



May 3, 2017

The Honorable Fred Upton  
Chairman  
Subcommittee on Energy  
House Committee on Energy and Commerce  
2125 Rayburn House Building  
Washington, DC 20515

The Honorable Bobby Rush  
Ranking Member  
Subcommittee on Energy  
House Committee on Energy and Commerce  
2125 Rayburn House Building  
Washington, DC 20515

Dear Chairman Upton and Ranking Member Rush:

The Hydropower Reform Coalition would like to register our strong opposition to the current versions of Discussion Draft Hydropower Policy Modernization Act; Discussion Draft Promoting Hydropower Development at Existing Non-Powered Dams Act; and Discussion Draft Promoting Closed-Loop Pumped Storage Hydropower Act. These drafts elevate FERC above all other federal, state, and local agencies and tribes and in the process undo many of the checks and balances that have equitably balanced hydropower development with other uses of our public resources for 40 years.

The Federal Energy Regulatory Commission (FERC) has long shared the responsibility for developing hydropower license conditions with those state and federal agencies that have the statutory mandates, experience, and expertise FERC lacks. This team approach serves to ensure that impacts from hydropower operations to public resources such as fish, wildlife, water quality, recreation, and federal property are fully mitigated. Congress has placed checks and balances on FERC's authority through Sections 4(e) and 18 of the Federal Power Act, Section 401 of the Clean Water Act, and the consultation requirements in the Endangered Species Act. Collectively, these mandatory conditioning authorities ensure that natural resources and public property are protected from the impacts of hydropower projects.

While the goal of the Discussion Draft Hydropower Policy Modernization Act is to address the perceived delay in the hydropower licensing process, it has the following practical impacts:

- It severely constrains the ability of federal and state agencies as well as tribes to protect the lands and the waters they manage,
- It gives power to a bureaucratic agency in Washington DC to protect our natural resources over scientific experts in federal and state agencies working in local communities who understand the resources better from direct on-the-ground experience, and
- It imposes undue burden on sister agencies that are participants in the licensing process by allowing FERC to set a schedule that even it may be not be able to meet.

While we oppose the current Discussion Draft for these reasons, we appreciate that this has been introduced as a draft and we would welcome the opportunity to engage with the Committee and interested parties to achieve mutually beneficial outcomes that improve the licensing process, provide

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**Steering Committee:**

Alabama Rivers Alliance • American Rivers • American Whitewater • Appalachian Mountain Club  
California Hydropower Reform Coalition • California Sportfishing Protection Alliance • Friends of the River  
Idaho Rivers United • Michigan Hydro Relicensing Coalition • New England FLOW  
Coastal Conservation League • Trout Unlimited • Water and Power Law Group

greater certainty to licensees, and address resource impacts of hydropower projects in a meaningful way.

The Discussion Draft Promoting Hydropower Development at Existing Non-Powered Dams Act and Discussion Draft Promoting Closed-Loop Pumped Storage Hydropower Act also take away the authorities of scientists and experts at natural resource management agencies and place them in the hands of federal regulators in Washington DC whose expertise lies in energy regulation. The provisions in these drafts will have detrimental effect on fish, wildlife, public lands, Native American trust and treaty obligations, and state water rights during development of hydropower at non-powered dams and closed-loop pumped storage projects.

The Hydropower Reform Coalition believes that there are ways to improve the licensing process and to get hydropower projects licensed faster. We think adequate communication and cooperation between federal agencies, including FERC, is the single most effective way to ensure smooth and faster licensing process. For that, we offer the following preliminary recommendations for FERC to do the following:

- Approve licensing studies requested by federal, state, and tribal resource management agencies in the licensing process;
- Promote memoranda of understanding (MOU) with tribes and states to improve coordination and prevent unnecessary delay; and
- Explore ways to improve coordination with the U.S. Army Corps of Engineers (USACE) to expedite the powering of non-powered dams owned and operated by the ACE.

We also have three recommendations for consideration by Congress:

- Consider increasing appropriations to federal resource management agencies to fund the staff positions allowing for efficient and thorough evaluation of hydroelectric licenses;
- Delegate Section 4(e) and 18 authorities under the Federal Power Act to technically qualified and capable tribes;
- Consider amending the Federal Power Act to remove FERC jurisdiction over dams owned by the USACE.

The balance the Federal Power Act strikes between power and non-power values has existed for almost a century. Current law protects the public's right to enjoy its rivers, a right which can and should be compatible with responsible electricity production. However, these Discussion Drafts upend that balance. Simply put, these Drafts come at the expense of healthy rivers and the fish, wildlife, and people that depend upon them while doing little to bring more hydropower projects online.

The Hydropower Reform Coalition is ready and willing to work with the Committee and other stakeholders to work on common sense reforms to hydropower licensing while also protecting natural resources. Please do not hesitate to contact me at [okeefe@americanwhitewater.org](mailto:okeefe@americanwhitewater.org) or (425) 417-9012 if you have any questions or require additional assistance.

Sincerely,



Thomas O'Keefe  
Chair  
Hydropower Reform Coalition