



September 8, 2015

The Honorable Ed Whitfield, Chairman
Energy and Power Subcommittee
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Bobby L. Rush, Ranking
Member
Energy and Power Subcommittee
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

VIA FACSIMILE

Re: Comments on the Hydropower Regulatory Modernization Act of 2015 (discussion draft)

Dear Chairman Whitfield and Ranking Member Rush:

The Environmental Council of States (ECOS), the Association of Clean Water Administrators (ACWA), and the Association of State Wetland Managers (ASWM) write to express concern with the draft discussion bill known as the "Hydropower Regulatory Modernization Act of 2015." If enacted, the draft bill would modify requirements with respect to Federal Energy Regulatory Commission (FERC) licensing under the Federal Power Act.

States are responsible, under the federal Clean Water Act (CWA or Act) and under a state's own laws and regulations, to advance the attainment of clean and healthy waters and to prevent violations of the water quality standards designed to support these goals. CWA Section 401 was incorporated into the Act to ensure applicants seeking federal licenses or permits to conduct operations that could impact navigable waters must provide certification from the state in which the discharge originates and that the project will comply with applicable water quality standards and other state requirements. We believe states have acted efficiently under this authorization, as required by the regulations related to Section 401, in certifying hydropower facilities, establishing procedures, and providing primary responsibility to ensure that water quality standards are met initially or through remedial actions.

Several states have expressed concern that provisions in the draft Hydropower Regulatory Modernization Act of 2015 could be interpreted to remove state Section 401(a) authority for these types of licenses. In addition, the draft bill could also limit states' abilities to obtain data necessary to certify waters within their jurisdiction. This could result in federal agencies making regulatory decisions without full technical information, which puts them at risk for missed deadlines, litigation, and less effective control of hydropower facilities.

States also are concerned that the draft's Section 1301(h), *Administration of Hydropower Licenses to the Federal Power Act* and Section 1301(i), *Effective Use of Existing Information*, amending the Federal Energy Regulatory Commission's (FERC's) Integrated Licensing Process (ILP), could eliminate responsiveness to environmental concerns and slow the process of scheduling and licensing.

In closing, we would like to discuss with you ways to revise the language to clearly preserve state's rights under CWA Section 401 and to avoid problematic changes to the ILP. We will follow up with your offices in the coming weeks to further discuss this letter. Thank you for your consideration of our concerns.

Sincerely,



Julia Anastasio
Executive Director and General Counsel
Association of Clean Water Administrators



Jeanne Christie
Executive Director
Association of State Wetland Managers



Alexandra Dapolito Dunn
Executive Director and General Counsel
Environmental Council of the States

Cc via Email: The Honorable Gina McCarthy, Administrator, U.S. Environmental Protection Agency
Ken Kopocis, Deputy Assistant Administrator, U.S. Environmental Protection Agency
Office of Water
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works, U.S.
Army Corps of Engineers