



October 5, 2017

The Honorable Paul Ryan, Speaker
Congress of the United States
House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi, Minority Leader
Congress of the United States
House of Representatives
233 Cannon House Office Building
Washington, DC 20515

Dear Speaker Ryan and Minority Leader Pelosi:

We are writing you on behalf of the members of The Association of Clean Water Administrators (ACWA), Environmental Council of States (ECOS), and The Association of State Wetland Managers (ASWM) to express our concern with provisions of H.R. 3043- *Hydropower Policy Modernization Act of 2017*. If enacted as written, the draft bill would modify Federal Energy Regulatory Commission (FERC) licensing requirements under the Federal Power Act, and may conflict with the states' authority under Section 401 of the Clean Water Act to protect water quality and provide critical input on federal dredge and fill permits to wetlands and other waters under § 404.

Under the CWA and a state's own laws and regulations, states are responsible for advancing the attainment of clean and healthy waters. Section 401 of the CWA requires states to certify that projects impacting navigable waters will comply with applicable water quality standards and other state requirements. Additionally, 401 certification is required for federal dredge and fill permits to wetlands and other waters under Section 404. Under this framework, states and permittees have efficiently been able to balance certification of hydropower facilities while ensuring that water quality standards are met initially or through remedial actions. By weakening § 401 authority, H.R. 3043 would harm the ability of the governmental entity with primary responsibility for water quality protection.

Additionally, H.R. 3043 places FERC in control of permitting timetables and limits time extensions. This could restrict states' abilities to gather necessary data and scientific studies for permitting, which are crucial to reaching collaborative, science-based conclusions. Rushing scientific studies and data gathering would result in federal agencies making regulatory decisions without sufficient technical information, and may lead to litigation and less effective oversight of hydropower facilities.

H.R. 3043 needlessly impairs state authority granted under the CWA, and undermines "cooperative federalism," a core principle of the Act and the Administration's approach to environmental law. The bill



will not improve permitting efficiency, and will likely result in water quality standards being even harder to achieve. ACWA, ECOS and ASWM welcome the opportunity to discuss revisions that would better preserve states' rights under CWA Section 401 and ensure the protection of state water resources. Should you have any additional questions, do not hesitate to contact us.

Sincerely,

Alexandra Dunn
Executive Director, ECOS

Julia Anastasio
Executive Director, ACWA

Jeanne Christie
Executive Director, ASWM