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Statement of John C. Seebach
National Coordinator, Hydropower Reform Coalition

House Natural Resources Committee
Subcommittee on National Parks, Forests, and Public Lands

Mr. Chairman and members of the Committee:

My name is John Seebach, and I am the national coordinator of the Hydropower Reform Coalition, a consortium of more than 140 conservation and recreation organizations dedicated to protecting and restoring rivers impacted by hydropower dams. I am appearing today on behalf of American Rivers, which is the Coalition's chair. The views presented in this testimony are those of American Rivers, and not necessarily those of the entire Coalition. I would like to thank the Committee for holding this hearing, and for extending me this opportunity to testify on H.R. 523, the *Douglas County, Washington, PUD Conveyance Act*.

American Rivers is the national organization that stands up for healthy rivers so our communities can thrive. We believe rivers are vital to our health, safety and quality of life. We pioneer and deliver locally-oriented solutions to protect natural habitats and build sustainable communities. We lead national campaigns to raise awareness of river issues and mobilize an extensive network that includes more than 65,000 members and activists to help safeguard our rivers for today and tomorrow.

American Rivers opposes H.R. 523

H.R. 523 directs the Secretary of the Interior to sell more than 600 acres of public land managed by the Bureau of Land Management (BLM) to the Douglas County Public Utility District (PUD), overriding three laws that protect public land and the broader public interest, including the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Federal Power Act (FPA). This bill would also affect the ongoing relicensing of the Wells hydroelectric project by removing existing federal authorities that are intended to protect these lands from the project's impacts. American Rivers is opposed to this bill on two basic principles:

- **Federal land transfers should be conducted through an open public process:** This bill would result in a forced sale of public land that bypasses the existing legal framework for a land transfer process, thwarting public participation, environmental review, and competitive bidding requirements. The procedures outlined in the Federal Land Policy and Management Act offer the appropriate forum for disposing of federal land.
- **Congress should generally avoid legislating the outcome of individual hydropower licensing proceedings:** By removing the land in question from federal ownership, the bill

would materially affect existing federal authorities – and potentially the outcome – of the ongoing relicensing of the Wells hydroelectric project. Congress should not preempt the BLM's authority to protect lands affected by a hydropower project by forcing the sale of those lands to the operator of that project.

Federal land transfers should be conducted through an open public process

By circumventing the land transfer procedures outlined in FLPMA and, by extension, environmental review under NEPA, H.R. 523 would dispose of public land located on the shores of a stretch of the scenic Columbia River without any meaningful review to determine if the proposed land transfer would best serve the public interest.

It is extremely rare for the BLM to sell riverside land. Absent this bill, the BLM would not be able to sell the land identified in this bill, as none of the land has been identified as suitable for disposal in the Spokane Resource Management Plan (RMP). Under existing law, the BLM would need to amend its RMP in order to sell this land, a procedure that would require, at the minimum, a public notice and comment period. Any proposed sale of this land would likely trigger NEPA review as well. H.R. 523 would effectively remove both of these deliberative processes from the proposed land transfer. There would be no opportunity for the public to participate in the decision, submit comments, or ask questions about how the land is currently being managed and how it might best be managed in the future.

Under the terms of H.R. 523, the land would simply be sold to the PUD without any stipulations regarding its future management or additional public discussion of the potential immediate or future consequences of the sale. While the bill would transfer the land to non-federal public ownership, the Douglas County PUD and the BLM have very different missions. There are strict rules that govern how the BLM should manage the public lands in its care. The PUD, on the other hand, must balance land stewardship against the financial interests of its own ratepayers. There would be nothing to prevent the land from being sold to private interests after the transfer required in the bill is complete.

American Rivers does not believe that this Committee has enough information to determine if the actual land transfer being proposed in this bill would result in a net benefit to the public. Instead, we support an open, transparent, public review of the facts of this particular case: precisely the sort of review that this bill would preclude. Laws like NEPA and FLPMA ensure that decisions like these are accompanied by careful analysis and an open, deliberative process. These formal processes would give other members of the public – who may be more familiar with the resource and have a direct interest in how it is managed – an opportunity to be heard.

Congress should not legislate the outcome of an individual hydropower licensing proceeding

While the terms by which H.R. 523 proposes to sell public lands – a forced sale to a pre-ordained buyer without the public participation, environmental review, or competitive bidding that would ordinarily be required by law – are clearly not in the public interest, another aspect of the bill is even more troubling. The lands in question are located either within or adjacent to the project boundary of the Wells hydroelectric project, which is operated by the PUD under the terms of a Federal license (P-2149) that will expire in May of 2012. This bill would effectively remove the Secretary of Interior's authority to place conditions that the Bureau of Land Management (BLM) deems necessary to protect these BLM-

managed public lands and the public's use of those lands from the adverse impacts of the Wells hydroelectric project.

The Wells hydroelectric project currently operates under a 50-year license issued by the Federal Energy Regulatory Commission (FERC; previously the Federal Power Commission) in 1962. The PUD has already begun the 5-year process of seeking a new license for the project, filing a Pre-Application Document with FERC on December 1, 2006. FERC has already initiated the NEPA scoping process for this relicensing. The relicensing of a hydropower facility almost always results in tangible benefits for non-power public values, such as protected fish and wildlife habitat, improved water quality, and enhanced opportunities for public recreation. These improvements can be particularly significant at projects like the Wells project, which received its original license in an era before the advent of modern environmental laws.

Section 4(e) of the Federal Power Act instructs FERC to give equal consideration to environmental and recreational resources as well as power resources when issuing a license for a hydroelectric facility. The same section of the Federal Power Act also requires FERC to ensure that it does not issue licenses that interfere with the purposes of federal reservations that overlap the boundaries of hydropower projects, including Indian reservations, national forests, and other federally reserved lands. The Federal Power Act accomplishes this goal by requiring FERC to include in its licenses any conditions that the responsible Secretaries deem necessary for the "adequate protection and utilization" of these reservations.

The March 2, 2006 map prepared by the Douglas County PUD shows that the Wells hydroelectric project overlaps two federal reservations: the Colville Indian Reservation on the east, and several tracts of federal land that is managed by the BLM. The proposed transfer includes all BLM-managed land that overlaps the project boundary of the Wells Hydroelectric project. The authority to condition hydropower licenses under section 4(e) is limited to reservations that overlap the project boundary. By requiring that all BLM-managed land overlapping the project be sold to the PUD, H.R. 523 would remove the Secretary of the Interior's authority to require license conditions that will protect BLM-managed land from any adverse impacts caused by the operation of this hydropower project. In so doing, the bill would materially affect existing federal authorities during an ongoing federal licensing proceeding.

All of the lands in question are clearly affected by the project: one tract is inundated by the reservoir, one tract has transmission lines running through it, and the remaining tracts are on the banks of the river and reservoir. Section 4(e) conditions typically include provisions designed to protect water quality, recreation and public access, fire prevention, vegetation, and wildlife. It is still too early in the relicensing process for the BLM to determine if section 4(e) conditions would be necessary to protect these reservations, but information from the study phase of the relicensing or other relevant public input could lead the Secretary to determine that such conditions would be necessary. Congress should not preempt this authority by forcing the BLM to sell the land during the pending relicensing process.

Directing the BLM to sell public lands during an ongoing hydropower would set a dangerous precedent. The message to hydropower operators would be clear: if you wish to avoid license requirements

designed to protect the environment from your hydropower project – and the costs associated with meeting these responsibilities – ask Congress to sell you the land. Whether or not that is the intention behind this particular bill, the result would be the same: a loss of federal authority to protect public values during the first opportunity in fifty years to exercise that authority.

In addition to our substantive concerns outlined above, we note that there is no real urgency behind this proposal. We have not yet been presented with any compelling reason why this land should be sold while the Wells project relicensing proceeding is still pending. A FERC hydropower licensing process involves NEPA review, and offers an excellent opportunity for public participation and collaborative discussions among all stakeholders. Licensing often results in broad agreements about how project-related land should be managed. As it earns its new FERC license, the PUD could win broad stakeholder approval for some sort of land transfer. In the past American Rivers has supported land exchange legislation, such as the Tapoco Project Licensing Act of 2004, that resulted from comprehensive settlement agreements. While we remain opposed to this bill, we note that this hearing has already spurred some positive discussions with the Douglas County Public Utility District (PUD), and we hope to continue these discussions.

Conclusion

American Rivers strongly opposes H.R. 523 in its current form. It would result in a net loss of public land and a net loss of federal authority to protect public values at an existing hydropower project. It would set a damaging precedent that could undermine future hydropower licensing proceedings. Decisions about the sale of public land should be made through the open, deliberative, and public processes already provided by FLPMA and NEPA. We recognize that dealing with complex administrative processes can be frustrating, but it is also important to remember that these processes have been put in place to protect the public.