



September 8, 2015

The Honorable Lisa Murkowski, Chairman
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20515

The Honorable Maria Cantwell, Ranking
Member
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20515

VIA FACSIMILE

Re: *Concern with Provisions of S.1236 -- Hydropower Improvement Act of 2015*

Dear Chairman Murkowski and Ranking Member Cantwell:

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 provisions of S. 1236, the Hydropower Improvement Act of 2015. If enacted, S. 1236 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 S.1236 could be interpreted to remove state Section 401(a) authority for these types of licenses. In addition, S. 1236 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 S. 1236's Section 35, *Licensing Coordination to the Federal Power Act* and Section 34, *Licensing Process Improvements*, 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: 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