

**U.S. House Committee on Energy and Commerce**  
**Subcommittee on Energy, Climate, and Grid Security**  
**“American Hydropower: Unleashing Reliable, Renewable, Clean Power**  
**Across the U.S.”**  
**[September 20, 2023]**

1. Letter to Chair Rodgers from Hydropower stakeholders, September 20, 2023, submitted by the Majority.
2. Letter to Chair Rodgers, Ranking Member Pallone, Chair Duncan, and Ranking Member DeGette from American Rivers, September 18, 2023, submitted by the Minority.
3. Letter to Chair Duncan and Ranking Member DeGette from American Whitewater, September 20, 2023, submitted by the Minority.
4. Letter to Chair Rodgers, Ranking Member Pallone, Chair Duncan, and Ranking Member DeGette from Hydropower Reform Coalition, September 18, 2023, submitted by the Minority.



September 18, 2023

The Honorable Cathy McMorris Rodgers  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2322A Rayburn House Office Building  
Washington, DC 20515

The Honorable Jeff Duncan  
Subcommittee Chair  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Diana DeGette  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairman McMorris Rodgers, Ranking Member Pallone, Chair Duncan, and Ranking Member DeGette:

We are writing to express our profound concerns about the Hydropower Clean Future Act (HR 4045). Hydropower is an important source of generation for our nation's renewable energy supply, but it is also a technology that has serious impacts to rivers and the people, fish, and wildlife that depend on them.

Hydropower licenses are issued for up to 50 years. Many hydropower facilities that are coming up for relicensing now were first constructed before many modern environmental laws were in place. It is during relicensing proceedings that the public gets the opportunity to ensure that dam owners make the necessary changes to comply with modern laws. The opportunity to mitigate the damage these projects cause to the environment and surrounding communities only arises once in a generation.

HR 4045 attempts to streamline the hydropower licensing process by centralizing power and allowing FERC to set an aggressive licensing schedule that all federal and state agencies must adhere to throughout the licensing process. There are no requirements that FERC or the licensee provide the agencies with the information they deem necessary to quickly and competently exercise their Clean Water Act or Endangered Species Act authority. This creates a dynamic where, unless every step of the process proceeds seamlessly, agencies are faced with the impossible decision to either exercise their authority without necessary information (which exposes them to legal liability) or to fail to meet the schedule (which exposes them to draconian fines of \$5,000 per week). This change will constrain federal, state, and tribal agencies use of their independent authorities and rush decision making, potentially making it more difficult to protect water quality, recover threatened and endangered species, and manage tribal-trust resources and public lands.

The nation's hydropower fleet is aging and in poor condition. The average age of dams in the United States is 57 years old and, in some regions, such as the Pacific Northwest, the average age of dam is closer to 70 years old, which is well past the engineered lifespan of most facilities. The Association of Civil Engineers has given our nation's dams a grade of D for their poor condition and scant funding for dam safety programs. HR 4045 would exempt that vast majority of projects from oversight. Some estimates suggest that 97% of hydropower projects in Alaska, 90% of Northeast/Mid Atlantic projects (including all projects in Maine), 60% of Southeast projects, and 72% of projects in California, Washington, Oregon, and Idaho would no longer receive regulatory oversight. The oversight provided by the hydropower licensing process is crucial to identifying and addressing dam safety concerns. It makes no sense to remove oversight from the majority of hydropower dams at a time when dam safety concerns are growing and FERC and state dam safety agencies are struggling to maintain licensee compliance with safety requirements. This is a dam safety catastrophe in the making.

While not perfect, the FERC licensing process is largely free of the politicization that impacts many other areas of our government and society. That would end with this bill. HR 4045 includes provisions that take decision making out of FERC's hands and give it, in certain circumstances, to political appointees and the President. If the goal of hydropower licensing reform is to make the process more efficient and predictable, this provision does not achieve that aim. Instead, it will lead to outcomes that change with each administration, making relicensing outcomes less predictable and adding levels of bureaucracy to the process.

This legislation is deeply flawed and we are dismayed that despite having been introduced multiple times it has not improved. We believe this legislation would be deeply impactful of rivers and would undermine and reverse much of the progress we have made to restore rivers, fish and wildlife through the hydropower licensing process. We would welcome the opportunity to work with your office to improve this legislation.

Sincerely,

A handwritten signature in black ink that reads "Kelly L. Catlett". The signature is written in a cursive, flowing style.

Kelly Catlett, J.D.  
Director, Hydropower Reform



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September 20, 2023

Jeff Duncan  
Subcommittee Chair  
Committee on Energy and Commerce  
United States House of Representatives  
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Diana DeGette  
Ranking Member  
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RE: Energy, Climate, and Grid Security Subcommittee, Energy and Commerce Committee,  
Legislative Hearing, Hydropower Clean Energy Future Act (H.R. 4045)

Dear Chair Duncan and Ranking Member DeGette,

On behalf of American Whitewater and our members nationwide, we write in opposition to the Hydropower Clean Energy Future Act (H.R. 4045). This legislation would detrimentally impact America's river ecosystems, opportunities for the public to enjoy them, and the local economies that depend on them.

*About American Whitewater*

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954 with approximately 50,000 supporters, 7,000 dues-paying members, and 100 locally based affiliate clubs, representing whitewater enthusiasts across the nation. American Whitewater's mission is to protect and restore America's whitewater rivers and to enhance opportunities to enjoy them safely. The organization is the primary advocate for the preservation and protection of whitewater rivers throughout the United States, and connects the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission. Our vision is that our nation's remaining wild and

free-flowing rivers stay that way, our developed rivers are restored to function and flourish, that the public has access to rivers for recreation, and that river enthusiasts are active and effective river advocates. Our members live, work, and recreate along the rivers that would be directly impacted by the Hydropower Clean Energy Future Act (H.R. 4045).

The Federal hydropower licensing process ensures the public has a meaningful role in protecting and restoring the rivers that flow through their communities and that are impacted by federally-licensed hydropower projects. Two primary concerns with the legislation are that it exempts most projects from licensing and it limits the participation of the public in hydropower licensing.

*The Hydropower Clean Energy Future Act (H.R. 4045) Would Negatively Impact Communities, Local Economies, Rivers, and Outdoor Recreation*

American Whitewater has a long and successful record of engaging in the hydropower licensing process at well over 100 projects across the country to restore rivers and build robust outdoor recreation economies. Many of these hydropower projects do not generate much power, but their impacts can be significant. The legislation would exempt most projects from licensing by increasing the threshold for licensing exemptions from 10 MW to 40 MW. Dams in this range can and often do have significant impacts on rivers and communities. They often have significant reservoirs and dewatered (i.e. bypassed) river reaches, have the capacity to significantly store and manipulate river flows, and block fish passage. They can make or break outdoor recreation economies depending on the FERC mitigation requirements.

If the proposed legislation is enacted, hydropower dams such as the Ripogenus Hydroelectric Project on Maine's West Branch of the Penobscot River would be exempt from requirements to provide recreational releases. This project provides the iconic northeast whitewater rafting experience that is a mainstay of a struggling regional economy that was decimated by the closure of paper mills. Similarly, at the West Canada Creek Hydroelectric Project in the Adirondack Region in New York, hydropower dams have diverted the entire river that once flowed over several of the largest waterfalls east of Niagara. The flow diversions at this project have created a lifeless river, prevented the public from enjoying views of the falls, eliminated virtually all recreation opportunities, and harmed the local economy. These projects are currently being relicensed, and American Whitewater is working to restore flows to these and many other dewatered sections of the rivers in order to provide recreation opportunities that support local communities.

The problems of unlicensed and unregulated hydropower projects are well known. The Electron Project on Washington's Puyallup River is a small project that is currently exempt from FERC licensing but that has significant environmental impacts. The project has had an egregious record of environmental impacts affecting salmon species listed under the Endangered Species Act. With no regulatory oversight from FERC, American Whitewater had to go to federal court to ultimately reach a settlement requiring the dam owner to bring the project into compliance with basic environmental laws before it can operate. This responsibility to ensure compliance with environmental laws should not fall to non-profit organizations and Tribes but should remain the responsibility of FERC. Removing more hydropower projects from regulatory oversight by FERC is not in the public interest.

In addition, the legislation would do nothing to address the reality that many projects are no longer economic and have unacceptable environmental impacts with associated environmental justice impacts. It would only exacerbate the current regulatory inadequacy in dealing with such dams.

#### *The Hydropower Clean Energy Future Act (H.R. 4045) Would Threaten Public Safety*

FERC has a critical role in dam safety and removing more dams from regulatory oversight threatens public safety. In 2020 Michigan's Tittabawassee River overwhelmed the Edenville Dam spillway, causing the dam to fail and driving thousands of families from their homes in the midst of a global pandemic. FERC had revoked the license for this project in 2018, washing its hands of any further regulatory oversight by simply directing the owners to “disable the project’s generating equipment” and provide “a photograph of the reading on the [electric] meter.” Within two years the dam failed. As the hydropower projects in this country continue to age, many of them over a century old, it is more important than ever to maintain regulatory oversight to ensure public safety concerns are addressed and impacts are appropriately mitigated. Reminders of the human and economic toll of dam failures caused by inadequate oversight and upkeep paired with climate-change are becoming all too common.

#### *The Hydropower Clean Energy Future Act (H.R. 4045) Would Negatively Impact Public and Agency Participation*

This legislation would impact public participation and the authority in significant ways and prevent us from achieving the types of outcomes we have successfully achieved on scores of rivers. Specifically, the legislation would severely limit public participation by shortening timelines, eliminating public meetings and community engagement, and reducing opportunities to raise and incorporate effective mitigation measures that address project impacts. The

arbitrary timelines established by this legislation would not allow for meaningful public deliberation and effective agency process. Power companies and the federal government cannot be expected to know what river-based communities need to flourish. Rather, it is almost always perspectives from the public that lead to the efficient and meaningful protection and enhancement of outdoor recreation, quality of life, and local river-based economies through the FERC relicensing process. Protecting the role of the public in relicensing is vital to ensuring fair and positive outcomes for communities.

The proposed legislation would also weaken the authority of federal resource agencies such as the Fish & Wildlife Service and the National Marine Fisheries Service to prescribe conditions protecting fish under Section 4(e) and Section 18 under the Federal Power Act. These changes could prevent these agencies from requiring flows necessary to protect certain fish species impacted by hydropower projects at federal reservations (Section 4(e)) and prevent conditions that require the construction of fishways (Section 18) where hydropower dams prevent safe, timely, and effective fish passage.

### *Conclusion*

American Whitewater would welcome the opportunity to engage with your offices to discuss policy alternatives that would improve hydropower licensing and decommissioning and indeed we have participated in such a conversation with representatives of the hydropower industry, Tribes, and conservation community. This legislation would have unacceptable environmental impacts on rivers and threaten public safety and local river-based economies.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin R. Colburn', written in a cursive style.

Kevin R. Colburn  
National Stewardship Director



## HYDROPOWER REFORM COALITION

Putting water,  
wildlife, and people  
back in rivers

September 18, 2023

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Chairman  
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Washington, DC 20515

Dear Chairman McMorris Rodgers, Ranking Member Pallone, Chair Duncan, and Ranking Member DeGette:

On behalf of the Hydropower Reform Coalition and our millions of members nationwide, we write in opposition to the Hydropower Clean Energy Future Act (H.R. 4045). This legislation would detrimentally impact America's river ecosystems by transferring important federal resource agency authorities to the Federal Energy Regulatory Commission (FERC), which has a distinct and unique statutory mandate.

Founded in 1992, the Hydropower Reform Coalition is a diverse consortium of more than 160 national, regional, and local conservation and recreation organizations dedicated to protecting and restoring rivers affected by hydropower dams, ensuring public access to these lands and waters, and reforming the federal licensing process to ensure public participation and to improve the quality of the resulting decisions. Rivers should be treated as holdings within the public trust when hydroelectric projects are licensed through the federal regulatory process. We understand the unique role played by FERC in regulating energy production and distribution; however, FERC must also balance multiple resource needs while respecting the authority of states and sovereign tribes, as well as the roles Congress has reserved to other federal agencies that have superior conservation expertise.

**Our community is concerned that this legislation would:**

**Exempt most projects in key hydropower generating regions from licensing.**

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hydroreform.org

Alabama Rivers Alliance | American Rivers | American Whitewater |  
Appalachian Mountain Club | California Outdoors | California Sportfishing  
Protection Alliance | California Trout | Foothill Conservancy | Friends of  
the River | Idaho Rivers United | Michigan Hydro Relicensing Coalition |  
New England FLOW | South Yuba River Citizens League | Trout Unlimited



Moving the threshold for licensing exemptions from 10MW to 40MW will exempt from licensing the vast majority of projects in the key hydropower generating regions. For example, 97% of Alaska projects, 90% of Northeast/Mid Atlantic projects (including all Maine projects), 60% of Southeast projects, and 72% of West Coast projects (CA, WA, OR, ID) could no longer receive regulatory oversight. As the hydropower fleet ages and states and FERC struggle to maintain licensee compliance with dam safety requirements, it is more important than ever to continue periodic oversight.

**Limit participation of states, Native American tribes, and the public in hydropower licensing by shortening timelines, eliminating meetings, and reducing opportunities to raise and incorporate effective mitigation measures that address project impacts.**

This legislation puts FERC in charge of setting artificial and ambiguous timelines that do not meaningfully take deliberate and effective agency processes and requirements into account. Further, this legislation constrains agency budgets, which are already limited, by fining them \$5,000 each week if FERC deadlines are not met. This not only curtails agency effectiveness by taking money away from their budgets but will also result in agencies prioritizing reviews for hydro projects over other types of projects. This is unfair and unnecessarily punitive.

**Gives FERC the ability to decide whether species or critical habitat will be jeopardized by the project.**

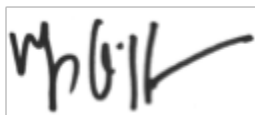
Endangered Species Act determinations currently made by federal fisheries agencies are best handled by the experts within the agencies. FERC does not have the requisite resources and expertise to effectively manage making these types of determinations that could eliminate or critically impact an entire population of environmentally sensitive species.

**Politicizes the licensing process by allowing the White House Office of Management and Budget to refer hydropower project disputes to the President as the final arbiter.**

Delegating final project authority to political officials, could result in politically motivated outcomes that are inconsistent with thorough scientific determinations and detrimentally impact river ecosystems.

This bill has been introduced multiple times and each time Congress has declined to enact these changes. This bill does not improve the hydropower licensing process; it is an attempt to provide weaker oversight and management of hydroelectric dams. For these reasons, we urge you to reconsider this legislation that would strip important science-based decision making away from key stakeholders. The HRC would welcome the opportunity to engage with your offices to discuss policy alternatives to this legislative proposal.

Sincerely,



Thomas O'Keefe, Ph.D.  
Co-Chair



Kelly Catlett, J.D.  
Co-Chair