an option for a new 700-megawatt coal-fired power plant in Kansas. *See* IRP at 197.<sup>5</sup>

In April of 2011, WAPA approved Tri-State’s IRP with one sentence: “The IRP has been reviewed and approved and will be effective until February 15, 2016.” *See* Letter from WAPA to Fred Stoffel, Senior Manager, Budget/Financial, Business Analytics, Tri-State Generation and Transmission Association, Inc., approving IRP (April 6, 2011). In doing so, WAPA effectively

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<sup>4</sup> The extent to which WAPA disapproval of an IRP would incentivize a customer to further minimize environmental impact is exactly the type of analysis that would be conducted under NEPA.

<sup>5</sup> To the extent that Tri-State’s IRP address environmental impacts, it does not appear that an actual analysis and assessment of impacts was completed in accordance with NEPA. Thus, to the extent that WAPA may believe Tri-State’s IRP, or other customers’ IRP for that matter, are sufficient to meet NEPA, the Administration is simply incorrect. Furthermore, to the extent that NEPA allows WAPA to adopt another agencies analysis, it may only do so when the analysis is a “Federal draft or final environmental impact statement or portion thereof [] that meets the standards for an adequate statement under these [NEPA] regulations.” 40 C.F.R. § 1506.3(a).

approved of the environmental impacts of Tri-State's coal-fired generating resources, as well as the company's plans to acquire new coal-fired resources. Not only did WAPA's approval effectively condone these impacts, by selling wholesale power to Tri-State, this approval appears to have enabled these impacts.

This is only one example. There are many customers of WAPA that own and operate coal-fired resources, including, but not limited to, the Platte River Power Authority, Salt River Project, Deseret Power, Basin Electric, Colorado Springs Utilities, Sunflower Electric Power Corp., Utah Associated Municipal Power Systems, Nebraska Public Power District, Otter Tail Power Company, and Minnkota Power Cooperative. WAPA's review and approval of IRPs for these customers further underscores that the process must be guided by NEPA. Here, there is no doubt that such actions are major, that they pose potentially significant adverse environmental impacts, and that WAPA has discretion to influence the outcome of the IRP process to minimize these impacts.

Despite this, WAPA has confusingly taken the position that NEPA does not apply to its review and approval of IRPs and appears to be making no effort to analyze and assess the impacts of IRP approval accordingly, or to involve the public in its review and approval of IRPs. In the case of Tri-State's IRP (as well as IRPs for other customers), WAPA conducted no analysis or assessment of adverse impacts, did not consider any alternatives to ensure that environmental impacts were effectively minimized, and furthermore provided no public notice of its proposed approval and final action. Plainly, its decision was not based on a demonstrated understanding of environmental consequences.

WAPA's position that NEPA does not apply to IRP review and approval is not just squarely at odds with the law, it defies the outcomes that would be achieved through adherence to NEPA. In the case of Tri-State's IRP, if WAPA would have complied with NEPA, the Administration would have conducted an analysis and assessment of the environmental impacts of the IRP, would have considered alternatives (such as differing levels of adverse environmental impact minimization or varying "least cost options"), and would have provided public notice of its proposed action and likely an opportunity for public comment. Based on these considerations, WAPA would have made an informed decision as to whether Tri-State's IRP was sufficient, particularly with regards to ensuring minimization of adverse environmental impacts, and approved or disapproved of the IRP accordingly.

Given that the IRP review and approval process appears to be precisely the type of federal action that should be governed by NEPA, perhaps it is no surprise that the Energy Policy Act of 1992 expressly states that NEPA applies to WAPA review and approval of IRPs. As the Act states, "The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. et seq.] shall apply to actions of the Administrator implementing sections 7275 to 7276c of this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 7276c(a). Here, the IRP review and approval process is an action by WAPA implementing sections 7275 to 7276c (specifically, review and approval is guided by 42 U.S.C. § 7276(b)). It thus appears clear that

NEPA applies “in the same manner and to the same extent” to IRP review and approvals as it applies to other federal actions under NEPA.<sup>6</sup>

### **The IRP Process and the Endangered Species Act**

The fact that WAPA is not meeting its NEPA obligations with regards to the review and approval of IRPs raises further concerns that the Administration may not be complying with other substantive obligations under federal law. These concerns are most evident with regards to federal agency duties under section 7 of the ESA.

Specifically, section 7 of the ESA imposes two affirmative duties upon federal agencies, including WAPA. First, section 7(a)(1) requires the agency to “in consultation with and with the assistance of the Secretary [of Interior], utilize [its] authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of [listed species].” 16 U.S.C. § 1536(a)(1). Second, section 7(a)(2) requires agencies to “in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any [listed species] or result in the destruction or adverse modification of habitat of such species[.]” 16 U.S.C. § 1536(a)(2). Section 7(a)(1) therefore imposes a proactive affirmative duty upon federal agencies, regardless of specific agency action, to further the conservation of threatened and endangered species, while section 7(a)(2) imposes a reactive affirmative duty that is triggered by discrete agency action.

To this end, ESA rules explicitly require that federal agencies formally consult with the U.S. Fish and Wildlife Service whenever an action “may affect” a listed species. 50 C.F.R. § 402.14(a).<sup>7</sup> Actions are defined broadly as “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States” and include “the granting of licenses, contracts, leases, easements, rights-of-ways, permits or grants-in-aid” and “actions directly or indirectly causing modifications to the land, water, or air.” 50 C.F.R. § 402.02. Furthermore, actions triggering consultation requirements must involve an exercise of “discretionary Federal involvement or control.” 50 C.F.R. § 402.03.

Here, it appears that WAPA review and approval of IRPs is subject to section 7 requirements under the ESA. To begin with, action on IRPs is clearly an “action” as defined by ESA rules. IRP approval not only prerequisite for WAPA to enter into long-term firm power contracts with customers, but such approval indirectly causes modifications to the land, water, or air. As explained above, Congress contemplated that IRP approval would lead to adverse

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<sup>6</sup> WAPA appears to have taken the position that 42 U.S.C. § 7276c(a) applies only to rulemaking actions implementing 42 U.S.C. §§ 7275-7276c. For example, in 1995, WAPA prepared an EIS in relation to the adoption of its Energy Planning and Management Program under Section 114 of the Energy Policy Act of 1992. *See* 60 Fed. Reg. 53181 (Oct. 12, 1995). However, § 7276c(a) appears to apply to any actions implementing 42 U.S.C. §§ 7275-7276c, not simply rulemakings.

<sup>7</sup> Federal agencies must also consult with the National Oceanic and Atmospheric Administration National Marine Fisheries Service where actions may affect marine species listed under the ESA.

environmental impacts, including land, water, and air impacts, and therefore sought to ensure that such impacts were appropriately minimized.

Action on IRPs also involves discretionary involvement or control. Although WAPA is obligated to review and take action on IRPs, the Energy Policy Act of 1992 clearly vests the Administration with discretion to approve or disapprove based on consideration of adverse environmental impacts, which would include impacts to species listed under the ESA. As explained, WAPA may only approve IRPs if it determines, based on its own exercise of judgment, that environmental impacts have been appropriately minimized. To this end, WAPA both has the ability to influence the actions of its customers, but also to influence the role of the federal government in involving itself in actions that indirectly affect listed species. Clearly there is discretionary involvement or control in the IRP review and approval process. Accordingly, WAPA's review must necessarily include consideration of whether the IRPs appropriately minimize adverse impacts to species listed under the ESA such that their existence is not jeopardized and critical habitat not adversely modified.

Finally, there is no question that WAPA's review and approval of IRPs "may affect" species listed under the ESA and their critical habitats. A key point of the IRP process is to ensure that WAPA leverages its long-term firm power contracting authorities to ensure its customers minimize adverse environmental impacts. This leverage occurs through IRP disapproval, the imposition of surcharges, and through contract terminations. Although not explicitly defined under the Energy Policy Act or Department of Energy regulations, it is reasonably presumed that "environmental effects" includes effects to fish, wildlife, and plants, including those listed under the ESA. To this end, WAPA appears more than empowered to leverage its IRP authorities to ensure customers minimize adverse effects to species listed under the ESA, or at least limit the extent to which such species are adversely effected. While such effects may be an "indirect" consequence of WAPA review and approval of IRPs, "effects" under the ESA has been defined to encompass such indirect impacts.

At the least, WAPA appears more than empowered to ensure wholesale federal power sold to customers does not incentivize or subsidize adverse environmental effects that may jeopardize the continued existence of listed species or adversely modify their critical habitat.

The potential effects of customer IRPs to threatened and endangered species can again be seen with regards to Tri-State Generation and Transmission, one of WAPA's largest customers. One of the company's most significant generating resources, Craig Generating Station near Craig, Colorado, a three unit 1,339 coal-fired power plant, discharges air emissions and water effluent into the Yampa River drainage, which supports populations and critical habitat for the endangered razorback sucker and Colorado pikeminnow.<sup>8</sup> To this end, it appears that the operation of this facility "may affect" species listed under the ESA and their critical habitat. Similarly, we are concerned that coal-fired generating resources operated by other customers similarly "may affect" threatened and endangered species.

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<sup>8</sup> Tri-State owns 24% of units 1 and 2 and 100% of unit 3 at the Craig Generating Station. See Tri-State IRP at 35-36.



That WAPA has not consulted with the U.S. Fish and Wildlife Service when reviewing and approving IRPs is therefore disconcerting. Particularly given that the ESA imposes a duty upon WAPA to consult in order to “utilize [its] authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of [listed species],” we are concerned that the Administration is overlooking key opportunities to advance the protection and recovery of imperiled fish, wildlife, and plants throughout the western United States. Not only that, but WAPA appears to be doing so in contravention of the ESA.

In light of the fact that IRP review and approval involves agency discretion, is an action in the context of the ESA, and “may affect” listed species, there appears to be no valid reason for WAPA to not undertake consultation in accordance with section 7.

## **Conclusion**

In light of the aforementioned, WildEarth Guardians is greatly concerned. WAPA appears to be that WAPA may be inappropriately endorsing the adverse environmental impacts of customer IRPs, including impacts to threatened and endangered species, that should not be. To this end, we urge WAPA to undertake the following actions:

1. WAPA must immediately take steps to ensure that IRPs currently under review are subjected to NEPA, as appropriate. At a minimum, WAPA must ensure that public notice of its proposed actions is provided and that IRPs are reviewed using the appropriate level of NEPA documentation (an EA or EIS given that there is no categorical exclusion for IRP approvals).
2. In accordance with 40 C.F.R. §§ 1500.6 and 1507.3(a), WAPA must review its policies, procedures, and regulations and revise them as necessary to guide future IRP reviews to ensure full and consistent compliance with NEPA at all times. Any revision to WAPA’s policies, procedures, and/or regulations must be completed in consultation with the Council on Environmental Quality in accordance with 40 C.F.R. § 1507.3(a). We urge WAPA to complete such review and undertake any necessary revisions within one year.
3. WAPA must immediately take steps to bring its IRP review and approval process into compliance with the ESA. To this end, WAPA must initiate formal consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the ESA on any IRP currently under review. WAPA cannot approve any IRP before undertaking and completing such consultation and complying with any U.S. Fish and Wildlife Service response to any consultation.
4. WAPA must reinitiate section 7 consultation with the U.S. Fish and Wildlife Service over any and all IRPs that have been approved and are in effect. Reinitiation is warranted under 50 C.F.R. § 402.16 in light of new information indicating that WAPA’s IRP approvals may affect species listed under the ESA and their critical habitats in a manner and to an extent not previously considered.

The need to reassess WAPA's position on these matters is critical. It appears that the IRP process provides important opportunities for the federal government to play a meaningful role in advancing clean energy in the American West and in minimizing the impacts of fossil fuel energy generation. With environmental duties going unfulfilled, it concerns us that WAPA may be enabling a status quo approach to doing business with customers that ultimately prioritizes coal over renewable energy. With coal-fired energy generation taking a toll on our climate, waters, air quality, and the land, WAPA cannot simply rubber stamp IRPs without meaningfully analyzing whether customers are actually minimizing adverse environmental impacts.

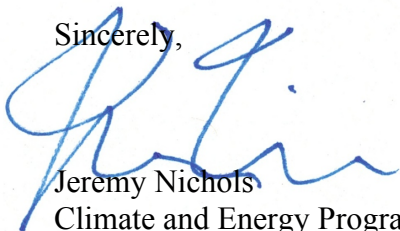
We appreciate your time and attention to this matter. If WAPA disagrees with our concerns, or otherwise disagrees that the aforementioned actions are warranted, we request the Administration provide us an explanation in writing. As you can imagine, it concerns us that such a significant federal program, whose aim is to ensure that adverse environmental impacts are minimized, could avoid even basic environmental scrutiny. If we are in err, a detailed explanation would be enormously helpful in shedding further light on these issues and reassuring us that WAPA is, in fact, effectively marketing federal power and working with customers to address the adverse environmental impacts of their IRPs.

Regardless, we would appreciate a written response to this letter within 30 days.

Copies of this letter have been sent to the White House Council on Environmental Quality, as well as the U.S. Fish and Wildlife Service, given their respective roles in overseeing implementation of NEPA and the ESA.

Thank you again for your time and attention to this matter.

Sincerely,



Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
1536 Wynkoop, Suite 301  
Denver, CO 80202  
(303) 437-7663  
[jnichols@wildearthguardians.org](mailto:jnichols@wildearthguardians.org)

cc: Mike Boots, Acting Chair, White House Council on Environmental Quality  
Dan Ashe, Director, U.S. Fish and Wildlife Service